

Seven Hangmen  
of  
Colonial Maryland

by

C. Ashley Ellefson

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*For*  
*all of the victims*  
*of*  
*colonial “justice”*

“. . . our foolish civil institutions, whereby the real welfare of the public and true justice are always sacrificed to an apparent order, which is in reality subversive of all order, and of which the only effect is, to bestow the sanction of public authority upon the oppression of the weak and the injustice of the strong.”

John Jacques Rousseau, *Confessions* (Modern Library edition; New York: Random House, n. d.), p. 336.

“In general, nice people leave the policing of the world to hirelings because they feel the work to be not such as a person who is quite nice would wish to undertake.”

Bertrand Russell, “Nice People,” in *Why I Am Not a Christian and Other Essays on Religion and Related Subjects* (Touchstone edition; New York: Simon and Schuster, Inc., 1957), p. 151.

“I never saw an execution but once; and then the hangman asked the poor creature’s pardon, wiped his mouth as you do, pleaded his duty, and then calmly tucked up the criminal.”

Samuel Richardson, *Pamela* (Everyman's edition; 2 vols.; New York: E. P. Dutton & Co., Inc., 1926), I, 92.

# Seven Hangmen of Colonial Maryland

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The hangmen I include here I have found during the almost fifty years that I have been doing research on other subjects on the legal history of colonial Maryland — with a partial recess of about fourteen years from 1975 to 1989, when I was in what I call my exile from the field. From time to time I have tried to find out more about these men, and because I thought that I might run into additional hangmen I have been in no hurry to finish the manuscript. As late as March of 1992 the title was still “Five Hangmen of Colonial Maryland”; at some point it became “Six Hangmen . . .”; and finally, quite recently, it has become “Seven Hangmen . . . .” Maybe someday someone will find an eighth.

During those many years of my working in the records of colonial Maryland I have received a lot of help from a lot of people. Archivists at the State Archives in Annapolis have come and gone, and some of their names I do not remember. I thank them still. Others, of course, are unforgettable. These begin with the late Dr. Morris L. Radoff, Maryland State Archivist and Commissioner of Land Patents, and the late Gust Skordas, Assistant State Archivist, who together made the State Archives a supreme collection of records. Guy Weatherly and Frank White have been gone for a long time. Phebe Jacobsen was always special not only as an archivist but also as a person and as a friend.

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We have not personally met Michael McCormick, Director of Reference Services at the State Archives, but we thank him also.

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At Cortland, through the years Eileen O'Donnell, Gretchen Gogan, Laurie Pepper, and Beverly Ann have gone beyond anything that could have been expected

of them to get me the sources I have needed through interlibrary loan. It was Mrs. O'Donnell who in 1973 got for me all of those photocopies of the Colonial Office Papers from the Library of Congress that I use especially in the Appendix on the Espy File.

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Cortland, New York

25 August 2009



## 1. Introduction: The Excitement of Hanging

Possibly the single most characteristic feature of what is called western civilization is the gallows and other devices for dispatching people from life. In Europe there was never any shortage of candidates of whom the governing elite could make examples by hanging them up at the end of a rope or by sending them off by some more fashionable method, and when those countries established colonies the colonists brought with them their enchantment with the instruments of death.

If authority was going to kill people, it had to find someone to do its dirty work. Little information remains about the executioners of colonial America, but one can find information on the executioners of England and Europe.<sup>1</sup> The executioner, who was sometimes called the “master of high works”<sup>2</sup> or the Finisher of the Law<sup>3</sup> and in England was often referred to as Jack Ketch,<sup>4</sup> performed other functions than simply carrying out executions. He was responsible for inflicting all floggings, brandings, and other corporal punishments.<sup>5</sup> He also burned offensive books and pamphlets as well as the papers and other effects of particularly offensive people.<sup>6</sup>

The executioner’s primary job, however, was to kill people — to see that people got hanged, properly or improperly, or otherwise dispatched. In England, legally it was the sheriff who officiated at a hanging,<sup>7</sup> but apparently authority

ordinarily found someone else to do its unsavory work and therefore allowed the sheriff to escape the personal stigma of being a killer.<sup>8</sup> Often officials in England had no difficulty finding such a person,<sup>9</sup> but it was not always easy. Therefore they sometimes had to exchange a condemned man's life for his agreement to serve as executioner.<sup>10</sup> The condemned person might choose to die rather than to become the public hangman,<sup>11</sup> although some hangman might positively enjoy their work.<sup>12</sup>

While in England the hangman usually waited at the gallows,<sup>13</sup> he might participate in the preliminaries as well as perform the actual hanging. After the blacksmith knocked off the prisoner's irons<sup>14</sup> the hangman or one of the sheriff's other functionaries, called the Yeoman of the Halter,<sup>15</sup> pinioned the prisoner's arms, usually in the press-yard but sometimes in the jail.<sup>16</sup> At the gallows he put the noose around the victim's neck and adjusted the rope, covered the prisoner's face,<sup>17</sup> and on the signal from the condemned victim<sup>18</sup> lashed the horses to pull the cart from under him.<sup>19</sup> With the friends and relatives of the condemned prisoner he prevented the interference of the crowd,<sup>20</sup> and with them also he might pull on the legs of the victim or beat him on the chest in order to make him die more quickly.<sup>21</sup> After the body had remained hanging "the usual time" the hangman cut it down,<sup>22</sup> sometimes only after holding a child, or sometimes even an adult, to the dead person's hand to cure a wen or some other disorder,<sup>23</sup> and usually turned it over to the dead person's friends or relatives for burial.<sup>24</sup> Instead of burying it, however, the friends might lay the body at the door of the victim of the crime or of the principal witness against the hanged or even destroy his property.<sup>25</sup> On other occasions the hangman could not turn the body over to the friends or relatives but rather had to hang it on a gibbet,<sup>26</sup> quarter it, or turn it over to the surgeons for dissection or anatomization.<sup>27</sup>

Hangings did not always proceed smoothly. The crowd might become unruly,

either out of indignation at the condemned<sup>28</sup> or in sympathy for him<sup>29</sup> or because the reprieve of the condemned denied the crowd its expected spectacle.<sup>30</sup> Its wrath might be turned against the hangman himself,<sup>31</sup> although on other occasions it might greet him with a cheer.<sup>32</sup> The unruliness of the crowd might result in injury or death to some of the spectators.<sup>33</sup> Or people might get killed by accident.<sup>34</sup> And while the English were very proud that their criminals were famous for going to the gallows bravely and undaunted<sup>35</sup> — often, one suspects, because they were either drunk<sup>36</sup> or possibly in fits<sup>37</sup> —, not all victims of the gallows found sufficient comfort in the assurance that “wedding and hanging goes by destiny”<sup>38</sup> or in the impudent saying that “there is nothing in being hang’d, but awry Neck, and a wet pair of Breeches.”<sup>39</sup> Sometimes they were defiant,<sup>40</sup> and they might actually attack the hangman physically.<sup>41</sup>

Other dramatic incidents might occur. The rope might break,<sup>42</sup> in which case the victim was immediately hanged again.<sup>43</sup> The rope might break twice.<sup>44</sup> The noose might slip, or the victim might get his hands loose and grasp at the rope.<sup>45</sup> The hood might come off the victim’s head and reveal his distorted face.<sup>46</sup> If after the introduction of the trap-door the hangman failed to calculate the length of the drop properly the head might be jerked off the body<sup>47</sup> or almost jerked off.<sup>48</sup> Or the hangman might simply bungle the hanging generally.<sup>49</sup>

Both before and after the introduction of the scaffold and trap-door the victim might take a long time to die.<sup>50</sup> The person who was hanged sometimes revived after he was cut down.<sup>51</sup> According to English law in such a case he was supposed to be hanged again,<sup>52</sup> but the crowd might prevent the second hanging of the revived victim.<sup>53</sup> If he was not hanged again he might be pardoned<sup>54</sup> or transported to the colonies.<sup>55</sup> On at least one occasion a private individual paid his passage to

America.<sup>56</sup>

The character of the hangman was often something less than sweet. At a hanging he might be drunk,<sup>57</sup> or he might be brutal.<sup>58</sup> Sometimes the hangman himself was hanged later.<sup>59</sup> He had to be callous,<sup>60</sup> although often he did claim to be sensitive.<sup>61</sup> Probably the hangman was not much more callous than those who watched the hangings, the legislators who provided the punishments, or the judges who passed the sentences,<sup>62</sup> but his callousness might only have been more obvious than theirs.

## 1. Introduction:

### The Excitement of Hanging

- The documentation included in the notes of this chapter is not confined to England and the American colonies in the seventeenth and eighteenth centuries but comes also from other times and other places.

- The *Annual Register* is divided into sections, each with its own pagination. Except where noted, my citations come from the “Chronicle” section, where items are listed in chronological order. Since I include both the dates and the pages of the items, anyone who wants to check citations should have no difficulty finding them.

<sup>1</sup> Four of the hangmen of England made the *Dictionary of National Biography*. Two of these are from the seventeenth century (Richard Brandon, d. 1649: *DNB*, II, 1131-1132, and John Ketch, d. 1686: *DNB*, XI, 71-72), and two are from the nineteenth century (William Calcraft, 1800-1879: *DNB*, III, 690, and William Marwood, 1820-1883: *DNB*, XII, 1218). See also Horace Bleackley, *The Hangmen of England: How They Hanged and Whom They Hanged. The Life Story of “Jack Ketch” Through Two Centuries* (London: Chapman and Hall, Ltd., 1929); Brian Bailey, *Hangmen of England: The History of Execution from Jack Ketch to Albert Pierrepoint* (New York: Barnes & Noble Books, 1989); W. Pinkerton, “Jack Ketch and his Brotherhood,” *Notes and Queries*, 2nd Series, XI (January-June 1861), pp.

314-316; Edward F. Rimbault, "Tyburnian Gleanings," *ibid.*, pp. 445-448; G. D. Robin, "The Executioner: His Place in English Society," *The British Journal of Sociology*, XV, No. 3 (September 1964), pp. 234-253.

<sup>2</sup> Edward Payson Evans, *The Criminal Prosecution and Capital Punishment of Animals* (London: William Heineman Limited, 1906; reprinted London: Faber and Faber Limited, 1987), pp. 140, 156.

<sup>3</sup> *Maryland Gazette*, 11 September 1755; Bleackley, *The Hangmen of England*, pp. 10, 13; J. S. Cockburn, "Punishment and Brutalization in the English Enlightenment," *Law and History Review*, XII, No. 1 (Spring 1994), p. 161. In France the executioner might be referred to as "Executioner of the High Works and Criminal Sentences." Barbara Levy, *Legacy of Death* (Westmead, Farnborough, Hants, England: Saxon House, 1973), p. 15.

<sup>4</sup> After John Ketch was hangman, Englishmen called the hangman "Jack Ketch." George Ryley Scott, *The History of Capital Punishment, Including an Examination of the Case for and Against the Death Penalty* (London: Torchstream Books, 1950), p. 143; Tobias Smollett, *The Adventures of Sir Launcelot Greaves*, in *The Miscellaneous Works of Tobias Smollett, M. D. With Memoirs of His Life and Writings*, ed. Robert Anderson (6 vols.; Edinburgh: Mundell & Son, 1800), V, 46, 63; Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers* (London: Printed for A. Millar, 1751; reprinted in *Complete Works*, intro. by William Ernest Henley, New York: Barnes & Noble, 1967), XIII, 108; George Theodore Wilkinson, *The Newgate Calendar* (3 vols.; London: Panther Books Ltd., 1962-1963), I, 37, 251; Negley K. Teeters and Jack H. Hedblom, "Hang by the Neck . . .": *The Legal Use of Scaffold and Noose, Gibbet, Stake, and Firing Squad from Colonial Times to the Present* (Springfield, Ill.: Charles C. Thomas, Publisher,

1967), p. 50; John Laurence, *A History of Capital Punishment* (New York: Citadel Press, 1960), p. 93; Bleackley, *The Hangmen of England*, pp. 10, 13; Charles Duff, *A Handbook on Hanging* (Totowa, N. J.: Rowman and Littlefield, 1974), p. 24; David C. Cooper, *The Lesson of the Scaffold: The Public Execution Controversy in Victorian England* (Athens, Oh.: Ohio University Press, 1974), pp. 69-70; John C. Miller, *Crisis in Freedom: The Alien and Sedition Acts* (Boston: Little, Brown and Company, 1951), p. 121; Evans, *The Criminal Prosecution and Capital Punishment of Animals*, p. 147; Bernhard Knollenberg, *Origin of the American Revolution, 1759-1766* (revised edition; New York: The Free Press, 1965), p. 44 (quoting the *London Chronicle*, 6 December 1763); Horace Walpole, *Historic Doubts on the Life and Reign of King Richard the Third* (London: Printed for J. Dodsley, 1768; reprinted Totowa, N. J.: Rowman & Littlefield, 1974), p. 9; Wilkie Collins, "Fauntleroy," in *Tales of Terror and the Supernatural* (New York: Dover, 1972), pp. 159-160.

"'Arthur Ellis' was the traditional pseudonym used by Canada's hangmen." R. E. Porter, "Crime Beat," *Ellery Queen's Mystery Magazine*, LXXXV, No. 3 (March 1985), p. 87. Credit for this reference goes to Beverly Ellefson.

<sup>5</sup> G. M. Trevelyan, *Illustrated English Social History* (4 vols.; London: Longmans, Green and Co. Ltd., 1949-1952), III, *The Eighteenth Century*, p. 56; Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (4 vols.; London: Stevens & Sons Limited, 1948-1968), I, *The Movement for Reform, 1750-1833*, p. 187n.; Laurence, *A History of Capital Punishment*, p. 111; Peter Linebaugh, "The Tyburn Riot Against the Surgeons," in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, hereafter *Albion's Fatal Tree* (New York: Pantheon Books, 1975), p. 71; Jacques Casanova, *Memoirs*, ed. Arthur

Machen (6 vols.; New York: G. P. Putnam's Sons, n. d.), V, 118; VI, 515; 1678, c. 18, *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), VII, 105.

<sup>6</sup> *Annual Register*, 3 April 1760, p. 90 (France); 8 May 1761, p. 109 (France); 25 February 1764, p. 51 (England); 31 January 1765, p. 60 (Holland); 24 February 1775, pp. 94-95 (England); Tobias Smollett, *The History of England, from the Revolution to the Death of George the Second. Designed as a Continuation of Mr. Hume's History* (New edition; 4 vols.; London: Printed for T. Cadell and others, 1830), I, 161-162; George Rudé, *Hanoverian London, 1714-1808* (Los Angeles: University of California Press, 1971), p. 212; George Rudé, *Wilkes and Liberty: A Social Study of 1763 to 1774* (Oxford: Oxford University Press, 1962), pp. 33-34, 181; Knollenberg, *Origin of the American Revolution, 1759-1766*, p. 44; Francois Ribadeau Dumas, *Cagliostro*, trans. Elisabeth Abbot (New York: Orion Press, 1967), pp. 291, 293; Norman Cohn, *The Pursuit of the Millennium: Revolutionary Messianism in Medieval and Reformation Europe and Its Bearing on Modern Totalitarian Movements* (New York: Oxford University Press, 1957; reprinted Torchbook edition, New York: Harper & Brothers, 1961), pp. 350, 361; G. P. Gooch, *Frederick the Great: The Ruler, the Writer, the Man* (London: Longmans Green and Co., Ltd., 1947; reprinted Hamden, Conn.: Archon Books, 1962), p. 223; Frederick B. Artz, *Reaction and Revolution, 1814-1832* (New York: Harper & Brothers Publishers, 1934), pp. 139-140.

<sup>7</sup> Henry Fielding, *An Enquiry into the Causes of the Late Increase of Robbers*, 108; John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (Toronto: University of Toronto Press, 1973), p. 92; Sir Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown* (2 vols.; Dublin: [??],



1778), I, 501.

<sup>8</sup> For contempt for the hangman in England, see Laurence, *A History of Capital Punishment*, pp. 89, 95, 115; Scott, *The History of Capital Punishment*, p. 139; Bleackley, *The Hangmen of England*, pp. 58, 126, 165; Charles Duff, *A New Handbook on Hanging* (London: Andrew Melrose, 1954), p. 24; Duff, *A Handbook on Hanging*, pp. 26, 91; Samuel Richardson, *Pamela* (Everyman's edition; 2 vols.; New York: E. P. Dutton & Co., Inc., 1926), I, 89; II, 404; Oliver Goldsmith, *She Stoops to Conquer*, V.ii, in Ricardo Quintana, ed., *Eighteenth Century Plays* (Modern Library edition; New York: Random House, Inc., 1952), p. 399; Ben Jonson, *Bartholomew Fair*, ed. Edward B. Partridge (Lincoln, Neb.: University of Nebraska Press, 1964), IV.vi, 25-27; Jon Davies, *Microcosmos*, in *The Complete Works of John Davies of Hereford* (2 vols.; Edinburgh: Edinburgh University Press, 1878), I, 83.

For contempt of the executioner in **France**, see Laurence, *A History of Capital Punishment*, p. 76; Levy, *Legacy of Death*, p. 9; Richardson, *Pamela*, II, 93n.; **Corsica**: James Boswell, *Boswell on the Grand Tour: Italy, Corsica, and France, 1765-1766*, ed. Frank Brady and Frederick A. Pottle (New York: McGraw-Hill Book Company, Inc., 1955), pp. 158-159; **Spain**: Casanova, *Memoirs*, VI, 73; **Generally**: Cesare Beccaria, *On Crimes and Punishments*, ed. Henry Paolucci (Liberal Arts edition; New York: The Bobbs-Merrill Company, Inc., 1963), p. 50; Joseph Baretti, *A Journey from London to Genoa, Through England, Portugal, Spain, and France* (London: Printed for T. Davis and L. Davis, 1770; reprinted 2 vols. in one; New York: Praeger Publishers, 1970), I, 323.

<sup>9</sup> Laurence, *A History of Capital Punishment*, p. 114. In England during the nineteenth century there appear to have been plenty of candidates for the office of public executioner. Radzinowicz, *The Movement for Reform*, p. 187n.; Scott, *The*

*History of Capital Punishment*, p. 141; Duff, *A New Handbook on Hanging*, p. 154; Duff, *A Handbook on Hanging*, pp. 30, 159.

In Scotland in the nineteenth century a woman served as executioner for a time. Bleackley, *The Hangmen of England*, pp. 253-254. And in New Zealand in 1951 a woman applied for the job of executioner. Duff, *A Handbook on Hanging*, p. 69.

<sup>10</sup> Laurence, *A History of Capital Punishment*, pp. 92, 98, 103. For authority's exchanging the condemned man's life for his agreement to become the hangman in France, see Tobias Smollett, *Travels Through France and Italy*, in *The Miscellaneous Works of Tobias Smollett*, V, 310; Laurence, *A History of Capital Punishment*, p. 75.

And for the same thing in Corsica, see Boswell, *Boswell on the Grand Tour: Italy, Corsica, and France, 1765-1766*, pp. 183-184.

<sup>11</sup> *Ibid.*, p. 184. Boswell approved of the condemned person's choosing to die rather than to become the public hangman. *Ibid.*, pp. 183-184.

<sup>12</sup> Pinkerton, "Jack Ketch and His Brotherhood," p. 315; Bleackley, *The Hangmen of England*, p. 168.

For a hangman who clearly enjoyed his work in the nineteenth-century American West, see Glenn Shirley, *Law West of Fort Smith: Frontier Justice in the Indian Territory, 1834-1896* (Collier edition; New York: Collier Books, 1961), p. 82.

The hangman might be simply unconcerned. Pamela says:

"I never saw an execution but once; and then the hangman asked the poor creature's pardon, wiped his mouth as you do, pleaded his duty, and then calmly tucked up the criminal."

Richardson, *Pamela*, I, 92.

<sup>13</sup> Bleackley, *The Hangmen of England*, p. 152.

<sup>14</sup> *Ibid.* See also *Annual Register*, 14 September 1771, p. 141.

<sup>15</sup> Bleackley, *The Hangmen of England*, p. 173.

<sup>16</sup> James Boswell, *Boswell for the Defence, 1769-1774*, ed. William K. Wimsatt, Jr., and Frederick A. Pottle (New York: McGraw-Hill Book Company, Inc., 1959), p. 333; Duff, *A Handbook on Hanging*, p. 36; Bleackley, *The Hangmen of England*, pp. 173, 185.

The condemned victim's elbows were tied at his sides and his hands tied in front. Bleackley, *The Hangmen of England*, pp. 152, 158.

<sup>17</sup> *Annual Register*, 14 October 1767, p. 139; 14 September 1771, p. 141; *ibid.*, 1775, "Appendix to the Chronicle," pp. 232-233; C. de Saussure, *A Foreign View of England in the Reigns of George I and George II* (edition of 1902), quoted in Radzinowicz, *The Movement for Reform*, p. 183; Cooper, *The Lesson of the Scaffold*, pp. 171-172.

Putting the noose around the neck of the condemned was called haltering him. *Annual Register*, 2 April 1759, pp. 82-83; Pinkerton, "Jack Ketch and His Brotherhood," p. 314.

<sup>18</sup> Radzinowicz, *The Movement for Reform*, pp. 181-182. See also William McAdoo, *Procession to Tyburn: Crime and Punishment in the Eighteenth Century* (New York: Boni and Liveright, 1927), p. 219; Sandra Lee Kerman, ed., *The Newgate Calendar, or Malefactor's Bloody Register* (New York: Capricorn Books, 1962), p. 191; *Annual Register*, 7 November 1767, p. 146.

<sup>19</sup> C. de Saussure, *A Foreign View of England in the Reigns of George I and George II*, quoted in Radzinowicz, *The Movement for Reform*, p. 183; Laurence, *A History of Capital Punishment*, pp. 43-44.

<sup>20</sup> Radzinowicz, *The Movement for Reform*, p. 194.

<sup>21</sup> *Annual Register*, 1760, "Characters," p. 47; Laurence, *A History of Capital*

*Punishment*, pp. 44, 105, 175, 188, 207; Scott, *The History of Capital Punishment*, pp. 194, 200; Radzinowicz, *The Movement for Reform*, pp. 172n., 186, 186n., 202-203, 203n.; William Edward Hartpole Lecky, *A History of England in the Eighteenth Century* (New edition; 7 vols.; New York: D. Appleton and Company, 1893), VII, 323; Bleackley, *The Hangmen of England*, pp. 141, 186; Duff, *A Handbook on Hanging*, p. 29; Cooper, *The Lesson of the Scaffold*, pp. 69-70; Wilkinson, *The Newgate Calendar*, I, 132.

<sup>22</sup> Duff, *A New Handbook on Hanging*, p. 152; Duff, *A Handbook on Hanging*, p. 157; Cooper, *The Lesson of the Scaffold*, p. 173; Linebaugh, "The Tyburn Riot Against the Surgeons," p. 82; Wilkinson, *The Newgate Calendar*, I, 136; Arthur Koestler, *Reflections on Hanging* (Danube edition; London: Hutchinson, 1970), p. 179.

<sup>23</sup> *Annual Register*, 19 April 1758, p. 90; 4 May 1767, p. 88; *ibid.*, 1784-1785, 20 September 1784, pp. 201-202. Stroking with the hand of the dead victim of the gallows was supposed to cure a number of things, such as wens, goiter, bleeding tumors, ulcers, cancer, and sterility in women. The beliefs varied in various parts of England. *Annual Register*, 1784-1785, 20 September 1784, pp. 201-202.

<sup>24</sup> *Ibid.*, 8 July 1772, p. 114; 11 August 1773, p. 124; 27 October 1773, pp. 144-145; 30 November 1774, p. 165; *ibid.*, 1775, "Appendix to the Chronicle," p. 233; Kerman, ed., *The Newgate Calendar*, p. 264.

<sup>25</sup> *Annual Register*, 24 August 1763, p. 96; 5 May 1764, p. 74.

<sup>26</sup> *Ibid.*, 1761, "Characters," p. 62; 25 February 1763, p. 58; 18 April 1768, p. 97; 9 August 1768, p. 154; 28 March, 1770, pp. 85-86; 19 April 1770, p. 96; 19 July 1770, p. 129; 4 January 1771, p. 66; 8 July 1772, p. 114; 28 August 1772, p. 124; 22 April 1773, p. 93; 6 August 1774, p. 139; Laurence, *A History of Capital Punish-*

ment, pp. 57-62; Scott, *The History of Capital Punishment*, pp. 199, 203-207; Radzinowicz, *The Movement for Reform*, pp. 197, 200, 213-220; McAdoo, *Procession to Tyburn*, p. 123; Kerman, ed., *The Newgate Calendar*, pp. 24, 27, 153, 205, 241, 348; Wilkinson, *The Newgate Calendar*, I, 39, 132, 185, 195; Albert Hartshorne, *Hanging in Chains* (London: T. Fisher Unwin, 1891).

<sup>27</sup> *Annual Register*, 14 September 1767, p. 129; 11 September 1769, p. 129; 19 July 1770, p. 129; 28 March 1771, p. 87; 22 April 1773, p. 93.

<sup>28</sup> Radzinowicz, *The Movement for Reform*, pp. 185, 212; Wilkinson, *The Newgate Calendar*, I, 45, 96, 228-229; Kerman, ed., *The Newgate Calendar*, p. 264; *Annual Register*, 1761, "Characters," p. 62; Henry Fielding, *The History of the Life of the Late Mr. Jonathan Wild the Great* (Everyman's edition; London: J. M. Dent & Sons Ltd., 1932), p. 171.

<sup>29</sup> *Annual Register*, 24 August 1763, p. 96; 5 May 1764, p. 74; 14 February 1770, p. 72; 16 April 1771, p. 96.

For sympathy for the condemned without unruliness, see *Annual Register*, 21 May 1763, p. 77; 12 October 1768, p. 178; 2 January 1772, p. 65; Radzinowicz, *The Movement for Reform*, pp. 450n., 464-465, 465n., 468n.

<sup>30</sup> Laurence, *A History of Capital Punishment*, p. 179; *Annual Register*, 4 July 1758, p. 100.

<sup>31</sup> As, for example, the crowd at a hanging might throw stones at the hangman. Radzinowicz, *The Movement for Reform*, p. 185. See also *Annual Register*, 24 February 1775, pp. 94-95; Bleackley, *The Hangmen of England*, pp. 146, 161.

<sup>32</sup> Bleackley, *The Hangmen of England*, p. 211; Laurence, *A History of Capital Punishment*, p. 111.

<sup>33</sup> *Annual Register*, 14 September 1767, p. 129; Radzinowicz, *The Movement*

for Reform, pp. 185, 204; Koestler, *Reflections on Hanging*, p. 179; Cooper, *The Lesson of the Scaffold*, pp. 7, 20, 105.

<sup>34</sup> *Annual Register*, 10 October 1770, p. 154; 4 December 1770, p. 169.

<sup>35</sup> *Ibid.*, 18 July 1769, p. 117; 25 October 1773, p. 144; Radzinowicz, *The Movement for Reform*, pp. 720, 722n.; Bellamy, *Crime and Public Order in England in the Later Middle Ages*, p. 189.

The Corsicans had the same reputation as the English in going to the gallows bravely and undaunted. Boswell, *Boswell on the Grand Tour: Italy, Corsica, and France*, p. 171.

<sup>36</sup> Scott, *The History of Capital Punishment*, pp. 52, 134.

<sup>37</sup> *Annual Register*, 28 March 1771, p. 87.

<sup>38</sup> Thomas Dekker, *The Shoemaker's Holiday*, IV.iii, in Ernest Rhys, ed., *Thomas Dekker* (New York: A. A. Wyn, 1949), p. 59.

<sup>39</sup> Bernard Mandeville, *An Enquiry Into the Causes of the Frequent Executions at Tyburn: and A Proposal for some Regulations concerning Felons in Prison, and the Good Effects to be Expected from Them*, intro. Malvin R. Zirker Jr. (London: J. Roberts, 1725; reprinted Los Angeles: University of California Press, 1964), p. 37.

<sup>40</sup> Scott, *The History of Capital Punishment*, p. 134; Wilkinson, *The Newgate Calendar*, I, 142.

<sup>41</sup> Radzinowicz, *The Movement for Reform*, p. 185; Kerman, ed., *The Newgate Calendar*, p. 349; *Annual Register*, 16 October 1771, pp. 148-149.

<sup>42</sup> Radzinowicz, *The Movement for Reform*, pp. 185-186, 186n., 222-223; Laurence, *A History of Capital Punishment*, pp. 56-57; Scott, *The History of Capital Punishment*, p. 195; Boswell, *Boswell for the Defence*, pp. 289, 289n.; Wilkinson, *The Newgate Calendar*, I, 15, 132; II, 45; Kerman, ed., *The Newgate Calendar*, p. 6n.

<sup>43</sup> *Annual Register*, 1765, first section, p. 231; Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 406; Wilkinson, *The Newgate Calendar*, I, 15; James Boswell, *Journal of a Tour to the Hebrides with Samuel Johnson, LL. D.*, ed. Frederick A. Pottle and Charles H. Bennett (New York: The Viking Press, 1936), p. 75; Duff, *A Handbook on Hanging*, pp. 67-68; Cooper, *The Lesson of the Scaffold*, p. 141; *Maryland Gazette*, 16 November 1758; Hugh F. Rankin, *Criminal Trial Proceedings in the General Court of Colonial Virginia* (Charlottesville: The University Press of Virginia, 1965), p. 117.

<sup>44</sup> Duff, *A New Handbook on Hanging*, pp. 65, 104; Duff, *A Handbook on Hanging*, pp. 67, 106.

<sup>45</sup> Laurence, *A History of Capital Punishment*, p. 105; Scott, *The History of Capital Punishment*, pp. 195-197; E. P. Thompson, "The Crime of Anonymity," in *Albion's Fatal Tree*, p. 287.

<sup>46</sup> Bleackley, *The Hangmen of England*, p. 128.

<sup>47</sup> Duff, *A Handbook on Hanging*, pp. 37, 39.

<sup>48</sup> *Ibid.*, p. 106.

<sup>49</sup> Boswell, *Boswell on the Grand Tour: Italy, Corsica, and France*, p. 213n.; Laurence, *A History of Capital Punishment*, pp. 103, 104, 105, 122; Bleackley, *The Hangmen of England*, pp. 128, 141, 209; Duff, *A Handbook on Hanging*, pp. 68, 131-132. For incompetence at beheadings, see Lawrence, *A History of Capital Punishment*, pp. 35-36, 97, 100. For the hangman's incompetence in France, see *ibid.*, p. 76. For a complaint about the ineptitude of executioners in nineteenth-century England, see Cooper, *The Lesson of the Scaffold*, pp. 154-155.

<sup>50</sup> Duff, *A New Handbook on Hanging*, p. 104; Duff, *A Handbook on Hanging*,

p. 106; Scott, *The History of Capital Punishment*, pp. 197-198, 207; Laurence, *A History of Capital Punishment*, p. 105; Bleackley, *The Hangmen of England*, pp. 128, 141, 212, 225, 237; Cooper, *The Lesson of the Scaffold*, p. 154.

<sup>51</sup> Radzinowicz, *The Movement for Reform*, pp. 194, 195n.; Scott, *The History of Capital Punishment*, pp. 200-202; Kerman, ed., *The Newgate Calendar*, pp. 111, 113; Duff, *A New Handbook on Hanging*, p. 113; Duff, *A Handbook on Hanging*, p. 115; Bleackley, *The Hangmen of England*, pp. 73-74, 75; Linebaugh, "The Tyburn Riot Against the Surgeons," pp. 103, 103-104, 104.

In one instance in Ireland in which the victim revived and escaped after he was cut down the sheriff was fined one hundred pounds and sentenced to two years in jail. *Annual Register*, 1 May 1759, p. 88.

Apparently the "usual time" that the body was supposed to be left hanging was about one hour. *Annual Register*, 1760, "Characters," p. 47; Kerman, ed., *The Newgate Calendar*, p. 192; Smollett, *The History of England, from the Revolution to the Death of George the Second*, IV, 355-364; Scott, *The History of Capital Punishment*, p. 56; Cooper, *The Lesson of the Scaffold*, p. 15. See also Chapter 6, "Character and Competence," Note 59.

<sup>52</sup> Blackstone, *Commentaries*, IV, 406. According to Sandra Lee Kerman, by Scottish law the person who survived a hanging could not be hanged again for the same crime. Kerman, ed., *The Newgate Calendar*, p. 113. But see also Boswell, *Boswell for the Defence*, p. 289.

<sup>53</sup> Linebaugh, "The Tyburn Riot Against the Surgeons," pp. 103-104.

<sup>54</sup> Scott, *The History of Capital Punishment*, pp. 200-201; *Annual Register*, 23 January 1767, p. 51.

One Patrick Redmond having been condemned, at



Corke in Ireland, to be hanged for a street robbery, he was accordingly executed, and hung upwards of 28 minutes, when the mob carried off the body to a place appointed, where he was, after five or six hours, actually recovered by a surgeon, who made the incision in his windpipe, called bronchotomy, which produced the desired effect. The poor fellow has since received his pardon, and a genteel collection has been made for him.

*Annual Register*, 23 January 1767, p. 51.

<sup>55</sup> James Davie Butler, "British Convicts Shipped to American Colonies," *American Historical Review*, II, No. 1 (October 1896), p. 28; Linebaugh, "The Tyburn Riot Against the Surgeons," p. 104.

<sup>56</sup> Linebaugh, "The Tyburn Riot Against the Surgeons," p. 104.

<sup>57</sup> William Andrews, *Old-Time Punishments* (London: William Andrews & Co., 1890; reprinted London: The Tabard Press Limited, n. d.), p. 217; Laurence, *A History of Capital Punishment*, p. 87.

<sup>58</sup> Laurence, *A History of Capital Punishment*, pp. 98, 194; Evans, *The Criminal Prosecution and Capital Punishment of Animals*, pp. 146-147.

<sup>59</sup> Laurence, *A History of Capital Punishment*, pp. 86, 99, face p. 114; *Dictionary of National Biography*, XI, 71-72; Radzinowicz, *The Movement for Reform*, p. 188, 188n.; Duff, *A Handbook on Hanging*, p. 75; Rimbault, "Tyburnian Gleanings," p. 448.

<sup>60</sup> Laurence, *A History of Capital Punishment*, pp. 87-88, 107, 115, 116, 117-118; Duff, *A Handbook on Hanging*, p. 111. See also Noel Perrin, ed., *The Adventures of Jonathan Corncob, loyal American refugee, written by himself* (Boston: D. R. Godine, 1976), pp. 40-41 (originally published in London in 1787).

The hangman might hang his own father and brother. Laurence, *A History of Capital Punishment*, p. 98. See also Duff, *A Handbook on Hanging*, pp. 92-93.

<sup>61</sup> Laurence, *A History of Capital Punishment*, pp. 118, 121, 127, 128-129, 136.

<sup>62</sup> In 1864 *The Spectator* thought that forcing juries to attend executions would result in their seldom convicting anyone. Cooper, *The Lesson of the Scaffold*, p. 72.

## 2. John Dandy

During the colonial period in Maryland scores of people were executed. In the forty-nine-plus years from November of 1726 through 1775, the only period for which the records are adequate to allow us to develop any useful figures, at least 267<sup>1</sup> people were hanged and one was burned, possibly alive.<sup>2</sup> That is an average of more than five executions per year. One of these 268 people was an Indian slave; eleven were non-convict servants, fifty-two were convict servants; fifty-eight were free whites, and 146 were Negro and mulatto slaves.<sup>3</sup> Most often they were hanged for murder or attempted murder, breaking and entering, and burglary, but they were also hanged for horse-theft, rape, arson, robbery, and such other crimes as conspiring to raise an insurrection or attempted insurrection, passing counterfeit money, receiving stolen goods, breaking jail, and theft.<sup>4</sup>

After the justices ordered that the convicted defendant be taken “to the Prison from whence he came and from thence to the Gallows . . . the common place of Execution of Malefactors and there be hanged by the Neck . . . untill he be Dead”<sup>5</sup> they turned him over to a sheriff.

Little information has appeared on the process of hanging in colonial Maryland, but apparently it was patterned after that of England. As in England, legally it was the sheriff who officiated at a hanging, but, according to what little evidence we have,

authority in Maryland as in England ordinarily, if not always, found someone else to do the actual hanging. In 1638 the assembly read twice and engrossed, but did not read for a third time, a bill by which it would have directed that the sheriff choose one of his servants to execute “all corporall corection [*sic*] shame or other punishment to be inflicted on the Body” of anyone and that if he had no servant the governor and his council would appoint someone.<sup>6</sup> Though the bill never passed, it does reflect the unwillingness of the men who controlled the society to become directly and publicly involved in its most contaminating work.

Little is known about the men who did the hangings. They are not included in the records of executions, and those we know about were unfortunates who might never have become hangmen if they had not got into trouble themselves. Three of the seven hangmen whose names we know — John Dandy, John Oliver, and James Douglas — became hangmen after they had been convicted of capital crimes for which they received pardons in return for becoming hangmen. One — Pope Alvey — hanged one man while he was under a reprieve from a death sentence and before he received a pardon. One — John Collins — was a servant who was sold into servitude again as a result of his inability to pay his fourfolds<sup>7</sup> and his fees after being convicted of two thefts. He appears to have been the hangman while he was a servant. One — Thomas Poney — was a convict servant who we know was a hangman only through an advertisement for him as a runaway, and the seventh — Negro Tony — was a slave who had to hang his four fellow defendants after he himself was acquitted of participating in the murder of their master.<sup>8</sup>

Of these seven men we have the most information on John Dandy and Pope Alvey. John Dandy had been convicted of murder and became hangman in return for

a pardon at least once and maybe twice. Later he was hanged for another alleged murder, and whether or not he was actually guilty of that killing the evidence brought out at his trial makes it appear that he was a very violent man.<sup>9</sup> He might have killed as many as three people — or, if his first death sentence was for homicide, four.

Dandy, who was a blacksmith and gunsmith and who could not write his name,<sup>10</sup> must have started out in the colony as a hired laborer. When at the provincial court on 8 April 1638 George Evelin remitted one year of his service in return for Dandy's promise to pay him eight hundred pounds of tobacco<sup>11</sup> Dandy was already in trouble. On that same day Evelin entered a recognizance of one thousand pounds of tobacco to guarantee that he would deliver Dandy to the court to answer to whatever might be objected against him.<sup>12</sup> Why Dandy had to appear is not recorded, nor is the outcome of his appearance. At the provincial court on 7 May Evelin promised to pay Dandy whatever arrears of wages the court should decide he had coming and warranted his release of Dandy from the one year of service.<sup>13</sup>

Two-and-a-half years later Dandy was in trouble again. On 12 October 1640 the assembly ordered the sheriff of St. Mary's County to have him before it at nine o'clock that morning to answer for such crimes as would be charged against him. On the nineteenth the assembly again ordered the sheriff to bring Dandy before it.<sup>14</sup> What Dandy's crime was and when he was actually tried for it does not appear, but his sentence was death. On 10 May 1641, however, after "a Great part of the Colony" petitioned Governor Leonard Calvert to pardon Dandy, Calvert commuted the death sentence to three years service to the proprietor. Dandy was, quite understandably, well satisfied with that bargain.<sup>15</sup> Possibly Dandy's service to the proprietor on this occasion was to act as the common hangman, just as it was after he was sentenced to death again three-and-a-half years later.<sup>16</sup>

This time Dandy's alleged offense is clear. On 24 February 1643/4 the provincial justices ordered the sheriff to take him into custody until he could be "lawfully discharged of homicide" in the shooting of an Indian boy, "(since called Edward)," the day before.<sup>17</sup> The sheriff was also to move Dandy's guns and ammunition to someplace more secure from the Indians, and if Edward died and if Dandy had fled the sheriff was to seize his goods and chattels.<sup>18</sup> Edward did die on or before the twenty-sixth,<sup>19</sup> and in an "Enquest" that day a coroner's jury concluded that he

came by his death by a bullet shot by John dandy, which bullet entered the epigastrium near the navell on the right side, obliquely descending, & peircing [*sic*] the gutts, glancing on the last vertebra of the back, and was lodged in the side of Ano[ther vertebra?].

Dandy had to give security of three thousand pounds of tobacco, with two sureties of two thousand pounds of tobacco each, to guarantee his appearance to answer to the charge "upon demand,"<sup>20</sup> and at the provincial court on 14 March a "grand Enquest" of twelve men indicted him. On that same day a petit jury, also of twelve men, found him guilty of murder even though in its indictment the grand jury said nothing about his having shot Edward with malice aforethought.<sup>21</sup> The court sentenced him to hang, and on 16 March Governor Leonard Calvert issued a death warrant for his execution before eleven o'clock on the following Monday.<sup>22</sup> Dandy's estate was also to be forfeited to the proprietor.<sup>23</sup>

Dandy's sentence must have been based on the provisions of an act of 1642 by which the assembly provided that homicide, piracy, robbery, burglary, sacrilege, sodomy, sorcery, rape, and larceny would be capital crimes and that whether a suspect's alleged offense fit into one of these categories would "be determined by the Judge as neare as may be to the Lawes of England." The same thing would be true of wilfully burning or destroying any other person's house or stack of tobacco, corn,

or hay and of wilfully “cutting or plucking out” another person’s eyes or tongue. For any of these offenses or for being an accessory “afore the offence committed” the culprit could be sentenced to death, branding in the hand, or “losse of member,” together with the loss of all of his “lands for life, goods or chattels, dignity, or office.” Or he could be outlawed, exiled, or imprisoned for life or, unless he was a gentleman, could be sentenced to serve the proprietor for up to seven years. Finally the justices could sentence him to be “corporally corrected or putt to shame” in any other way they thought was appropriate to the crime.<sup>24</sup>

Two days after Calvert issued the death warrant for Dandy he cancelled it.<sup>25</sup> Again on the petition of “divers inhabitants” of the province he commuted the hanging to service to the proprietor, this time for seven years, with the provision that Dandy would “remaine exequutioner of all corporall corrections according to the writs lawfully directed to him.”<sup>26</sup>

Dandy behaved himself so well and served the proprietor so faithfully, however, that he had to serve the proprietor for only three years and four months. On 12 June 1647 Governor Thomas Greene pardoned him because of his good behavior and for his many good services to the province. Dandy had been “forward & willing in the undertaking divers matters for the good, & safety of . . . [the] Province, to the uttmost of his power.” Since Leonard Calvert had intended to pardon him but had died before he carried out his intention, Greene did it for him. He “acquitt[ed] . . . John Dandy from all . . . penalties & censures.”<sup>27</sup>

But John Dandy could not stay out of trouble for long. After Thomas Maidwell on 31 August 1650 complained that Dandy and his wife Ann had knocked him to the ground with a hammer and had seriously wounded him a warrant was issued to the sheriff to bring all three before Governor William Stone. Dandy would be kept in

custody until his appearance.<sup>28</sup>

In his deposition before Stone on 2 September Maidwell alleged that while he was working in his shop at St. Inigoes on the thirty-first Ann Dandy came in and spoke to him in very harsh language only because he had accepted two or three peaches from a girl who lived with the Dandys. Dandy then approached him with a hammer, which weighed about three pounds, in his hand. Suspecting some mischief, Maidwell backed out of the shop, but when he got outside Ann Dandy hit him on the head with a smith's cinder,<sup>29</sup> and while he was still stunned Dandy hit him on the head with the hammer and knocked him to the ground. With "much struggling [*sic*] & amazem'" Maidwell got up, ran out of the fort, and called for help. He believed that if he had not escaped the Dandys would have murdered him, especially since in the past Ann Dandy had threatened to do him "a private mischeife." He was afraid that unless Stone did something to restrain the two they would do him further harm, and he was also afraid that he could not work in the shop again without danger to his life.

After taking the deposition Stone required Dandy to give security of two thousand pounds of tobacco to guarantee his appearance at the next provincial court to answer to Maidwell's action of battery and to guarantee his as well as Ann Dandy's good behavior in the meantime.<sup>30</sup> Three weeks later, however, Maidwell and Dandy settled their differences. On 23 September, before Edward Packer and Raphe Crouch, the two agreed that all controversies, causes, and actions between them, "from the beginning of the World unto . . . [that] day," were wholly ended.<sup>31</sup>

By 13 November Maidwell was dead,<sup>32</sup> possibly as a result of the beating he got from the Dandys.<sup>33</sup> Although if a person died within a year and a day after being injured the person who inflicted those injuries could be tried for murder,<sup>34</sup> no further



action appears to have been taken against the couple.

The pugnacious Ann Dandy appears to have been a good match for her husband. In 1655 she had a confrontation with John Milam, a merchant, that got both of them into trouble. Who started it is unclear. On 26 December 1655 the provincial justices ordered that since Milam had injured Ann Dandy for having her arrested for a felony though no evidence of such a felony had appeared he acknowledge his miscarriage against her and pay the fees in the case. At the same time they ruled that since Ann Dandy had scandalized Milam by saying that she had heard him say “That he would hang up men at the Yards Arme, for there was no Law in the Countrey,” she must also acknowledge her offense against him. With that Milam was contented. Apparently the fees in this instance were included in those that the justices ordered Milam to pay.<sup>35</sup>

In the end John Dandy’s violence or possibly only the suspicion of him finally killed him. On or about 7 July 1757 the body of Henry Gouge, one of Dandy’s servants, was found naked in a creek near Dandy’s dwelling house.<sup>36</sup> Expecting trouble, Dandy immediately took steps to protect himself by rounding up nine men to view the body before anything else happened to it. After inspecting the body on 7 July these nine men offered to swear that they could find nothing about it that would throw any suspicion on Dandy. There was no sign of any severe blow, and there were no bruises but only some small signs of blows from a small rod or switch, and even those bruises were not fresh. The men did add however that when they questioned Dandy’s maid she told them that at about ten or eleven o’clock on the previous night Darby, one of Dandy’s other servants, told her that Dandy was beating “Harry” and that “at that Very time” she heard someone cry out “O Lord!” She could not tell whether it was Harry she heard.<sup>37</sup>

After hearing the maid's information the nine men examined Darby Canneday, the servant who had spoken to the maid. He told them that he had heard Harry cry out "O Lord!" several times and that only a short time before he heard the cries Dandy had gone in the direction from which they came.<sup>38</sup>

Sometime before 6 August Richard Furbear, in spite of what he and the other eight men had said after they inspected Gouge's body, reminded the provincial justices that suspicions that John Dandy had "laid Violent hands" on Gouge before Gouge was found dead in the creek were still circulating.<sup>39</sup> On 6 August Richard Preston and William Ewens, two of the justices of the provincial court, began taking a series of depositions against Dandy.<sup>40</sup> The next day Dandy was arrested, but he escaped and went to Virginia. He was not free for long: by the fourteenth he was back in custody and was brought before Preston and Ewens for examination.<sup>41</sup>

After a delay of six weeks, on 23 September 1657 the provincial justices ordered that the witnesses who had been summoned and bound over to give evidence in Gouge's death should appear on the twenty-ninth.<sup>42</sup> On that same day they decided that since it was suspected that Dandy was responsible for Gouge's untimely death it was necessary to inspect Gouge's corpse again.<sup>43</sup> Actually Dandy had requested this way back on 14 August.<sup>44</sup>

Since Gouge had been buried on or soon after 7 July, there was no time to waste. The justices therefore ordered that because a competent jury could not be called "in Convenient time" to view the body James Veitch, the sheriff of St. Mary's County,<sup>45</sup> disinter it in the view of two surgeons, Richard Maddokes<sup>46</sup> and Emperor Smith, and as many neighbors as he could conveniently procure. After the surgeons and the neighbors diligently inspected the corpse the two surgeons, still in the presence of the neighbors, were to cut off the head and then, after another "diligent

View and Search” of the corpse and the head, were to report their condition. Finally, the two surgeons were “to Cause the . . . head to be Carefully lapped up and warily brought to the Court” as soon as possible.<sup>47</sup>

On 25 September the eleven men who were present when Gouge’s body was exhumed swore that on his head they could find nothing but two places on the right side where the skin and flesh were broken. The skull was “perfect and Sound,” and there were no injuries that could have resulted in Gouge’s death. The men also tried to search the body, but since it had been buried without being wrapped in anything it was “so Noysome” to them that they could not do it.<sup>48</sup>

On Monday the twenty-eighth the provincial justices appointed Richard Smith attorney general,<sup>49</sup> and the next day Smith petitioned the court that since on about 7 July 1657 Henry Gouge, “Sometime Servant to John Dandy,” was found dead in a creek and since it appeared by the evidence of several people that Dandy had murdered him the justices should seriously consider trying Dandy for the murder. The court granted Smith’s petition and immediately impaneled a “Jury of Inquest” of twenty-four men. Dandy, given the opportunity to challenge any of the jurors, challenged none.

After “much debate & time Spent,” the “Grand Jury of Inquest” returned an indictment against Dandy for Gouge’s death and for breaking prison and fleeing to Virginia after he was arrested on suspicion of murder. Again the indictment says nothing about malice aforethought. The grand jurors added that Gouge had “confessed that he . . . was charged to have killed . . . Gouge, a week before he did.”<sup>50</sup> By the time the grand jury returned the indictment it was getting very late, and therefore the justices adjourned the court until eight o’clock the next morning.<sup>51</sup>

On Wednesday Dandy pleaded not guilty to both charges, and the court impan-

eled a petit jury. Dandy challenged one of the jurors; the court replaced him,<sup>52</sup> and the trial proceeded. Dandy had no attorney, but the witnesses gave their evidence under oath in the presence of Dandy, who according to the record had “all Lawfull Libertie and time to make his defence.”<sup>53</sup>

Besides Dandy himself, there were eleven witnesses in the trial. The statements of these witnesses often have a suspicious similarity, as though the justices who took the evidence had more than a judicious interest in the outcome of the proceedings, knew exactly what they wanted to hear, and were leading the witnesses through a scenario that would make the strongest possible case against Dandy.<sup>54</sup> As much as the young colony might have needed him as a gunsmith, Dandy might have become just too much of a nuisance for authority to tolerate, even in the intensely violent society of seventeenth-century Maryland.

William Wood, who had found Gouge’s body, testified that he went to Dandy’s mill in July to have some corn ground. He stayed all night, but at sunrise the next morning he started down the creek in a canoe. About a quarter of a mile from the mill he found Gouge naked and dead in the water. He tied a line to one of Gouge’s arms and towed the body ashore, then went back to the mill to tell Dandy. Dandy, Robert Cole,<sup>55</sup> and two other men went back to the body with Wood, and when Dandy saw the body he said that he would “Come into a great Deale of trouble about this Boy.”<sup>56</sup>

Richard Furbear, who had reminded the provincial justices of the suspicions about Dandy<sup>57</sup> but was also one of the nine men who signed the report in July after viewing Gouge’s body with the other eight men,<sup>58</sup> swore to the deposition that he had given before Richard Preston and William Ewens on 6 August. He had seen no marks on the corpse except “Some few blowes,” which appeared to have been

inflicted with a small switch, and “one Scar or old Soar in his head.” The scar on the head was reported to have resulted from Dandy’s hitting Gouge with an axe in May. Furbear, who lived with Dandy, testified further that after the corpse was on dry land and after Dandy handled it it started to bleed from the scar and from the nose.<sup>59</sup> The corpse, Furbear added, was “little Swelled, . . . [and] Very black about the face.”<sup>60</sup>

Sarah Middleton, the maid whom the nine men interviewed on the day on which Wood found Gouge’s body, repeated what she had already told those men. On the day on which Gouge disappeared Darby Canneday called to her and “bid her hearken.” He told her that he heard Dandy beating Gouge and Gouge crying out “O Lord! O Lord!” She listened and did hear a voice crying “O Lord! O Lord!,” and she thought that the voice was coming from the coal-kill,<sup>61</sup> where Gouge was working, or near there. She did admit though that she did not pay much attention to the voice, since Gouge often cried out that way. She added that on the night on which Gouge was first missing Dandy sent a boy about seven years old to look for him, but she believed that instead of going to find Gouge the boy went to play.<sup>62</sup>

John Harwood or Howard,<sup>63</sup> who like Furbear lived with Dandy and was one of those who viewed the corpse immediately after Wood found it, said that he did not hear Dandy make any inquiry about Gouge on the night he was first missing. When he and the others examined Gouge’s body he saw no signs of violence on it except for “Some Small Slashes, which Caused the flesh to be black and blew, and one old Soar upon his head.” That sore Dandy was supposed to have given Gouge about three months earlier with an axe. The sore “did bleed a fresh,” although Harwood did not say whether Dandy had touched the corpse; Gouge’s nose also bled; the face was very black; and the corpse was very little swollen.<sup>64</sup>

John Jarbo, a neighbor who also viewed the corpse on 7 July, agreed that some

small marks on Gouge's back appeared to have been given with a small switch and were not new; that the corpse was slightly swollen and very black in the face; and that the sore on Gouge's head, which according to Jarbo's information Dandy had inflicted with an axe about three months earlier, had "bled a fresh." But the wording earlier in the record of Jarbo's evidence about just when the corpse bled is confusing: Gouge's body "did bleed a fresh at the nose and head *before that* Dandy touched the Corps [*sic*] . . ." <sup>65</sup> That might mean either that the body bled before Dandy touched it or that it bled at the nose and the head, but, *before that*, Dandy had touched it.

Darby Canneday's evidence most directly connects Dandy to Gouge's killing. Canneday, Dandy's fourteen-year-old servant, testified that on the day on which Gouge disappeared he saw Dandy go toward the place where Gouge was at work and that he confidently believed that about a quarter of an hour later he heard Gouge cry out, "O Lord! O Lord! near upon twenty times." When he told Sarah Middleton to listen she agreed that she heard the cries, and he told her "there is Dandy beating of poor Harry now." As far as Canneday knew, no one saw Gouge again until he was found dead in the creek. <sup>66</sup>

Thomas Carpenter was another of Dandy's neighbors who viewed Gouge's corpse on the day it was discovered. He testified that on the back of the corpse there were signs of some blows that made it black and blue about the shoulders. It appeared to Carpenter that the blows had been inflicted with a small switch. Carpenter also pointed out that on his head Gouge "had an old Soare or Scar," which "bled a fresh" when he, Dandy, and the rest of the neighbors turned the body over. At the same time, according to Carpenter, the corpse bled from the nose. The body was also somewhat more black than usual about the face, but it was swollen very little or not at all. It "was not Seen to Void . . . the least quantitie of water." The corpse was

naked, and though the men who “belonged to John Dandy” diligently searched for Gouge’s clothes they could not find them. Nor could they find any sign of his footsteps. The clothes were still missing.

After Gouge died Dandy’s wife told Carpenter that Dandy had expressed to her the same sort of concern about the connection of his own fate to Gouge’s as he expressed to William Wood, Robert Cole, and the two unidentified others. He had often told her that “his mind gave him” that because of Gouge he would be hanged some time or other. And Dandy’s maid, apparently Sarah Middleton, had told Carpenter that Dandy had inflicted the injury on Gouge’s head with an axe two months earlier and that originally it was more than an inch deep.

Finally, Carpenter testified that on the same day on which Gouge disappeared he heard Darby Canneday say that he heard Gouge “Crye out o Lord! O Lord! near upon twenty times, And that Dandy was beating . . . Harry.” Carpenter did not believe that Gouge had drowned.<sup>67</sup>

Anthony Webe or Webb,<sup>68</sup> still another of the neighbors who viewed Gouge’s body just after Wood found it, added nothing new but did confirm much of what the other witnesses said. On the body he had seen “the print of Some blows . . . which made the Corps black and blew about the Shoulders.” He had seen the old sore on Gouge’s head, which bled when Dandy and the other men turned the body over. He had observed that the corpse also bled at the nose, “with Some kind of purging with all,” but he did not see any sign of water purging from him. He agreed that the corpse was black about the face but swollen little or not at all. Darby Canneday had told him that he had heard Gouge cry out “O Lord! O Lord! near upon twenty times” and that when he heard the cries he said that Dandy was beating Gouge. Dandy’s maid-servant had told him that she had also heard Gouge twice cry out “O Lord! O

Lord!” near the coal-kill where he was working, and she added that Gouge had not been seen again until his body was found in the water.

Webe testified further that he was one of the men who made a diligent search for Gouge’s clothes and that as far as he knew the clothes were still missing. Finally, he did not believe that Gouge had drowned.<sup>69</sup>

Walter Peake or Pake, who would himself be hanged just over eleven years later,<sup>70</sup> said nothing at all about Gouge’s death, but still his evidence must have been damaging to Dandy. When he was at the mill during the previous spring he saw “a poor lame boy of Dandy’s” who appeared to be badly abused and had “pinches about his Eares.”<sup>71</sup> When he asked the boy “whether he lay in the mill where there was no Corne,” so that the rats ate his ears off, the boy “answered no, But that he had a wound in his head which was very troublesom [*sic*] unto him.” Peake looked at the wound and found that the skull was broken. Later when he saw Ann Dandy at John Shircliffe’s house she told him that her husband had inflicted the wound two months before “with the pole of an Axe” and that she had taken two pieces of skull out of Gouge’s head.<sup>72</sup>

The evidence of Dandy’s wife Ann could have done her husband no good. She testified that on the day on which Gouge disappeared she heard Dandy say that he had sent him “to the Cole kill to draw out Some Coles for him” and that he would go down to the coal-kill himself to see what Gouge was doing. Then he left and went in the direction of the coal-kill. When about half an hour later Ann Dandy went toward the coal-kill herself to look for Dandy she met him half way. When, scratching his head, he told her that Gouge had run away again and had not drawn even half a peck of coals she responded “hang him rogue lett him goe.” He would come home that night or the next morning, when he got hungry, and she would find him then.



When several times before Gouge's death Dandy told his wife that he believed that some time or other he would be hanged because of Gouge she told him that if he believed that that would happen he should sell Gouge or even give him away.

Ann Dandy agreed that the old sore on Gouge's head "bled a fresh," meaning, apparently, that it bled when the men turned the body over. Not only had she heard Gouge say that Dandy had inflicted the wound but she had also heard Dandy admit it. When Dandy first inflicted the injury in June Ann Dandy took out two small pieces of the skull and asked Dandy to look after the injury, but he got angry and told her to dress it herself.

Finally, Ann Dandy must have increased the suspicion toward her husband when she said that in her conscience she did not believe that Gouge had drowned himself.<sup>73</sup>

Possibly the most damaging evidence against Dandy was the short testimony of John Hollowes. He testified that after Dandy escaped to Virginia the two of them went to the house of one Mr. Bradhorst, where Dandy said that "it was reported that he . . . had killed his man Harry a weeke before he did kill him" and that he had escaped to Virginia in order to have his trial for the alleged killing there rather than in Maryland.<sup>74</sup>

Dandy had escaped to Virginia sometime after he was arrested on 7 August, but he was soon captured and on the fourteenth swore to a deposition taken before Preston and Ewens. Even though according to the evidence of John Hollowes he admitted to him and Mr. Bradhorst that he had killed Gouge, now he denied that he knew how Gouge had died. He testified that during the afternoon of the day on which Gouge disappeared he went to look for him and to see what work he had done but did not find him where he should have been at work. He had not looked for

Gouge before noon because between breakfast and dinner-time he was with his workmen, Robert Cole, and others whom he does not identify. When the justices asked him why he had fled to Virginia he replied that he had wanted to have his trial there rather than in Maryland because the government of Maryland was not settled and because he had already had “Some Experience . . . of . . . hard usage” by those in authority in Maryland. He requested that Gouge’s corpse be exhumed and examined and that the justices examine Nicholas Oliver, who was one of the men who examined Gouge’s body on 7 July<sup>75</sup> and whom Dandy accused of beating Gouge a week before Gouge was found dead.<sup>77</sup> Of course the commissioners did order Gouge’s body exhumed, though not until 23 September<sup>77</sup> — almost six weeks after Dandy requested it and eleven weeks after Gouge died —, and there is no indication that they ever examined Nicholas Oliver. Possibly he was not to be found, or possibly the justices were so convinced of Dandy’s guilt that they did not bother to look.

After hearing all of this evidence the petit jury found Dandy guilty, apparently both of murdering Gouge and of breaking prison and fleeing after he was arrested on suspicion of murder. The justices asked him whether he knew any reason why he should not hang, and after “Some Space of time” he had thought of nothing to say for himself. Smith asked the court to pass judgment, and the president of the court, Richard Preston himself, ordered that Dandy be hanged on the following Saturday, 3 October 1657, on the island at the mouth of Leonard’s Creek in the Patuxent River.<sup>78</sup> Since the sentencing occurred on 30 September, the hanging was only three days away.

John Dandy appears to have been an unsavory enough character, but the

evidence that he murdered Henry Gouge is far from conclusive. The grand jury itself appears to have had some doubts about indicting him, since it returned the indictment only “after much debate & time spent,”<sup>79</sup> and five of the men who appear not to have noticed the scar on Gouge’s head when they examined his body on 7 July — Richard Furbear, John Harwood, John Jarbo, Thomas Carpenter, and Anthony Webe — testified later, in their depositions or at Dandy’s trial, to having seen it. And if a body’s bleeding when a person handled it was accepted as evidence that he was guilty of murder, according to the evidence of Thomas Carpenter and Anthony Webe other men along with Dandy were handling Gouge’s body when it bled.

Dandy’s killing Henry Gouge is not the only possible explanation for Gouge’s death. Nicholas Oliver might have beaten him a week before he died, as Dandy claimed, and Gouge might have died of the wounds he had received from Oliver and then fallen into the creek. Or as a result of those blows from Oliver he might have fallen into the creek and drowned. According to Carpenter and Webe, however, no water came from the body. Or the blows and the bruises might not have been the immediate cause of Gouge’s death. He might in fact have committed suicide.<sup>80</sup> The fact that his clothes were never found<sup>81</sup> might be significant.

Probably Dandy’s past reputation was at least as important in his conviction and hanging as the evidence of the several witnesses against him was. Even before his violence against Henry Gouge he had been sentenced to death twice. After he was sentenced to die for an unspecified crime Governor Leonard Calvert on 10 May 1641 commuted the sentence to three years of service to the proprietor,<sup>82</sup> and after he was again sentenced to die for killing the Indian lad Edward, Calvert on 18 March 1643/4 commuted the sentence to seven years of service as the common executioner of the province.<sup>83</sup> And with his wife Ann he might have been responsible for the death of

Thomas Maidwell in November of 1650 as well.<sup>84</sup>

More than that, by the time the incident with Gouge took place Dandy had become politically dangerous to authority. His earlier violence had occurred under the proprietor, while by the time he was charged with Gouge's murder the Protestants had taken over the province.<sup>85</sup> Dandy had resisted that change. At the provincial court for October of 1655 he was found guilty of being one of the accomplices of Captain William Stone in the rebellion of 1655, when Stone as an agent of Lord Baltimore was trying to re-conquer the province for him.<sup>86</sup> After Dandy submitted himself to the mercy of the court the justices fined him two thousand pounds of tobacco "towards the Satisfying of the publick damage."<sup>87</sup>

And beyond all of this, Dandy was a Roman Catholic. At about the same time that he was convicted of being involved in the rebellion, and apparently on the very same day, Dandy openly admitted in court that he was a Catholic,<sup>88</sup> and therefore the officials of Maryland during the Protectorate<sup>89</sup> probably thought that he was capable of any crime however vicious.

If that was not enough Dandy must have gained no new friends among the Protestants when he in effect told the justices who took his deposition that he did not expect to get a fair trial in Maryland because the government there was unsettled and because he had already had a taste of its justice. No doubt officialdom was happy enough to get rid of him.

Richard Furbear's role in Dandy's prosecution is suspicious. It was not until after he reminded the commissioners of the suspicions that Dandy had "laid Violent hands" on Gouge that they began to take the depositions of the witnesses,<sup>90</sup> and Furbear might have been in a dispute with Dandy about wages that Dandy owed him. On 1 October 1657, the day after the provincial justices condemned Dandy, Furbear

petitioned the provincial court to allow him nine hundred pounds of tobacco and five barrels of Indian corn that he claimed Dandy owed him for work that he had done for Dandy. The justices, however, allowed Furbear only six hundred pounds of tobacco and one barrel of corn “in full Satisfaction for his work.”<sup>91</sup> That might mean that Furbear had demanded more than he had coming.

Clearly this does not prove that Furbear had a vendetta against Dandy and was determined to destroy him, but it might indicate that there were bad feelings between them that do not appear in the record and that that bad feeling had helped to get Dandy into trouble.

Since Dandy was convicted of murder his estate was subject to forfeiture to the Lord Protector.<sup>92</sup> On 1 October 1657, however, when Dandy still had two days to live, Ann Dandy petitioned the provincial justices not to leave her utterly destitute but that they grant her sufficient subsistence for herself, the “two Orphans under her Charge,” and the child with whom she claimed to be pregnant. After considering the petition the justices ordered the sheriff to take an inventory of Dandy’s real and personal property and directed that Ann Dandy be left in possession of any property that remained after all “officers fees, former Judgments, Sentences and Just debts due out of the Estate” were satisfied. At the same time, though, the justices ordered that before the next meeting of the provincial court Ann Dandy give security to guarantee that she would give an account of and be responsible for whatever remained of the estate whenever she was required to do that.<sup>93</sup>

There were considerable claims against the estate. On 1 October 1657, the same day on which they allowed Richard Furbear that six hundred pounds of tobacco and one barrel of Indian corn as payment for work that he had done for Dandy, the provincial justices allowed Emperor Smith and Rice Maddookes,<sup>94</sup> the two surgeons,

one hogshead of tobacco to be divided equally between them for viewing Gouge's body and for cutting off his head and bringing it to court.<sup>95</sup> The record does not state that that tobacco would come out of Dandy's estate, but since the fees mentioned later came out of his estate probably this fee did also.

Other claims were the result of Dandy's arrest, trial, and hanging. On 5 October, two days after Dandy was hanged, the provincial justices awarded James Veitch, the sheriff of St. Mary's County, 5,220 pounds of tobacco and Thomas Turner, the clerk of the provincial court,<sup>96</sup> 622 pounds of tobacco for the costs of Dandy's imprisonment and other fees concerning his trial and execution.<sup>97</sup> On the same day they awarded Thomas Belcher 779 pounds of tobacco for food for Dandy and his friends and for the grand and petit jurors while Dandy was on trial.<sup>98</sup> On that day also they awarded Major John Hollowes 498 pounds of tobacco out of Dandy's estate for his expense in holding Dandy in prison and for the cost of a guard after he escaped to Virginia as well as for Hollowes' attendance as a witness against Dandy,<sup>99</sup> and they allowed Richard Smith, who had served as the prosecutor against Dandy, 350 pounds of tobacco "for his paines and trouble" in prosecuting the case."<sup>100</sup> A month later, on 4 November, they awarded Captain Henry Keene four hundred pounds of tobacco and cask "for his attendance with a Guard" on Dandy during Dandy's trial and at his hanging.<sup>101</sup>

There were other claims. On 3 November 1657 the provincial justices ordered the sheriff to deliver to Francis Peake any cattle that Richard Lawrence had left to him in his will but that had been in the possession of John Dandy and that any increase that these cattle had produced and that Dandy had marked with his own mark would also go to Peake.<sup>102</sup> On 5 November Patrick Forrest claimed 1912 pounds of tobacco out of Dandy's estate for a debt due to the estate of Thomas

Hatton, and the justices apparently granted it,<sup>103</sup> and on the same day they awarded Captain Sampson Waring 430 pounds of tobacco and cask that Dandy owed him on a note.<sup>104</sup> On the same day also they awarded Richard Hostkeys nine hundred pounds of tobacco and cask on a note by which Dandy owed that amount to Markes Bloomefield and that Bloomefield had assigned to Hostkeys.<sup>105</sup>

While all of this was going on Ann Dandy must have thought that if she was going to have anything left for herself and her orphans to live on she had better take some steps of her own. What she decided to do, according to the information available to the provincial justices, was to abscond with as much of the estate as she could carry off. On 5 November 1657 the provincial justices ordered that since Ann Dandy had not given security to guarantee her responsibility for Dandy's estate and since they had heard that since the sheriff took the inventory of the estate she had "Imbezelled and Carryed away" some of it the sheriff should "forthwith take Some Speedy Course" to secure the estate and to satisfy any debts against it. If it appeared that Ann Dandy had indeed embezzled and carried away any part of it the sheriff was empowered to inquire into any such goods, to seize the estate or any part of it, and to provide for the security of the entire estate. Finally the provincial justices authorized the sheriff "to use all Lawfull Endeavours to apprehend and bring" Ann Dandy to the next provincial court to answer for and to give an account of any part of the estate that she had carried off.<sup>106</sup>

Ann Dandy was still not able to give the security, and at the end of the year there were still more debts to be satisfied out of her late husband's estate. On 31 December 1657 the provincial justices awarded John Price 1128 pounds of tobacco and cask, William Huse 455 pounds of tobacco and cask, and the estate of Thomas Hatton 329 pounds of tobacco and cask, all on notes.<sup>107</sup> Then on 1 January 1657/8

Rice Maddookes, who had already married Ann Dandy,<sup>108</sup> appeared at the provincial court and asked the justices to allow him until their March court to enter the security to guarantee the estate. The justices ruled that if Maddookes would satisfy any debts against the estate, would give security at the March court to guarantee the estate “or Compound with Such Creditors,”<sup>109</sup> and would give a true account of the estate at that March court, he and Ann could keep it.<sup>110</sup>

But still that was not the end of it. Later in the year, apparently in April, John Jarbo entered into the records of the provincial court a warrant by which Governor Josias Fendall<sup>111</sup> authorized him to take into his possession all cattle — which no doubt means all chattels — that John Dandy owned at the time of his arraignment and to keep them in his possession until further order from Fendall.<sup>112</sup>

In the records of the provincial court for 28 April 1658 there is an entry that is not clear. John Hatch swore that John Ashcombe acknowledged before him “An Account, belonging to John Dandy to bee due. But what the summe was he knoweth not.” Apparently this was money due Dandy’s estate, but what happened does not appear.<sup>113</sup>

The payment of some of these judgments was less than prompt. On 30 April 1658, seven months after Dandy was hanged, James Veitch petitioned the provincial court for the 5,220 pounds of tobacco for himself and the 622 pounds of tobacco for the clerk that the court originally allowed them on 5 October 1657 against Dandy’s estate<sup>114</sup> for fees “concerning the tryall [and] executing [of] John Dandie.” The justices ordered that if the fees were not paid execution should be issued for them,<sup>115</sup> which means that they would be paid out of Dandy’s property. And on 3 March 1658/9, exactly seventeen months after Dandy was hanged, the provincial justices ordered that Richard Smith and Thomas Belcher be allowed 779 pounds of tobacco



out of Dandy's estate for providing food for Dandy "in time of his durance att their howse."<sup>116</sup> This is exactly what the court awarded to Belcher on 5 October 1657 for food for Dandy and his friends and for the grand and petit jurors while Dandy was on trial.<sup>117</sup>

Guilty or not guilty in the death of Henry Gouge, John Dandy quite clearly was a very violent man who did serve for a time as the hangman of the province. Possibly he served as hangman twice. While he might never have got a chance to hang anyone during the three years and four months he was hangman, or during the three years he was hangman on the earlier occasion if indeed that is what his service to the proprietor consisted of that time,<sup>118</sup> as executioner of all corporal corrections on that later occasion he must have got a chance to do some whipping, pillorying, and stocking and possibly even some cropping of ears and boring of tongues.<sup>119</sup> Without complete records there is no way to know exactly what he might have had to do.

John Dandy does not appear to have been the sort of man who would have any sympathy for the people he was punishing. Rather it appears likely that he would have enjoyed the rituals, and he might have made as much fun out of them as he could. Probably he would not have scrimped when he was inflicting the various non-capital punishments, and probably a victim facing imminent eternity would have found little comfort from him during the final moments of his life.

## 2. John Dandy

<sup>1</sup> With the information that is available there is no way to arrive at a certain figure of the number of people who were executed in colonial Maryland. Not all of the records of the courts have survived, and therefore there is no way to know just how many people were condemned. Nor is there any way to know how many of those who were condemned were actually hanged and how many received pardons or reprieves.

The figure of 267 hangings and one burning during the forty-nine-plus years from November of 1726 through 1775 we get from the records of the condemnations, death warrants, pardons, reprieves, and hangings that still do survive. These records are Commission Records, 1726-1786; Commission Records, 1733-1773; Commission Book, Liber J. B., No. 1; Black Books; Red Books; *Maryland Gazette*; *Maryland Journal and Baltimore Advertiser*; the records of the assembly and of the governor and his council in the published *Archives of Maryland*; the Pforzheimer Collection; Adjutant General Papers, 1748-1790; Pardon Papers, 1777-1781; Executive Papers, 1715-1783; Provincial Court Judgment Records; and the proceedings and judgments of the various county courts. All of these records are at the Maryland State Archives in Annapolis.

The figure that we have for executions must be too low, since it includes only

those people for whom we have found records of death warrants and for whom there have appeared no records of pardons or reprieves later, whose executions were reported in the *Maryland Gazette*, or for whose executions we have found other evidence. People who were sentenced to death but for whom there is no other evidence of their executions are not included.

Because fewer sources on executions are available in the records of Maryland before November of 1726 than for the later period historians are likely to understate the number of hangings during that earlier period even more than for the later period. Again a minimum figure is all we can hope for.

The same absence of sufficient surviving records that prevents our knowing the total number of executions in colonial Maryland appears likely also to be a problem in the other colonies. Those people who are confident that they can establish the total number of executions in the United States, including the colonial period, must be satisfied instead with establishing a *minimum* number of executions. Claiming more exactness will only make it appear that it is lot easier to be certain about what has happened in history than it actually is and will mislead a lot of people.

For more on the issue of accuracy, see Appendix A, “The Espy File.”

<sup>2</sup> Esther Anderson was burned in Kent County on 16 May 1746 for participating in the murder of her master, Richard Waters. The crime was petit treason. Commission Records, 1726-1768, pp. 73-74; *Maryland Gazette*, 22 April, 6, 20 May 1746; Kent County Bonds, Indentures, etc., Liber J. S., No. 20, 1743-1746, pp. 66-67. See Chapter 6, “Character and Competence,” at Notes 70-78.

Petit treason was the malicious killing of someone to whom the person owed allegiance other than the king or queen: “a servant killing his master, a wife her husband, or an ecclesiastical person (either secular, or regular) his superior, to whom

he owes faith and obedience.” Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 203. An offence against the crown or the government, of course, was high treason. *Ibid.*, p. 75.

<sup>3</sup> The classes of people who were executed:

Negro slaves.....	men.....	123
Negro slaves.....	women.....	15
Mulatto slaves.....	men.....	8
Indian slave.....	man.....	1
Convict servants.....	men.....	50
Convict servants.....	women.....	2
Non-convict servants.....	men.....	10
Non-convict servants.....	women.....	1
Free whites.....	men.....	56
Free whites.....	women.....	2
Total.....		268

Some of those identified as free whites might have been servants or convict servants, and some of those identified as servants might have been convict servants. Servants and convict servants are identified as such in only some of the sources referring to them, and therefore here again it is impossible to be sure of our figures. Peter Wilson Coldham’s *The Complete Book of Emigrants in Bondage, 1614-1775* (Baltimore: Genealogical Publishing Co., Inc, 1988) and his *Supplement to the Complete Book of Emigrants in Bondage, 1614-1775* (Baltimore: Genealogical Publishing Co., Inc., 1992) have been very helpful in trying to identify convict servants.

<sup>4</sup> These figures on the number and status of the people executed in Maryland from November of 1726 through 1775 and the crimes for which they were executed come from charts I started making in the late sixties for my work on crime and punishment in eighteenth-century Maryland. For my sources, see Note 1 above.

<sup>5</sup> For the wording of the record in the seventeenth century, see *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XLIX, 545. The quote comes from 1751 and is in Provincial Court Judgment Record, Liber E. I., No. 13, pp. 491-492. The wording did not change much during the seventeenth and eighteenth centuries, though sometimes there are variations.

<sup>6</sup> *Md. Arch.*, I, 39; 1638, c. 12, *Md. Arch.*, I, 55; Thomas Bacon, *Laws of Maryland at Large* (Annapolis: Jonas Green, 1765) under 1638, c. 12 (page 24).

<sup>7</sup> Several laws provided that the defendant who was convicted of or confessed to theft had to pay his victim four times the value of the goods he stole. 1681, c. 3, *Md. Arch.*, VII, 201-203; 1692, c. 34, *Md. Arch.*, XIII, 479-481; 1699, c. 44, *Md. Arch.*, XXII, 553-555; 1700, c. 2, *Md. Arch.*, XXIV, 98-101; 1704, c. 25, *Md. Arch.*, XXVI, 266-269; 1715, c. 26, *Md. Arch.*, XXX, 304-308. By the acts of 1704 and 1715 the assembly specifically provided that the person who could not pay his fourfold and his fees would be sold into servitude.

For illustrations of people who were sold into servitude because they could not pay their fourfolds, see Anne Arundel County Court Judgment Record, Liber R. C., No. 1, pp. 32, 461-462; *ibid.*, 1720-1721, p. 76; Liber I. B., No. 1, pp. 422-423; Liber I. S. B., No. 2, p. 164; Baltimore County Court Proceedings, Liber T. R., No. 5 (1750), p. 153; Somerset County Judicial Record, 1733-1734, pp. 170a-171; Provincial Court Judgment Record, Liber H. W., No. 3, pp. 273-275; Liber T. B., No. 2, pp. 201-203; Liber W. G., No. 1, pp. 254-255.

<sup>8</sup> In this essay we will deal with these hangmen in chronological order. Of course it is possible that these seven men were the only specially designated hangmen Maryland had during the colonial period and that at all other times the sheriffs had

to do the hanging or hire somebody for each hanging. In 1762 Jonas Green mentioned Jack Ketch in his report of the hanging of Thomas Cooper: “He was much persecuted by the Impertinence of *Jack Ketch*, who behaved himself extremely ill.” *Maryland Gazette*, 14 October 1762. Green’s emphasis. It seems unlikely that Green would write that way about a sheriff.

<sup>9</sup> For very brief reports of John Dandy’s career, see Bernard C. Steiner, *Maryland During the English Civil Wars: Part II* (Baltimore: Johns Hopkins Press, 1907), p. 40, and Bernard C. Steiner, *Maryland Under the Commonwealth: A Chronicle of the Years 1649-1658* (Baltimore: Johns Hopkins Press, 1911), pp. 168-170.

<sup>10</sup> *Md. Arch.*, IV, 260 (blacksmith), 274, 324, 325 (gunsmith; could not write his name); X, 376 (could not write his name), 543 (“Smith”); Arthur Pierce Middleton and Henry M. Miller, “‘Mr. Secretary’: John Lewgar, St. John’s Freehold, and Early Maryland,” *Maryland Historical Magazine*, CIII, No. 2 (Summer 2008), p. 148.

<sup>11</sup> *Md. Arch.*, IV, 28.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, pp. 33-34.

<sup>14</sup> *Ibid.*, I, 89, 92. The assembly was not divided into two houses until its session of 29 December 1646 to 2 January 1646/7. *Md. Arch.*, I, 209; Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, eds., *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 19. Thus “assembly,” rather than “upper house” or “lower house,” is the correct word to use here.

Morris L. Radoff says that the division did not occur until 1650. Morris L.

Radoff, *The Old Line State: A History of Maryland* (Annapolis: Historical Record Association, 1956), p. 321.

<sup>15</sup> *Md. Arch.*, III, 98. It is possible, of course, that the “crimes” to which the assembly referred and the crime for which Dandy was sentenced to death were entirely separate. No record of the trial has appeared.

<sup>16</sup> Sixteen months after Dandy’s commutation there was some opposition in Maryland to forcing a person to be hangman. From the records of the assembly for 7 September 1642:

The Bill for Officers was much opposed by Capt Cornwaleys and Mr Brent as unnecessary as giving away their Liberties as imlimited [unlimited?] in point of Sheriffs recognizance and number of Officers to be imposed & as against Common right and decency compelling men to be hangmen[.]

The Governor consented that an exception should be made of the Office of Hangman and that Recognisance might be limited to such a Value as the Business might amount unto committed to his trust as 10000<sup>l</sup> w<sup>t</sup> [ten thousand pounds] of Tobacco or the like sum[.]

*Md. Arch.*, I, 175.

And from the records of the assembly for 11 September 1642: “The Bill for Officers was not agreed upon[.]” *Ibid.*, p. 176.

<sup>17</sup> *Md. Arch.*, IV, 254, 260. Thus it appears that the authorities gave Edward this name after he was dead: “. . . (since called Edward . . .)” (*ibid.*, p. 254); “. . . an Indian ladd (since christned by the name of Edward) . . .” *Ibid.*, p. 260.

<sup>18</sup> *Ibid.*, p. 254. If a suspect fled after he was charged with a crime, he lost his goods and chattels even though he might be found not guilty. In England the crimes for which the defendant forfeited all of his goods and chattels were treason, misprision of treason, petit treason, all felonies “whether clergyable or not,” suicide, petit larceny, and drawing blood in Westminster Hall. Blackstone, *Commentaries*, II, 267-

268; IV, 381-382, 386-387.

“Clergyable”: For benefit of clergy, see Chapter 3, “Pope Alvey,” Note 1.

<sup>19</sup> *Md. Arch.*, IV, 255, 260.

<sup>20</sup> *Ibid.*, p. 255. Dandy’s sureties were Barnaby Jackson and Henry Bishop.

<sup>21</sup> *Ibid.*, p. 260. Felonious killing without malice aforethought was only manslaughter. See Chapter 3, “Pope Alvey,” Note 9.

<sup>22</sup> *Md. Arch.*, IV, 260.

<sup>23</sup> *Ibid.*, p. 262. For very brief mentions of the case against Dandy, see Raphael Semmes, *Crime and Punishment in Early Maryland* (Baltimore: The Johns Hopkins Press, 1938), pp. 132-133; George Dalzell, *Benefit of Clergy in America & Related Matters* (Winston-Salem, N. C.: John F. Blair, Publisher, 1955), p. 121.

<sup>24</sup> 1642, c. 46, in *Md. Arch.*, I, 192-193.

<sup>25</sup> *Md. Arch.*, IV, 260.

<sup>26</sup> *Ibid.*, III, 146.

<sup>27</sup> *Ibid.*, pp. 187-188.

<sup>28</sup> *Ibid.*, X, 31. To whom Thomas Maidwell complained and who issued the warrant to the sheriff are not included in the record.

<sup>29</sup> A smith’s cinder is a piece of slag from a forge. *Oxford English Dictionary Online*, definition 1a.

<sup>30</sup> *Md. Arch.*, X, 31-32.

<sup>31</sup> *Ibid.*, p. 32.

<sup>32</sup> *Ibid.*, pp. 108, 163.

<sup>33</sup> Raphael Semmes believes that Maidwell died from the beating he got from John and Ann Dandy (Semmes, *Crime and Punishment in Early Maryland*, p. 142), but no firm evidence for this has appeared.



<sup>34</sup> Blackstone, *Commentaries*, IV, 197.

<sup>35</sup> *Md. Arch.*, X, 432.

<sup>36</sup> *Ibid.*, pp. 534-535.

<sup>37</sup> *Ibid.*, p. 535.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, pp. 534-535.

<sup>40</sup> *Ibid.*, pp. 535, 536, 537.

<sup>41</sup> *Ibid.*, pp. 540-541, 547.

<sup>42</sup> *Ibid.*, p. 522. When these witnesses were bound over to appear on the twenty-third is not noted in the record.

<sup>43</sup> *Ibid.*, p. 524.

<sup>44</sup> *Ibid.*, pp. 540-541.

<sup>45</sup> *Ibid.*, pp. 534, 547.

<sup>46</sup> Rice Maddookes. *Ibid.*, p. 546.

<sup>47</sup> *Ibid.*, p. 524.

<sup>48</sup> *Ibid.*, p. 525.

<sup>49</sup> *Ibid.*, p. 542. We know that 28 September 1657 was a Monday because the justices later sentenced Dandy to hang on Saturday, 3 October. *Ibid.*, p. 545.

<sup>50</sup> *Ibid.*, pp. 542-543. In the records of the provincial court the charges of “feloniously Murthering” Gouge and of breaking jail are included in one bill of indictment, but the record reads that the grand jury returned “both Indictments” *billa vera* (*ibid.*, p. 543), here meaning, apparently, both charges. Later the record refers to only one indictment, including both charges. *Ibid.*, pp. 544, 545.

Breaking prison after being charged with a capital crime was itself a capital crime. Blackstone, *Commentaries*, IV, 130-131; 1676, c. 17, *Md. Arch.*, II, 542;

Commission Records, 1726-1786 (orig.), pp. 20-23 from back; Proceedings of Special Courts of Oyer and Terminer and Goal Delivery, 1728-1736 (Accession 3998), pp. 17-21.

A court of oyer and terminer and jail delivery was a special court that the governor and his council appointed either to try specific prisoners or to try all prisoners being held in a specific jail so that they could be disposed of, one way or another, without keeping them in jail for long periods. **Specific prisoners:** *Md. Arch.* XXII, 300-301; XXIX, 26; **all prisoners:** Commission Records, 1726-1786 (orig.), pp. 7, 9. See also C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 114-118.

<sup>51</sup> *Md. Arch.*, X, 543.

<sup>52</sup> Dandy challenged George Newman; Thomas Belcher replaced him. *Ibid.*, p. 544.

<sup>53</sup> The defendant in a criminal case ordinarily had no attorney. The justices were supposed to protect the rights of defendants. Blackstone, *Commentaries*, IV, 355-356. A short search in the court records at the Maryland State Archives in Annapolis will reveal the absence of attorneys for defendants in most criminal prosecutions.

<sup>54</sup> In the published *Archives of Maryland* all of the evidence in the trial, including the depositions that Richard Preston and William Ewens had taken, are entered into the record of the provincial court for 26 September (*Md. Arch.*, X, 535-541), three days before Dandy's trial started. *Ibid.*, p. 542. According to the record, six witnesses were sworn and examined in open court; one witness might or might not have sworn to a deposition that he had given earlier; and apparently for the other

five witnesses, including Dandy, only their depositions were used.

The wording of the witnesses is far more similar than we have been able to show here without making it appear that we are simply stringing quotes together.

<sup>55</sup> It appears quite likely that this is the Robert Cole who is the subject of Lois Green Carr, Russell R. Menard, and Lorena S. Walsh in *Robert Cole's World: Agriculture and Society in Early Maryland* (Chapel Hill, N. C.: The University of North Carolina Press, 1991).

<sup>56</sup> *Md. Arch.*, X, 535.

<sup>57</sup> *Ibid.*, pp. 534-535.

<sup>58</sup> *Ibid.*, p. 535.

<sup>59</sup> The belief was that if a murderer touched the dead body of his victim it would bleed. *Md. Arch.*, XXXII, 128-129; XLI, 385; Oliver Chitwood, *Justice in Colonial Virginia* (Baltimore: The Johns Hopkins Press, 1905; reprinted New York: Da Capo Press, 1971), p. 105.

See also G. B. Harrison, ed., *The Trial of the Lancaster Witches, 1612* (London: Peter Davies, 1929; reprinted New York: Barnes & Noble, Inc., 1971), pp. 179, 185, and Appendix B, "Bleeding Body," below.

<sup>60</sup> *Md. Arch.*, X, 536.

<sup>61</sup> "Coal-kill" is a corruption of "coal-kiln." One of the definitions of "kiln" is "a furnace for burning a substance, as in calcining lime (LIME-KILN) or making charcoal." *Oxford English Dictionary Online*, definition 1a.

It appears likely therefore that John Dandy's coal-kill was a place where he turned wood into charcoal, which would burn hotter in a forge than wood would. For "coal-kill," see "Today in Champlain Valley History," 9 February 1767, at <http://www.thewarof1812.com/CVHistory/February/february9.htm>; "Learning About

George Washington,” 18 February 1797, at <http://gwpapers.virginia.edu/education/life/quest10.html>; “*The Journals of the Lewis and Clark Expedition*,” 27 January 1805, at <http://lewisandclarkjournals.unl.edu/search.php?collection=lewisandclarkjournals&keyword=%22Coal+kill%22&style=yes&stylesheet=http%3A%2F%2Flibtextcenter.unl.edu%2Flewisandclark%2FLCsearch.xml>; Hugh Blair’s “LEIDGER” (1810) at <http://sevierlibrary.tripod.com/blair.html>; *The Life of John Andrew Smith*, p. 6 (mid-nineteenth century), at [http://www.footnote.com/page/1822/the\\_life\\_of\\_john\\_andrew\\_smith/](http://www.footnote.com/page/1822/the_life_of_john_andrew_smith/). [all visited 22-23 September 2008] I owe all of these citations to Beverly Ann. I also thank those people, too many to name individually, who responded to my query about “coal-kill” on the H-OIEAHO Discussion Network.

<sup>62</sup> *Md. Arch.*, X, 536.

<sup>63</sup> *Ibid.*, p. 535.

<sup>64</sup> *Ibid.*, pp. 536-537.

<sup>65</sup> *Ibid.*, p. 537. Emphasis added.

<sup>66</sup> *Ibid.*, pp. 537-538.

<sup>67</sup> *Ibid.*, p. 538.

<sup>68</sup> *Ibid.*, pp. 535, 539.

<sup>69</sup> *Ibid.*, pp. 539-540.

<sup>70</sup> For Walter Peake, see Chapter 3, “Pope Alvey,” at Notes 53-62.

<sup>71</sup> One of the definitions of “pinch” as a verb is “to nip off or prune the tip of (a young shoot or bud).” *Webster’s Third New International Dictionary of the English Language Unabridged* (1961).

<sup>72</sup> *Md. Arch.*, X, 541.

<sup>73</sup> *Ibid.*, pp. 538-539.

<sup>74</sup> *Ibid.*, p. 541.

<sup>75</sup> *Ibid.*, p. 535.

<sup>76</sup> *Ibid.*, pp. 540-541.

<sup>77</sup> *Ibid.*, p. 524.

<sup>78</sup> *Ibid.*, pp. 544-545.

<sup>79</sup> *Ibid.*, p. 543.

<sup>80</sup> Servants did sometimes commit suicide or attempt suicide. *Maryland Gazette*, 4 August 1747, 25 September 1766, 22 April 1773. This note long predates the publication of A. Roger Ekirch's, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* (Oxford: Clarendon Press, 1987), where Ekirch mentions these cases at page 159n.

Raphael Semmes believes that Gouge drowned himself (Semmes, *Crime and Punishment in Early Maryland*, p. 126), but Richard B. Morris does not. Richard B. Morris, *Government and Labor in Early America* (New York: Columbia University Press, 1946; reprinted Torchbook edition, New York: Harper and Row, 1965), p. 486n.

<sup>81</sup> *Md. Arch.*, X, 538, 540.

<sup>82</sup> *Ibid.*, I, 89, 92; III, 98, and Text above at Notes 14-15.

<sup>83</sup> *Md. Arch.*, III, 146, 187-188; IV, 254, 255, 260, 262, and Text above at Notes 17-26.

<sup>84</sup> *Md. Arch.*, X, 31-32, 108, 163, and Text above at Notes 28-34.

<sup>85</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 116-117.

<sup>86</sup> James McSherry, *History of Maryland* (Baltimore: J. Murphy, 1849; reprinted Baltimore: Baltimore Book Co., 1904), pp. 57-63; Matthew Page Andrews, *History of Maryland: Province and State* (Garden City, N. Y.: Doubleday, Doran

& Co., Inc., 1929; reprinted Hatboro, Pa.: Tradition Press, 1965), pp. 126-129.

<sup>87</sup> *Md. Arch.*, X, 429. When Dandy was condemned he still owed that fine. On 1 October 1657, the day after the provincial justices condemned Dandy, Peter Joy, his surety for the fine, petitioned the provincial justices to release him from that bond, and the justices ruled that if Ann Dandy would furnish security to guarantee the payment of the fine they would release Joy from his bond. Whether Ann managed to provide the security does not appear. *Ibid.*, pp. 546-547.

<sup>88</sup> *Ibid.*, p. 429.

<sup>89</sup> The Puritans surrendered the government of Maryland on 24 March 1657/8. *Ibid.*, I, 369-371; *Biographical Dictionary*, I, 21. The first assembly under the Puritans met on 20 October 1654. *Md. Arch.*, I, 339-340.

<sup>90</sup> *Md. Arch.*, X, 534-535.

<sup>91</sup> *Ibid.*, p. 546.

<sup>92</sup> Blackstone, *Commentaries*, IV, 385-387.

<sup>93</sup> *Md. Arch.*, X, 545-546.

<sup>94</sup> Richard Maddokes. *Ibid.*, p. 524.

<sup>95</sup> *Ibid.*, p. 546.

<sup>96</sup> *Ibid.*, pp. 486, 497, 511; Owings, *His Lordship's Patronage*, p. 139.

<sup>97</sup> *Md. Arch.*, X, 547.

<sup>98</sup> *Ibid.* Why Thomas Belcher was feeding Dandy, his friends, and the grand and petit jurors does not appear. He might have been an inn-holder. He was on the jury that convicted Dandy. *Ibid.*, p. 544.

<sup>99</sup> *Ibid.*, p. 547.

<sup>100</sup> *Ibid.*, p. 548.

<sup>101</sup> *Ibid.*, pp. 557-558.

<sup>102</sup> *Ibid.*, pp. 553-554.

<sup>103</sup> *Ibid.*, p. 558.

<sup>104</sup> *Ibid.*, p. 559.

<sup>105</sup> *Ibid.*, pp. 559-560

<sup>106</sup> *Ibid.*, p. 559.

<sup>107</sup> *Ibid.*, XLI, 12.

<sup>108</sup> *Ibid.*, p. 13.

<sup>109</sup> To compound was “to obtain discharge from a debt by the payment of a smaller sum.” Henry Campbell Black, *Black’s Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern* (6th edition; St. Paul: West Publishing Co., 1990), p. 286.

<sup>110</sup> *Md. Arch.*, XLI, 13.

<sup>111</sup> Owings, *His Lordship’s Patronage*, p. 117.

<sup>112</sup> *Md. Arch.*, XLI, 52.

<sup>113</sup> *Ibid.*, p. 70.

<sup>114</sup> *Ibid.*, X, 547.

<sup>115</sup> *Ibid.*, XLI, 81-82.

<sup>116</sup> *Ibid.*, p. 257.

<sup>117</sup> *Ibid.*, X, 547. The wording of the two entries is not exactly the same, but it appears unlikely the amounts would have been exactly the same if they represent two separate payments. The earlier payment was for “dyett” for Dandy, his friends, and the grand and petit juries (*ibid.*), while the later payment was “for prouision of dyett in time of . . . [Dandy’s] durance att their howse.” *Ibid.*, XLI, 81-82.

<sup>118</sup> I have found no evidence that anyone was hanged while John Dandy was hangman, but of course many records are missing. The four men whom the Puritan

rebels executed in the Civil War in 1655 were shot rather than hanged. See Appendix A, “The Espy File,” at Note 54.

<sup>119</sup> It was the job of the hangman to execute all corporal punishments. 1638, c. 12, *Md. Arch.*, I, 55. The bill of attainder against Edward Husbands in 1678 for allegedly attempting to poison “most of the members” of the lower house also illustrates this. 1678, c. 18, *Md. Arch.*, VII, 104-105; Bacon, *Laws of Maryland at Large*, under 1638, c. 12 (page 24). See also Text above at Note 6.



### 3. Pope Alvey

Probably there was not much to choose between John Dandy and Pope Alvey, another enthusiastic practitioner of the violence of the age, who hanged at least one man while he lived under a reprieve of a sentence of death for stealing a cow after he had already pleaded benefit of clergy<sup>1</sup> in the death of one of his servants. Pope Alvey reveals the sort of brutal man who could also be a thief and a liar and in seventeenth-century Maryland still be considered a worthy neighbor and receive the favor of authority.

On 2 March 1663/4 a coroner's inquest of twelve men in St. Mary's County reported that Pope Alvey's servant Alice Sandford had died within half an hour after Alvey brought her to William Rosewell's house on 29 February 1663/4. The jurors and the doctors who attended the inquest found no mortal wound and found that Alice Sandford's "Intrayles . . . [were] cleare from any inward disease." But the jurors reported also that Alice Sandford's body had been "beaten to a Jelly," and they believed that if it was possible "that any Christian could bee beaten to death w<sup>th</sup> stripes" Alice Sandford had been.<sup>2</sup>

On that same day William Evans, the sheriff of St. Mary's County, took depositions from two witnesses. John Besseck,<sup>3</sup> who was twenty-two years old "or thereabouts," swore that about two hours into the night of 29 February 1663/4 he

heard “one hollow” in the woods, and when he went to investigate he found Pope Alvey and “a maide Servant of his, sitting uppon a Tree.” When Besseck asked the woman whether she would go with him, she replied that she understood that “here is a Christian man come” and told Besseck to take notice that her master had killed her. Alvey heard her say that and told Besseck, “This Damned whoare . . . , I cannot gett her along noe further then I bast her.”

Alice Sandford asked for water, but Besseck could not find any. After Alvey cut a stick, he and Besseck led Alice Sandford ten paces, but then she could go no farther. Alvey swore that he would make her go farther, lifted up her waistcoat, and beat her on her bare back. When he had broken three sticks on her she raised her hand to ward off the blows, but Alvey held her hand under his foot and beat her again.

Finished beating for the time being, Alvey told Alice Sandford to get up and move on, but she said that she could not go any farther even “if shee dyed for it.” Again she asked for water, and this time Besseck got her some. When Alvey told her again to move on, she told him to go away and that she would go with Besseck. Alvey went behind a tree, but when Besseck asked Alice Sandford whether she would go with him she said that she was not able. Besseck called Alvey, who asked Alice whether she would go on, and she replied that she could not.

Alvey swore again that he would make her go, and after he beat her again she said that she would go and raised her hand for help. Alvey and Besseck helped her up. Besseck took her on his back, carried her until he was tired, and then put her down. Alvey, with uncharacteristic concern, asked her whether she wanted a drink, and when she said she did he got some water in his hat and gave it to her. Besseck then picked her up again and carried her within sight of Rosewell’s plantation, then

set her down once more.

When the three had rested for a while Alvey asked Alice whether she would go on, and she asked how far it was to the plantation. Alvey answered that it was close by and asked her to go on, but again she asked for water. Alvey got some water for her. He and Besseck helped her up, but after she went two or three paces she could go no farther and sat down.

Alvey then took Alice Sandford by the hands and “halled” her to a tree. Besseck asked Alvey to leave her alone and offered to get help to carry her to Rosewell’s house. After Alvey and Besseck went to the house and got Rosewell’s servant Charles Alexander to help, Besseck and Alexander carried Alice toward Rosewell’s house on a ladder while Alvey held her to keep her from falling off.

When the four got to Rosewell’s yard Alvey let go of Alice, and she fell off the ladder. Alvey carried her into the house, laid her in the chimney corner, and gave her some hominy. Alice lay down, and when she cried out Alvey “tooke her by th<sup>e</sup> nose & stopped her breath.” A short while later she asked for water, “for th<sup>e</sup> Lords sake,” and immediately died. Alvey lifted her head up and said, “I thinke really that shee is dead.”<sup>4</sup>

William Rosewell’s servant Charles Alexander, who was also twenty-two years old “or thereabouts” and whom William Evans also swore to a deposition on 2 March, confirmed some of what John Besseck said and added some information that makes Alvey’s brutality even clearer than Besseck makes it. He swore that on 29 February 1663/4 Alvey and Besseck came to Rosewell’s house after leaving Alice Sandford about half a mile from the house. He went with the two men, and the three of them carried Alice to Rosewell’s yard on a ladder. There Alice fell off the ladder, and Alvey took her under her arms, lifted her off the ground, and “halled” her to the

chimney corner.

When Alice cried out three times, according to Alexander, Alvey hit on her head her three times with his hand. When she cried out again he “tooke her by th<sup>e</sup> nose & Checked her.” Then he picked up a porringer of hominy, held her up and “opened her mouth w<sup>th</sup> a payre of Tobacco Tonges,” poured hominy broth into her mouth, and laid her down again. A bit later he lifted her head, “& shee was dead.”<sup>5</sup>

Five days after Evans took those depositions — on 7 March 1663/4 — Charles Calvert, governor of the province and sitting as the chief justice of the provincial court, ordered him to arrest Pope Alvey, to keep him in custody without bail or mainprize,<sup>6</sup> and to have him before the provincial court on 5 April 1664.<sup>7</sup> In an indictment on that day a grand jury of sixteen men charged that in Britton’s Bay in St. Mary’s County on 29 February 1663/4 Alvey, who was a cooper, struck Alice Sandford “divers blowes on the body” with “certaine sticks of noe vallue” so that Alice Sandford died within half an hour. The charge against Alvey was that he “feloniously did Kill” Alice Sandford.<sup>8</sup> Felonious killing was manslaughter.<sup>9</sup>

Apparently even before the grand jurors left the courtroom to consider the indictment against Alvey the justices questioned John Besseck again. He confirmed that he was with Pope Alvey in the woods, and when he was asked how big the stick — not sticks, as in his deposition — with which Alvey struck Alice Sandford was he said that “it was a small stick lesse then his little finger by a greate manner.” When he was asked whether the hominy that Alvey put into Alice Sandford’s mouth was hot or cold he said that it was cold.<sup>10</sup>

After Alvey pleaded not guilty the petit jury found him guilty, and when the justices asked him what he had to say for himself he pleaded benefit of clergy. Alvey did read; the court ordered that he “be forthwith burnt in the brawn of his Right hand

with a Red hot Iron”;<sup>11</sup> and the under-sheriff did the branding immediately.<sup>12</sup>

Clearly Pope Alvey was a very brutal man, and his reputation was well known. At least one other servant died in his service, and Paul Marsh was afraid that his servant would die in Alvey’s service, too.

In a petition to the provincial court in May of 1665 Marsh reported that he had hired out a servant to Pope Alvey until October of 1665 for one thousand pounds of tobacco. Now he was afraid that he would recover neither the servant nor the tobacco. Alvey had “already been in question” for the life of one servant, and since Marsh had hired out his servant to Alvey another of Alvey’s servants had died. Marsh was credibly informed that Alvey was responsible for that death, too, since according to Marsh’s information Alvey “Kikt him one day that the fellow fell downe dead for the p<sup>r</sup>[e]sent.”

Marsh asked the provincial justices to require Alvey to give sufficient security to guarantee the payment of the one thousand pounds of tobacco and the return of his servant or the equivalent value. The response of the justices does not appear, but Marsh immediately brought an action of trespass on the case against Alvey for two thousand pounds of tobacco.<sup>13</sup> On 4 January 1665/6 the case was finally entered “Compounded as by both partys confest,”<sup>14</sup> which means that the two had agreed out of court.<sup>15</sup> Whether Marsh’s servant lived or died has not appeared, nor has any further information on his other accusations.

No doubt it is significant that Paul Marsh’s concern was not with the well-being of the servant he had hired out to Pope Alvey. He was not so much worried about whether Alvey might kill the servant as he was about getting the price of the hire and reimbursement for the value of the servant if Alvey did kill him.

Almost exactly eighteen months after Pope Alvey was tried for the beating

death of Alice Sandford he was in court again, this time on the charge of stealing a cow from Colonel William Evans, who was now a member of the council and one of the provincial justices,<sup>16</sup> on 19 December 1665.

In a deposition before John Jarbo, one of the justices of St. Mary's County,<sup>17</sup> on 28 December 1665 James Pattison, the constable of New Town Hundred, swore that on 24 December 1665 on the information of Walter Pake<sup>18</sup> he searched Alvey's house for meats that Pake "pretended to have lost." When he asked Alvey for the meat, Alvey denied that he had any such meat in the house. Instead of taking Alvey's word for it Pattison searched the house and found fresh beef, newly killed, and the hide of a beast, without ears, "hidden under Corn husks in the hen house." When Pattison asked Alvey where he got that meat and the hide Alvey replied that the owner had told him to kill it. When Pattison also found "young meat" salted and drying on tobacco sticks in Alvey's loft, Alvey claimed that it was a quarter of beef that he had bought from William Wood, but that did not account for the part of a fore-quarter and the hind-quarter that Pattison had found as well.<sup>19</sup> Clearly Pope Alvey was neither a very quick thinker nor a very good liar.

Walter Pake and Gregory Rowse, who had assisted Pattison in the search of Alvey's house, swore to exactly the same statement that Pattison had made but apparently did not make separate depositions.<sup>20</sup>

Pattison arrested Alvey "for feloniously killing & Stealing of Cattle" and the next day took him before Jarbo for questioning. Alvey, possibly remembering the dismal job of lying he did to Pattison the day before, or possibly hoping for mercy, apparently decided to tell at least a part of the truth. He admitted that he had killed a beast that he supposed belonged to Colonel William Evans, since "it was marked [with] a hole in one Ear & Cropt & Slit in the other." Alvey then asked Jarbo to

allow him to go to Colonel Evans “to make his Composition for it.”<sup>21</sup>

Instead of allowing Alvey to go to Evans to try to reach an agreement about his cow, Jarbo on the twenty-eighth took two more depositions. Henry Aspinall, the son-in-law<sup>22</sup> of Walter Pake, swore that on 25 December 1665 Pake “hollowed” for him to come across the creek to him and then told him that he supposed that Alvey had killed one of Aspinall’s beasts. When Aspinall went to Alvey’s house Alvey asked him whether he had bought Colonel William Evans’ heifer. When Aspinall in turn asked Alvey “what was it to him,” Alvey told him that he had killed a beast and that if it belonged to Aspinall and if Aspinall “would put it up & make no more words of it he would pay him for three for it.”<sup>23</sup>

Seventeen-year-old Daniel Hammond swore that on the night of 19 December 1665 Alvey, who was his step-father,<sup>24</sup> went outside with an axe and that when he came in again he told Hammond’s mother that he had “done his busieness [*sic*] for he had Cut off a beasts Legg in the hen house.” Even without one leg the heifer “was eating husks like mad,” and therefore Alvey went out again with the axe and knocked her in the head. After supper, when Alvey’s servant had gone to bed, Alvey and Hammond went out to dress the heifer while Hammond’s mother held a candle. The next day Alvey cut up the meat and carried it into the house, and the next Saturday Alvey hid the hide under the husks in the hen-house. According to Hammond’s best judgment the “marke of the beast was one Ear whole & a hole in it & the other Cropt & Slitt.”<sup>25</sup>

At the provincial court on 3 January 1665/6 the grand jury of sixteen men after considering the depositions that Jarbo had taken charged that on 19 December 1665 Alvey “found feloniously took Stoled killed & Carried away” a black cow worth £2.10.0 and belonging to Colonel William Evans. The witnesses to the indictment

were John Jarbo, James Pattison, Walter Pake, Gregory Rowse, Henry Aspinall, and Daniel Hammond.<sup>26</sup>

After the grand jurors returned their indictment the crier commanded silence, and the clerk ordered the sheriff “to Sett pope Alvey to the Barr” for his arraignment. When the sheriff had done that, the clerk read the indictment to Alvey and asked him how he would plead. Alvey pleaded not guilty; the clerk asked him how he would be tried; Alvey answered “by God and the Country”; and the clerk said “God Send thee Good deliverance.”<sup>27</sup>

The clerk then ordered the sheriff to return a panel of petit jurors to try Alvey, and the sheriff returned twelve men. The clerk ordered Alvey to hold up his hand and told him that if he wanted to challenge any of the jurors he should challenge them “as they Come to the Booke to be Sworn before they be Sworn and you Shall be heard.” Apparently Alvey challenged none of them.

Now it was the crier’s turn again. He made proclamation that if anyone in the court could inform the attorney general of any treason, murder, felony, or “other misdemeanour” that Pope Alvey had committed he should come forth. Nobody did come forth, and the petit jury was sworn.<sup>28</sup>

The clerk then called over the names of the jurors, and the sheriff counted them. The clerk asked them whether they were all sworn, and all of the petit jurors said that they were. The clerk then ordered Alvey to hold up his hand again and ordered the jurors to look at him. He read the indictment once more, then told the jurors that their job was to determine whether Alvey was guilty or not guilty. If they found him guilty they were to determine what lands, tenements, goods, and chattels he had at the time he committed the crime or at any time since.<sup>29</sup> If they found him not guilty they were to determine whether “he did fly for it,” and if they found that he had fled



they were to determine what goods or chattels he had at that time or at any time since.<sup>30</sup> If they found that he was not guilty and that he did not fly for it they were to “Say So & no more.”

The six witnesses were now called, sworn, and examined, and after hearing the evidence the jurors withdrew to a room where they would have nothing to eat or drink until they had returned their verdict. When they returned, the clerk called over their names again, asked each one whether they had reached a verdict, and when each said that they had the clerk asked him who would speak for him. Each answered that the foreman would speak.

The clerk then ordered Alvey to hold up his hand again, ordered the petit jurors to look at him, and asked the foreman for the verdict. The foreman announced that the jury had found Alvey guilty and had found that the cow was worth only “Eleven pence & no more.” Placing that value on the stolen cow would save Alvey from hanging.<sup>31</sup> The justices were not satisfied with that and therefore ordered the jurors to reconsider their verdict and “to have a Speciall Care in what they did.” The jurors went out again, and this time they returned with a simple verdict of guilty. They also reported that to their knowledge Alvey had no land, tenements, goods, or chattels that they knew of at the time he committed the crime or at any time since and that he did not fly for it. The clerk then polled the jury, and after all agreed that they had found Alvey guilty they were dismissed.<sup>32</sup>

The clerk now ordered the sheriff to “Set the prisoner to the Barr,” and the court asked him whether he knew any reason why he should not suffer death. Alvey pleaded benefit of clergy, but the justices denied it, since the record showed that he had already received benefit of clergy in the death of Alice Sandford.<sup>33</sup> Alvey then threw himself on the mercy of the court, but the justices, no doubt already well aware

that a reprieve was in the works — Charles Calvert, the governor, was after all sitting as the chief justice of the court<sup>34</sup> —, sentenced him to hang.<sup>35</sup>

There is no evidence that Colonel William Evans, the victim of Alvey's theft of the cow and one of the provincial justices sitting in the case,<sup>36</sup> disqualified himself while the court tried Alvey.

Immediately after the justices sentenced Alvey to hang, several people appeared and on their knees humbly begged the court to reverse the judgment and save Alvey's life. Because of the "Earnest Intercession" of those people, Calvert respited the execution and released Alvey.<sup>37</sup> The death sentence would remain in effect, however, during the governor's pleasure, and Alvey's ultimate fate would depend on how he behaved himself in the future.<sup>38</sup>

In the actions against Pope Alvey we meet some participants more than once. In this rural society in which the pool of potential jurors was limited, most people, despite the scattering of the population, probably either knew or knew of and about suspects or defendants in whose cases they would be involved in court. There was no pretense of insisting that the men who would determine the fates of their neighbors had no previous knowledge of or possible prejudice against those neighbors. The grand jury, in fact, evolved from the Norman "jury of presentment," which consisted of men who were supposed to know what was going on in their communities and, under oath, to report crimes that they already knew of or suspected.<sup>39</sup>

It should not be surprising therefore that the same person could have more than one judgmental role in the processing of one alleged crime. Peter Mills, who served on the petit jury that found Alvey guilty of the cow-theft, had served on the coroner's jury that investigated the death of Alice Sandford.<sup>40</sup> Justinian Gerrard, who also served on the petit jury that found Alvey guilty of the cow-theft, had served on the

grand jury that indicted him in the death of Alice Sandford.<sup>41</sup> William Harper, who served on the grand jury that indicted Alvey for the cow-theft, had served on the petit jury that found him guilty of killing Alice Sandford.<sup>42</sup> And William Watts, who had served on the coroner's jury that investigated Alice Sandford's death, also served on the petit jury that found him guilty of killing her.<sup>43</sup>

Alvey lived under the sentence of death for about eight and a half years — until 7 July 1674. When in May of 1674 he petitioned the lower house to intercede with Governor Charles Calvert for a pardon for him the delegates sent the petition on to the upper house with a favorable recommendation.<sup>44</sup> On the thirtieth Calvert granted the petition and ordered that Alvey could sue out his pardon.<sup>45</sup> On 29 June 1674 the chancellor of the province, Phillip Calvert,<sup>46</sup> ordered Charles Calvert, who would soon become third Baron Baltimore and who still was governor<sup>47</sup> as well as the chief justice of the provincial court, to send the record of Alvey's conviction for the theft of the cow "with all things touching the Same" to the chancery court.<sup>48</sup> Charles Calvert did send the record as well as the record of Alvey's earlier conviction of killing Alice Sandford;<sup>49</sup> the chancery court reviewed the cases;<sup>50</sup> and on 7 July 1674 Charles Calvert did pardon Alvey.<sup>51</sup>

Though Alvey's becoming hangman was not a condition of his reprieve,<sup>52</sup> while he was under sentence of death he had to serve as hangman at least once, and it might have given him some satisfaction that his victim was Walter Pake, the very man who had first informed James Pattison that Alvey might have stolen William Evans' black cow and who accompanied Pattison in his search of Alvey's property.<sup>53</sup> The provincial justices also summoned Pake as a witness in the case that Paul Marsh brought against Alvey.<sup>54</sup>

At the provincial court in December of 1668 the grand jury charged that at his

house on 23 October 1668 Pake, who had sat in the assembly in 1647/8 and 1649,<sup>55</sup> had served as an attorney,<sup>56</sup> and was an innkeeper at St. Lawrence's in Britton's Bay, assaulted William Price with a sword worth five shillings and under Price's right shoulder inflicted a mortal wound seven inches deep and one inch wide, "of which mortall wound the said william [*sic*] Price Immediately did dye." Then, according to the grand jury, Pake inflicted in Price's throat a second mortal wound, three inches deep and one inch wide, of which Price would have died if he had not died of the first one. Since the grand jury charged that Pake had attacked Price with malice forethought, the charge against him was murder.<sup>57</sup>

After Pake pleaded not guilty,<sup>58</sup> the petit jury returned a special verdict in which it found that on 23 October 1668 while he was drunk and did not know what he was doing Pake did kill Price by wounding him in several places. The jurors could not determine, however, whether Pake's crime was murder or only manslaughter and therefore left that determination to the court.<sup>59</sup>

The justices unanimously decided that Pake was guilty of murder, and when the court asked him whether he knew any reason why he should not suffer death he asked only that he be hanged before his own house, where he had committed the murder. The justices granted his request and ordered that Pake "be Executed att the place aforesaid by the hands of Pope Alvey on Thursday next," 17 December 1668, between nine and twelve o'clock in the morning.<sup>60</sup>

Walter Pake was not a poor man. Arriving in Maryland in 1646, "by the early 1660s" he owned an inn and "more than 5,900 acres" of land. He sold 1,600 acres and gave his daughter Mary 1,450 acres, and when he died he still owned 2,850 acres.<sup>61</sup> His name appears often in the records of the provincial court from 1647 until his death.<sup>62</sup>

Pope Alvey might or might not have been pleased when in April of 1671 he escaped the job of conducting a quadruple hanging. The victims of the gallows this time were Negro John, James Sall, Robert Speare, and Robert Warry, whom the provincial justices, with Governor Charles Calvert sitting as chief justice, condemned on 10 April for petit treason in the murder of their master, John Hawkins, on 16 February 1670/1. The justices ordered further that their fellow defendant, Negro Tony, whom the petit jury had acquitted of participating in Hawkins' murder, hang them on the fourteenth.<sup>63</sup>

There would be at least one more hanging before Alvey got his pardon on 7 July 1674. On the same day on which Negro John, James Sall, Robert Speare, and Robert Warry were hanged, the provincial justices sentenced Isabella Yausley to hang three days later — 17 April 1671 — after a petit jury found her guilty of murdering her new-born male child on 3 March 1670/1.<sup>64</sup> Pope Alvey therefore might have been Isabella Yausley's executioner, as he was Walter Pake's.

Surely Pope Alvey's career provides clear evidence that authority in as well as the population of seventeenth-century Maryland could accept extreme cruelty and violence in free white men and might even find such men useful. At the same time, however, as John Dandy's fate illustrates, there was sometimes a limit even to what free white men, at least those of Dandy's position in the splintered society of the time, could do.

### 3. Pope Alvey

<sup>1</sup> Benefit of clergy was a system by which for some crimes the person who could read could escape hanging and suffer only a brand on the brawn of his left thumb instead. A layman could plead benefit of clergy only once. Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 365-374\*.

<sup>2</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XLIX, 166, 168.

The case against Pope Alvey in the death of Alice Sandford is recorded both in *Md. Arch.*, XLIX, 166-168, 201, 223, 230, 233, 234, 235, the record of the provincial court, and in *Md. Arch.*, LI, 119, 121-123, the record of the chancery court. Unless otherwise noted, when both sources are cited all quotes come from *Md. Arch.*, XLIX.

<sup>3</sup> Or Bissick or Bassick. *Ibid.*, XLIX, 166, 223; LI, 122.

<sup>4</sup> *Ibid.*, XLIX, 166-167.

<sup>5</sup> *Ibid.*, p. 167.

<sup>6</sup> Mainprize was the turning of a suspect over to men who would guarantee his appearance at the specified time. Henry Campbell Black, *Black's law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence*,

*Ancient and Modern* (6th edition: St. Paul: West Publishing Co., 1990), p. 953.

<sup>7</sup> *Md. Arch.*, XLIX, 168.

<sup>8</sup> *Ibid.*, pp. 230, 234; LI, 122.

<sup>9</sup> In their Letter of Transmittal of Volume LI of the *Archives of Maryland*, Samuel K. Dennis, J. Hall Pleasants, and John M. Vincent, who constituted the Committee on Publication of the Maryland Historical Society, say that the charge against Pope Alvey was murder. *Md. Arch.*, LI, xvii. In their Letter of Transmittal of Volume XLIX of the *Archives* the same three men make the same error. *Ibid.*, XLIX, xix.

Jeffrey K. Sawyer also assumes that the grand jury charged Alvey with murder, and he speculates that “Alvey’s offense . . . apparently . . . [was] reduced to manslaughter” and that “The fact that he was granted clergy means that the jury found him guilty only of manslaughter because murder was not clergyable.” Jeffrey K. Sawyer, “‘Benefit of Clergy’ in Maryland and Virginia,” *The American Journal of Legal History*, XXXIV, No. 1 (January 1990), pp. 58, 60.

There is a widespread but very strained view that petit juries often deliberately and regularly mitigated the force of the law by bringing in defendants guilty of crimes less serious than those with which the grand juries charged them or by reducing the value of stolen goods in cases of theft. My work on crime and punishment in colonial Maryland, including specifically on benefit of clergy, makes it appear however that juries might not have done that as often as historians have assumed. The evidence in those few capital cases in which evidence has survived might make it appear that in cases in which petit juries reduced the seriousness of the crimes of which the petit juries found defendants guilty were often, if not usually, closer to what the defendants had actually done than the crimes with which the grand juries had charged them were.

There is not enough surviving evidence in capital cases in colonial Maryland to allow anyone to be fully confident about either view. See C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: "the most capable in all Respects" or "Blockhead Booby"?*, Archives of Maryland Online, Vol. 747, pp. 174-179 (<http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000747/pdf/am747.pdf>).

The grand jurors did not charge that Pope Alvey had killed Alice Sandford with malice aforethought, which was necessary for the charge to be murder. Without the words "malice forethought" the indictment was an indictment for manslaughter only. Blackstone, *Commentaries*, IV, 198-201, ii-iii; Sir Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown* (2 vols.; London: E. and R. Nutt and R. Gosling: Assigns of Edward Sayer, 1736), II, 344.

<sup>10</sup> *Md. Arch.*, XLIX, 233; LI, 122. The record in the proceedings of the chancery court leaves out the word "small" before "stick" and says "matter" rather than "manner."

<sup>11</sup> . . . the crime of manslaughter amounts to felony, but within the benefit of clergy; and the offender shall be burnt in the hand, and forfeit all his goods and chattels.

Blackstone, *Commentaries*, IV, 193.

<sup>12</sup> *Md. Arch.*, XLIX, 223, 230, 234, 235; LI, 121-123 (quote). William Watts, who had served on the coroner's jury that investigated Alice Sandford's death, also served on the petit jury in the trial of Alvey for her death. *Ibid.*, XLIX, 166, 235; LI, 122.

Pope Alvey's trial and the two that went with it are a good illustration of a petit jury's considering more than one criminal case at the same time and then bringing in verdicts in all of them at once. The petit jury heard the evidence against Pope Alvey for the manslaughter of Alice Sandford, against Arthur Notttool for breaking prison



after he had been arrested for alleged burglary, and against Elizabeth Greene for the murder of her new-born child, deliberated on all three cases, and then brought all of the defendants in guilty. Alvey and Notttool pleaded benefit of clergy and were immediately branded, and the justices sentenced Elizabeth Greene to hang. She was sentenced on 6 July 1664 and hanged two days later. Thomas Dent was the sheriff who was responsible for the hanging. *Md. Arch.*, XLIX, 212, 217-218, 220, 223, 230-236, especially p. 235.

Notttool was convicted of the burglary at the same time that he was convicted of breaking prison. *Ibid.*, pp. 234, 235. The “prison” in which Notttool was held was the house of Thomas Sprigg, the sheriff of Calvert County. *Ibid.*, pp. 230-231, 235.

For two reasons, either of which would have been sufficient, Elizabeth Greene could not claim benefit of clergy. First, in 1547 parliament revoked benefit of clergy for murder (1 Edward 6, c. 12, paragraph 10, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), V, 264), and, second, it was not until 1691 that women could plead benefit of clergy. 3-4 William and Mary, c. 9, paragraph 6, in *ibid.*, IX, 139; 4-5 William and Mary, c. 24, paragraph 13, in *ibid.*, p. 233.

Just how common in colonial Maryland the practice of the petit jury’s hearing several cases at once was is not apparent at this point, but in England before the eighteenth century trying cases in “batches” was the usual practice. John H. Langbein, *The Origins of Adversary Criminal Trial* (Oxford: Oxford University Press, 2003), p. 21.

<sup>13</sup> *Md. Arch.*, XLIX, 453.

<sup>14</sup> *Ibid.*, pp. 455, 496, 546, 555.

<sup>15</sup> *Black’s Law Dictionary* (6th edition), p. 286.

<sup>16</sup> *Md. Arch.*, LI, 121, 123; Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiverson, eds., *A Biographical Dictionary of the Maryland Legislature, 1635-1789*, hereafter *Biographical Dictionary* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 24, 25, 314. William Evans appears to have become a member of the council and a justice of the provincial court some time after he, as sheriff of St. Mary's County, arrested Pope Alvey for the killing of Alice Sandford. See Text above at Note 6.

<sup>17</sup> *Md. Arch.*, III, 490, 503, 514, 518, 540; *Biographical Dictionary*, II, 482.

<sup>18</sup> For Walter Pake as Peake or Pakes, see index to *Md. Arch.*, X.

<sup>19</sup> *Ibid.*, XLIX, 540; LI, 124-125. James Pattison had served on the coroner's jury that investigated the death of Alice Sandford. *Ibid.*, XLIX, 166.

The case against Pope Alvey for stealing the cow is recorded in *Md. Arch.*, XLIX, 538, 539-541, 542, 543, 543-545, and in *Md. Arch.*, LI, pp. 123-130. All quotes come from *Md. Arch.*, LI.

<sup>20</sup> *Md. Arch.*, XLIX, 540.

<sup>21</sup> *Ibid.*, pp. 539-540; LI, 124.

<sup>22</sup> Here "son-in-law" probably means "step-son." See *Webster's New Universal Unabridged Dictionary* (1983), where "step-father" is one of the definitions of "father-in-law."

Darrett B. and Anita H. Rutman refer to "sons- and daughters-in-law (the seventeenth century's dual expression for stepsons and daughters as well as for children's spouses) . . . ." Darrett B. Rutman and Anita H. Rutman, "'Now-Wives and Sons-in-Law': Parental Death in a Seventeenth-Century Virginia County," in Thad W. Tate and David L. Ammerman, eds., *The Chesapeake in the Seventeenth Century: Essays on Anglo-American Society* (Chapel Hill: The University of North Carolina Press,

1979), p. 169.

For the interchangeable use of “step-[people]” for “in-laws,” from the seventeenth through the nineteenth centuries, see also Lois Green Carr, Russell R. Menard, and Lorena S. Walsh, *Robert Cole’s World: Agriculture and Society in Early Maryland* (Chapel Hill: The University of North Carolina Press, 1991), pp. 170, 171, 173; R. J. Minney, *The Tower of London* (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1970), p. 143 (1651); Daniel Defoe, *Roxana: The Fortunate Mistress* (1724), ed. David Blewett (New York: Penguin Books, 1982), p. 307; Jane Austen, *Sense and Sensibility* (1813), in R. W. Chapman, ed., *The Novels of Jane Austen* (3rd edition; 5 vols.; London: Oxford University Press, 1933), I, 5); Jane Austen, *Emma* (1816), in *ibid.*, IV, 233, 343, 359; and Thomas Hardy, *The Woodlanders* (1886-1887) (New York: Oxford University Press, 1985), pp. 56, 118, 194.

<sup>23</sup> *Md. Arch.*, XLIX, 540; LI, 125.

<sup>24</sup> The record says father-in-law, but Pope Alvey was married to Anne Hammond, who was the widow of John Hammond and who had at least two sons, Mordicay and Daniel. *Md. Arch.*, XLIX, 165, 299, 300, 452, 496. See Note 22 above.

<sup>25</sup> *Md. Arch.*, XLIX, 540-541; LI, 125.

<sup>26</sup> *Ibid.*, XLIX, 539, 542; LI, 123, 124, 126.

<sup>27</sup> *Ibid.*, XLIX, 543; LI, 126.

<sup>28</sup> *Ibid.*, XLIX, 543-544; LI, 126, 127.

<sup>29</sup> For some of the more serious crimes the convict’s property was forfeited to the crown or, in Maryland during the proprietary periods, to the proprietor. Blackstone, *Commentaries*, II, 267-268; IV, 381-382, 386-387.

<sup>30</sup> The defendant who fled after being charged with a crime forfeited all of his goods and chattels, since the flight carried “a strong presumption of guilt, and is at

least an endeavour to elude and stifle . . . justice . . . .” *Ibid.*, IV, 387.

<sup>31</sup> Theft of goods valued twelve pence — a shilling — or under was non-capital; theft of goods valued at more than a shilling was capital. *Ibid.*, p. 237.

Pope Alvey’s case might be an instance in which the petit jury did actually try to save the convicted defendant’s life by valuing the cow at less than its actual value. See Note 9 above.

<sup>32</sup> *Md. Arch.*, XLIX, 544-545; LI, 127-128.

<sup>33</sup> See Text above at Notes 2-12.

<sup>34</sup> *Md. Arch.*, XLIX, 538; LI, 123.

<sup>35</sup> *Ibid.*, XLIX, 545; LI, 128.

<sup>36</sup> *Ibid.*, XLIX, 538; LI, 123.

<sup>37</sup> *Ibid.*, XLIX, 545; LI, 128-129.

<sup>38</sup> *Ibid.*, XLIX, 545; LI, 129.

<sup>39</sup> The “jury of presentment,” in turn, had evolved from the Frankish and later Norman “inquest of recognition” or “inquest of neighbors.” Charles Homer Haskins, *Norman Institutions* (Cambridge: Harvard University Press, 1918; reprinted New York: Frederick Ungar Publishing Co., 1960), pp. 196-238, esp. pp. 237-238; Sir Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I* (2nd edition; 2 vols.; Cambridge: Cambridge University Press, 1898; reprinted Cambridge: Cambridge University Press, 1968) I, 136-148; II, 647-650; F. W. Maitland, *The Constitutional History of England* (Cambridge: Cambridge University Press, 1908), pp. 126-129; Theodore F. T. Plucknett, *A Concise History of the Common Law* (London: Butterworth & Co. (Publishers), Ltd., 1956), pp. 112-114; Bryce Lyon, *A Constitutional and Legal History of Medieval England* (New York: Harper & Row, Publishers, 1960), pp. 102-103, 295; S. F. C. Milsom, *Histori-*

*cal Foundations of the Common Law* (London: Butterworth & Co. (Publishers) Ltd., 1969), pp. 356-358; W. L. Warren, *Henry II* (Berkeley: University of California Press, 1973), pp. 354-356; O. G. Tomkeieff, *Life in Norman England* (London: B. T. Batsford, 1966; reprinted Capricorn Books, 1967), p. 131.

<sup>40</sup> *Md. Arch.*, XLIX, 166, 543.

<sup>41</sup> *Ibid.*, XLIX, 230, 543; LI, 121, 126.

<sup>42</sup> *Ibid.*, XLIX, 235, 539; LI, 122, 124.

<sup>43</sup> *Ibid.*, XLIX, 166, 235; LI, 122.

<sup>44</sup> *Ibid.*, II, 370.

<sup>45</sup> *Ibid.*, p. 377.

<sup>46</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 122.

<sup>47</sup> *Ibid.*, p. 117.

<sup>48</sup> *Md. Arch.*, LI, 119.

<sup>49</sup> *Ibid.*, pp. 121-129. The legal forms in this case created the somewhat strange situation in which Phillip Calvert, the chancellor, ordered Charles Calvert, the governor and chief justice of the provincial court, to send the record concerning Pope Alvey before the court of chancery, where Charles Calvert himself rather than Phillip Calvert presided. *Md. Arch.*, LI, 123; J. Hall Pleasants, "The First Century of the Court of Chancery in Maryland," in *ibid.*, xxxv-xxxvi, xliii.

<sup>50</sup> *Md. Arch.*, LI, 119, 121-128.

<sup>51</sup> *Ibid.*, pp. 129-130. J. Hall Pleasants says that Pope Alvey "had been sentenced to hang for repeated convictions as a hogstealer." J. Hall Pleasants, "Introduction" to *Md. Arch.*, LVII, xxviii. I have not been able to discover where Pleasants got that information.

For the cases against Pope Alvey, see Raphael Semmes, *Crime and Punishment in Early Maryland* (Baltimore: Johns Hopkins Press, 1938), pp. 21-29, 108-110; George W. Dalzell, *Benefit of Clergy in America & Related Matters* (Winston-Salem, NC: John F. Blair, Publisher, 1955), pp. 118-120.

<sup>52</sup> *Md. Arch.*, XLIX, 545; LI, 129.

<sup>53</sup> *Ibid.*, XLIX, 540; LI, 124-125.

<sup>54</sup> *Ibid.*, XLIX, 455.

<sup>55</sup> *Biographical Dictionary*, I, 19, 20; II, 639 (under “Peake”).

<sup>56</sup> *Md. Arch.*, X, 441, 449; *Biographical Dictionary*, II, 639. Alan Day, in *A Social Study of Lawyers in Maryland* (New York: Garland Publishing, Inc., 1989), does not include Walter Pake as an attorney. He would have been included between Nicholas Painter and Daniel Palmer (pp. 551-552) or, as Walter Peake, between John Parry and Robert Pearce or Pearre (pp. 554-555).

<sup>57</sup> *Md. Arch.*, LVII, 352, 354-355. The witnesses to the indictment against Walter Pake were Peter Gramare, Rupert Birkenhead, and Thomas Covant. *Ibid.*, p. 352.

<sup>58</sup> *Ibid.*, p. 355.

<sup>59</sup> According to the legal mythology of the eighteenth century the petit jury decided only matters of fact and left all matters of law to the court. The reality, however, is that every time a petit jury decided that a defendant was guilty of the crime with which the grand jury charged him it was deciding a matter of law. It was deciding in the first place whether the defendant actually committed the act with which he was charged, and if it decided that he had committed the act it decided also — unless it brought in a special verdict — that the act was legally the crime that the grand jury mentioned in the indictment — that it was, that is, legally murder, or

burglary, or rape, or whatever. In reaching the first decision the petit jurors were deciding a matter of fact, and in reaching the second they were deciding a matter of law.

Even more obviously, whenever a petit jury brought a defendant in guilty of a lesser crime than the one with which the grand jury charged him it was deciding a matter of law.

As early as 1681 Lord John Somers recognized that petit juries decided matters of law as well as matters of fact (Lord John Somers, *The Security of Englishmen's Lives, or the Trust, Power, and Duty of Grand Juries in England Explained* (London: Printed for T. Mitchel, 1681), pp. 8-9), as did a writer in the *London Magazine* for June of 1752. *Maryland Gazette* 19 October 1752. In the 1780s James Boswell also understood it, but apparently he had a hard time finding anyone who agreed with him. James Boswell, *The English Experiment, 1785-1789*, ed. Irma S. Lustig and Frederick A. Pottle (London: William Heinemann Ltd., 1986), p. 236.

<sup>60</sup> *Md. Arch.*, LVII, 354-356. There is some confusion here. The court ruled that Pake would be hanged on “Thursday next being the seaventh day of this Instant . . .” (*ibid.*, p. 356), but according to the record the court did not meet until 8 December 1668. *Ibid.*, p. 351; Provincial Court Judgment Record, Liber F. F., p. 651. The record, however, also has the next day as “December the Eighth all present as yesterday” (*Md. Arch.*, LVII, 361), and the next day noted is the eleventh. The day after that was Saturday the twelfth, and Monday was the fourteenth. *Ibid.*, pp. 365, 369, 372; Provincial Court Judgment Record, Liber F. F., pp. 665, 670, 673. That would make the following Thursday the seventeenth.

And, in fact, 17 December 1668 was a Thursday. See [time and date.com](http://www.timeanddate.com), at <http://www.timeanddate.com/calendar/index.html?year=1668&country=9>. [visited

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Thus in the seventeenth century “Thursday next” might have meant not the Thursday immediately following but rather the Thursday of the following week, and apparently Pake was to be hanged on that day rather than on the seventh.

William Price, Walter Pake’s victim, had served on the grand jury that indicted Pope Alvey in the death of Alice Sandford. *Md. Arch.*, XLIX, 230.

<sup>61</sup> *Biographical Dictionary*, II, 639.

<sup>62</sup> See the indexes to *Md. Arch.*, IV, X, XLI, XLIX, LVII. Sometime before 6 August 1650 Pake accused Secretary Thomas Hatton of “speaking evil” about Roman Catholics. *Md. Arch.*, I, 318-319; John D. Krugler, “‘With promise of Liberty in Religion’: The Catholic Lords Baltimore and Toleration in Seventeenth-Century Maryland, 1634-1692,” *Maryland Historical Magazine*, LXXIX, No. 1 (Spring 1984), p. 33.

Mary Beth Norton suggests that Walter Pake “seem[ed] to have” lived as part of a *ménage à trois* with his wife and his partner, Paul Simpson (Mary Beth Norton, *Founding Mothers & Fathers: Gendered Power and the Forming of American Society* (New York: Alfred A. Knopf, 1966), p. 469, but her citation, *Md. Arch.*, “X, 188-498 ff passim, esp. 296-297,” requires a lot of work of a reader who would like to follow her thinking. Pages 296-297 are, in fact, only suggestive, and a *passim* for 310 pages seems extreme. Norton suggests the existence of *ménages à trois* in the context of the willing sharing of women as a result of their scarcity. Norton, *Founding Mothers & Fathers*, pp. 344-346.

Actually in 1652 Pake accused his wife Frances of committing adultery with Simpson (*Md. Arch.*, X, 188-189; *Biographical Dictionary*, II, 639), and, especially since there was bad blood between Pake and Simpson (*ibid.*, pp. 188, 188-189, 190-



191), this example might better be considered a matter of simple adultery rather than of the existence of a *ménage à trois*.

One of Norton's other examples of the sharing of a woman is also an instance in which the husband appeared "to have been ignorant of his wife's adulterous liaison with their servant." Norton, *Founding Mothers & Fathers*, p. 469. This instance, as in the case of the Pakes, might also better be classified as simple adultery rather than as an illustration of a *ménage à trois*.

The *ménage à trois* might not have been as common in Maryland as Norton suggests. Norton, *Founding Mothers & Fathers*, pp. 344-345.

<sup>63</sup> *Md. Arch.*, LXV, 2-8; Espy File, <http://www.deathpenaltyinfo.org/ESPYstate.pdf> (1608-2002), p. 158. See also Chapter 4, "John Oliver, James Douglas, John Collins, Thomas Poney, and Negro Tony," at Notes 23-26.

<sup>64</sup> *Md. Arch.*, LXV, 8-11; Espy File, <http://www.deathpenaltyinfo.org/ESPYstate.pdf> (1608-2002), p. 158.

4. John Oliver, James Douglas, John Collins,  
Thomas Poney, and Negro Tony

While the evidence we have makes it appear quite clearly that John Dandy and Pope Alvey were the most violent of the seven hangmen we know about in colonial Maryland, we do not have sufficient evidence about the lives of the others to be sure. We do know, though, that they had been sufficiently obnoxious to authority to have been in serious trouble before they got that job.

Both John Oliver and James Douglas had been sentenced to death in Maryland for theft. At the provincial court at St. Mary's City on 21 February 1677/8 Oliver, a servant of Richard Chillman, was convicted of stealing £0.7.6 "English money" and one Spanish piece of eight from an unidentified victim. When the justices asked him whether he had anything to say for himself to save him from hanging he pleaded benefit of clergy. The justices granted it, but when the book was presented to him he admitted that he could not read. Therefore the justices sentenced him to hang.

On 25 February 1677/8, however, Governor Thomas Notley<sup>1</sup> pardoned Oliver with the condition that he serve as the "General hangman" of the province for the rest of his life. Oliver also had to serve his remaining time with Chillman, and at the expiration of that servitude he had to serve Chillman an additional unspecified time to reimburse Chillman for the fees due to the sheriff for his imprisonment.<sup>2</sup>

Whether Oliver actually had to hang anyone has not appeared, but it must have been Oliver to whom the assembly referred in November of 1678 when it directed that the common hangman give Edward Husbands, a surgeon from Calvert County, twenty lashes on his bare back for “menacing and Curseing” the assembly.<sup>3</sup>

Less than ten years later James Douglas similarly became hangman after he was sentenced to death but pardoned. At the provincial court for September of 1686 the grand jury indicted Douglas and Robert Bourchall for stealing a gelding worth sixteen hundred pounds of tobacco and a saddle and a bridle worth two hundred pounds of tobacco from Ignatius Craycroft on 30 November 1685. At the same time the grand jury indicted Zacharias Vansweringen as accessory. What happened to Vansweringen does not appear, but after Douglas and Bourchall pleaded not guilty a petit jury found them guilty of stealing the saddle but not the horse. The petit jury did not mention the bridle. When the two men were brought before the court again they pleaded benefit of clergy. When the justices granted it to them they were both able to read,<sup>4</sup> and the justices ordered that Bourchall “be burnt in the hand” with “a Red hott Iron: which was accordingly done.”<sup>5</sup>

Why the justices did not order Douglas burned as well does not appear, but it might be because he had already been convicted on another indictment against him. The purpose of branding the culprit was to guarantee that he could not plead benefit of clergy a second time,<sup>6</sup> and if the justices could condemn Douglas immediately there would be no reason to brand him.

In that second indictment the grand jury charged that on 16 July 1686 Douglas stole a gelding worth sixteen hundred pounds of tobacco and a saddle and a bridle worth two hundred pounds of tobacco from Anthony Underwood. On 10 September, the same day on which Douglas and Bourchall were found guilty of stealing the

saddle from Ignatius Craycroft, a petit jury also found Douglas guilty of stealing the horse, saddle, and bridle from Underwood. On 14 September, the same day on which Douglas and Bourchall pleaded their clergy in the one case, the justices asked Douglass “what he had to say why Sentence of Death should not pass against him according to law” in the second case. This time Douglas had nothing to say for himself except to ask for the mercy of the court. The justices, however, condemned him to hang.<sup>7</sup>

On the day after the provincial justices condemned him Douglas petitioned the council for a pardon. The council on that day consisted of the same five men who as provincial justices had condemned Douglas the day before.<sup>8</sup> In his petition Douglas told the members of the council that he had nothing to say in mitigation or extenuation of his crime but that he could only humbly prostrate himself at the councilors’ feet. He had “only his own contrite and penitent spiritt for this and all other [of] his miscarryes of his life past”; his “firm Resolution of amendment for the future” if the council gave him a chance to live into the future; “the poor distressed condition of his poor wife”; his own “tender yeares,” which would enable him to do the proprietor and the province good service if he was allowed to live; and the grace and mercy of the members of the council, which allowed him to hope for their “serious and compassionate consideration of his deplorable condition.”

After considering Douglas’ petition the council decided that he should have a pardon with the condition that he become the common hangman of the province “for the future.” The council also ruled however that the pardon should be kept secret until Douglas had been taken to the place of execution and had the rope around his neck. At that time, “and not before,” the pardon was to be produced.<sup>9</sup>

John Collins, who served for some years as the hangman for Anne Arundel

County in the middle of the eighteenth century, was a thief and more besides. When in September of 1755 Samuel Howard advertised for him as a runaway servant<sup>10</sup> he noted that Collins was commonly known by the name of Jack Ketch, “having many Years followed the Business of *Finisher of the Law*” in Anne Arundel County. He was “of low Stature” and had “a very *short Neck*,” “large black Eye-Brows,” and “a remarkable *hanging Look*.” He had “a squeaking Voice,” and he spoke “as if he was half-choak’d.” After describing Collins’ clothing, Howard warned the public that if he had the opportunity he would “*privately borrow* other Apparel.” He was “by Trade a Brick-Maker, and when he . . . [had] it in his Power . . . [was] always *wetting his Clay*.” Finally Howard offered a reward of twenty shillings to anyone who would “*catch the said Jack Ketch*.”<sup>11</sup>

By 1755 Collins had a long history of trouble with the law. At the Anne Arundel County court for August of 1743 he received fifteen lashes and spent fifteen minutes in the pillory after he admitted that on 19 July 1743 he stole two chickens from Samuel Howard. He also had to pay Howard thirty pounds of tobacco fourfold.<sup>12</sup> At the Anne Arundel County court for June of 1745 he paid of fine of thirty shillings current money after he admitted that he was the father of the bastard child of an unidentified mother.<sup>13</sup> That is probably what Howard meant when he said that Collins was always wetting his clay.

At the Anne Arundel County court for June of 1745 the grand jury also presented Collins for stealing two saddles, but since he had already been convicted in the Anne Arundel County court of the theft of the chickens the justices forwarded both cases to the next provincial court.<sup>14</sup> In each case Collins had to give security of twenty pounds current money, with one surety, to guarantee his appearance there. Charles Carroll was his surety in each case.<sup>15</sup>

At the provincial court for September of 1745 the grand jury indicted Collins for both crimes. In the first indictment the grand jury charged that after being convicted at the Anne Arundel County court for August of 1743 of stealing two chickens worth eight pounds of tobacco from Samuel Howard, Collins on 30 March 1745 stole a saddle worth fifty shillings current money from Isaac Jones of Anne Arundel County, and in the other it charged that on the same day Collins stole a saddle worth forty shillings current money from Joseph Watson of Anne Arundel County.

After one petit jury found Collins guilty of both thefts the justices valued the second saddle at only twenty-five shillings and then sentenced him to thirty lashes and to half an hour in the pillory in each case. The sheriff of Anne Arundel County, Samuel Smith Jr., or more probably someone he designated or hired, imposed the first whipping immediately<sup>16</sup> and the second on the following Monday. The justices also ordered Collins to pay Jones ten pounds current money fourfold and to pay Watson five pounds current money fourfold. When Collins could not provide the security for the payment of the two fourfolds and his fees the justices committed him to Smith's custody, and later the justices ordered Smith to sell Collins to the highest bidder for not more than five years.<sup>17</sup>

By November of 1745 Collins was the servant of John Dorsey: apparently Dorsey bought him in September. At that time Dorsey brought Collins into the Anne Arundel County court with an account of money that Collins owed his former master, Stephen Higgins, for runaway time back in August of 1739. The account included the cost of taking him up and bringing him home, prison fees, and, for some reason, the cost of searching the records of Prince George's County. Possibly the reason for searching those records was to determine whether or not Collins was actually a

servant when he ran off. The total account was £28.8.0, apparently in current money.

The justices, after Collins did not object to the account, ruled that he should serve Dorsey for an additional three years.<sup>18</sup> Possibly Dorsey had reimbursed Higgins for his expenses, although there is no indication that that is true. Servants did sometimes serve present masters for the additional time the courts imposed on them after they had run away from former masters.<sup>19</sup>

In June of 1756 Collins' name once more came up at the Anne Arundel County court, but this time he was the victim of a crime. At that court John Reynolds appeared and submitted himself to the judgment of the justices on the charge of having committed an assault and battery on Collins. The justices fined him only one penny current money.<sup>20</sup> The size of the fine might indicate that the justices had little sympathy for Collins.

Although Thomas Poney might not have been as colorful as John Collins, in England he had got into trouble that was serious enough to get him transported out of the country. He was a convict servant, and when in September of 1755 Thomas John Hammond advertised for him as a runaway he noted that Poney was "commonly known by the Name of *Tom Ketch* [*sic*], having been formerly a Hangman" in Anne Arundel County. Poney stuttered badly when he spoke hastily, had grey eyes, and, like Collins, had "a hanging Look." Hammond supposed that he had gone off with Thomas Dyton, a servant of a Mr. Brice.<sup>21</sup>

Poney must have been caught, since nine months later Hammond advertised for him again.<sup>22</sup> What happened after that has not appeared.

While John Dandy, Pope Alvey, John Oliver, James Douglas and John Collins became hangmen after they were convicted of crimes, and while Thomas Poney had

been convicted in England of a crime serious enough to get himself transported out of the country, in 1671 Negro Tony had to hang his four fellow defendants after a petit jury acquitted him of petit treason in the death of their master, John Hawkins.

At the provincial court on 10 April 1671, with Governor Charles Calvert sitting as chief justice, the grand jury charged that on 16 February 1670/1 James Sall, “John the Negro,” Robert Warry, Robert Speare, and “Tony the Negro” voluntarily and with “mallice before thought . . . feloniously and Traytorously”<sup>23</sup> attacked John Hawkins with axes worth forty pence, breaking several pieces of his skull on the right side of his head near the crown and inflicting one mortal wound three inches deep, one inch wide, and one-and-a-half inches long.<sup>24</sup> Hawkins died instantly, and the grand jurors charged that the five servants had “voluntaryly & wickedly feloniously and Traytorously” killed him.<sup>25</sup>

On their arraignments James Sall, Robert Speare, and Negro John pleaded not guilty and asked for a trial by jury. Robert Warry pleaded guilty and the justices turned him over to the jailer, and since Negro Tony could not speak English they respited his pleading until through the trial of the others they and the jurors could determine how involved he was in the killing. The petit jury found all three defendants in the first trial guilty, then heard the evidence against Negro Tony and acquitted him. After nobody came forward to accuse him of any other crime the justices discharged him from the indictment and then sentenced the other four to hang in St. Mary’s City between nine and twelve on Friday the fourteenth “by the hands of Tony the Negro now in . . . Custody . . . .”<sup>26</sup>



4. John Oliver, James Douglas, John Collins,  
Thomas Poney, and Negro Tony

<sup>1</sup> Donnell M. Owings, *His Lordship's Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), pp. 117-118.

<sup>2</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), LI, 214-215; George Dalzell, *Benefit of Clergy in America & Related Matters* (Winston-Salem, N. C.: John F. Blair, Publisher, 1955), pp. 120-121.

There is some confusion in the records here. Oliver's pardon, which was issued in the name of Charles Calvert, third Baron Baltimore, says that it was witnessed by "our Self," thus by Baltimore himself, in St. Mary's City on 25 February 1677/8. *Md. Arch.*, LI, 214-215. According to Donnell Owings, however, Baltimore went to England in June of 1676 and did not return to Maryland until sometime before 8 January 1678/9. *Md. Arch.*, XV, 211; Owings, *His Lordship's Patronage*, pp. 117, 118. Since Baltimore was not back in Maryland by 26 October 1678 (*Md. Arch.*, XV, 207), it must have been Notley who issued Oliver's pardon on 25 February 1677/8.

For other items issued as early as 20 April 1677 in Baltimore's name and recorded as being witnessed by "our Self," see *Md. Arch.*, LI, 208, 208-209, 209,

209-210, 210, 210- 211, 211-212, 213, 214, 215, 215-218.

For a document of 15 February 1677/8 issued in the name of the proprietor but “witnessed” by Governor Notley, see *Md. Arch.*, XV, 161-162.

I have not found the prosecution of John Oliver in the records of the provincial court. The information on him comes only from his pardon, which is in the records of the chancery court. There is no entry for either His Lordship versus Oliver or Proprietary versus Oliver in the index to the Provincial Court Judgment Record (Maryland State Archives, Microfilms MSA 2294 and MSA 2295), and I have also checked the appropriate volumes of the published *Archives of Maryland* for this prosecution. *Md. Arch.*, LXVI, 1675-1677; LXVII, 1677-1678; and LXVIII, 1678-1679.

<sup>3</sup> *Md. Arch.*, VII, 27, 42, 43, 47, 48, 50; 1678, c. 18, *Md. Arch.*, VII, 104-105. For Edward Husbands, see also C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: “the most capable in all Respects” or “Blockhead Booby”?* (available as Volume 747 of Archives of Maryland Online at <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000747/html/>), Chapter 1, “Introduction: The Turbulent Seventeenth Century,” Note 182.

<sup>4</sup> They “Craved the Benefitt of their Clergy, being granted them they both Reade.”

<sup>5</sup> Provincial Court Judgment Record, Liber T. G., p. 60.

<sup>6</sup> Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4 vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 367.

<sup>7</sup> Provincial Court Judgment Record, Liber T. G., p. 61. Since the clerk did not list the petit jurors in the case against Douglas and Bourchall or in the case against Douglas alone, at this point we do not know whether anyone served on both juries.

<sup>8</sup> Provincial Court Judgment Record, Liber T. G., p. 59; *Md. Arch.*, V, 498-499.

<sup>9</sup> Provincial Court Judgment Record, Liber T. G., p. 61; *Md. Arch.*, V, 498-499. We do not know how often a reprieve or a pardon was revealed only after the rope had been placed around the neck of the condemned person, but James Douglas was not the first person to have that experience. On 17 February 1674/5 Governor Charles Calvert on the petition of the delegates granted a reprieve to John Cowman, who had been convicted of witchcraft, but with the conditions that the reprieve be revealed to him only after he was at the gallows with the rope around his neck and that he remain in St. Mary's City "to be Employed in Such Service" as Calvert and his council thought during the pleasure of the governor. *Md. Arch.*, II, 425-426, 444, 445, 446-447.

<sup>10</sup> It is possible that John Collins began his career in Maryland as a convict servant. From October of 1730 through January of 1738/9 four men with the name of John Collins or John Collings were deported from England to the colonies. Peter Wilson Coldham, *The Complete Book of Immigrants in Bondage, 1614-1775* (Baltimore: Genealogical Publishing Co., Inc., 1988), p. 172; Peter Wilson Coldham, *Supplement to the Complete Book of Immigrants in Bondage, 1614-1775* (Baltimore: Genealogical Publishing Co., Inc., 1992), p. 23.

<sup>11</sup> *Maryland Gazette*, 11 September 1755. Emphasis in original.

<sup>12</sup> Anne Arundel County Court Judgment Record, Liber I. B., No. 4, p. 172. Again there is some confusion. According to the record the court valued the two chickens at three pounds of tobacco each. The fourfold should have been twenty-four pounds of tobacco. According to a later record in the Provincial Court Judgment Record, the two chickens were worth eight pounds of tobacco, but there the clerk was

probably simply copying the indictment from Anne Arundel County. Provincial Court Judgment Record, Liber E. I., No. 9, pp. 455-456, 456-458.

For the fourfold, see Chapter 2, “John Dandy,” Note 7.

<sup>13</sup> Anne Arundel County Court Judgment Record, Liber I. B., No. 5, p. 323.

<sup>14</sup> The person was considered convicted even when he pleaded guilty. Anne Arundel County Court Judgment Record, Liber I. B., No. 4, p. 172, together with Provincial Court Judgment Record, Liber E. I., No. 9, pp. 455-456, 456-458. The law on the second offense is 1715, c. 26, *Md. Arch.*, XXX, 304-308.

<sup>15</sup> Anne Arundel County Court Judgment Record, Liber I. B., No. 5, pp. 299, 307, 307-308, 311; Provincial Court Judgment Record, Liber E. I., No. 9, p. 450.

<sup>16</sup> Apparently the sheriff, or again more probably his proxy, imposed the first whipping on Collins on Tuesday or Wednesday, the tenth or the eleventh of September.

<sup>17</sup> Provincial Court Judgment Record, Liber E. I., No. 9, pp. 441, 447, 455-456, 456-458. According to the record Collins was sold because he could not give security for his fees only, but he could give security neither for his fees nor for his fourfolds.

<sup>18</sup> Anne Arundel County Court Judgment Record, Liber I. B., No. 5, pp. 501-502.

<sup>19</sup> For service to a present master for running away from a former master, see Charles County Court Record, Liber I, No. 2, p. 143; Prince George’s County Court Record, Liber K, p. 10; Queen Anne’s County Court Judgment Record, 1732-1735, pp. 189-190; *ibid.*, 1735-1739, p. 297.

<sup>20</sup> Anne Arundel County Court Judgment Record, Liber I. S. B., No. 3, pp. 582-583. Whether Reynolds admitted the assault or not does not appear.

Submitting to the judgment of the court did not require the defendant to admit his guilt. He could plead not guilty or simply not contend the charge. Charles County Court Record, Liber T, No. 3, pp. 61-62, 62; Prince George's County Court Record, Liber V, pp. 401, 412; Provincial Court Judgment Record, Liber D. D., No. 1, pp. 184, 521-522, 522-523.

Just as it is possible that John Collins came to Maryland as a convict servant (see Note 10 above), it is also possible that there was more than one John Collins and therefore that not all of the references here are to the same person. From 1741 through the summer of 1754 five men with that name were transported to the colonies. Coldham, *The Complete Book of Colonists in Bondage, 1614-1775*, pp. 172-173; Coldham, *Supplement to the Complete Book of Immigrants in Bondage, 1614-1775*, p. 23.

<sup>21</sup> *Maryland Gazette*, 18 September 1755. Thomas Poney is not included in either of Peter Wilson Coldham's two lists of transported convicts. For Coldham's two titles, see previous note.

<sup>22</sup> *Maryland Gazette*, 10 June 1756.

<sup>23</sup> Killing one's lord or master was petit treason. Blackstone, *Commentaries*, IV, 75, 203-204. See Chapter 2, "John Dandy," Note 2.

<sup>24</sup> For two reasons it was important that in the indictment for a death the wound or wounds of which the victim died be accurately described and the weapon or other instrument that caused the death be accurately described and valued. First, if a defendant was going to be hanged or otherwise punished for the death of another, it was important that the wound or wounds of which the victim died was the one, or were the ones, that the defendant had inflicted on him. Second, any instrument that was the cause of a person's death, or its equivalent value in money, was forfeited to

the crown as deodand. Blackstone, *Commentaries*, I, 300-302. When the proprietor controlled Maryland the deodand went to him.

<sup>25</sup> The witnesses to the indictment of these five men were the coroner, Charles James, and Augustin Harman (Augustine Herman), Richard Chapman, and John Rycroft. *Md. Arch.*, LXV, 2-3.

<sup>26</sup> *Ibid.*, pp. xviii-xix, 1, 2-8. In Louisiana under the Spanish Louis Congo, a Negro slave, served as hangman. Joe Gray Taylor, *Negro Slavery in Louisiana* (Baton Rouge: Louisiana Historical Association, 1963), p. 14.

## 5. Income and Expenses

Evidence on how much the hangman in colonial Maryland received for conducting a hanging has not appeared, but it seems unlikely that those we have discovered received anything at all. In England in the seventeenth century the hangman received £0.0.13½ for his role in a hanging.<sup>1</sup> In 1767 he received either five or ten shillings for whipping a culprit, apparently depending on the circumstances.<sup>2</sup> In 1779 and 1780 the hangman received £1.1.0 for a hanging, and in 1785 he received thirty pounds a year plus £0.6.8 for an execution and five shillings for a whipping.<sup>3</sup>

Until approximately 1669 the sheriff in Maryland received a fee for officiating at a hanging, and apparently he had to pay the hangman if the hangman was paid at all. When on 1 August 1642 Governor Leonard Calvert and his council established fees for officers they provided that the sheriff receive fifty pounds of tobacco “for inflicting Corporall Correction” and one hundred pounds of tobacco “For takeing away member or Life.” The fees were “to be paid by the party Cause thereof if hee or Shee . . . [was] Solvent” and otherwise by the province.<sup>4</sup>

By 1666, however, whether the sheriff received a special fee for presiding at an execution appears to have depended on the mood of the delegates and the members of the council and upper house. In that year the delegates allowed John Lawson, the sheriff of St. Mary’s County, eight hundred pounds of tobacco for hanging Negro

Jacob and two Indians for murder. Lawson also received sixty pounds of tobacco for the prison fees, including the cost of food, for Negro Jacob, forty pounds of tobacco to pay a man for watching Jacob for two days and one night, seventy pounds of tobacco to pay the same man “for his dyett & paynes,” and ninety-five pounds of tobacco for “Grave making & other expences.”<sup>5</sup> Whether William Boarman, the former sheriff of St. Mary’s County, got anything for hanging William Sewick in 1681 for buggery does not appear. On 21 October 1681 Boarman petitioned the upper house to allow him one thousand pounds of tobacco out of the public levy for hanging Sewick, and more than a year later, on 15 November 1682, the upper house sent the petition to the lower house with the suggestion that the Committee of Accounts take it into consideration. There the record ends.<sup>6</sup>

After 1682 there might have developed a standard fee for conducting a hanging, but the response of the lower house to a petition of Thomas Reynolds, the sheriff of Anne Arundel County, makes that uncertain. When in a petition to the upper house on 16 May of 1701 Reynolds pointed out that he had not been paid for executing three malefactors, the upper house recommended that the lower house allow him “what has been usuall.” The delegates did not consider the petition until 26 June 1702, when they decided that the public should not have to pay the sheriff anything for hanging people.<sup>7</sup>

What the upper house considered the usual fee is impossible to say, since in the laws by which the assembly established officers’ fees in 1692 and 1699 it allowed the sheriff nothing for executing a convict or for a whipping or a pillorying. At the same time, however, it provided that if any of the officials named in the act provided a service for which the assembly had not specified a fee the governor and his council should decide what the official should receive.<sup>8</sup> In 1704 the assembly not only



allowed the sheriff nothing for an execution but also specifically provided that he would receive nothing for whipping a convict or for putting him in the pillory,<sup>9</sup> and by later laws it continued to allow the sheriff nothing for an execution or for imposing other punishments.<sup>10</sup> A list of fees that Edward Lloyd as president of the council sent to the Board of Trade on 15 July 1712 includes no fee for the sheriff for executing a person.<sup>11</sup>

In 1706 Governor John Seymour and his council, apparently basing their action on the blanket provision in the act of 1704,<sup>12</sup> allowed Josiah Wilson, the sheriff of Anne Arundel County, twelve pounds of tobacco for setting a person in the stocks.<sup>13</sup> While the assembly had specified that the sheriff should have no fee for a whipping or a pillorying, it had neglected to mention placing someone in the stocks.<sup>14</sup> In his proclamation on fees on 14 April 1733 Charles Calvert, the fifth Baron Baltimore,<sup>15</sup> provided nothing for the sheriff for an execution or for imposing any other punishment and ordered that no payments not mentioned in his proclamation could be made without his permission or that of his governor.<sup>16</sup>

If the sheriff received nothing for hanging a person, there were still some expenses connected with an execution. At the beginning of the eighteenth century some counties did not have a permanent gallows, and the building of one for a specific victim created additional expense for the province. In 1711 the Committee of Accounts of the lower house allowed Roger Woolford, the sheriff of Dorchester County, 3238 pounds of tobacco for imprisonment fees, for a guard and the guard's provisions, and for erecting a gallows for hanging Negro Will and John Brookes.<sup>17</sup> Edward Lloyd, the president of the council, also received 120 pounds of tobacco each for sealing their death warrants.<sup>18</sup> In 1712 the same committee granted James Presbury, the sheriff of Baltimore County, four hundred pounds of tobacco for erecting

a gallows for hanging Negro Hector and for Hector's being five days in his custody;<sup>19</sup> granted Thomas Dashiell, the sheriff of Somerset County,<sup>20</sup> 3930 pounds of tobacco for keeping Hector in custody for 172 days and for other expenses;<sup>21</sup> granted Thomas Gassaway, the sheriff of Ann Arundel County, an unstated amount for Hector's imprisonment fees;<sup>22</sup> and granted Edward Lloyd 120 pounds of tobacco for sealing Negro Hector's death warrant.<sup>23</sup>

Finally, in 1761 the justices of Frederick County allowed Joseph Hartman two pounds, apparently in current money, for building a gallows and one pound for making a coffin and digging a grave for John Harrison alias Stewart, who was hanged for allegedly stealing a gelding worth ten pounds current money from Andrew Rench in Frederick County on 1 April 1760.<sup>24</sup>

It appears unlikely that the hangmen we have found in Maryland benefitted from the perquisites that were sometimes available to the hangmen in England. There the condemned culprit sometimes gave the executioner either money or gifts to encourage him to make the execution as painless as possible,<sup>25</sup> or members of the mob might give him money for whipping a culprit harshly.<sup>26</sup> The hangman also got the clothing and the personal effects of his victim unless he received their value in money.<sup>27</sup> In the nineteenth century the hangman collected a fee of £0.2.6 every time someone rubbed a wen against the dead culprit's body.<sup>28</sup> The hangman kept the rope, which he could cut into short lengths and sell to collectors of such morbid souvenirs.<sup>29</sup> In England the hangman could also claim the dead body,<sup>30</sup> and the Company of Barber-Surgeons paid him a fee for corpses that he delivered for dissection,<sup>31</sup> but obviously that benefit would not apply in Maryland.

## 5. Income and Expenses

<sup>1</sup> Thomas Dekker, *The Honest Whore, Part II*, V.ii, in Ernest Rhys, ed., *Thomas Dekker* (New York: A. A. Wyn, 1949) p. 275, 275n.; W. Pinkerton, "Jack Ketch and his Brotherhood," *Notes and Queries*, 2nd Series, XI (January-June 1861), p. 316.

<sup>2</sup> Horace Bleackley, *The Hangmen of England: How They Hanged and Whom They Hanged. The Life Story of "Jack Ketch" Through Two Centuries* (London: Chapman and Hall, Ltd, 1929), p. 98.

<sup>3</sup> John Laurence, *A History of Capital Punishment* (New York: Citadel Press, 1960), p. 103. See also Bleackley, *The Hangmen of England*, p. 129. According to James Boswell, in 1775 the hangman in Edinburgh received two guineas for every person he hanged. James Boswell, *The Ominous Years, 1774-1776*, ed. Charles Ryskamp and Frederick A. Pottle (New York: McGraw-Hill Book Company, Inc., 1963), p. 168.

For the fees of the hangman of England in the twentieth century, see Charles Duff, *A Handbook on Hanging* (Totowo, N. J.: Rowman and Littlefield, 1974), pp. 23, 81-82.

<sup>4</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), I, 164.

<sup>5</sup> *Ibid.*, II, 31, 94-95. See also Appendix A, “The Espy File,” at Notes 8-10.

<sup>6</sup> *Md. Arch.*, VII, 393. See also Appendix A, “The Espy File,” at Note 15.

<sup>7</sup> *Md. Arch.*, XXIV, 148, 303-304. See also Appendix A, “The Espy File,” at Note 22. I have not found the convicts whom Reynolds hanged.

<sup>8</sup> 1692, c. 53, *Md. Arch.*, XIII, 510-511, 512; 1699, c. 49, *Md. Arch.*, XXII, 576-577, 580.

<sup>9</sup> 1704, c. 86, *Md. Arch.*, XXVI, 418-419.

<sup>10</sup> 1719, c. 18, *Md. Arch.*, XXXVI, 541-542; 1725, c. 23, *Md. Arch.*, XXXVIII, 391-392; 1747, c. 1, *Md. Arch.*, XLIV, 633-634; 1753, c. 22, *Md. Arch.*, L, 351-353; 1763, c. 18, *Md. Arch.*, LVIII, 477-478. See also list of sheriff’s fees at *Md. Arch.*, XXVIII, 78-79.

Two laws, however, provided that the sheriff’s fee for serving an extraordinary warrant or commission would be regulated by the court. 1692, c. 53, *Md. Arch.*, XIII, 511; 1725, c. 23, *Md. Arch.*, XXXVIII, 392.

<sup>11</sup> The National Archives (PRO), Colonial Office 5, Vol. 717, Item 51.iii (p. 189) (photocopy in Library of Congress).

<sup>12</sup> 1704, c. 86, *Md. Arch.*, XXVI, 423. 1719, c. 18, *Md. Arch.*, XXXVI, 547, also includes this provision.

<sup>13</sup> *Md. Arch.*, XXVI, 541.

<sup>14</sup> See Note 8 above.

<sup>15</sup> Donnell M. Owings, *His Lordship’s Patronage: Offices of Profit in Colonial Maryland* (Baltimore: Maryland Historical Society, 1953), p. 114.

<sup>16</sup> *Md. Arch.*, XXVIII, 42-43.

<sup>17</sup> TNA (PRO), Colonial Office 5, Vol. 717, pp. 171, 172; Vol. 720, pp. 50, 51, 52. On Negro Will, see Appendix A, “The Espy File,” at Note 26.

<sup>18</sup> TNA (PRO), Colonial Office 5, Vol. 717, p. 170; Vol. 720, p. 49. Where Negro Will and John Brookes were convicted, and for what, has not appeared.

Apparently John Brookes was never hanged but received a pardon after his death warrant had been issued. TNA (PRO), Colonial Office 5, Vol. 717, pp. 170, 171, 172; Vol. 720, pp. 49, 50, 51, 52.

<sup>19</sup> TNA (PRO), Colonial Office 5, Vol. 717, p. 205; Vol. 720, p. 195.

<sup>20</sup> Edward C. Papenfuse, Alan F. Day, David W. Jordan, and Gregory A. Stiver-son, eds., *A Biographical Dictionary of the Maryland Legislature, 1635-1789* (2 vols.; Baltimore: The Johns Hopkins University Press, 1979, 1985), I, 256.

<sup>21</sup> TNA (PRO), Colonial Office 5, Vol. 717, pp. 203-204; Vol. 720, p. 194.

<sup>22</sup> *Ibid.*, Vol. 717, p. 209; Vol. 720, p. 199.

<sup>23</sup> *Ibid.*, Vol. 717, p. 207; Vol. 720, p. 197. For Negro Hector, see Appendix A, "The Espy File," at Note 27. Where Negro Hector was convicted, and for what, has not appeared.

<sup>24</sup> Frederick County Court Judgment Record, 1761-1762, p. 4. In 1760 and 1761 Samuel Beall Jr. was the sheriff of Frederick County. Commission Record, 1726-1786 (original), pp. 139, 142, 146.

John Harrison alias Stewart might have been a victim of a sort of double jeopardy. After the provincial justices at their court for September of 1760 sentenced him to hang for stealing a gelding worth ten pounds current money from Andrew Rench in Frederick County on 1 April 1760, Harrison, in his petition to Governor Horatio Sharpe for his life, pointed out that while he had been convicted and condemned at the provincial court for the theft of "a Horse and Mare" from Rench, in Virginia he had been acquitted twice in trials "for the same Fact" because there he had it in his power "to clear up the unjust Charge."

While the record of Maryland says nothing about the mare, it is possible that Harrison was tried twice in Virginia, once for the gelding and once for the mare, that he had been acquitted there on both charges, and that he was condemned in Maryland for one of those same thefts. Or there could have been another alleged horse-theft in Maryland.

Harrison's petition to Sharpe did him no good, and he was hanged. *Md. Arch.*, XXXI, 412-413; Commission Records, 1726-1786, p. 140; *Maryland Gazette*, 18 September 1760; Provincial Court Judgment Record, Liber B. T., No. 5, pp. 805, 823, 824-825.

This case raises the important question of whether because of the uncertainties of boundaries during the colonial period a person could face double jeopardy by being tried in two separate colonies for the same crime. Since in Virginia Harrison would have been tried for such a crime either at the general court or at a court of oyer and terminer, and since the records of neither exist, there is no way to determine whether he actually was the victim of a form of double jeopardy.

<sup>25</sup> George Ryley Scott, *The History of Capital Punishment, Including an Examination of the Case for and Against the Death Penalty* (London: Torchstream Books, 1950), pp. 144, 173, 174; Charles Duff, *A New Handbook on Hanging* (London: Andrew Melrose, 1954), pp. 145-146; Duff, *A Handbook on Hanging*, p. 151; Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (4 vols.; London: Stevens & Sons Limited, 1948-1968), I, *The Movement for Reform, 1750-1833*, pp. 187n., 188, 188n.; Bleackley, *The Hangmen of England*, pp. 10-11, 25, 83, 84, 102.

<sup>26</sup> Peter Linebaugh, "The Tyburn Riot Against the Surgeons," in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion's Fatal*

*Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), p. 71.

<sup>27</sup> Radzinowicz, *The Movement for Reform*, pp. 187n., 191; Scott, *The History of Capital Punishment*, pp. 51, 145; Laurence, *A History of Capital Punishment*, pp. 99, 109, 111; Bleackley, *The Hangmen of England*, pp. 10, 189-190; Linebaugh, "The Tyburn Riot Against the Surgeons," p. 75; David C. Cooper, *The Lesson of the Scaffold: The Public Execution Controversy in Victorian England* (Athens, Ohio: Ohio University Press, 1974), p. 22; Sandra Lee Kerman, ed., *The Newgate Calendar, or Malefactor's Bloody Register* (New York: Capricorn Books, 1962), p. 349n. See also *Annual Register*, 6 December 1769, pp. 159-160. Also:

In would step a brawny bully, equipped, at second hand,  
in Monmouth Street or Long Lane, with his twisted flaxen  
wig, just combed and powdered, sold perhaps, by the hang-  
man, in the middle row and from thence bought by some of  
his whore's pence to adorn the Hector's blockhead . . . .

"The Weekly Dancing Club: (Or, Buttock Ball in St. Giles)," in D. Gunter Wilde, ed., *When Maidens Were Deflowered and Knightly Lost Their Heads* (New York: Belmont Books, 1967), p. 90.

From William Shakespeare, *Henry IV, Part I*, l.ii.59-76 (The Yale Shakespeare):

*Falstaff*: . . . but I prithee sweet wag, shall there be gallows  
standing in England when thou art king and resolution  
thus fubbed as it is with the rusty curb of old Father  
Antic the Law? Do not thou, when thou art king, hang  
a thief.

*Prince*: No, thou shalt.

*Falstaff*: Shall I? O rare! By the Lord I'll be a brave judge.

*Prince*: Thou judgest false already. I mean thou shalt have  
the hanging of the thieves, and so become a rare hang-  
man.

*Falstaff*: Well, Hal, well; and in some sort it jumps with my

humor as well as waiting in the court, I can tell you.  
*Prince*: For obtaining of suits?  
*Falstaff*: Yea, for obtaining of suits, whereof the hangman  
hath no lean wardrobe . . . .

And from the note at the bottom of page 20 of The Yale Shakespeare edition of *Henry IV, Part I*, ed. Tucker Brooke and Samuel B. Hemingway: “the clothes of the criminal were the hangman’s perquisite.”

<sup>28</sup> Bleackley, *The Hangmen of England*, p. 166; Cooper, *The Lesson of the Scaffold*, p. 22, 22n. See also Laurence, *A History of Capital Punishment*, p. 112; Linebaugh, “The Tyburn Riot Against the Surgeons,” pp. 109-110; Keith Thomas, *Religion and the Decline of Magic* (New York: Charles Scribner’s Sons, 1971), p. 204.

<sup>29</sup> Scott, *The History of Capital Punishment*, p. 145; Bleackley, *The Hangmen of England*, p. 190; Cooper, *The Lesson of the Scaffold*, p. 22.

<sup>30</sup> Radzinowicz, *The Movement for Reform*, p. 191.

<sup>31</sup> Bleackley, *The Hangmen of England*, p. 10; Laurence, *A History of Capital Punishment*, p. 99; Linebaugh, “The Tyburn Riot Against the Surgeons,” p. 82. In 1768 surgeons offered two hundred pounds for the body of an especially large man, who, however, was not an executed convict. *Annual Register*, 25 November 1768, p. 191.



## 6. Character and Competence

It does not appear likely that the seven hangmen whose names we have in colonial Maryland would have exhibited either much sensitivity, much compassion, or much skill, nor does it appear likely that they were very different from other hangmen in these respects.

The insensitivity of the hangman might be explicitly reflected in his treatment of the person he was about to hang. After Thomas Cooper, a convict servant of William Reynolds, was hanged in Annapolis on 8 October 1762 for breaking into Bennett Chew's storehouse on 1 September 1762 and stealing two pairs of silk stockings and two cotton handkerchiefs, altogether valued at £2.5.0 current money, Jonas Green reported that he "was much persecuted by the Impertinence of *Jack Ketch*, who behaved himself extremely ill." It is possible that here Green was trying to make a none-too-subtle joke at Cooper's expense, but Cooper, who according to Green was a short, very young Englishman, pitted with smallpox, missing "one or two of his upper Jaw Teeth" and "terribly Shocked at the near Approach of the King of Terrors,"<sup>1</sup> might have been exactly the sort unfortunate whom a bullying hangman would enjoy tormenting. And considering the characters of the hangmen we have met — except for Negro Tony, against whom we have no negative information except that he was charged with, but was acquitted of, participating in the murder of

John Hawkins<sup>2</sup> —, it appears quite likely that Green was simply reporting the hangman's behavior.

While one historian includes hangman Thomas Poney among skilled craftsmen,<sup>3</sup> the evidence that so far has appeared makes it quite clear that at least through the middle of the eighteenth century authority in Maryland did not include skill as a condition for joining that profession. Skill was not important. The judges who imposed the hangings and the sheriffs who were responsible for carrying them out wanted no direct part, if they could help it, in the actual hangings, and so authority chose less fortunate men to do the job. All the hangman had to do to kill the victim was to tie a sufficient knot in a rope around his neck. Even that was not crucial. To the elite rulers of the province it did not matter how long it took the victim, who was dragged off a cart rather than pushed off a ladder or dropped from a platform, to die, or whether the hangman had to hang him more than once.

Surely the victim's doubt about the hangman's ability as well as his wondering about just how nasty that functionary might choose to be in order to fulfill his part in this drama of death must have made the terror of hanging even greater than the anticipation of dangling, gasping, and writhing for several minutes at the end of a rope before he lost consciousness already was. Surely these victims must have worried about potential snags in a process that was adopted by men whose over-riding interest was to maintain the structure of their society and their positions in it, that was conducted by men who had little or no experience or concern, and that was carried out before a crowd that was present only for the spectacle.

The hangman must have known that he was at the gallows not to guarantee that the hanging went smoothly or that authority's victim died quickly and with as little agony as possible but rather as one of the primary actors in an exciting drama that

broke up the drudgery of one long and boring day after another. On 21 September of 1748 Jonas Green reported that Joseph Hume and Matthew Lapear, who were hanged near Annapolis on that very day, “were attended to the Place of Execution by a numerous Crowd of Spectators,”<sup>4</sup> and a week before Christmas of 1750 he reported that “A vast number of People attended at the Execution” of two Negro men when they were hanged in Charles County “for robbing the Store” of their master, Hugh Mitchell.<sup>5</sup>

If nothing else adequately illustrates the lack of the concern of the masters of the society for the suffering of the culprit, their carelessness about having an adequate rope surely does. They must have allowed the hangman to use whatever rope that might have been lying around, regardless of how inadequate it might have been. And such a rope might break.

The one-eyed and “remarkably ugly” Maurice Mongall, a thirty-five-year-old ditcher and grubber<sup>6</sup> who was hanged in Baltimore County on 8 November 1758 for breaking into Richard Hayton’s storehouse on 10 June 1758 and stealing cloth and other items worth a total of fifty-seven shillings current money, was the victim of such a rope and had to be hanged twice. Already so convinced that he had not received a fair trial that on his return to jail after his conviction he angrily told the under-sheriff in charge of him that he knew “how it would be as soon as he saw how” the justices “were going on,” Mongall broke the rope on his first swing and had to be turned off again. Jonas Green laconically reported the incident without comment.

Last Week *Maurice Mongall*, was Executed in *Baltimore* County, pursuant to his Sentence at the last Provincial Court, for breaking open a store in *Baltimore-Town*. He broke the Rope at his first Swing, but was soon hang’d up again.<sup>7</sup>

Mongall had caused officialdom considerable difficulty by breaking out of the

Baltimore County jail before his trial, and besides that he was an Irishman.<sup>8</sup> Probably few people had much sympathy for him but instead might have enjoyed the bonus of watching two hangings rather than only one.

And it is possible that some people in Maryland, as in Scotland and probably also in England, might even have seen the hand of Providence in the breaking of the rope. From James Boswell:

He [Lord Erroll] told us a story of a man who was executed at Perth some years ago for murdering a woman, who was with child to him, and a former child he had by her. His hand was cut off. He was then pulled up. But the rope broke, and he was forced to lie an hour on the ground till another rope was brought from Perth, the execution being in a wood at some distance — the place where the murders were committed. “There,” said my lord, “I see the hand of Providence.”<sup>9</sup>

Probably the other entertainments in which the hangman or some other agent of authority was a key character required no more skill than a hanging did.

There was in colonial Maryland a wide range of non-capital punishments that the hangman or some other functionary had to carry out. The simplest and apparently the least common of these was setting people in the stocks, which consisted of two hinged planks with holes into which the victim’s ankles were locked.<sup>10</sup> Branding on the brawn of the thumb with a red-hot iron was very popular,<sup>11</sup> though probably not as popular as whipping the victim on his naked back with as many as thirty-nine lashes with a cat-o’-nine-tails<sup>12</sup> or as pillorying — locking the victim in a cross-shaped device, the hinged horizontal planks of which had three holes for attaching him by his wrists and his neck.<sup>13</sup> The nailing and cutting off of ears was quite common,<sup>14</sup> while boring the tongue appears to have been unusual.<sup>15</sup>

As in the case of hangings, the judges and the sheriffs avoided the indignity of

inflicting non-capital punishments in person. At a session of the provincial court held at Patuxent on 17 August 1657, for example, the justices saved the sheriff from the stigma of having to perform a whipping, or the effort of finding someone else to do it, by having one culprit whip another. After Thomas Hobson and James Shaklady or Shacklady, two servants of William Parker, confessed that they had forged a “pass or Certificate,” the justices ordered that each of them would receive twenty lashes “upon the bare back with a whip.” After Hobson petitioned the court to remit his punishment and promised to behave himself in the future the justices, on the motion of Phillip Morgan, a provincial justice<sup>16</sup> and the person who had entered the complaint against the two men, did remit his punishment in return for his whipping Shaklady. The wording of the record makes it appear that Hobson himself suggested that he whip Shaklady in return for the remission of his own punishment.<sup>17</sup>

And in August of 1763, when Lancelot Jacques was sheriff of Anne Arundel County,<sup>18</sup> the justices of that county ordered that one Samuel Harris be paid “for Service done in Whipping Negroes.”<sup>19</sup>

Like the stocks, the pillory allowed the more enthusiastic spectators to participate directly in the punishment by taunting or firing filth or more deadly ammunition at its helpless prey.<sup>20</sup> In order to make the chastisement more painful, more humiliating, more entertaining, and, authority apparently assumed, more effective as a deterrent, the justices often sentenced people to both whipping and pillorying<sup>21</sup> or included one or both of these in other multiple punishments for only one crime.

The justices might, for example, combine whipping and pillorying with additional whipping at a cart’s tail. When in April of 1720 a petit jury at the provincial court found Sarah Sherbutt, a spinster from Baltimore County, guilty of trying to murder Mary Hammond by poisoning her with the juice of poke root and “other

Poysonous Juices” mixed in beer, the provincial justices ordered the sheriff of Anne Arundel County, Stephen Warman,<sup>22</sup> to take Sarah Sherbutt to the gallows and whip her with five stripes. Then she was to be “Dragg’d from . . . [the gallows] at the Cart’s Arse to the Publick Whipping Post” and receive fifteen more stripes “well laid on by the Way.” At the whipping post she would receive nineteen more stripes, and finally she would be placed in the pillory for one hour. The sentence was carried out immediately.<sup>23</sup> While the justices ordered Warman to do all of this, it is very unlikely that he did the whipping or the carting himself. He would have been there only to choreograph this public performance in four acts and to see that it was acted out to its proper end.

While the justices often combined the cutting off or the cropping of ears with one or more other exercises, they might also order the cropping without an additional punishment. In November of 1737 the justices of Prince George’s County ordered that the sheriff cut off the right ears of Negroes Tobe and Sam, the slaves of Deborah Boyd, after John Pindall swore that they had hit him.<sup>24</sup> Nine months later they ordered that the sheriff cut off the left ear of Negro Hercules, the slave of Grace Thompson, for striking John Foster.<sup>25</sup> In March of 1770 the justices of that court ordered that William Sidebottom’s Negro Ben have one of his ears cropped for a breach of the peace after he confessed that he had beaten and abused Thomas Wise.<sup>26</sup>

A whipping accompanied the cutting off of each of Negro Hannah’s ears. In June of 1755 the justices of a special court of oyer and terminer for Charles County ordered that for taking a false oath in court Hannah receive thirty-nine lashes and have one of her ears cut off immediately and receive another thirty-nine lashes and have her other ear cut off on the following Monday morning.<sup>27</sup> Negro Hannah, Jonas Green calmly noted, “suffer’d *Moses’s* Law.”<sup>28</sup>

A person might also have one or both of his ears cropped after standing in the pillory. After a petit jury at the provincial court in May of 1686 found Richard Royston, a planter from Calvert County, guilty of forging a letter of attorney the justices in September sentenced him to stand for one hour in the pillory, to have one ear cut off, and to spend a year in jail.<sup>29</sup> At the provincial court for April of 1688 the justices sentenced Henry Lowe's Negro Matthew to stand for four hours in the pillory and have both ears cropped after a jury found him guilty of stealing nine hogs worth two thousand pounds of tobacco from Thomas Evans in St. Mary's County on 23 March 1687/8.<sup>30</sup>

Nailing people's ears to the pillory before they were cut off added another level to the punishment,<sup>31</sup> though in May of 1696 Sarah Chapman, the wife of Richard Chapman, a planter of St. Mary's County, might have avoided the loss of her ears after they were nailed. After a petit jury found her guilty of perjury the provincial justices ordered that she be set in the pillory for one hour with both of her ears nailed to it, but the record says nothing about cutting them off.<sup>32</sup>

Others did lose their ears after they were nailed. At the provincial court on 4 December 1648 Blanch Howell pleaded not guilty of perjury, but a petit jury found her guilty and the justices ordered that she "stand nayled" in the pillory and "loose both [of] her eares." The punishment was to be carried out immediately, before the court conducted any other business.<sup>33</sup> When at the provincial court for October of 1693 Thomas Gregory, a planter from Talbot County, pleaded guilty of perjury the justices ruled that he stand for one hour in the pillory with both of his ears nailed to it and that after he completed his time in the pillory both of his ears would be cropped.<sup>34</sup>

While the record is not clear, it is possible that in the case of John Goleguely,

a laborer from Cecil County, authority departed from its usual practice and had his ears cut off before they were cropped. After a jury at the provincial court for April of 1688 found him guilty of perjury the justices ordered that he stand in the pillory for an unspecified time and that both of his ears be cropped and nailed to that elemental device.<sup>35</sup>

John Geneere might not have had his ears cut off, but the provincial justices applied what must have been an equally painful alternative. When at the provincial court in June of 1648 Geneere was charged with perjury the only thing he had to say for himself was that this was the first time he had committed that crime. That was not enough for the justices, who ordered that he be set in the pillory for an unspecified time with both ears nailed to it with three nails in each ear; that the nails be “slit out”; and that at the end of his time in the pillory he be whipped with twenty “good lashes.” As in the case of Blanch Howell five months later, the punishment was to be carried out before the court went on to other things.<sup>36</sup>

The nailing and cropping of ears continued into the eighteenth century. After a petit jury at the assizes<sup>37</sup> for Queen Anne’s County for the fall of 1725 found Richard Dowman, a servant of Michael Flinn, guilty of stealing a black gelding belonging to Joseph Jackson the provincial justices on 19 October 1725 sentenced him to stand for one hour in the pillory with his right ear nailed to it and ordered that “a good Peice [*sic*] of . . . [his] Right Ear be Cropt.” Apparently in order to guarantee that there would be a satisfactory crowd at the cropping, the justices ordered that the sheriff of Queen Anne’s County execute the sentence on the second day of the county court for November “in full Court time.”<sup>38</sup>

What sort of implement the sheriff’s proxy used for the surgery on people’s ears, whether a knife or some sort of clippers, has not appeared, but it is quite clear



that no skill was required for him to accomplish the purposes of the performance.

Boring the tongue, which along with a fine of twenty pounds sterling was the punishment for the first offense of blasphemy,<sup>39</sup> is another service that required little skill in the hangman or whatever surrogate of the sheriff might have performed it. Only two cases of borings have appeared, but one petitioner's pointing out that that was the customary punishment for blasphemy in Maryland<sup>40</sup> might mean that it was more common than we will ever know.

When a petit jury at the assizes for Baltimore County for the spring of 1748 found Bevis Pain, whom Jonas Green described as "an old grey-headed Sinner," guilty of blasphemy for using an expression that Green called "too vile and horrid to Repeat," the justices, acting on the basis of the law of 1723,<sup>41</sup> sentenced him to have his tongue bored through and to pay a fine of twenty pounds sterling. According to Green Pain's tongue was immediately bored through and then he was committed to the custody of the sheriff until he could pay his fine.<sup>42</sup>

Thirty-nine years earlier Charles Arrabella, who as a Florentine probably did not inspire either love or trust among Marylanders, had his tongue bored through three times. After he quarreled with an unidentified carpenter on the Chester River the carpenter vowed revenge, and when Arrabella uttered several blasphemous expressions after spilling some scalding pitch on his foot the carpenter accused him of blasphemy. In or about August of 1709<sup>43</sup> he was convicted, and the justices, acting this time on the basis of the law of 1704<sup>44</sup> and apparently sentencing him separately for three blasphemous expressions, ordered that he have his tongue bored through three times and pay a fine of twenty pounds sterling. He did get his tongue bored through three times, but since he could not pay his fine or the fees for his prosecution the justices committed him to jail for six months. Fifteen months later he was still

in jail, still unable to pay his fine and fees but now also saddled with the costs of his maintenance in prison. Finally in December of 1710 the Council of Trade recommended to Lord Dartmouth, the Secretary of State for the Southern Department,<sup>45</sup> that Arrabella be released, but only when he could be put on a ship bound for Europe.<sup>46</sup> Whether he ever got back to Europe has not appeared.

As in the case of cropping, what implement the hangman or other factotum used to bore tongues has not appeared, but in Virginia in the 1630s, according to one source, a man had his tongue bored through with an awl for vilifying a gentleman.<sup>47</sup>

Because we have no way of knowing just how much pain and distress each of these non-capital punishments might have caused we cannot rank them in severity, and obviously, therefore, when the justices imposed a catalogue of punishments for one crime it is similarly impossible to establish a scale of the harshness of the sentences.

While all of these lesser punishments were purportedly non-capital, any of them could have resulted in death. We have no way of knowing whether or how many people might have died of infections after standing with their wrists tied to the whipping post<sup>48</sup> and having their bare backs torn apart with thirty-nine lashes times nine. The executioner was, after all, using a cat-o'-nine-tails,<sup>49</sup> and since we have not seen a cat-o'-nine-tails from early Maryland we do not know whether or not each lash was knotted at the end or was separated into two or more thongs.<sup>50</sup> We do know, however, that the justices often ordered that the lashes be “well Laid on Upon the bare back”<sup>51</sup> until the back of the victim — male or female<sup>52</sup> — was bloody,<sup>53</sup> though afterward the raw flesh might be “well washt with Trickle and gunn Powder.”<sup>54</sup>

“Trickle” appears to have been a concoction that included the dung of goats or other small animals.<sup>55</sup>

It would be comfortable to believe that the justices' ordering that the whippings continued until the victims' backs were bloody means that the whipping ended when the blood started flowing, but it is too soon to allow ourselves that luxury. It appears far more likely that the phrase was designed to guarantee that the executioners would perform the whippings with sufficient enthusiasm to make the backs bleed but that the whippings would continue until the functionaries had applied the specified number of strokes.<sup>56</sup>

As in the case of whipping, we do not know whether or how many people might have died of infections after having one or both of their ears cut off, but we do know that in England in the eighteenth century a person might be killed in the stocks or in the pillory.<sup>57</sup> Whether or not anybody in colonial Maryland died as a result of these various penalties, the justices who imposed them must have known that they might be handing down capital punishments in disguise.

And there is evidence that in colonial Maryland at least one man became partially disabled, if not worse, as a result of a branding. At the provincial court for April of 1688 James Lewis of St. Mary's County was tried on an indictment in which the grand jury charged that for several days on and before 31 December 1680 he assaulted his servant Joseph Robinson with a grape vine and stake and by striking him on his head, bare back, and sides gave him several mortal wounds and also exposed him "to extreme cold & want." From the beating, the cold, and the want Robinson languished "from the hour of 12 a Clock in the Same day to the hour of Six a Clock in the same day likewise following," when he died. The grand jury charged Lewis with murder. The petit jury returned a special verdict in which it reported that they found Lewis guilty of murder if the justices found "it Soe," but the justices found him guilty only of manslaughter. After Lewis pleaded benefit of clergy the

justices ordered that he be branded on the hand, and he was branded in open court.

All of this happened on the fifth of April, two days after the court opened. But apparently whoever branded Lewis was more enthusiastic than he was supposed to be, and Lewis' hand did not heal. Five days later he was before the council complaining that he had been unduly punished because he was likely "to loose his hand by the Officers ill execution of his Office." When the council summoned the sheriff of St. Mary's County he apparently agreed that the branding had been too severe but claimed that he had given his deputy "no such order." The council reveals the depth of its concern for Lewis with its ruling that since the sheriff was responsible for the actions of his officers and that since Lewis "was like . . . to be disabled" he would not have to pay the sheriff any fees for his imprisonment.<sup>58</sup>

Even after a person had been successfully hanged the hangman's job was not done. After the victim had been hanging long enough to be dead — usually about an hour, apparently, but also as little as fifteen minutes or more than an hour<sup>59</sup> — the hangman had to cut the body down, and after that he might have to hang it on a gibbet or cut off its head and then divide it into quarters. For the simpler hangings, except possibly for multiple ones, the hangman probably needed little or no direct help except in cutting the dead body down, while with a gibbeting he probably needed help in transporting the body and then lifting it in its irons or chains high enough to fasten it to whatever it would hang from as a warning to whoever passed by until it disintegrated.<sup>60</sup>

From 1723 through 1775 the council ordered at least twenty-nine people to be gibbeted in Maryland, and a thirtieth was sentenced to gibbeting but there is no evidence beyond her sentence.<sup>61</sup> Gibbetings were imposed most often for murder, but

people were also gibbeted for planning a murder, attempted poisoning, rape, arson, or conspiring to raise an insurrection.

Though a quartering, like the other punishments, required little or no skill, it appears to have been a fairly strenuous process. Probably the hangman needed help cutting off the victim's right hand while he was still alive and then in getting him into the cart to put the rope around his neck. Later he might have had help in hacking the body to pieces,<sup>62</sup> and probably other people would be involved also in loading the bloody parts onto a cart to carry them to wherever they would remain for the edification of the population for as long as people could recognize what they were.

Quarterings were less common than gibbetings, though from 1740 through 1776 thirteen people, all Negroes except for one mulatto, were quartered. Eight of these sentences were for petit treason — the murder of one's lord, master, overseer, or other person to whom he owed allegiance<sup>63</sup> —; two were for aiding in petit treason; one was for simple murder; and two were for aiding in murder. Five other Negroes received the same sentence, but one of these, whose crime was only arson, was pardoned, and in the remaining four cases — one conviction of petit treason and three of murder — no evidence beyond the sentencing has appeared.<sup>64</sup>

Both male and female Negroes, as well as white men, were gibbeted in eighteenth-century Maryland,<sup>65</sup> but by law quartering applied only to "Negroe[s], and other Slave[s]."<sup>66</sup>

In January of 1750/1 Jonas Green reported the wording of the sentence to quartering. Mulatto Joe, who had shot Edward Taylor, his master, had been

sentenced to have his Right Hand cut off, then to be hang'd, to have his Head sever'd from his Body, and his Body to be divided into Four Quarters, and his Head and Quarters to be fix'd up in the most public Parts of the County . . . .

With Mulatto Joe's death warrant, issued on 23 January 1750/1, Governor Samuel Ogle confirmed the sentence. All of this would happen in Cecil County, where Mulatto Joe had committed his crime and where he had been convicted at a special court, and on 1 February the sentence was carried out.<sup>67</sup>

As in the cases of cropping ears and of boring tongues, what instrument the hangmen or other public surrogate used to quarter people in colonial Maryland has not appeared. Quite probably they used whatever tools they could find. In England by the early seventeenth century the participants appear to have used knives, broad-axes, what might have been an early form of a machete,<sup>68</sup> and possibly other devices for cutting. A headsman's ax might also have come in handy in this laborious job, especially since the victim's body was beheaded before it was disemboweled.<sup>69</sup>

Among the harshest punishments in colonial Maryland was burning, though only one instance of this exhibition has appeared. On 2 May 1746 the justices of a special court of oyer and terminer for Kent County condemned Hector Grant, James Horney, and Esther Anderson for killing their master, Richard Waters, on 5 April 1746.<sup>70</sup> Since Esther Anderson was a convict servant and Hector Grant and James Horney were non-convict servants,<sup>71</sup> their crime, like Mulatto Joe's, was petit treason.<sup>72</sup>

The justices, acting on the basis of English law,<sup>73</sup> sentenced Grant and Horney to hang and Esther Anderson to burn. On 5 May 1746, on the order of Governor Thomas Bladen, separate death warrants for the executions of the three were issued to the sheriff of Kent County,<sup>74</sup> "the said Esther Anderson to be burnt alive and the two men to be hanged." All of this would happen on 16 May 1746,<sup>75</sup> and on 20 May Jonas Green could report that the executions were carried out in Chester on the previous Friday. "The Men were Hang'd," Green reported, "the Woman Burn'd.

They died penitent, acknowledging their Crimes, and the Justice of their Punishment.”<sup>76</sup>

We do not know whether Esther Anderson was actually burned alive or was strangled first. If the authorities in Maryland followed the English practice of strangling their victims before they were burned,<sup>77</sup> it was the hangman or some other menial who would have had to do the strangling. In such a case the strangler would twist a knout around the victim’s neck after she was already tied to the post above the flammable pile that would turn her into ashes. Apparently the functionary sometimes attempted to do the knouting after the fire was started, which of course could lead to the victim’s beginning to burn before she was unconscious.<sup>78</sup>

Whether the victim died by the knout or from the flames, burning a person required little or no skill in the hangman or other executioner. Since four of the purposes of punishing people were to humiliate and to inflict pain on the victim, to entertain the crowd, and to deter others from committing crimes, however, how much of an adventure the hangman made of imposing the various punishments did not matter. The hangmen we know about in colonial Maryland make it clear that the people who selected them believed that *anybody* could do the job. Competence or incompetence did not matter. If defendants became disabled as a result of their brandings, if they died in the stocks or in the pillory or from other purportedly non-capital punishments, or if they suffered more pain in being hanged or burned than quick executions would have caused them, these were prices that authority was willing to pay for what it called maintaining order. Maintaining order it would have defined as keeping the ruling class, from which of course the authorities came, in its place.

Thus the executioner and his role in the society of colonial Maryland were not

incidental but rather were fundamental to the society as it existed. The executioner, who as the proxy for the sheriff had not only to hang or burn people but also had to carry out the many non-capital punishments,<sup>79</sup> was not a mysterious oddity whom nobody really knew, but rather during the many days of the year when one or another of the courts was meeting he was a very visible public figure.<sup>80</sup> No doubt many people recognized him; some of them worked with him; and at least a few of his victims and potential victims must have understood how he was serving authority.



## 6. Character and Competence

<sup>1</sup> *Maryland Gazette*, 5 June 1760 (ad for runaway), 23 September, 7, 14 October 1762; Commission Records, 1726-1786, p. 148; *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XXXII, 42; Provincial Court Judgment Record, Liber D. D., No. 2, pp. 346, 368-369; Provincial Court Land Records, Liber E. I., No. 9A, pp. 65-66; Peter Wilson Coldham, *The Complete Book of Emigrants in Bondage, 1614-1775* (Baltimore: Genealogical Publishing Co., Inc, 1988), p.184. Jonas Green incorrectly calls Cooper's crime a burglary.

<sup>2</sup> See Chapter 4, "John Oliver, James Douglas, John Collins, Thomas Poney, and Negro Tony," at Notes 23-26.

<sup>3</sup> A. Roger Ekirch creates the impression that the hangman was expected to be skilled. A. Roger Ekirch, "Exiles in the Promised Land: Convict Labor in the Eighteenth-Century Chesapeake," *Maryland Historical Magazine*, LXXXII, No. 2 (Summer 1987), p. 102; A. Roger Ekirch, *Bound for America: The Transportation of British Convicts to the Colonies, 1718-1775* (Oxford: Oxford University Press, 1987; paperback edition, Oxford: Clarendon Press, 1990), pp. 144-145.

<sup>4</sup> *Maryland Gazette*, 31 August, 14, 21 September 1748; Commission Records, 1726-1786, p. 85; Provincial Court Land Records, Liber E. I., No. 3, pp. 107-108.

Joseph Hume was hanged for burglary and Matthew Lapear for breaking and entering.

<sup>5</sup> *Maryland Gazette*, 19 December 1750; Commission Records, 1726-1786, p. 95. Jonas Green calls the two men Bob and Dick, but apparently he has one of the names wrong. The two culprits probably were Negro Robert Rustain and Negro James, who were hanged in Charles County on 15 December 1750 for breaking into Hugh Mitchell's storehouse on 29 October 1750 and stealing one silk handkerchief, one pair of striped Holland sheets, one pair of Scotch plaid blankets, one pair of men's gloves, one pound of gunpowder, three quarts of rum, one pair of "Single Channeld mens pumps," two and seven-eighths yards of "Indiana," and nine yards of "Check Linnen." *Maryland Gazette*, 12 December 1750; Charles County Court Record, 1750, p. 140.

<sup>6</sup> *Maryland Gazette*, 6 July 1758.

<sup>7</sup> *Ibid.*, 6 July, 21 September, 16 November 1758 (italics in original); Commission Records, 1726-1786, p. 134; *Md. Arch.*, XXXI, 296-297; Provincial Court Judgment Record, Liber B. T., No. 3, pp. 557, 560-561. According to the indictment against Maurice Mongall, he stole one hundred yards of "Roussia Linnen," fifteen pieces of ribbon, one leather letter case, fourteen pairs of children's stays, one pair of women's stays, and one child's velvet cap.

By English law, if the convict was not killed with the first hanging the sheriff had to hang him up again, since the judgment of the court was that the culprit be hanged by the neck until he was dead.

. . . it is clear, that if, upon judgment to be hanged by the neck till he is dead, the criminal be not thoroughly killed, but revives, the sheriff must hang him again.

Sir William Blackstone, *Commentaries on the Laws of England* (10th edition; 4

vols.; London: Printed for A. Strahan, T. Cadell, and D. Prince, 1787), IV, 406.

According to *The Newgate Calendar* the rope broke when Captain John Kidd was hanged on 22 May 1701, but like Maurice Mongall Captain Kidd was soon hanged up again. George Theodore Wilkinson, *The Newgate Calendar* (3 vols.; London: Panther Books Ltd., 1962-1963), I, 15. For other citations of instances in which the ropes broke, see Chapter 1, “The Excitement of Hanging,” Notes 42-44.

<sup>8</sup> *Maryland Gazette*, 6 July, 21 September 1758.

<sup>9</sup> James Boswell, *Journal of a Tour to the Hebrides with Samuel Johnson, LL.D.*, ed. Frederick A. Pottle and Charles H. Bennett (New York: The Viking Press, 1936), p. 75.

<sup>10</sup> 1719, c. 4, *Md. Arch.*, XXXIII, 462; 1723, c. 16, *Md. Arch.*, XXXIV, 734-735. For illustrations of the stocks in England, see Joseph Burke and Colin Caldwell, *Hogarth: The Complete Engravings* (London: Alpine Fine Arts Collection (U. K.) Ltd., 1980-1989?), Plate 100 (“Hudibras Triumphant”) and Plate 102, “Hudibras in Tribulation.”

In October of 1697 the provincial justices ruled that any person who disturbed the court with rude, indecent, or ill-behavior outside the courthouse would be set in the stocks for one hour. Provincial Court Judgment Record, Liber H. W., No. 3, p. 134. I thank Alan Day for pointing this record out to me.

For people set in the stocks for disturbing the court, see Baltimore County Court Proceedings, Liber I. S., No. A, p. 443; *ibid.*, Liber I. S., No. T. W. 2, p. 215; Frederick County Court Judgment Record, 1752-1753, p. 753; *ibid.*, 1761-1762, p. 306; Frederick County Court Minutes, 1758-1762, November Court 1761; Kent County Court Proceedings, Liber J. S., No. X, pp. 200-201; Provincial Court Judgment Record, Liber P. L., No. 4, p. 94.

For setting a man in the stocks for profane cursing, see Prince George's County Court Record, Liber B, pp. 360a-361b. The numbering of pages in this liber is very confusing.

And at the Prince George's County court for January of 1700/01 the justices ordered that William Scott "be putt in the stocks for an hour for Pissing against John Davis." *Ibid.*, p. 93.

<sup>11</sup> A person could be branded for a variety of crimes, such as some types of **theft** (Provincial Court Judgment Record, Liber V. D., No. 1, pp. 546-548; Liber V. D., No. 3, pp. 228-229; Liber W. G., No. 1, pp. 393-394, 553-554; Liber P. L., No. 7, pp. 307-309; Liber E. I., No. 6, pp. 576-577; Liber E. I., No. 13, pp. 825-826; Liber E. I., No. 14, pp. 801-802; Liber D. D., No. 17, pp. 585, 587-588; *Maryland Gazette*, 17 April 1751, 25 December 1751, 21 October 1762; 1718, c. 7, *Md. Arch.*, XXXVIII, 233-234); **accessary to theft** (Provincial Court Judgment Record, Liber V. D., No. 3, pp. 228-229; 1718, c. 7, *Md. Arch.*, XXXVIII, 233-234; *Maryland Gazette*, 17 April 1751, 25 December 1751, 21 October 1762); **theft and hog-theft** (Provincial Court Judgment Record, Liber W. G., No. 2, pp. 459-462); **second offense of theft** (1704, c. 25, *Md. Arch.*, XXVI, 267; 1715, c. 26, *Md. Arch.*, XXX, 305-306; Provincial Court Judgment Record, Liber W. G., No. 1, pp. 293-294; Liber W. G., No. 2, pp. 459-462; Liber E. I., No. 6, pp. 576-577; Liber D. D., No. 14, pp. 667-668, 670-673); **horse-theft** (Provincial Court Judgment Record, Liber W. G., No. 2, pp. 15-16); **breaking and entering** (*ibid.*, Liber W. G., No. 1, pp. 399-401, 401-402, 406-407; Liber P. L., No. 7, pp. 309-310); **pocket-picking** (Provincial Court Judgment Record, Liber E. I., No. 14, pp. 234-235; *Maryland Gazette*, 23 April, 7 May 1752); **breaking prison** (*Maryland Gazette*, 25 December 1751); some forms of **manslaughter** (Provincial Court Judgment Record, Liber W. G., No. 1, pp.

545-546; Liber P. L. No. 7, pp. 301-303; Liber B. T., No. 3, pp. 269, 393-394; Liber D. D., No. 19, p. 3; Prince George's County Court Record, Liber C. C., No. 1, pp. 312, 326-328; *Maryland Gazette*, 13, 27 January 1748; 20 April 1758); and **blasphemy**. 1723, c. 16, *Md. Arch.*, XXXIV, 733-734.

In September of 1685 the provincial justices sentenced Anne Thompson to be burned in the hand after she confessed to the charge of bigamy. Provincial Court Judgment Record, Liber T. G., pp. 31-32.

The defendant was also branded after pleading benefit of clergy. See Chapter 3, "Pope Alvey," at Notes 1, 11, and 12. For other examples, see Provincial Court Judgment Record, Liber P. L., No. 3, pp. 231-234, 257, 258, 398-400 (Thomas Macnemara); Liber T. P., No. 2, pp. 379-384 (George Askins), 576, 585-596 (Negro Hannibal).

<sup>12</sup> From the records of the Baltimore County court for June of 1721:

The sheriff shall provide A sufficient Catt a Nine tailes Which the first Day of Each Respective Court he shall produce to the Courts [*sic*] View and Lay the same on the Table Within the Barr under penalty Of fifty pounds of Tobacco [for] Each Offence."

Baltimore County Court Proceedings, Liber I. S., No. C, p. 513.

A person could be whipped for such crimes as **assault** (Provincial Court Judgment Record, Liber P. L., No.7, pp. 306-307); **begetting** (Anne Arundel County Court Judgment Record, 1720-1721, pp. 427-428; *ibid.*, Liber I. B., No. 1, pp. 4, 5; Prince George's County Court Record, Liber L, p. 197) or **bearing a bastard** (Prince George's County Court Record, Liber V, pp. 413, 553-554; Anne Arundel County Court Judgment Record, Liber I. B., No. 2, pp. 3-4, 18, 135-136; Charles County Court Record, Liber Y, No. 2, pp. 89-90; Baltimore County Court Proceedings, Liber T. B. & T. R., No. 1, pp. 392-393; 1715, c. 27, *Md. Arch.*, XXX, 233-235; **theft**

(*Maryland Gazette*, 12 June 1751, 7 February 1754, 20 March, 4 September 1755; Anne Arundel County Court Judgment Record, Liber I. S. B., No. 3, pp. 265-266; 1715, c. 26, *Md. Arch.*, XXX, 305); including **horse-theft** (Provincial Court Judgment Record, Liber E. I., No. 5, pp. 137-138; Liber E. I., No. 6, pp. 578-579; Anne Arundel County Court Judgment Record, Liber I. B., No. 1, pp. 19-20; Baltimore County Court Proceedings, Liber H. W. S., No. 7, pp. 243-244); **hog-theft** (Queen Anne's County Court Record, 1744-1746, pp. 82-84; Baltimore County Court Proceedings, Liber T. B. & T. R., No. 1, pp. 405-407; Liber B. B., No. C, pp. 6-7, 7-9, 227-228; Anne Arundel County Court Judgment Record, Liber I. S. B., No. 2, p. 659); **shop-lifting** (*Maryland Gazette*, 20 March 1755); **cheating in trade** (Somerset County Judicial Record, 1698-1701, pp. 132-133); **cursing** (*Maryland Gazette*, 23 November 1752; 1723, c. 16, *Md. Arch.*, XXXIV, 734-735; Anne Arundel County Court Judgment Record, Liber I. S. B., No. 2, pp. 423, 431; *ibid.*, 1720-1721, pp. 541-542); **perjury** (*Maryland Gazette*, 19 August 1746; Provincial Court Judgment Record, Liber E. I., No. 1, pp. 94-95; Anne Arundel County Court Judgment Record, Liber I. B., No. 6, pp. 229-230; 1692, c. 16, *Md. Arch.*, XIII, 458-460); **forgery** (1763, c. 18, *Md. Arch.*, LVIII, 442; Provincial Court Judgment Record, Liber E. I., No. 6, pp. 299-301); **contempt** (Prince George's County Court Record, Liber H, p. 182); **speaking against the king** (*Maryland Gazette*, 8 September 1747); and **conspiracy**. *Maryland Gazette*, 7 June 1753.

<sup>13</sup> For the pillory, see Text below at Notes 20-23, 29-38. For the difference between the stocks and the pillory, see Alice Morse Earle, *Curious Punishments of Bygone Days* (New York: The Book League of America, 1929), pp. 36-37, 45-46; William Andrews, *Bygone Punishments* (London: William Andrews & Co., 1899), pp. 144-145, 153, 155, 187, 190, 191; William Andrews, *Old-Time Punishments*

(London: William Andrews & Co., 1890; reprinted London: The Tabard Press Limited, n. d.), pp. 66- 67, 74, 79, 81, 121, 122, 125, 128, 133, 137.

As in the cases of branding and whipping, a person could be sentenced to the pillory for a variety of crimes, including such things as **assault** (Provincial Court Judgment Record, Liber P. L., No. 7, pp. 306-307); **forgery** (*Maryland Gazette*, 26 October 1748; 1763, c. 18, *Md. Arch.*, LVIII, 442; Provincial Court Judgment Record, Liber E. I., No. 6, pp. 299-301); **giving false measure** (*Maryland Gazette*, 28 September 1748); **theft** (Provincial Court Judgment Record, Liber W. G., No. 1, pp. 391-392; *Maryland Gazette*, 12 June 1751, 7 February 1754, 20 March, 4 September 1755; **horse-theft** (Provincial Court Judgment Record, Liber E. I., No. 5, pp. 137-138; Baltimore County Court Proceedings, Liber H. W. S., No. 7, pp. 243-244); **hog-theft** (Queen Anne's County Court Judgment Record, 1744-1746, pp. 82-84; Baltimore County Court Proceedings, Liber T. B. & T. R., No. 1, pp. 405-407; Liber B. B., No. C, pp. 6-7, 7-9, 227-228; Anne Arundel County Court Judgment Record, Liber I. S. B., No. 2, p. 659); **shop-lifting** (*Maryland Gazette*, 20 March 1755); **perjury** (*Maryland Gazette*, 19 August 1746; Anne Arundel County Court Judgment Record, Liber I. B., No. 1, pp. 420-422; Liber I. B., No. 6, pp. 229-230; Provincial Court Judgment Record, Liber E. I., No. 1, pp. 94-95; 1692, c. 16, *Md. Arch.*, XIII, 458-460); **conspiracy** (*Maryland Gazette*, 7 June 1753); and **speaking against the king**. *Maryland Gazette*, 8 September 1747.

Acts for whipping and pillorying are 1681, c. 3, *Md. Arch.*, VII, 201-203; 1692, c. 34, *Md. Arch.*, XIII, 479-481; 1699, c. 44, *Md. Arch.*, XXII, 553-555; 1700, c. 2, *Md. Arch.*, XXIV, 98-101; 1704, c. 25, *Md. Arch.*, XXVI, 266-268; 1715, c. 26, *Md. Arch.*, XXX, 304-306.

Trying to determine the relative popularity of non-capital punishments in colo-

nial Maryland would require a massive quantification that probably could be accomplished only by a crew of people after they already have acquired some knowledge of the records. Because of the absence of some records all of the figures would still be too low and the percentages only approximate.

<sup>14</sup> For nailing and cropping of ears, see Text below at Notes 24-38.

<sup>15</sup> For boring the tongue, see Text below at Notes 39-47.

<sup>16</sup> *Md. Arch.*, X, 493-494, 499, 519.

<sup>17</sup> *Ibid.*, pp. 516-517. “The Court doth order upon the motion of Cap<sup>t</sup> Morgan, and the Humble request of the Said Hobson . . . .” If Morgan had already made the motion, there would have been no reason for Hobson to make the request, although we cannot be sure that the clerk had things in the right order here.

<sup>18</sup> Anne Arundel County Court Judgment Record, Liber I. M. B., No. 1, pp. 760, 812. Lancelot Jacques was commissioned sheriff of Anne Arundel County on 30 May 1763, and on 22 November 1763 Joseph Galloway replaced him. Commission Records, 1726-1786, pp. 152, 154.

<sup>19</sup> Anne Arundel County Court Judgment Record, Liber I. M. B., No. 1, p. 816.

<sup>20</sup> *Maryland Gazette*, 28 September 1748. People were supposed to “do . . . vylonye [villainy]” to the person in the pillory. John Bellamy, *Crime and Public Order in England in the Later Middle Ages* (London: Routledge & Kegan Paul, 1973), p. 185.

For the danger of death to the person sitting in the stocks or standing in the pillory, see also Text below at Note 57.

<sup>21</sup> Examples of sentencing to both whipping and pillorying are Anne Arundel County Court Judgment Record, Liber I. B., No. 6, pp. 3, 21; Provincial Court Judgment Record, Liber T. B., No. 2, pp. 194-195, 201-203; Liber E. I., No. 1, pp.



94-95; Liber E. I., No. 5, pp. 137-138; Liber E. I., No. 6, pp. 299-301; *Maryland Gazette*, 18 March 1746; 20 March, 4 September 1755.

<sup>22</sup> Provincial Court Judgment Record, Liber W. G., No. 1, p. 109; Anne Arundel County Court Judgment Record, Liber R. C., No. 1, pp. 25, 201.

<sup>23</sup> Provincial Court Judgment Record, Liber W. G., No. 1, pp. 110, 139-140.

<sup>24</sup> Prince George's County Court Record, Liber W, p. 603.

<sup>25</sup> *Ibid.*, Liber X, pp. 118-119.

<sup>26</sup> *Ibid.*, 1768-1770, p. 525.

<sup>27</sup> Charles County Tobacco Inspection Records, Liber C, No. 3, p. 16. For the court of oyer and terminer, see Chapter 2, "John Dandy," Note 50.

<sup>28</sup> *Maryland Gazette*, 26 June 1755.

<sup>29</sup> Provincial Court Judgment Record, Liber T. G., pp. 50-52, 62-64.

<sup>30</sup> *Ibid.*, pp. 106-107. In another case of hog-theft, Negro Matthew was acquitted. *Ibid.*, pp. 105-106.

<sup>31</sup> Acts that provided for nailing and cutting off ears are 1650, c. 3, *Md. Arch.*, I, 286-287, made perpetual by 1676, c. 2, *Md. Arch.*, II, 542-551; 1692, c. 16, *Md. Arch.*, XIII, 458-460, made permanent by 1705, c. 8, *Md. Arch.*, XXVI, 515-516; 1707, c. 4, *Md. Arch.*, XXVII, 144-145.

<sup>32</sup> Provincial Court Judgment Record, Liber T. L., No. 1, pp. 573-574.

<sup>33</sup> *Md. Arch.*, IV, 445. As in the case of John Goneere five months earlier (see Text below at Note 36), because some of the records of the assembly prior to 1648 are missing it is impossible to know on what law the justices based Blanch Howell's punishment. It must have been a law similar to, if it was not, 1642, c. 47 (No. 17 in the published *Archives*), "An Act for Punishment of Offences not Capital," in *Md. Arch.*, I, 193, which included perjury. It was up to the judges whether the culprit

would have his right hand cut off, be burned in the hand, suffer “any other corporall shame or correction (not extending to life),” or be fined. The wording of this act, which the assembly passed in September of 1642, is similar to that of an act it passed in its session of July and August of that year. 1642, c. 21, “An Act for Punishment of some Offences not Capital,” *Md. Arch.*, I, 158-159.

The quotations of the titles of the laws come from Thomas Bacon, *Laws of Maryland at Large* (Annapolis: Jonas Green, 1765); the other quote comes from the *Archives*.

<sup>34</sup> Provincial Court Judgment Record, Liber D. S., No. C, pp. 346-347.

<sup>35</sup> “. . . to stand in the Pillory and have his Ears Cropt and nailed to the Same.” *Ibid.*, Liber T. G., pp. 116-117. Seven men who served on John Golequely’s jury also served on Negro Matthew’s jury. See Text above at Note 30.

<sup>36</sup> *Md. Arch.*, IV, 393.

<sup>37</sup> The assize courts were circuit courts conducted by justices of the provincial court who went from county to county to hear cases so that suitors would save the time and expense of going to Annapolis for the sessions of the provincial court but also, it appears clear, to increase the power of the provincial justices at the expense of the county justices.

There were two circuits. The Western Circuit — for the Western Shore — in 1708 included Anne Arundel, Baltimore, Calvert, Charles, Prince George’s, and St. Mary’s counties, and the Eastern Circuit — for the Eastern Shore — in 1708 included Cecil, Dorchester, Kent, Queen Anne’s, Somerset, and Talbot counties. Two provincial justices went on each circuit. C. Ashley Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763* (New York: Garland Publishing, Inc., 1990), pp. 73-114. When the assize justices heard criminal cases they sat under their

commissions of oyer and terminer and jail delivery. The commission of jail delivery was separate from the commission of oyer and terminer. Commission Records, 1726-1786 (orig.), pp. 1-2, 10-11, 17-18, 24-25 (oyer and terminer); pp. 3-4, 12, 18-19, 25-26 (jail delivery), all from back.

<sup>38</sup> Provincial Court Judgment Record, Liber W. G., No. 2, pp. 270-271.

<sup>39</sup> 1694, c. 24, *Md. Arch.*, XXXVIII, 19-20; 1699, c. 36, *Md. Arch.*, XXII, 523-525; 1704, c. 47, *Md. Arch.*, XXVI, 321-322; 1715, c. 34, *Md. Arch.*, XXX, 243-248; 1723, c. 16, *Md. Arch.*, XXXIV, 733-737.

<sup>40</sup> The National Archives (PRO), Colonial Office 5, Vol. 727, pp. 201-202 (photocopy in Library of Congress); The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXV, No. 489.

<sup>41</sup> 1723, c. 16, *Md. Arch.*, XXXIV, 733-737.

<sup>42</sup> *Maryland Gazette*, 13 April 1748.

<sup>43</sup> “. . . in or ab! August 1709 . . . .” TNA (PRO), Colonial Office 5, Vol. 727, pp. 211-215.

<sup>44</sup> 1704, c. 47, *Md. Arch.*, XXVI, 321-322.

<sup>45</sup> Sir George Clark, *The Later Stuarts, 1660-1714* (2nd edition; Oxford: The Clarendon Press, 1955), p. 462.

<sup>46</sup> TNA (PRO), Colonial Office 5, Vol. 189, p. 138 (p. 149 of photocopy in Library of Congress); Vol. 717, Nos. 19, 19.i, 21 (p. 68), 22 (pp. 70-71), 22.i; Vol. 721, Part I, pp. 77-78, 79; Vol. 727, pp. 201-202, 204-206, 207-210, 210-211, 211-215, 359-360; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXV, Nos. 489, 532, 539, 540, 561. Where Arrabella was convicted does not appear.

Back in 1696 John Cood was more fortunate than either Charles Arrabella or

Bevis Pain was after he was sentenced to have his tongue bored through with a red hot iron and to pay a fine of twenty pounds sterling after he was convicted of blasphemy. Governor Nathaniel Blakiston on the recommendation of the provincial justices suspended the sentence and then in July of 1700 pardoned Cood in view of his service in the revolution of 1689 and his good behavior while the sentence was suspended but still hanging over him. *Md. Arch.*, XXV, 80, 103; Chancery Record 2, p. 453; TNA (PRO), *Calendar of State Papers: Colonial Series*, XV, No. 858; XVII, No. 129.iv; Provincial Court Judgment Record, Liber W. T., No. 3, pp. 104-106, 208-213; H. R. McIlwaine, Willmer L. Hall, and Benjamin J. Hillman, eds., *Executive Journals of the Council of Virginia* (6 vols.; Richmond, 1925-1966) I, 419. The act in Cood's case is 1694, c. 24, *Md. Arch.*, XXXVIII, 19-20.

<sup>47</sup> Edward Ingle, *Local Institutions of Virginia* (Baltimore: Johns Hopkins University, 1885), p. 68.

<sup>48</sup> **Hands tied:** Baltimore County Court Proceedings, Liber I. S., No. C, pp. 13, 198-199, 219, 284; Liber H. W. S., No. 9, p. 263; *Md. Arch.*, IV, 395-396.

<sup>49</sup> **Cat-o'-nine-tails:** For the use of the cat-o'-nine-tails, see Note 12 above.

<sup>50</sup> Many images of the cat-o'-nine-tails with knots or thongs at the ends of the lashes can be found at <http://images.google.com/images?hl=en&q=cat-o-nine-tails&btnG=Search+Images&gbv=2&aq=f&oq=>. [last visited 23 April 2009]

<sup>51</sup> **Well laid on bare back:** Charles County Court Record, Liber A, pp. 393-394. The common wording of the sentence for whipping was something such as that the victim should receive so many stripes "on the bare back well laid on" (Prince George's County Court Record, Liber H, p. 182; Provincial Court Judgment Record, Liber H. W., No. 3, pp. 273-275) or "on the bare Back well laid on untill the blood Appear." Somerset County Judicial Record, 1749-1751, pp. 15a-16.

For the bare back, see also Prince George's County Court Record, Liber H, pp. 36, 87, 143-144, 144, 182, 185, 673, 814, 868, 905, 940, 941, 976, 980, 1017, 1037, 1037-1038; Liber K, p. 17.

<sup>52</sup> **Women stripped naked waist up:** “. . . and having Striped [*sic*] her Naked from the Waist upwards their [*sic*] give her Twelve Lashes on the Bair [*sic*] Back . . .” Charles County Court Record, 1746/7-1747/8, p. 197. For similar wording, see *ibid.*, pp. 4-5; Liber R, No. 2, pp. 88.

<sup>53</sup> **Until back bloody:** Baltimore County Court Proceedings, Liber H. W. S., No. 9, p. 263, 264, 265, 267-268, 308, 365; Somerset County Judicial Record, 1749-1751, pp. 15a-16.

<sup>54</sup> **Trickle:** Somerset County Judicial Record, 1698-1701, p. 311.

<sup>55</sup> It appears unlikely that “trickle” was simply “A falling or flowing drop; a tear; a small quantity of liquid; a small fitful stream” (*Oxford English Dictionary Online*, definition 1 of “trickle, n.<sup>1</sup>”), but rather appears more likely to have been pieces of the “dung of sheepe, goates, rats or conies.” *Ibid.*, definition of “trickle, n.<sup>2</sup>.” The word is, or was, a “variant of triddle, treddle,” and “treddle” is “a pellet of sheep's or goat's dung: usually in pl.” *Ibid.*

In colonial Maryland, however, “trickle” might still have been a form of the word “treacle,” which was “a kind of salve, composed of many ingredients.” *Oxford English Dictionary Online*, definition 1.a of “treacle.” [visited 5 May 2009]. That would make it appear to be a bit less unappetizing than what appears above.

Apparently in the late seventeenth century sheep's dung was used for the treatment of scalds and burns. Mentioned from an old manuscript, at [http://www.sheepusa.org/index.phtml?page=site/news\\_details&nav\\_id=6e4deef7147e159f5110203eacf4649a](http://www.sheepusa.org/index.phtml?page=site/news_details&nav_id=6e4deef7147e159f5110203eacf4649a). [visited 23 April 2009]

<sup>56</sup> Sir William Blackstone mentions the concern that in private whippings there might be “collusion or abuse” (Blackstone, *Commentaries*, IV, 372), by which he apparently he meant either whipping too lightly or too severely. The same concern no doubt existed in public whippings.

<sup>57</sup> *Annual Register*, 6 March 1762, p. 75; 8 April 1780, p. 207; J. H. Plumb, *The First Four Georges* (New York: The Macmillan Company, 1957), p. 16n.; Derek Jarrett, *England in the Age of Hogarth* (New Haven: Yale University Press, 1986), pp. 51, 123.

Sandra Lee Kerman on the stocks:

Although stoning was not an official method of execution, a prisoner unpopular with the mob confined in the stocks as punishment stood little chance of survival.

Sandra Lee Kerman, ed., *The Newgate Calendar, or Malefactor’s Bloody Register* (New York: Capricorn Books, 1962), p. vii, note.

<sup>58</sup> Provincial Court Judgment Record, Liber T. G., pp. 104-105; *Md. Arch.*, VIII, 23-24. For Mary Baines’ deposition against Lewis, in which she has Joseph Robinson dying on 2 February 1680/1, see Provincial Court Judgment Record, Liber W. C., pp. 378-379. No explanation has appeared for the long time between Robinson’s death and the prosecution of James Lewis.

George W. Dalzell mentions a case of benefit of clergy in New Hampshire in 1776 in which a physician was in attendance to care for the wound from the branding. In this case, however, the culprit was branded so lightly that the physician was not needed. The crime was manslaughter. George W. Dalzell, *Benefit of Clergy in America & Related Matters* (Winston-Salem, N. C.: John F. Blair, Publisher, 1955), pp. 214-215.

Dalzell apparently got this case from John M. Shirley, “The Early Jurisprudence

of New Hampshire,” *Proceedings of the New Hampshire Historical Society*, Vol. I, 1872-1888 (Concord, N. H.: New Hampshire Historical Society, 1888), p. 283. See Dalzell, *Benefit of Clergy in America & Related Matters*, p. 280.

<sup>59</sup> *Annual Register*, 1 May 1759, p. 88; 1760, “Characters,” p. 4; 14 January 1767, p. 47; 6 December 1769, pp. 159-160; 8 July 1771, p. 122; 9 December 1771, p. 161; 11 December 1771, p. 161; 11 August 1773, p. 125; James Boswell, *Boswell for the Defence, 1769-1774*, ed. William K. Wimsatt Jr. and Frederick A. Pottle (New York: McGraw-Hill Book Company, Inc., 1959), p. 335; Kerman, ed., *The Newgate Calendar*, pp. 111, 113, 192, 274, 312; Wilkinson, *The Newgate Calendar*, I, 217; II, 21; Tobias Smollett, *The History of England, from the Revolution to the Death of George the Second* (4 vols.; London: Printed for T. Caldwell et al., 1830) IV, 355-364. See also George Riley Scott, *The History of Capital Punishment* (London: Torchstream Books, 1950), pp. 56, 200; William McAdoo, *Procession to Tyburn: Crime and Punishment in the Eighteenth Century* (New York: Boni and Liveright, 1927), pp. 219, 262; John Laurence, *A History of Capital Punishment* (New York: Citadel Press, 1960), p. 207; E. F. Rimbault, “Tyburnian Gleanings,” *Notes and Queries*, 2nd Series, XI (January-June 1861), p. 447; Peter Linebaugh, “The Tyburn Riot Against the Surgeons,” in Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), p. 105.

<sup>60</sup> Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 218-219.

<sup>61</sup> My figures on gibbetings, like those on quarterings below, come from the charts that I started making in the 1960s.

<sup>62</sup> An early print shows two people hacking up one of the conspirators in the

Gunpowder Plot in 1605 with what looks like a broadaxe and a large butcher-knife or early machete. <http://images.google.com/hosted/life/f?q=%22Gunpowder+Conspirators%22&prev=/images%3Fq%3D%2522Gunpowder%2BConspirators%2522%26gbv%3D2%26ndsp%3D20%26hl%3Den%26sa%3DN&imgurl=d5736ef55d8e6d19>. [last visited 23 April 2009]

<sup>63</sup> 25 Edward III, Statute 5, c. 3, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), II, 51-52; Blackstone, *Commentaries*, IV, 75, 203-204.

<sup>64</sup> Documentation of these cases is included in the charts that I mention above and that will be left at the State Archives in Annapolis.

<sup>65</sup> Writing about gibbeting, Aubrey Land prematurely says that “Whites were spared these indignities.” Aubrey C. Land, ed., *Bases of a Plantation Society* (New York: Harper & Row, Publishers, 1969), p. 223.

<sup>66</sup> 1729, c. 4, *Md. Arch.*, XXXVI, 454-455.

<sup>67</sup> Commission Records, 1726-1786, p. 96; Commission Records, 1726-1786 (orig.), p. 116; *Maryland Gazette*, 2, 30 January, 13 February 1751.

For the wording of other death sentences that included quartering, see Commission Records, 1726-1786 (orig.), pp. 53, 56, 70; Commission Records, 1726-1786, pp 66, 70, 85.

<sup>68</sup> See Note 62 above.

<sup>69</sup> A second early print on the Gunpowder Plot shows a headsman’s ax lying on the platform of the gallows beside the severed head of the victim while the dead body lies on a low table or bench with a man kneeling beside it with his left hand hidden inside the slitted abdomen. In his out-stretched right hand he holds what appear to be entrails that he is exhibiting to the crowd. <http://www.learnhistory.org.uk/crime/>



[Guy%20Fawkes.gif](#). [last visited 23 April 2009] This print also appears in Antonia Fraser, *King James VI of Scotland, I of England* (New York: Alfred A. Knopf, 1975), p. 108.

<sup>70</sup> Kent County Bonds, Indentures, etc., Liber J. S., No. 20 (1743-1746), pp. 66-67.

<sup>71</sup> *Maryland Gazette*, 22 April 1746; Peter Wilson Coldham, *Supplement to the Complete Book of Emigrants in Bondage, 1614-1775* (Baltimore: Genealogical Publishing Co., Inc., 1992), p. 10 (Esther Anderson).

<sup>72</sup> Blackstone, *Commentaries*, IV, 75, 203-204. See also Text above at Note 63.

<sup>73</sup> Blackstone, *Commentaries*, IV, 376-377.

<sup>74</sup> The sheriff of Kent County in May of 1746 was Daniel Cheston. Commission Records, 1726-1786, pp. 67, 70,75.

<sup>75</sup> Commission Records, 1726-1786, pp. 73-74; Commission Records, 1726-1786 (orig.), p. 88.

<sup>76</sup> *Maryland Gazette*, 22 April, 6, 20 May 1746 (quote).

<sup>77</sup> Blackstone, *Commentaries*, IV, 376-377.

<sup>78</sup> Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (4 vols.; London: Stevens & Sons Limited, 1948-1968), I, *The Movement for Reform, 1750-1833*, p. 212, 212n.; Andrews, *Old-Time Punishments*, pp. 191-198; Laurence, *A History of Capital Punishment*, facing pp. 3, 19.

<sup>79</sup> See Chapter 2, "John Dandy," at Note 6.

<sup>80</sup> The hangman was often, if not usually or always, busy when the county courts met six and later four times each year (Acts providing for court days for the county courts are 1642, c. 8, *Md. Arch.*, I, 149-150; 1642, c. 35, *Md. Arch.*, I, 184-185; 1647/8, c. 6, *Md. Arch.*, I, 232; 1663/4, c. 19, *Md. Arch.*, I, 496-497; 1669, c. 16,

*Md. Arch.*, II, 222; 1674, c. 8, *Md. Arch.*, II, 397-398; 1684, c. 5, *Md. Arch.*, XIII, 122-123; 1692, c. 65, *Md. Arch.*, XIII, 528-529; 1697/8, c. 3, text not found, according to *Md. Arch.*, XXXVIII, 111; 1704, c. 63, *Md. Arch.*, XXVI, 346; 1707, c. 22, *Md. Arch.*, XXVII, 174; 1708, c. 12, *Md. Arch.*, XXVII, 367-368; 1715, c. 14, *Md. Arch.*, XXX, 299); when the provincial court met first irregularly and then settled into meeting twice each year (Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 66-68); when the assizes met twice a year in each county during those years they existed (For the assizes, see *ibid.*, pp. 73-114, and Note 37 above); and when the special courts of oyer and terminer and jail delivery met, not regularly but quite often. For the special courts of oyer and terminer, see Ellefson, *The County Courts and the Provincial Court in Maryland, 1733-1763*, pp. 114-118, and Chapter 2, "John Dandy," Note 50.

## 7. A Suggestion

Clearly Maryland in the seventeenth and eighteenth centuries was a very brutal society. While men such as John Dandy and Pope Alvey committed their ferocities in person, the members of the elite ruling class, with their whipping, pillorying, stocking, branding, boring the tongue, cropping ears, hanging, gibbeting, quartering, and burning, usually practiced their abuses by proxy. The inflicting of the thousands of excruciatingly painful non-capital punishments during the colonial period and the carrying out of 268 executions — with forty-two of them followed by either gibbeting or quartering — during the forty-nine-plus years from November of 1726 through 1775,<sup>1</sup> an average of just over five per year in a population ranging from about eighty thousand in 1719<sup>2</sup> to about 164,000 in 1761<sup>3</sup> and possibly 233,000 in 1776,<sup>4</sup> ought to get our attention.

The prevalence of this brutality, however, is a reality that we appear not yet to have absorbed. We tend to think of the colonies as modern societies in the early stages of development, but we would do better to begin our consideration from the other end of their history. The societies of the colonies were much closer to those of Tudor and Stuart England than they were to that of the United States at the beginning of the twenty-first century. When John Dandy became hangman in Maryland in March of 1643/4,<sup>5</sup> possibly for the second time,<sup>6</sup> the province was only forty years

from the death of Queen Elizabeth I but was 365 years — just over nine times as long — from the United States of 2009. February of 1663/4, when Pope Alvey beat his servant Alice Sandford to death<sup>7</sup> — and who twenty-two months later would cut off the leg of William Evans' live heifer<sup>8</sup> —, was only sixty years from the death of Elizabeth but 345 years from the year 2009. In 1758, when the rope broke in the hanging of Morris Mongall and he was “soon hang'd up again,”<sup>9</sup> Maryland was only 155 years from the death of Elizabeth but 251 years from 2009. Finally, even in 1776 the colonies were only 173 years from the death of Elizabeth, while they were still 233 years from the year we are living in.

Thus rather than basing our expectations of how people should have been acting in colonial Maryland on what we have been taught about our own society and thus magnify our difficulty in trying to understand them, we would do better to base our expectations of the colonials on our knowledge of the Tudors and the Stuarts and expect them to be no more humane or generous than people in those societies were. This, of course, does not diminish, mitigate, or justify their barbarities but rather only reminds us that the colonials learned from the English.

Finally, a serious study — not simply a quantification — of crimes and punishments in the American colonies might make us begin to wonder not why the people of the seventeenth and eighteenth centuries were so much different from us but rather why we are so much like them.

## 7. A Suggestion

<sup>1</sup> See Chapter 2, “John Dandy,” Note 1, and Chapter 6, “Character and Competence,” at Notes 60-69.

<sup>2</sup> Governor John Hart to Council of Trade and Plantations, 25 August 1720, in The National Archives (PRO), Colonial Office 5, Vol. 717, No. 84 (p. 311) (photocopy in Library of Congress); The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXXII, Nos. 214 (p. 180), 656 (p. 420).

<sup>3</sup> *Archives of Maryland* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XIV, 92; XXXII, 25.

<sup>4</sup> Alan F. Day, in *A Social Study of Lawyers in Maryland, 1660-1775* (New York: Garland Publishing, Inc., 1989), p. 134, gives this figure, but he has no citation for it.

<sup>5</sup> See Chapter 2, “John Dandy,” at Notes 17-26.

<sup>6</sup> *Ibid.*, at Notes 14-16.

<sup>7</sup> See Chapter 3, “Pope Alvey,” at Notes 2-12.

<sup>8</sup> *Ibid.*, at Notes 16-51.

<sup>9</sup> See Chapter 6, “Character and Competence,” at Notes 6-8.

# *Appendices*

## Appendix A

### The Espy File

Many if not most people working in American legal history will know that the Espy File, a list of executions in the American colonies and the United States from 1608 through 2002, is now available online.<sup>1</sup> No doubt for many researchers this ambitious project will be useful as long as we understand that it includes only the minimum number of executions from 1608 through 2002 and that it appears seriously to understate them. It is, for example, completely inadequate on colonial Maryland and misses such a high proportion of the executions there that for people working in or interested in the history of that province it is likely to be of little or no use.

While the Espy File includes only forty-eight executions in Maryland from 1638 through 1780,<sup>2</sup> I have a list of 268 people who my evidence indicates were executed from November of 1726 through 1775 alone. Compared to the Espy File's forty-eight executions for the entire colonial period, in the eleven-plus years from November of 1726 through 1737 at least forty-six people were hanged; in the six years from 1738 through 1743 there were at least another forty-eight; from 1744 through 1751 at least forty-seven people were hanged and one convict servant woman was burned, possibly alive; from 1752 through 1759 at least another forty-nine people were hanged; from 1760 through 1769 at least forty-six more; and from 1770

through 1775 at least thirty-one.<sup>3</sup> It did not take long for authority in colonial Maryland to pile up an inventory of forty-eight executions.

Because of the inadequacy of the sources, I do not include the first ten months of 1726. Since our figure for executions includes only those people for whom we have found records of death warrants and for whom there have appeared no records of pardons or reprieves later, whose executions were reported in the *Maryland Gazette*, or for whose executions we have found other evidence, our figure must be too low. I do not include those people who were sentenced to death but for whom there is no other evidence of their executions.

And since I have been dealing only with civilian courts, I do not include the hanging of a deserter in Fort Cumberland in 1754.<sup>4</sup>

It is possible, of course, that not every one of those 268 people was executed, but the evidence that they were, coming from the best sources on crime and punishment we have for the province through 1775, is very strong. During this same period I also have 183 people who received pardons after they had been condemned and twenty-six capital cases in which the defendants received reprieves and in which no evidence has appeared that they were hanged or pardoned later. To complete the figures, from 1708 through 1772 I have forty-three cases in which capitally convicted defendants successfully pleaded benefit of clergy<sup>5</sup> and therefore were branded in their hands rather than hanged, and I have eight additional cases of the successful pleading of benefit of clergy from 1663 through 1688 and one from 1778.

The Espy File fails to include a great majority of the executions in colonial Maryland. From 1638 through 1671 it has fourteen executions,<sup>6</sup> but it misses at least four hangings during that period. It does not include the hanging of Elizabeth Greene on 8 July 1664 for allegedly murdering her new-born child,<sup>7</sup> nor does it include the



two Indians who were hanged with Negro Jacob, apparently in 1665, for whose hangings the delegates in April of 1666 allowed John Lawson, the sheriff of St. Mary's County, eight hundred pounds of tobacco.<sup>8</sup> Negro Jacob was hanged for petit treason in the murder of his mistress, Mary Utye,<sup>9</sup> while the Indian Maquamps alias Bennett was hanged for cutting off John Langworth's head and the Indian Chotyke for aiding and assisting him in that murder.<sup>10</sup>

The Espy File also misses the hanging of Walter Pake, whom Pope Alvey had to hang on 17 December 1668 for the murder of William Price.<sup>11</sup>

From 1672 and through 1737 the Espy File includes only one execution, the hanging of Rebecca Fowler for witchcraft on 9 October 1685,<sup>12</sup> but again, during the last eleven-plus years of that period alone — from November of 1726 through 1737 — at least forty-six people were hanged. And though the sources for the period before 1726 are less adequate than those for the rest of the colonial period, the records from the fifty-five years from 1672 through October of 1726 include the hangings of at least twenty people whom the Espy File misses.<sup>13</sup>

I do not claim to have all of the hangings during this period, but:

In 1676 William Davis or Davyes and John Pate were hanged for rebellion against the proprietor.<sup>14</sup> Sometime before 21 October 1681 William Sewick was hanged for buggery.<sup>15</sup> On 3 October 1685 or soon after, the same month in which Rebecca Fowler was hanged for witchcraft, four other people were also hanged. Joseph Tomlinson or Tumbleton was hanged for raping the widow Elizabeth Letchworth;<sup>16</sup> Mary Axell was hanged for murdering her daughter Elizabeth Axell;<sup>17</sup> Richard Vanson was hanged for the murder of David Ingleby, a servant of Thomas Hillary;<sup>18</sup> and John Edwards was hanged for breaking and entering Susannah Darnell's dwelling house and stealing clothes and one other item that is unclear in the

record.<sup>19</sup>

There were more. In 1687 Thomas Leister was hanged for the murder of Richard Nicholson.<sup>20</sup> In 1691 John Woodcock was hanged for the murder of John Payne.<sup>21</sup> In 1701 three unidentified convicts were hanged for crimes that do not appear.<sup>22</sup> In October of 1703 Joseph Sanders of Anne Arundel County petitioned the upper house for compensation for two of his servants who had been executed for the murder of their fellow servant.<sup>23</sup> Sometime before 6 April 1706 James Pride and David Blake were executed after being convicted at a special court for a crime or crimes that does not or do not appear in the record.<sup>24</sup> In 1708 Richard Clarke was hanged on a bill of attainder for what the assembly in the bill of attainder against him calls “his most Execrable and Trayterous Designes” and his “Illegal Wicked and Trayterous Actions,” including allegedly counterfeiting foreign money.<sup>25</sup> In 1711 Negro Will was hanged for a crime or crimes that do not appear after being convicted at a special court of oyer and terminer.<sup>26</sup> In 1712 Negro Hector was hanged for abetting Negro Montillion in the murder of Zachariah Browne,<sup>27</sup> and in that same year Negro Boatswain was hanged after being tried at a special court for raping Elizabeth Beavor.<sup>28</sup>

From 1737 through 1780 the Espy File includes only thirty-three executions in Maryland,<sup>29</sup> but on my charts I have sources for the executions of 222 people in the province from 1737 through 1775.

If the failure to find evidence of hangings when that evidence is available skews downward our figure on the number of hangings in colonial Maryland, the apparent absence of records to show whether people who were sentenced to death were actually executed skews it downward further still. We know that in Maryland before November of 1726, the month and the year in which my charts begin, there are many

cases in which people were sentenced to hang but for which at this point we have no evidence of their final fates. Because of the apparent absence of surviving records, determining what proportion of these people were executed appears to be impossible.

Again I do not claim to have all of such cases, but:

In 1693 Mary Lunt was sentenced to hang for stabbing her child to death. Mary Lunt was married, so this was not the murder of a bastard child.<sup>30</sup> In 1702 George Groves was sentenced to hang for murdering Sarah Russell.<sup>31</sup> As attorney general from December of 1704 until his death in August of 1718, William Bladen got at least sixteen people condemned to hang.<sup>32</sup> These do not include Richard Clarke, who was hanged on a bill of attainder,<sup>33</sup> or Negroes Will and Boatswain, who were hanged after being convicted at special courts.<sup>34</sup>

After 1718 the number condemnations at the provincial court expanded and then ballooned. Apparently at the provincial court for September of 1718 the justices sentenced nobody to hang,<sup>35</sup> but in April of 1719 they condemned at least two people<sup>36</sup> and in October least one.<sup>37</sup> In April of 1720 they condemned at least two more<sup>38</sup> and in September at least three,<sup>39</sup> while in April of 1721 they sentenced at least seven people to hang<sup>40</sup> and in October at least nine.<sup>41</sup> Then in April of 1722 the provincial justices condemned another four people,<sup>42</sup> in September three,<sup>43</sup> in April of 1723 nine,<sup>44</sup> and in September of that year another five.<sup>45</sup>

In the fall of 1723 Governor John Seymour and the assembly re-established the assizes,<sup>46</sup> and from April of 1724 through April of 1731 no grand juries appeared at the provincial court.<sup>47</sup> Instead, two provincial justices made the rounds of each of the two circuits twice a year to try criminal as well as civil actions in the counties in which they arose. For 1724 through 1725 no capital sentences have appeared, but on 17 May 1726 the provincial justices sentenced Negro Jack to hang after a jury at the

assizes for Charles County in April found him guilty of burglary.<sup>48</sup>

We do not know how many of these sixty-four people were actually hanged. We do know that of the sixteen people whom William Bladen got sentenced to death Negro Hector was hanged<sup>49</sup> and that at least two of them were not hanged,<sup>50</sup> but to believe that both of the defendants who we know were condemned in 1693 and 1702, all thirteen of Bladen's people whose ultimate fates we do not know, and all forty-six of the people who we know were condemned from 1719 through 1726 — a grand total of sixty-one people — escaped hanging would require a naivety beyond naivety.

Thus the uncertainty about how many of the people who were condemned in colonial Maryland were actually hanged or otherwise executed makes it impossible for us to know just how many victims of the death penalty there were in the province. Any number of these people who ultimately were hanged would increase the chasm between the number of hangings we know about in colonial Maryland and the actual number of people authority ceremoniously killed.

What we *can* be sure of is that the Espy File seriously understates that number, and it appears inevitable that the same thing is true of other colonies, and states,<sup>51</sup> in which records have disappeared or are inadequate. To cite the Espy File to support the claim that only forty-eight people were hanged in Maryland from 1638 through 1780<sup>52</sup> would be vastly misleading, and to accept its figures for the other colonies would appear to require a presumption beyond presumption and a faith beyond faith.

In addition to the inadequacy of its numbers, there are at least a couple of errors in the Espy File on colonial Maryland. According to the File, the four men whom the Puritan rebels executed in 1655 were hanged,<sup>53</sup> but actually they were shot by the Puritans. These men were William Eltonhead, a member of Governor William Stone's proprietary council, Captain William Lewis, John Legatt, and John Pedro.<sup>54</sup>

Probably it is also worth pointing out that while according to the Espy File two slaves were executed in 1743 by being hanged in chains,<sup>55</sup> that was never a method of execution in colonial Maryland. People were hanged first and then “hung in chains,”<sup>56</sup> which might or might not have been iron straps rather than chains.<sup>57</sup> Here the Espy File must be referring to Negroes Jack and Harry, who were hanged and gibbeted on 1 July 1743 “at or near the head of Seneca Creek” after the justices of a special court of oyer and terminer for Prince George’s County condemned them in May of 1743 for the murder of an Indian man.<sup>58</sup>

Again the Espy File might be moderately useful for some projects as long as nobody considers it complete but rather understands that all of its figures represent the minimum numbers of executions, especially in the colonies but apparently after the American Revolution as well. Because of the absence of adequate records we will never have an exact number for colonial Maryland, a reality that probably applies also to the other colonies.

If we add the fifteen executions that the Espy File includes for Maryland from 1638 through 1685, the four known hangings that it misses in 1664, 1665, and 1668, the twenty known hangings that it misses from 1672 through October of 1726, and the 268 executions that we know about from November of 1726 through 1775, we have a total of 307 executions against the Espy File’s figure of only forty-eight executions during the entire period of 1638 through 1775. That means that the Espy File includes only 15.64% of the hangings that we know about in Maryland during that period and misses 84.36% of them. It misses more than five out of every six of the known hangings in the province during those years.

And our figures here do not include the people who were sentenced to death in

colonial Maryland but whose ultimate fates we do not know. Surely not all of the sixty-one people who were condemned but about whom no further information has appeared were fortunate enough to escape the gallows, as Benjamin Cely and Susannah Puckham did,<sup>59</sup> and therefore even our total of 305 executions is undoubtedly too low.

Clearly the person who accepts the Espy File's figure of forty-eight as the number of hangings in colonial Maryland from 1638 through 1775 will get a very distorted view of the penal system of the province and thus no more than a comfortably rosy-cheeked impression of the attitude of the ruling class there toward penal justice. And clearly, therefore, he will come away with a very sweet-scented view of the economic, social, and political character of the society itself. Thus for historians and others interested in colonial Maryland the Espy File in its present form — in the middle of 2009 — will be of little or no use, and to cite it as a source for the number of executions in colonial Maryland would be more misleading than helpful.

## Appendix A

### The Espy File

<sup>1</sup> The Espy File lists executions by date, by name, and by state. It can be found at M. Watt Espy and John Ortiz Smykla, *Executions in the United States, 1608-2002: The Espy File* [Computer file]. 3rd ICPSR ed. Compiled by M. Watt Espy and John Ortiz Smykla, University of Alabama. Ann Arbor, Mich.: Inter-university Consortium for Political and Social Research [producer and distributor], 2002, <http://www.deathpenaltyinfo.org/executions-us-1608-2002-espy-file>. Executions by state can be found at <http://www.deathpenaltyinfo.org/ESPYstate.pdf>. Hereafter Espy File.

<sup>2</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPYstate.pdf> (1608-2002), pp. 157-159.

<sup>3</sup> All of my figures come from charts on executions, pardons, and reprieves that I started making in the late 1960s. The figures from the charts include those that I have given for pardons and reprieves and benefit of clergy below. For the sources that I used in making these charts, see Chapter 2, “John Dandy,” Note 1.

<sup>4</sup> *Maryland Gazette*, 4 November 1754.

<sup>5</sup> For benefit of clergy, see Chapter 3, “Pope Alvey,” Note 1.

<sup>6</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPYstate.pdf> (1608-2002), pp. 157-158.

<sup>7</sup> *Archives of Maryland*, hereafter *Md. Arch.* (72 vols.; Baltimore: Maryland Historical Society, 1883-1972), XLIX, 217-218, 220, 231, 232-233, 234, 235-236.

<sup>8</sup> *Ibid.*, II, 31, 94-95.

<sup>9</sup> *Ibid.*, XLIX, 489-491.

<sup>10</sup> *Md. Arch.*, XLIX, 481-484, 489, 491. For Negro Jacob and the two Indians, see Chapter 5, "Income and Expenses," at Note 5.

<sup>11</sup> *Md. Arch.*, LVII, 352, 354-356. For Walter Pake, or Peake, see Chapter 3, "Pope Alvey," at Notes 53-62.

<sup>12</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPystate.pdf> (1608-2002), p. 158. For Rebecca Fowler, see Provincial Court Judgment Record, Liber T. G., p. 34; *Md. Arch.*, XXXIV, 678; Raphael Semmes, *Crime and Punishment in Early Maryland* (Baltimore: The Johns Hopkins Press, 1938), p. 168, Francis Neal Parke, "Witchcraft in Maryland," *Maryland Historical Magazine*, XXXI, No. 4 (December 1936), pp. 281-284.

<sup>13</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPystate.pdf> (1608-2002), p. 158.

<sup>14</sup> *Md. Arch.*, V, 143, 153; VIII, 225; XV, 127-130, 131-132, 344; Charles M. Andrews, *The Colonial Period of American History* (4 vols.; New Haven: Yale University Press, 1934-1938), II, 343-344; Francis Edgar Sparks, *Causes of the Maryland Revolution of 1689* (Baltimore: The Johns Hopkins Press, 1896), pp. 67-69; David William Jordan, *Foundations of Representative Government in Maryland, 1632-1715* (Cambridge: Cambridge University Press, 1987), pp 118-119.

<sup>15</sup> *Md. Arch.*, VII, 393. For William Sewick, see Chapter 5, "Income and Expenses," at Note 6.

<sup>16</sup> Provincial Court Judgment Record, Liber T. G., p. 33.



<sup>17</sup> *Ibid.*, p. 35.

<sup>18</sup> *Ibid.*, p. 36.

<sup>19</sup> *Ibid.*, pp. 37-38.

<sup>20</sup> *Ibid.*, pp. 86-88.

<sup>21</sup> *Md. Arch.*, VIII, 262, 308, 309, 334, 516; The National Archives (PRO), Colonial Office 5, Vol. 724, pp. 84-85, 215 (photocopy in Library of Congress).

<sup>22</sup> *Md. Arch.*, XXIV, 148, 303-304; Chapter 5, "Income and Expenses," at Note 7. The names of these convicts have not appeared.

<sup>23</sup> *Md. Arch.*, XXIV, 315. Apparently the two servants of Joseph Sanders who were hanged were William Ward and his wife Margaret, whom the provincial justices on 7 May 1703 sentenced to hang for the murder of John Austin four days earlier. Provincial Court Judgment Record, Liber T. L., No. 3, pp. 3-4.

It appears possible that William and Margaret Ward were the Thomas Ware and Mrs. Thomas Ware whose executions are noted in TNA (PRO), Colonial Office 5, Vol. 715, Item No. 87.vi.

<sup>24</sup> TNA (PRO), Colonial Office 5, Vol. 716, item 20(iii) (p. 71).

<sup>25</sup> *Md. Arch.*, XXV, 240, and indexes to *Md. Arch.*, XXV, XXVI, and XXVII; 1705, c. 5, *Md. Arch.*, XXVI, 513-514; 1707, c. 1, *Md. Arch.*, XXVII, 139-140; John Seymour to Council of Trade and Plantations, 23 June 1708, The National Archives (PRO), *Calendar of State Papers: Colonial Series* (40 vols.; Vaduz: Kraus Reprint Ltd., 1964), XXIII, No. 1570; TNA (PRO), Colonial Office 5, Vol. 727, p. 89; John Seymour to Principal Secretary of State, 23 June 1708, in "Unpublished Provincial Records," *Maryland Historical Magazine*, XVI, No. 4 (December 1921), pp. 357-358; Provincial Court Judgment Record, Liber T. L., No. 1, pp. 576-577; Liber T. L., No. 3, pp. 266, 268, 274-275, 429; Anne Arundel County Court Judgment Record,

Liber G, pp. 252, 284-285.

<sup>26</sup> TNA (PRO), Colonial Office 5, Vol. 717, pp. 170, 171, 172; Vol. 720, pp. 49, 50, 51, 52. For Negro Will, see Chapter 5, “Income and Expenses,” at Note 17. For the court of oyer and terminer, see Chapter 2, “John Dandy,” Note 50.

<sup>27</sup> Provincial Court Judgment Record, Liber T. P., No. 2, pp. 439-440; TNA (PRO), Colonial Office 5, Vol. 717, pp. 203-204, 204, 205, 207, 208; Vol. 720, pp. 194, 195, 197, 198. For Negro Hector, see Chapter 5, “Income and Expenses,” at Notes 19, 21-23. What happened to Negro Montillion has not appeared.

<sup>28</sup> TNA (PRO), Colonial Office 5, Vol. 717, pp. 170, 172, 174, 204, 207, 208, 209; Vol. 720, pp. 48, 51, 53, 194, 197, 198, 199. At the provincial court for October 1711 a petit jury found Negro Boatswain guilty of rape, but after he asked for counsel Thomas Bordley argued that the indictment was insufficient. The justices agreed and ordered a new indictment. Provincial Court Judgment Record, Liber T. P., No. 2, pp. 301-302. Thus Negro Boatswain was convicted again, this time at a special court of oyer and terminer.

<sup>29</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPystate.pdf> (1608-2002), pp. 158-159.

<sup>30</sup> Provincial Court Judgment Record, Liber D. S., No. C, pp. 199-200.

<sup>31</sup> *Ibid.*, Liber W. T., No. 4, pp. 169, 196-199.

<sup>32</sup> C. Ashley Ellefson, *William Bladen of Annapolis, 1673?-1718: “the most capable in all Respects” or “Blockhead Booby”?*, Chapter 6, “Attorney General,” manuscript online on the website of the Maryland State Archives, at <http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000747/pdf/am747.pdf>.

<sup>33</sup> For Richard Clarke, see Text above at Note 33.

<sup>34</sup> Negro Will: TNA (PRO), Colonial Office 5, Vol. 717, pp. 170, 171, 172;

Vol. 720, pp. 49, 50, 51, 52; Negro Boatswain: TNA (PRO), Colonial Office 5, Vol. 717, pp. 172, 174, 204, 207, 208, 209; Vol. 720, pp. 48, 51, 53, 194, 197, 198, 199. For Negroes Will and Boatswain, see Text above at Note 34.

<sup>35</sup> Provincial Court Judgment Record, Liber P. L., No. 4, pp. 93ff.

<sup>36</sup> *Ibid.*, pp. 242, 281-282, 287-288. Here and in the following items I say “at least” because the records of the provincial court are not always easy to read or to follow, and so I might have missed some capital sentences.

<sup>37</sup> Provincial Court Judgment Record, Liber W. G., No. 1, pp. 65-67.

<sup>38</sup> *Ibid.*, pp. 110, 138-139, 140-141.

<sup>39</sup> *Ibid.*, pp. 212, 249-250, 253-254 (2).

<sup>40</sup> *Ibid.*, pp. 359, 369, 394-395, 396-397, 402-403, 409-410 (4).

<sup>41</sup> *Ibid.*, pp. 487, 538-539, 541-542, 543-545, 546-547, 549-550 (5).

<sup>42</sup> *Ibid.*, pp. 635, 666-667, 670-672, 672-673, 673-674.

<sup>43</sup> *Ibid.*, Liber P. L., No. 7, pp. 1, 23-24, 24-25, 26-27.

<sup>44</sup> *Ibid.*, pp. 153, 155-156 (3), 156-157, 158-159, 160-161, 161, 162-164.

<sup>45</sup> *Ibid.*, pp. 303-304, 310-311, 312, 312-313 (2). In his inadequate chapter on Daniel Dulany the Elder as attorney general Aubrey C. Land mentions only two of those fourteen capital sentences at the provincial court in 1723 and includes only one further short paragraph about Dulany’s criminal prosecutions. Aubrey C. Land, *The Dulanys of Maryland: A Biographical Study of Daniel Dulany, the Elder (1685-1753) and Daniel Dulany, the Younger (1722-1797)* (Baltimore: Maryland Historical Society, 1955; reprinted Baltimore: The Johns Hopkins Press, 1968), pp. 58-59.

The sharp rise in capital sentences after 1718, and especially in the three years after 1720 — an average of more than twelve each year from 1721 through 1723 — might have resulted from an increased importation of English convicts after parlia-

ment provided in 1717 that justices could turn the convicts over to contractors who would ship them out of England (4 George I, c. 11, in Danby Pickering, *The Statutes at Large* (109 vols.; Cambridge: Joseph Bentham and Others, 1762-1869), XIII, 471-475) and then in 1719 refined that law. 6 George I, c. 23, in *ibid.*, XIV, 292-295. At the provincial court for April of 1723 the grand jury protested against the importation convicts, and the justices ordered that the sheriffs take all convict servants into custody until the owners gave security of thirty pounds current money each for their good behavior. Provincial Court Judgment Record, Liber P. L., No. 7, p. 132.

In 1692 the assembly outlawed the importation of convicts (1692, c. 74, *Md. Arch.*, XIII, 539-540), but that act was repealed. Thomas Bacon, *Laws of Maryland at Large* (Annapolis: Jonas Green, 1765), under 1692, c. 74. I do not have the date of that repeal.

In October of 1723 the assembly wrote into law the requirement that anyone who bought a convict servant had to give bond of thirty pounds current money to guarantee the convict's good behavior, that he report to a provincial or county justice any sale of a convict servant, and that the master of any vessel that brought any servants had to provide the naval officer with the names of any convicts among them (1723, c. 6, *Md. Arch.*, XXXVIII, 320-322), but the proprietor disallowed that law. *Md. Arch.*, XXXV, 212, 325; Bacon, *Laws of Maryland at Large*, under 1723, c. 6.

In 1728 the assembly passed another act to keep track of imported convicts, and this one survived. 1728, c. 23, *Md. Arch.*, XXXVI, 298-302; Bacon, *Laws of Maryland at Large*, under 1728, c. 23.

Trying to determine how many of the forty-five people sentenced to hang from 1718 through 1726 might have been convict servants will have to wait until another day.

<sup>46</sup> 1723, c. 23, *Md. Arch.*, XXXVI, 565-568. For the assizes, see Chapter 6, “Character and Competence,” Note 37.

<sup>47</sup> Provincial Court Judgment Record, Liber P. L., No. 7, pp. 385ff.; Liber W. G., No. 2, pp. 1ff., 115ff., 253ff., 395ff., 483.; Liber R. B., No. 1, pp. 1ff., 137ff., 203ff., 317ff., 425ff.; Liber R. B., No. 2, pp. 1ff., 173ff.

<sup>48</sup> *Ibid.*, Liber W. G., No. 1, pp. 462-463. The death warrants for three men who were hanged on 27 November 1726 and with whom our charts begin were issued on 26 October 1726 (Commission Records, 1726-1786, p. 1), and therefore these defendants appear to have been tried at the fall assizes.

<sup>49</sup> TNA (PRO), Colonial Office 5, Vol. 717, pp. 203-204, 204, 205, 207, 208; Vol. 720, pp. 194, 195, 197, 198. For Negro Hector, see again Chapter 5, “Income and Expenses,” at Notes 19, 21-23.

<sup>50</sup> Benjamin Cely, for example, was condemned in 1705 for breaking jail but ended up in Pennsylvania (Provincial Court Judgment Record, Liber T. L., No. 3, pp. 555, 566-566b; 1705, c. 4, *Md. Arch.*, XXVI, 512-513; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXII, No. 1210 (pp. 550-551); XXIII, Nos. 84 (pp. 40-41), 792 (pp. 388-389), 1113 (pp. 544-545), 1570 (p. 761), and Susannah Puckham — Mulatto Sue — , who in 1711 was sentenced to hang for the murder of her bastard child (Provincial Court Judgment Record, Liber T. P., No. 2, pp. 193, 300-301; *Md Arch.*, XXIX, 26; TNA (PRO), Colonial Office 5, Vol. 720, p. 117; TNA (PRO), *Calendar of State Papers: Colonial Series*, XXVI, No. 274), survived to be acquitted in 1717 of the alleged murder of another bastard child. Provincial Court Judgment Record, Liber V. D., No. 2, p. 382; Liber V. D., No. 3, pp. 75-76.

<sup>51</sup> Professor Michael Pfeifer of the John Jay College of Criminal Justice has found that the Espy File also understates the number of legal executions in Louisiana

after the Civil War. Message on H-Law, 20 September 2002, and e-mail to present writer, same date.

<sup>52</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPystate.pdf> (1608-2002), pp. 157-159.

<sup>53</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPystate.pdf> (1608-2002), pp. 157-158.

<sup>54</sup> Virlinda Stone, "Letter to Lord Baltimore," in John Langford, "A . . . Refutation of . . . Babylon's Fall in Maryland . . ." (1655), in Clayton Colman Hall, ed., *Narratives of Early Maryland* (New York: Charles Scribner's Sons, 1910), p. 266; John Hammond, "Leah and Rachel, or, the Two Fruitfull Sisters Virginia and Maryland" (1656), in *ibid.*, p. 305; J. Thomas Scharf, *History of Maryland from the Earliest Period to the Present Day* (3 vols.; Baltimore: J. B. Piet, 1879; reprinted Hatboro, Pa.: Tradition Press, 1967) I, 221; Bernard C. Steiner, *Maryland Under the Commonwealth: A Chronicle of the Years 1649-1658* (Baltimore: Johns Hopkins Press, 1900; reprinted New York: AMS Press, 1971), p. 100.

<sup>55</sup> Espy File, at <http://www.deathpenaltyinfo.org/ESPystate.pdf> (1608-2002), p. 158.

<sup>56</sup> For specific wording that shows that the victim of the gallows would be gibbeted only after he was dead, see Commission Records, 1726-1786, pp. 50, 86-87, 91, 104, 111, 114, 115, 119, 121, 183; Commission Records, 1726-1786 (orig.), pp. 30, 64, 104, 110, 127, 136, 139, 141, 145, 148, 182, 239, 240; Provincial Court Judgments, Liber P., L., No. 7, p. 161.

<sup>57</sup> In 1968 a set of irons was still preserved in Westgate Museum in Winchester, England. Personal visit.

<sup>58</sup> Commission Records, 1726-1786, p. 63; *Md. Arch.*, XXVIII, 302-303. On

1 June 1743 Governor Thomas Bladen ordered that death warrants be issued against Negroes Jack and Harry “for their Execution on the first of July next at or near the head of Seneca Creek, and that they be hung in Chains . . . .” *Md. Arch.*, XXVIII, 302-303. Clearly the hangings in chains came after the executions.

For gibbeting and quartering, see Chapter 6, “Character and Competence, at Notes 60-69.

<sup>59</sup> For Benjamin Cely and Susannah Puckham, see Note 50 above.

## Appendix B

### Bleeding Body

From the *Annual Register*, 3 November 1767, pp. 144-145:

The following extraordinary attestation of the coroner of Bergin county in New-England, was communicated by a gentleman of such credit, as leaves not the least doubt of its being genuine. “On the 22d day of September, in the year of our Lord 1767, I Johannes Demarest, coroner of the county of Bergen and province of New-Jersey, was present at a view of the body of one Nicholas Tuers, then lying dead, together with the jury, which I summoned to enquire of the death of the said Nichlas Tuers. At that time a negro man, named Harry, belonging to Hendrick Christians Zabriskie, was suspected of having murdered the said Tuers, but there was no proof of it, and the negro denied it. I asked if he was not afraid to touch Tuers. He said No, he had not hurt him, and immediately came up to the corpse lying in the coffin; and then Staats Storm, one of the jurors, said, ‘I am not afraid of him,[‘] and stroked the dead man’s face with his hand, which made no alteration in the dead person, and (as I did not put any faith in any of those trials) my back was turned towards the dead body, when the jury ordered the negro to touch the dead man’s face with his hand, and then I heard a cry in the room of the people, saying, ‘He is the man,’ and I was desired to come to the dead body; and was told that the said Negro Harry had put his hand on Tuers’s face, and that the blood immediately ran out of the nose of the dead man Tuers. I saw the blood on his face, and ordered the negro to rub his hand again on Tuers’s face; he did so, and immediately the blood again ran out of the said Tuers’s nose at both nostrils, near a common table spoonful at each nostril, as well as I could



judge. Whereupon the people all charged him with being the murderer, but he denied it for a few minutes, and then confessed that he had murdered the said Nicholas Tuers, by first striking him on the head with an axe, and then driving a wooden pin in his ear; though afterwards he said he struck a second time with his axe, and then held him fast till he had done struggling; when that was done, he awaked some of the family, and said Tuers was dying, he believed.

JOHANNES DEMAREST, Cor.”