

Legal Cultures of Early America

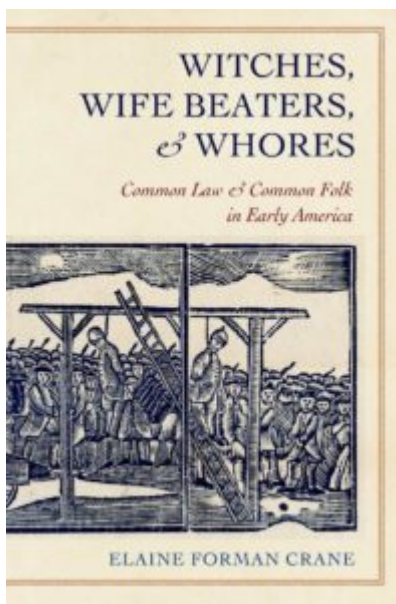
WITCHES, WIFE BEATERS, & WHORES

*Common Law & Common Folk
in Early America*



ELAINE FORMAN CRANE

When Thomas Harris's ghost appeared to his childhood friend William Briggs across a field one March morning in 1792, he set in motion a chain of events that produced a lawsuit. It is easy to understand why Harris's spirit was unable to settle down for eternity. Harris had left four illegitimate children as a result of a long-time connection with a woman named Ann Goldsborough. Eager to provide for their future, Harris instructed his brother James to sell his land and to use the proceeds to support the children. James sold the land, but pocketed the earnings, and Harris's enraged ghost set to work to solve the problem. Six visits persuaded Briggs that this apparition was indeed the specter of his old friend, and Briggs in turn used the information the ghost provided to pressure the living to follow the wishes of the deceased. Like any good friend seeking to redress a grievance in a world saturated with legal knowledge and with relatively easy access to courts, he filed suit in Queen Anne's County, Maryland, in 1796-1797.



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Thomas Harris's ghost is just one of the many fascinating characters readers encounter in Elaine Forman Crane's newest book, *Witches, Wife Beaters, & Whores: Common Law and Common Folk in Early America*. This enthralling, deeply researched work demonstrates vividly that early Americans lived in a world saturated by the law. Crane is interested specifically in the "common folk" of her title; tavern keepers, merchants, a handful of witches, murdered and battered wives, an enslaved black man. To uncover how the law suffused their world, Crane employs the methodology of microhistory, an approach used with great success by historians seeking to discern the lives and mentalities of those often not able to speak for themselves. Crane has undertaken research in challenging sources. Even more impressively, she has taken snippets of information and woven them into engaging, moving, and occasionally riveting stories. Crane demonstrates through her painstakingly recreated life histories

just how much “legal culture and the routine of daily life were knotted together in early America” (4).

Crane illustrates this thesis in six chapters that focus on different crimes in four distinct legal jurisdictions: the Dutch colony of New Netherland, the English colonies of Bermuda and Rhode Island, and the state of Maryland. Her first chapter examines slander cases in New Netherland, while her second chapter takes us to Bermuda, established as an English colony in the wake of the wreck of the *Sea Venture* in 1609. Bermuda experienced a witch hunt in the 1650s, and Crane analyzes the accusations launched against 12 people, five of whom were executed. Chapter three analyzes eight cases of family violence in eighteenth-century Rhode Island, in which four men were prosecuted for homicide in the deaths of their wives. Crane draws on trial depositions with great facility to illustrate the formal and informal legal solutions that friends and neighbors deployed to protect women from violent husbands. Chapter four explores a case of rape brought before the Rhode Island court. The incident allegedly happened on December 23, 1742, when a woman named Comfort Dennis Taylor traveled between Portsmouth and Bristol on a ferry navigated by a slave named Cuff. This chapter is an absorbing read. With Crane’s eloquent prose, her detective work, her judicious handling of problematic and contradictory evidence, and her willingness to speculate frankly about the case, this chapter would make ideal reading for an undergraduate methods class. Chapter five turns to the problem of debt, with a focus on the family of Samuel Banister, whose longstanding legal battles over debt payment in Rhode Island took a dramatic turn when he shot—and killed—a man accompanying the sheriff when he came to evict Banister in 1745. The final chapter takes up the story of Thomas Harris’s ghost and the complex family connections Harris’s case reveals.

Crane’s chapters illustrate several important themes. First and foremost is the legal knowledge that these seventeenth- and eighteenth-century North Americans and Bermudians possessed. For example, Samuel Banister knew just how to cope with repeated claims on his estate: he promised to repay and he delayed. This was the legal strategy his indebted father had also pursued. For the most part, Banister’s stalling worked—until he lost his wits and shot someone. Likewise, Taylor knew how a woman who had been raped should act, and she comported herself accordingly: she screamed for help in order to demonstrate that she had resisted her attacker; she quickly reported the attack; and she had bruises to show from her ordeal. John Middleton, one of the confessed witches in Bermuda, was similarly skilled in knowing how to make his confession persuasive. A Scot, Middleton was likely even more familiar with witchcraft than his English-born neighbors, but all of the island’s inhabitants demonstrated remarkable knowledge about witches, manifested in the many juries summoned to investigate the accused witches’ bodies for telltale marks, or revealed in depositions in which neighbors attested to the evil deeds surely attributable to the witch in their midst.

A second important theme is the role that growing literacy rates played in altering legal practice. While Banister’s primary difficulty was his inability

to pay his debts, the growing literacy of New England over the course of the eighteenth century made him more vulnerable to legal action. An earlier culture in which people trusted handshakes and memory had yielded to debts recorded in daybooks and a variety of paper records. Courts called for this book evidence when they adjudicated cases, and this paper trail proved damning to the likes of Banister. Literacy also played a key role in the saga of Harris's ghost. Thanks to their reading of the ghost stories that were so popular in the 1790s, Marylanders knew how ghosts were likely to comport themselves. By 1816, one could even read an article outlining the rules for ghosts' behavior.

A third important theme is the variations between colonial legal systems. Massachusetts, for example, passed a law in 1650 that ordered that neither wives nor husbands could strike each other—an unusual gender-neutral law on domestic violence. While Rhode Island had no such law, it did have another legal deviation: in Rhode Island (but not elsewhere in New England) courts could rely on circumstantial evidence if there were no eyewitnesses. A second example concerns Rhode Island's laws about rape. Colonies did not have laws about attempted rape, so Taylor's accusation of Cuff fell into a grey area. But in the midst of her legal struggles to get redress in any forum, the Rhode Island General Assembly passed a law in August 1743 that pertained to attempted rape by a black man and that could have been prompted only, Crane argues, by Taylor's ordeal (137). The law made attempted rape by a black man punishable by branding, whipping, and transportation. This law, and others like it in colonial America, racialized laws about attempted rape by assuming that any advance by a black man toward a white woman would be unwanted, and thus the man was automatically guilty of rape (129). The Rhode Island law provides strong evidence for Crane's argument "that law was implemented from the bottom up" (8). In light of these (and many other) important legal variations, it might have been helpful for Crane to devote more time in her book to a discussion of her selection of these particular jurisdictions.

There are many admirable attributes of Crane's study. She draws together jurisdictions not normally considered in tandem, with her choice of New Netherland, Bermuda, Rhode Island, and Maryland. This analysis required her to straddle different legal regimes, including both civil law and common law. Her research is deep and extensive. She combed a variety of local sources, from tax codes to maps to town records to church registers, to identify people and to piece together their lives. She even drove through a snowstorm to find out if one could really hear someone scream across Narragansett Bay in late December.

Crane draws on this impressive documentary base to speculate, something that is essential given the snippets of information she unearthed. She ponders what really happened when Taylor accused Cuff of rape. She tries to understand why Bermuda was beset with a witch hunt in the 1650s, and tests possible links to events elsewhere—a sodomy case in New Haven in 1653, or the rise of the Quaker movement in the mid-1650s. She wonders what William Briggs had in mind when he ventriloquized the words of Harris's ghost in his deposition. She tries to get to the bottom of Harris's relationship with Ann Goldsborough, combing local

records to identify this elusive woman, in order to find a way to characterize their relationship and to understand how this illicit relationship could endure through the births of four children. Some readers might chafe at the amount of speculation in this book, but Crane's stories are so inviting and her expertise so assured that it would be a disappointment if she did not try to tie some of the knots together for us. As she writes frankly, "speculation invites rebuttal" (202), and her honest appraisal of the problematic evidence allows readers to come to their own conclusions.

In the book's epilogue, Crane yokes the legal cultures she has described so vividly to the post-revolutionary United States. How, she asks, did these case studies foreshadow the later era? She posits that legal history can "offer a general interpretation of the American experience" (215). This conclusion seems apt in the respect that Anglo-Americans in the new United States, like their colonial ancestors, were deeply immersed in legal culture and familiar with many different aspects of the law. But it is difficult to discern how to connect these four jurisdictions with later U.S. legal cultures. Crane asserts, for example, that the stories in her book "confirm a connection between law and intrinsic American values" (10). What does this claim of American values mean in the context of the multiple jurisdictions Crane examines? Bermuda seems especially oddly placed, since it is American only in the sense of being in the western hemisphere, but not in the meaning that I think Crane invokes in her epilogue of pertaining to the United States. The legal code of New Netherland, based on Dutch civil law, was transformed under later English rule, and the Dutch colony's connection to the legal behavior or values of the later United States is similarly unclear. And which Americans? Cuff, for example, sits oddly here. Crane writes that Cuff's values were "at odds with early American society" (15). It is difficult to tell, however, if it was his unique values or simply his plight that shaped his response—flight from further legal proceedings—to his legal predicament. Crane's admirable book is likely to inspire many other studies that will help answer some of these important questions. In the meantime, she has blazed a trail with her exemplary study, demonstrating that it is possible to bring the dead to life even without the aid of a ghost. Instead, Crane offers us an engaging and detailed analysis of how ordinary people understood and deployed the law in the most adverse circumstances, drawing us in with stories that are sometimes heartbreaking, sometimes funny, sometimes confounding, but always intriguing and absorbing.

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