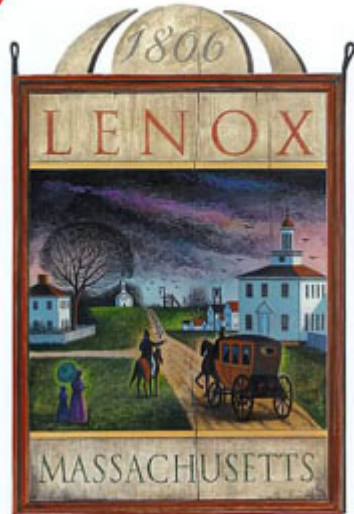


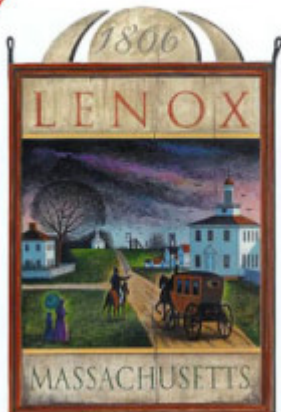
# Swift but Uncertain Justice

THE HANGING OF  
*Ephraim Wheeler*



IRENE QUENZLER BROWN and RICHARD D. BROWN

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The Hanging of Ephraim Wheeler: A Story of Rape, Incest, and Justice in Early America

Cases of trouble, as Karl Llewellyn and E. Adamson Hoebel called them in *Cheyenne Way* (Norman, Ok., 1941), define the bonds that hold community together. Rape and incest are always cases of trouble in our society. In early America, they tested the absolute authority of the father in the patriarchal family. Far more than any other crimes, rape and incest tell us much about power and powerlessness in the family. Irene and Richard Brown's remarkable

retelling of the case of Ephraim Wheeler proves Llewellyn and Hoebel's point.

The setting of this case was Berkshire County, in the far-western hills of Massachusetts. With woods of startling beauty cross cut by streams and valleys, Berkshire might have been an Eden. For its farmers, however, it was anything but a "sylvan paradise" (15). They saw not paradise but commodity, "timber, firewood, and fencing" (15). New arrivals jostled with the older settlers for land. The losers became day laborers on the winners' homesteads. A few Indians remained, and a handful of African Americans (one percent of the total population in 1790) had joined the natives on the margins of a largely English population. But Berkshire was not picky: "those who worked hard and behaved decently could be accepted on their merits" (16). Such were the Odels, a mixed-race family into which Ephraim Wheeler married.



Ephraim Wheeler and the Odels were people at the bottom of a society that still kept track of rank and order. Even on the old frontier, those who were at the top took pains to let everyone know. In town, "the conflict between gentlemen creditors and mortgaged farmers was often personal" (17). Only twenty years before, these conflicts had led to open rebellion, reprisals, and lasting animosity. Wheeler was one of the rebels. From where he stood, slouched in poverty, he could barely look up to the heights of political and legal authority. There, erect in posture, patriarchs, stood the judges of the Supreme Judicial Court. Simeon Strong, a Yale graduate and leading lawyer; Theodore Sedgwick, a second Federalist whose political rise had taken him to the Continental Congress and then the United States Senate; and Samuel Sewall, whose family had helped rule the colony and the state for a hundred years were the men who would sit in judgment of Wheeler, with his life in their hands.

On June 8, 1805, Wheeler allegedly raped his thirteen-year-old daughter Betsy. Though he was never a good parent or provider, his daughter still agonized before telling her mother what her father had done. Furious, Hannah Wheeler turned to trusted family members, and they, to the justice of the peace. Wheeler's incarceration was swift. For two days in September 1805, the Commonwealth of Massachusetts prosecuted and Wheeler's lawyers defended him for the capital offense. For the prosecution, state attorney James Sullivan, whose family background was little different from Wheeler's but whose fortunes were exactly opposite, thundered that Wheeler must be guilty. For the defense, local attorneys John Hurlbert and Daniel Dewey could not shake Betsy's testimony nor convince the jury that Hannah had ulterior motives for bringing her daughter's shame to light.



How then could this silent, violent, and alienated man defend himself? It is not clear from the surviving accounts what part Wheeler took in his own defense. His counsel could not call his wife (though as a party who had accused him, her spousal right not to testify could have been challenged). He did not

testify on his own behalf. He had the right to do so but could not be compelled, and defense counsel often keep their clients off the stand. Once sworn, they can be cross-examined, and their prior statements can be used to impeach their present testimony. In any case, the jurors knew him or his reputation and could see in his demeanor his immense hostility to all his betters.

The jurors did not deliberate long. Without meat, drink, or light, as was the custom, they reached a verdict—guilty of the rape—that under the current criminal code had only one penalty. They could have “mitigated” by finding guilt of incest only. In effect that would credit Wheeler’s defense of consent. It would save him from the noose. Juries often enough nullified harsh law by such means, and, in New England, courts allowed such jury discretion. But in this case, given the impact of Betsy’s testimony and the impression that Wheeler made on the jury, mitigation was unlikely. Found guilty by a jury from his own county of Berkshire, Massachusetts, Wheeler died by hanging on February 20, 1806.

Wheeler’s motive is hard to recover. Perhaps it was simply an irresistible impulse building over decades of sexual as well as social and economic frustration. Perhaps the real target was Hannah, a fault-finding and back-biting mate. Rape is always a crime about power. The Browns reveal that, according to the emerging reform criminology of that day, evil came not out of congress with the devil (an earlier view) but from prior experience. Piecing together Wheeler’s hard-knock life gains this monster a modicum of sympathy. Orphaned young, beaten and abused during his apprenticeship, he learned his passionate and harsh ways in a hard school. His marriage to Hannah Odel, whose parents were both white and black, did not make his life any easier. She never loved and rarely obeyed him, and she whined. She had good reason: he could not hold a job, left (or was thrown out) periodically, and surely abused her as well as his three children. Thus, naturally, his affections turned to his little mother, Betsy.

She was her mother’s helper, but her docility and desire to please, if natural, could easily be misread by a man who had trouble reading, in more ways than one. He tried twice before he succeeded in raping her. Both times she concealed her state, hoping, the Browns surmise, that each episode was the last. But abusers only grow bolder, and each time Wheeler was frustrated in his efforts to act the head of household, his subversive desires grew stronger. Finally, announcing that he would leave Hannah and take the two older children, he would no longer take “no” from Betsy for an answer.

The case was notorious in its time, for the capital crime and the sanguinary punishment. Wheeler, a tight-lipped man who could not read or write, gave an account of himself the night before he was executed. A local newspaperman sat through the trial and hired a note taker. The newspapers carried their own accounts. The daughter of one of the judges turned the story into a novel. The defense counsel, Hannah and Betsy, and ninety-three of Wheeler’s fellow

Berkshiremen petitioned Governor Caleb Strong and his executive council to commute the sentence. The Browns have researched every similar case and report that most often these petitions for reprieve from the death sentence were granted. This time, there was no reprieve. The nature of the crime and the absence of character testimony at the trial or in the petitions outweighed the antipathy of many for the ultimate sanction.

At the heart of the story is a darkness. While the Browns stretch themselves to see into the heart of the man, to gain for him and for the reader some empathy, he remains an incestuous father and a rapist. The Browns, both accomplished historians, must rest with the obvious conclusion, "Ephraim Wheeler was a vicious man, but still a man" (290), entitled to this one more day in court.



Wheeler's story still has the power to shock, but it is hardly unique. What makes this retelling so valuable is that Wheeler's crime and the historical record his trial created throw light on a world too often hidden. History affords little scope to those who could not read or write and hence left no documentary or anecdotal evidence of their passing. They wrote their lives on water and sand. But those lives can be surmised, weighed, and assessed nonetheless. The Browns pour over all the sources, peer into their corners, lift their edges, and when documentary evidence ends, make astute surmises. "We do so in order to better understand the meaning of the events" (10). This venture into what may be called novelesque historical interpretation, recently made popular by John Demos's *The Unredeemed Captive* (New York, 1994), is increasingly popular among microhistorians.

The genre of crime stories has grown large. Individual cases—such as those discussed in Elaine Forman Crane's *Killed Strangely* (Ithaca, N.Y., 2002) and John Ruston Pagan's *Anne Orthwood's Bastard* (Oxford, 2002), for example—and crime waves—such as those discussed in Peter Charles Hoffer's, *The Great New York Conspiracy of 1741* (Lawrence, Kans., 2003) and Jill Lepore's *New York Burning* (New York, 2005)—illuminate the dark corners of our founders' world. Though many would prefer to celebrate our history uncritically, saving their criticism for the scholars and teachers, these cases reveal the underside of life.

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