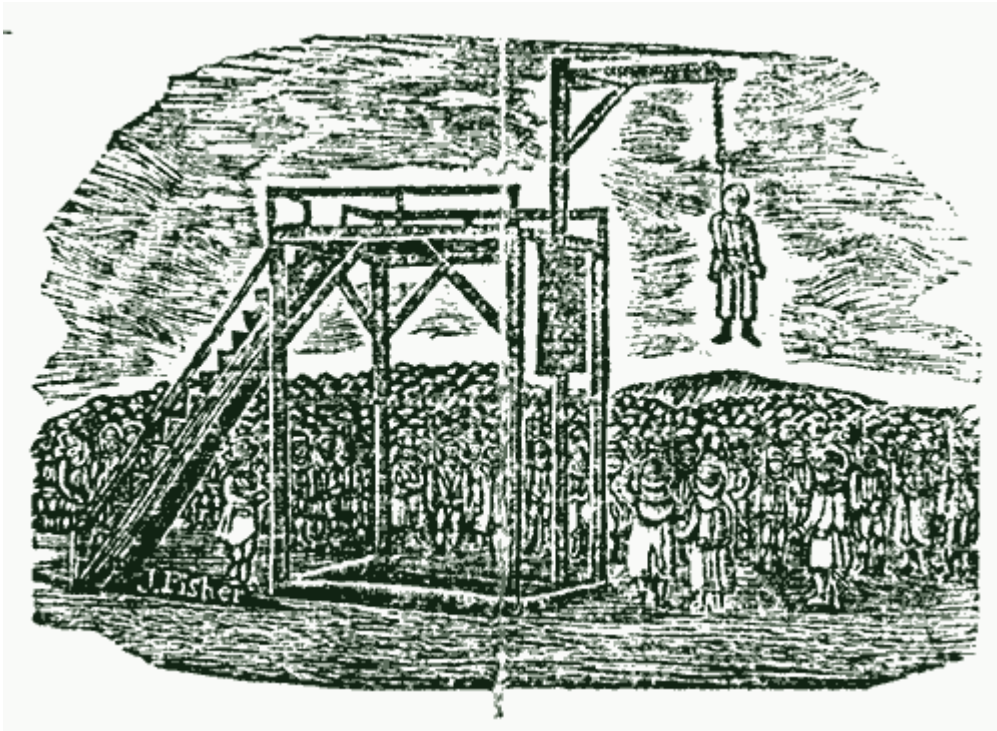


Incest in the Archives

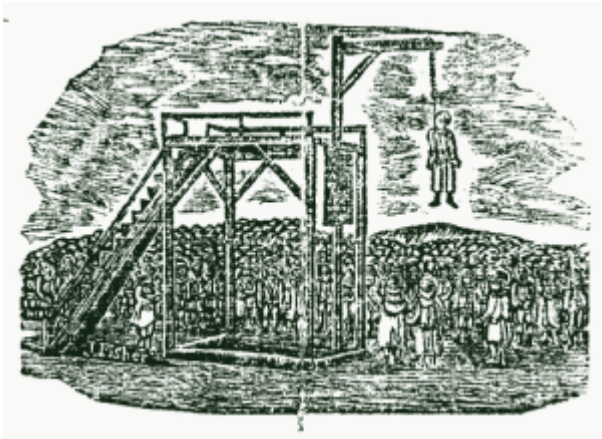


Thirteen-year-old Betsy Wheeler and her younger brother returned home on the afternoon of June 8, 1805. Earlier that day, enraged by a fight with his wife, Hannah, Ephraim Wheeler had commanded the children to leave with him. Now Betsy and the boy had come back unexpectedly. Betsy brought her father's newest orders that on the next day he planned to leave permanently with the children. The bruised and tearful child also privately told her mother that her father had raped her. Hannah asked her brother-in-law to go for the Justice of the Peace. The long, frightful day ended with Ephraim Wheeler's arrest. With her husband in jail, he could no longer threaten Hannah and her children.

All summer the girl persisted in her story. On Friday, September 13, 1805, the state of Massachusetts tried and convicted Ephraim Wheeler, a forty-three-year-old farm laborer, for rape. Five months later, despite pleas for mercy from Betsy, her mother and her brother, and a hundred Berkshire County voters, Wheeler went to the gallows at Lenox, Massachusetts, still protesting his innocence. The case of Ephraim Wheeler is the only known example of the conviction and execution of a father for the rape of his daughter in early America.

We came upon this astonishing story in a chance reference in a pamphlet published in 1809 in Pittsfield, Massachusetts. Two questions first provoked our interest. According to existing scholarship, Massachusetts's use of the death penalty for rape had ended a generation earlier. Moreover, on its face the case demonstrated an inversion of expected patriarchal power relations. Massachusetts, after all, had not executed anyone for rape in twenty-seven

years, and it had never executed a Yankee for the crime. Yet now, in 1805, the community took a daughter's accusation against her father so seriously that it sent a man to the gallows. What circumstances, we wondered, led to this extraordinary outcome? By investigating this disquieting story, we thought we might produce an article that would enlarge scholarly understanding of criminal justice and of family relations in the early republic.



Execution scene, Castine, Maine, 1811, by Reverend Jonathan Fisher. Image courtesy of the American Antiquarian Society, all rights reserved.

The Wheeler case was a likely subject for closer study because, in addition to newspaper coverage, it generated three pamphlets: a trial report, an autobiography of the criminal, and an execution sermon. These printed sources have supplied most of the evidence about the episode, but key questions could only be answered by archival research. First, we wanted to know more about Wheeler's family, and to verify his version of his life story from other sources. We especially wanted to learn about his wife, Hannah, the mother who stood by her daughter, both in reporting the crime and at the trial. Second, in order to grasp the meaning of Wheeler's trial and punishment, we needed to find out just how uncommon sexual prosecutions (rape, incest, sodomy) were in the early republic. Third, it was important to know why the Massachusetts authorities chose to hang Wheeler, and whether they considered other options. Finally, we wondered if Wheeler was truly the lone exception to the general understanding that after the Revolution the state stopped hanging men for rape.

To answer our questions we visited five kinds of repositories in Massachusetts: town offices, county land and probate registries, county court houses, the state archives, and specialized libraries and historical societies. Along the way we found answers to most of our questions, as well as surprises that revealed complexities in early republican Massachusetts that we had not imagined. We also learned that tracking the life histories of obscure, propertyless people who made frequent moves across town boundaries was exceedingly difficult and sometimes impossible. Students of New England history and genealogy expect to find their quarry in land and census records, tax lists, probate registries, and in church records. But because Wheeler was a

poor, unchurched farm laborer unable to maintain an independent household, he and his family moved from one town to another in search of work, and so appeared only occasionally in official records.

It was here, however, that we found our first great surprise: Ephraim's wife, whom we learned was Hannah Odel Wheeler, came from a mixed race family. Her father, Ichabod Odel, a veteran of the French and Indian and Revolutionary Wars, was identified in a handwritten notation as "Negro" in the manuscript censuses of 1790 and 1800. And when two of Hannah's sisters (who bore their husbands' names) died in the 1840s, the clergyman who recorded their deaths identified only one sister as "colored." During Wheeler's trial and thereafter, none of the printed sources said a word about race; but now we knew that by marrying Hannah Odel, Ephraim had entered a mixed race family. This fact gave us a deeper understanding of Wheeler's identity at the time of the marriage and during his troubled relationship with his wife.

Archival fragments also confirmed key parts of Ephraim Wheeler's autobiography. In the Rochester, Massachusetts, town hall we found a record of Jeduthan Hammond, the shoemaker to whom the orphaned boy was apprenticed in 1770. In the Bristol County probate records we found that Hammond's wife—the one person from Ephraim's youth whom he remembered favorably—had also been an orphan child. Hampshire County court records revealed that in the 1790s Wheeler called himself a "cordwainer" (shoemaker), the trade in which he had been apprenticed. This record, in which a farmer sued Ephraim for failing to fulfill a contract to clear three acres of woodland, also supplied independent confirmation of a key part of Wheeler's autobiography.

But the richest trove of records for us is preserved in the Massachusetts Archives in Boston. Some of these, especially the records of the Berkshire County sessions of the Supreme Judicial Court, we consulted while they were still housed in the county courthouse in Pittsfield. These grand, leather-bound folios are monuments to the importance that rulers placed on record keeping. Ordered from New York stationers (whose labels are retained in the volumes), they were handcrafted from the best materials, and the records are inscribed in an elegant, regular calligraphy. In the great folios of the Supreme Judicial Court the brown ink marches regularly across the brown pages, telling moving stories of real lives according to the formulaic wording of indictments and judicial rulings. It was here that we found the record of Wheeler's trial, as well as the records of surrounding cases stretching back to the 1790s and forward to the 1810s. Here we discovered two other cases where fathers were accused of sexual assaults on their daughters, and here, too, we found the record of Ezra Hutchinson, a young Yankee who was convicted of rape in 1813 and who, like Wheeler, was executed. Though the Wheeler case was unique, it became clear to us that charges of incest and of rape were merely unusual, not unknown.

No doubt the most varied, remarkable body of records we explored were the "Pardon" and "Pardons Not Granted" files of the governors, which we examined at

the Massachusetts Archives. Here a wide array of criminals—ranging from an aged, drunken woman who stole a hunk of beef from a butcher's cart to men and women convicted of murder—explained (often through the language of a lawyer) why they should be granted mercy and their punishments lifted or reduced. It was here that we found the four petitions that sought pardon or commutation of Ephraim Wheeler's death penalty. One petition came from Wheeler himself, and his X marked at the end demonstrated his inability to sign his name. Another came from Ephraim's wife and children, which led to the discovery that his mixed race wife, Hannah, could sign her name, though he and their children could not. (A facsimile of this petition with transcription is reproduced at the end of this article.) A third came from Wheeler's two court-appointed lawyers. And a fourth, bearing the signatures of ninety-four Berkshire County voters, argued that the death penalty was the wrong punishment for rape, and that Wheeler should instead be incarcerated for life in the brand new state prison. These petitions helped us understand that neither Wheeler's family nor his community regarded the death penalty as the only way to punish his crime.

Three other pardon cases proved especially significant for appreciating how state officials viewed Wheeler's case. Two concerned sexual crimes: a case of sodomy with a dog, and another involving the rape of a ten-year-old girl. In the sodomy case, which dated from 1797, 446 men petitioned to free the accused eighty-four-year-old physician who, his advocates claimed, was expert in curing cancer. In the rape case from 1802, 121 men asked that a dark-skinned young immigrant of the "Hindoo race" be deported rather than executed. In all, these two cases generated eleven variously worded petitions, and helped us to grasp the elements of a successful pardon plea.

One other successful pardon petition served to instruct us powerfully: that of a forty-four-year-old Yankee burglar whose death sentence the governor chose to commute to life in prison. Because this action was taken just five days before consideration of Wheeler's case, and because the decision rested on curtailing the use of capital punishment, an issue that the legislature had been debating for the past year, it demonstrated an alternative that officials and the public believed to be available in Wheeler's case.

Among the records of the governor's council we found one loose scrap of paper—a brief committee report on the Wheeler petitions—that could be only partly understood on the basis of surrounding records. Because the report was unsigned, there was no way to determine its authorship. All we knew was that its author was one of the nine governor's councilors. (A facsimile of this report with transcription is reproduced at the end of this article.)

We found the solution to this mystery, and some others, through the help of the staff and collections of the Massachusetts Historical Society in Boston's Back Bay. The MHS possesses a vast, well-cataloged collection of Massachusetts private manuscripts, and we asked for help in assembling known letters written by council members close to the year 1806. When we visited the spacious, oak-paneled library on Boylston Street, we found an unmistakable match in less than

half an hour. An added bonus included identification of the author of a key petition on behalf of the sodomist—none other than the convict's attorney and the future governor, Caleb Strong, the man who would rule on Wheeler's life.

No tale of archival labors would be accurate without reporting disappointments and dead ends. For us the most daunting was the paucity of information on Wheeler and his family in the public records, apart from the evidence generated by his crime. As a result, we could not trace Ephraim's wife and children after his death. A second disappointment was the absence of information in places where we expected to find it. One of Wheeler's judges was Theodore Sedgwick; and his daughter, Catharine Maria Sedgwick, wrote a story based on Wheeler's crime. Many letters of both Sedgwicks are preserved at the MHS, but we found none that referred to Wheeler's trial, his family, or any other aspect of his case. A third frustration is the also the mystery of the vanishing source. The Reverend Samuel Shepard, of Lenox, visited Wheeler in jail, preached his execution sermon, and witnessed his hanging. Surely the clergyman must have recorded something in the diary he is known to have kept. Perhaps so, but the diary, which was mentioned by a local historian in 1907, can no longer be located. No one can say whether it would illuminate our subject or even whether it still exists.

But now that our article length study has turned into a book length microhistory, tentatively titled *Deliver Us From Evil: Rape, Incest, and the Gallows in the Early Republic*, and scheduled for publication by Harvard University Press in 2002, we keep hunting and hoping. Indeed, only last week we found a record that three years before Betsy Wheeler accused her father of rape, an eleven-year-old girl in Lincoln County, Maine (then Massachusetts), charged her father, John Brown, with the same crime. Authorities jailed Brown, but court records (now kept in the vault of the registry of deeds in the courthouse in Wiscasset) show that the case never came to trial. This discovery, together with countless other archival fragments—of domestic conflict, criminal violence, and courtroom responses—enable us to understand how remarkable it was for Betsy to maintain her account of the rape through all the legal proceedings. At present we believe her perseverance was what made the case unique.

Petition of Hannah, Betsy, and Ephraim Wheeler Jr.

To his Excellency Caleb Strong Esq.
Gov. of the Commonwealth of Massachusetts and
the Hon^{ble} the Council of said Commonwealth.

Your unhappy petitioners, the
wife, and children of Ephraim Wheeler, now
under sentence of death for the crime of
Rape, committed on Betsey Wheeler one of your
petitioners, ~~and~~ his own daughter, approach
your Excellency and Honor with great anxiety,
in behalf of one who hath greatly injured us,
and implore your Excellency and Honor to
spare ~~his~~ ^{her} life, by inflicting such other punishment
as to your Excellency and Honor may seem fit
and proper. No injury however great, can obliterate
the remembrance, that Ephraim Wheeler is the
husband of one of your petitioners and the father
of the other two. Duty must require it, and
our feelings strongly urge, that the crime which
he committed and of which we were the immediate
sufferers, might not affect his life. Your
Excellency and Honor will feel, that when
we solemnly earnestly ask for the life of our
Husband, and our Father, we perform a
duty which nature points out, and that
we must remain in awful anxiety, until

until your Honor's determination shall
be known. Hoping and trusting that your
Excellency will be disposed to exercise that most
invaluable attribute, Mercy, we remain your
most unhappy and distressed petitioners.

Sept. 26: 1785

Mary ^{Wheeler}
Betsey ^{Wheeler}
Ephraim ^{Wheeler}

Petition of Hannah, Betsy, and Ephraim Wheeler Jr., September 26, 1805, Massachusetts Archives, Boston.

Transcription:

To his Excellency Caleb Strong Esq. Gov. of the Commonwealth of Massachusetts and the Hon. the Council of said Commonwealth. Your unhappy petitioners, the wife, and children of Ephraim Wheeler, now under sentence of death for the crime of Rape, committed on Betsey Wheeler one of your petitioners, being his own daughter, approach your Excellency and Honors with Great anxiety, in behalf of one who hath greatly injured us, and implore your Excellency and Honors to spare his life, by inflicting such other punishment as to your Excellency and Honors may seem fit and proper – No injury however great can obliterate the remembrance, that Ephraim Wheeler is the husband of one of your petitioners and the father of the other two – Duty must require it, and our feelings strongly urge; that the crime which he committed and of which we were the immediate sufferers, might not affect his life – Your Excellency and Honors will feel that when we ask, most earnestly ask for the life of our Husband, and our Father, we perform a duty which nature points out, and that we must remain in awful anxiety, [p. 2] until your Honors ['] determination shall be known – Hoping and trusting that your Excellency will be disposed to exercise that most invaluable attribute, Mercy, we remain your most unhappy and distressed petitioners. Sept. 26, 1805 Hannah Wheeler [Her own signature] her Betsey X Wheeler mark [Not the same hand as below] his Ephraim X Wheeler Junr. mark

Report of the committee on the pardon appeal of Ephraim Wheeler

The Committee to whom the petition of Ephraim Wheeler was committed, asks leave to report that on enquiring into the circumstances of the case they do not find any thing peculiar, either as the ground for granting the prayer of the petitioner unless questions as to the credibility of the principal witness in the trial should be considered such. It does not appear that the Court were dissatisfied with the verdict; but the Committee have reason to presume the contrary; yet from the different effect that the same evidence often has on different minds, perhaps, if the same evidence had on the trial were submitted to the Committee for a decision, perhaps they might doubt whether it would be perfectly safe to convict of so high an offence on such evidence.

Report of the committee on the pardon appeal of Ephraim Wheeler, n.d. [February 5, 1806], Massachusetts Archives, Boston.

Transcription:

The Committee to whom the petition of Ephraim Wheeler was committed, ask leave to report that on inquiry into the circumstances of the case they do not find anything peculiar as the ground for granting the prayer of the petitioner unless questions as to the credibility of the principal witness in the trial should be considered such. It does not appear that the Court were dissatisfied with the verdict; but the Committee have reason to presume the contrary; yet from the different effect that the same evidence often has on different minds, perhaps, if the evidence had on the trial were submitted to Committee for a decision, they might doubt whether it would be perfectly safe to convict of so high an offense on such evidence.

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Irene Quenzler Brown, a historian, is Associate Professor of Human Development and Family Relations at the University of Connecticut. Richard D. Brown is Professor of History at University of Connecticut.