Chapter 8

"To fix [their] character... in virtue and innocence"

The Regulation of Irish Women's Sexuality on the Southern Avalon

An important indicator of patriarchal domination in a society is the degree to which it seeks to regulate women's bodies in terms of marriage, sexuality, and reproduction. So what efforts were made to constrain Irish womanhood on the southern Avalon—by plebeian culture, by the local middle-class community, by the Catholic Church—and how effective were Irish women in negotiating control over their own sexuality in the period of early settlement? The court records of the southern district and the diary of Robert Carter Jr., a magistrate in Ferryland, provide a backdrop as a striking scene from the life of an Irish Newfoundland woman, Peggy Mountain, emerges from their pages.[1]

Peggy was the focus of an episode in the mid-1830s that began as a matrimonial matter in the local court but escalated into a public shaming incident. In early December of 1834, she brought her husband, Michael, before the local magistrates for desertion. Peggy was pregnant, and the court ordered that Michael support her and the expected baby; arrangements were to be made with a Patrick Welsh to take her into his home for the winter, at Michael's expense. Michael initially indicated his willingness to comply "as well as his ability would allow," but the very next day, he reneged on his promise, "by order of [Catholic parish priest] Father [Timothy] Browne." The priest's influence was obviously very strong, for Michael held his ground, even when the magistrates ordered that he be put in jail on bread and water for a month for contempt of court. Meanwhile, Peggy was temporarily placed at a local public house owned by Michael Devereaux, but Father Browne, "under threat of the highest nature he could inflict," ordered that the woman be removed, and as there was no other shelter available, she was placed in the local jail. Carter was taken aback by the activities of Father Browne, noting: " The Priest is inveterate against a poor unfortunate female under his displeasure and against whom he appears to direct his greatest malice and enmity… How such conduct will end let time decide."

Matters came to a head rather quickly. Peggy was very ill, and while her food allowance from the magistrates was generous, the accommodations were extremely uncomfortable, and the jailer reported that there were no coals for heating her cell.[2] Still, the priest did not relent, but spoke out against Peggy in the chapel and wrote an open letter against her that was read publicly at the jailhouse. In the meantime, the local magistrates arranged for a Mrs. Cahill to attend Peggy in the jail. Peggy finally gave birth to a daughter on a night so cold

that the ink froze in Carter's office and the bread froze in his storeroom. The child survived only a few hours. Peggy was then moved to Mrs. Cahill's house, but again, the priest ordered that she be removed, and finally Carter himself took her in. Several days later, she left for St. John's in the *Water Lily* and slipped quietly out of the annals of the southern Avalon.

This vignette raises as many questions as it answers. Why was the priest so angry at Peggy? Did he blame her for the breakdown of the marriage? Did he suspect that the coming child was not her husband's? What threat did he perceive in Peggy's continuing presence in the community? Although we are never told the specific reason for the shaming and ostracism of Peggy Mountain, we are left with a very strong impression that central to the issue was the priest's anxiety over "aberrant" female sexuality. Especially intriguing is the sharp contrast between the responses of the local magistrates and the priest to Peggy Mountain's circumstances, for these offices represented two important mechanisms for patrolling the boundaries of women's sexuality:[3] the legal system and formal religion.

As Newfoundland was a British fishing station and then colony in the period of this study, an examination of hegemonic discourses on female sexuality in eighteenth- and nineteenth-century Britain provides context for the discussion.[4] Within the English common-law tradition by the eighteenth century, patriarchal concerns about inheritance and the legitimacy of heirs had produced a legal regime that viewed women as virtual possessions of fathers or husbands. Women—like children, servants, and other dependents—were deemed to be incapable of controlling their bodies, their skills, and their labor. In particular, the chastity value of wives and daughters—their capacity to produce legitimate heirs—required protection. At the same time, Enlightenment thought was challenging the association of sinfulness with sexuality that had been the legacy of seventeenth-century Puritanism. Yet men and women did not have equal access to the emerging sexual freedom of the age. Enlightenment men acknowledged female sexuality, but feared that in an uncontrolled state, it would pose a threat, not only to property and legitimacy, but to the very foundation of the social order itself, because of its capacity to debauch the abstracted, rational (male) individualist who was at the core of civic virtue. The safest channel for female sexuality was, therefore, marriage and motherhood; female domesticity was glorified, while the division between the (masculine) public and (feminine) private domains intensified.

These discourses developed further within the context of late eighteenth-century and early nineteenth-century evangelical Christianity as it molded middle-class ideals of female domesticity, fragility, passivity, and dependence. Female

sexuality was further constrained as middle-class ideology fashioned a dichotomized construction of woman as either frail, asexual vessel, embodied in the domesticated wife and mother, or temptress Eve, embodied in the prostitute. Yet both constructions—respectable wife/mother and "fallen woman"—were necessary to satisfy an "uncontrollable" male sexuality; and even the sexually passive wife and mother required regulation within the context of marriage and family in order to safeguard property and legitimacy. The ideology of separate spheres intensified. Women who occupied spaces deemed to be public, or who demonstrated a capacity for social or economic independence, even physical hardiness, were increasingly seen as deviant.

Overt female sexuality was particularly problematic, for it "disturbed the public/private division of space along gender lines so essential to the male spectator's mental mapping of the civic order."[5] Furthermore, as the nineteenth century unfolded, male sexuality, although discursively constructed as "uncontrollable," was increasingly cordoned off into a biological function separate from rational masculinity, while female sexuality, by contrast, took a central position in the construction of womanhood. Woman became consumed by her sex, and legal, medical, and scientific discourses embellished the construction of woman as "the unruly body," problematic by her very biological nature and requiring increased monitoring and regulation.

Such understandings of femininity were spilling over into Newfoundland society through its British legal regime and emerging local middle class. And in the Newfoundland context, these perceptions of female sexuality and respectability took on ethnic undertones, as official discourse constructed the Irish woman immigrant as vagrant and whore, a "problem" requiring special regulation. The unmarried Irish female servant required particular monitoring, for her social, economic, and sexual agency flouted middle-class feminine ideals of fragility, economic dependence, and sexual passivity. But how did these constructions of womanhood play out on the southern Avalon of Newfoundland, where community formation was still in its early stages and where gender relations were still contested terrain? And how were they received within the essentially plebeian Irish community of the area?

In Britain, middle-class ideals of female domesticity, respectability, and sexual restraint were adopted and refashioned by the working class during the nineteenth century to support their own bid for respectability in the Chartist movement and to satisfy the male-centered agenda of trade unionism. Furthermore, the British middle class encouraged this development of a working-class respectability—one that imitated middle-class ideals while maintaining sufficient difference to preserve class boundaries. Similar processes took place in Ireland, where women workers were sidelined by the spread of

capitalist agriculture, while the aspirations of an increasingly "respectable" farming class meshed with Catholic Church discourses on femininity in restricting female sexuality. But did such processes occur on the southern Avalon?

Irish Womanhood within Plebeian Culture on the Southern Avalon

As earlier chapters have demonstrated, Irish plebeian women enjoyed considerable status and authority based on their vital contributions to early community formation and the social and economic life of the area. Their presence provided the basis for population permanence, and matrilocal or uxorilocal residence patterns featured strongly in shaping the contours of settlement. These women played an essential role in the almost total assimilation of the old English planter society into the Irish Catholic community, and they further reinforced the identity of their ethnoreligious group as spiritual guides in both formal Catholicism and a concurrent, ancient system of beliefs and customary practices. They were also an integral force in economic life: as service providers to the fishing population, as mistresses of fishing premises, and increasingly, as essential members of the shore crews of family production units in the fishery. Their vital economic role was reflected in customary testamentary practices that adhered to a relatively gender-inclusive system of partible inheritance, contrasting with the English practice of primogeniture. Women also participated in the politics of interpersonal confrontation, wielding power through verbal wrangling and physical violence in collective actions and individual interventions that were commonplace mechanisms for informal conflict resolution during the period.

It is evident, then, that within the plebeian community of the southern Avalon, Irish womanhood was not engulfed by the constraints of feminine ideals of passivity, fragility, and dependence. Nor was it readily channeled into formal marriage. Yet marriage was a key site for the regulation of female sexuality within the English common-law tradition and British middle-class ideology. In marriage, a woman was accessible to male sexual needs and could fulfill her destiny as reproducer of the race; yet her sexuality could be safely constrained within her roles of respectable wife and mother. Indeed, a woman's entire person was subsumed within marriage. With the adoption of the principle of *marital unity* in English common law, husband and wife became one legal entity in the person of the husband. Furthermore, the husband had sole rights to his wife's services, both domestic and sexual (the latter again reflecting a concern for patrilineal inheritance and the legitimacy of potential heirs). But while the formal marriage was institutionalized as the proper means of ordering society, within plebeian and working-class communities in the British Isles, informal marriages (for example, broomstick weddings,[6] smock weddings[7], handfasting[8]) and common-law relationships (for example, *living tally*) were not only tolerated by local

communities, but seen as legitimate forms of family relationships.[9] The acceptance of these arrangements reflected a less intense concern about property, legitimacy, and inheritance than existed among the middle and upper classes, although the latter groups brought increasing pressures to bear to reform marriage law and standardize marriage practices from the eighteenth century onwards.

Within the predominantly Irish plebeian community on the southern Avalon, such informal arrangements were similarly seen as acceptable. Indeed, this level of comfort was rooted in cultural tradition, for a different understanding of gender had evolved in Gaelic Ireland than in England: one in which traditions of communal property and partible inheritance contrasted with English preoccupations with private property and patrilineal inheritance; one in which the chastity requirement for wives and daughters was muted; one in which tolerance of informal marriage and divorce, illegitimacy, and closer degrees of consanguineous marriage deviated from English norms of sexual behavior.[10] Of course, this system of understanding was eroded over time by the incursions of English law and custom and an increasingly centralized and patriarchal Catholic Church. Yet even through the early decades of the nineteenth century, the Catholic Church in Ireland was struggling to control the still prevalent practices of cohabitation and informal marriages—with limited success in most rural areas, since non-compliers were operating within local community norms.[11]

There is no surviving evidence that customary marriage mechanisms—such as the *couple beggar*, the *runaway match*, the elopement, or the abduction—were transferred from Ireland to the southern Avalon,[12] although it could be argued that the "strolling priests" that plagued Prefect Apostolic (later Bishop) James O Donel in the early years of his mission at Newfoundland may have fit the bill of couple beggars.[13] While marriage according to the rites of the Church of England was the legal standard until 1824, marriages solemnized by Catholic clergy were acknowledged, and those performed by laymen, such as justices of the peace, were permitted in the absence of authorized clergy.[14] So there was a range of options available to the Irish plebeian community of the southern Avalon in the early years of settlement. Certainly, some marriages were performed by magistrates and ship captains; and in the absence of Catholic clergy, some semblance of a religious ceremony was performed by lay-people, including women. But a number of couples simply cohabited, in both long- and short-term arrangements. In 1789, Father Thomas Ewer, the Catholic priest stationed at the new Catholic mission in Ferryland, complained of the irregularity of marital arrangements in his parish.[15] What Ewer was observing were frequent incidents of common-law relationships and informal marriages, separations, and divorces in the area—part of a marital regime that kept fairly loose reins on female sexuality

and, in effect, freed a number of women from the repercussions of coverture.

It is difficult to calibrate the extent of such relationships on the southern Avalon, given the lack of recording in this early period. However, the 1800 nominal census of 166 family groupings in Ferryland district suggests the existence of up to thirty-three such relationships (20 percent of the total), either at the time of the census or in the recent past (see Appendix D for discussion). References to informal arrangements also appeared occasionally in court hearings and governors' correspondence. As part of the process of obtaining a grant in 1750 to Pigeon's Plantation in Ferryland, for example, Elizabeth Gobbet, who had lived with Elias Pigeon before his death, had to swear to the court at Ferryland that she was not currently married to one John Allen, but that they were "only keeping company together."[16] In a 1757 petition for maintenance, Elinor Coombs of Bay Bulls complained to Governor Edwards that her husband of one year, Michael, had been "persuaded" by Ellen Williams "to Quit his Wife and live with her which he at present Continues to do."[17] In 1759, Henry Tucker petitioned the governor for title to a plantation in Ferryland that had belonged to his deceased mother. The property was then in the possession of one Thomas Power, with whom his mother had been living "in the state of incontinency without being married to him."[18] In 1787, Hannah (Carney) and William McDaniel attested to the local court that they were not actually married but living together under common law.[19] In 1802, Mary Stokes of St. Mary's sued William Kearney for her deceased mother's possessions because William and her mother had not been married but merely living "in adultery."[20] Such arrangements were not uncommon, and they were accepted by the local population (unless individual, material advantage could be gained by censure in formal petitions and civil actions), especially when children were cared for in stable family relationships and did not become a charge on the community.

Even Irish plebeian women who entered into formal marriages on the southern Avalon were not readily constrained by gender ideology because of the power they derived from their vital role as co-producers in family economies. Like their counterparts in eighteenth-century rural Ireland, married women had considerable input into family and community decision-making, wielding power both within and outside their households. In both cultures, the bounds of female "respectability" were reconciled with women's social and economic agency, and women (married and single) worked and socialized—even fought, smoked, and drank—in public areas.

In general, then, middle-class anxieties about regulating female sexuality did not easily insinuate themselves into Irish plebeian culture on the southern Avalon because they did not mesh with the exigencies of day-to-day life. And plebeian women's status during this period did not erode dramatically on the southern Avalon as it did in rural Ireland, where the marginalization of women from

agricultural work and the collapse of both the domestic textile industry and the potato culture—processes that had begun by the early nineteenth century—led to a depreciation of women's economic and social status. Along the southern Avalon, by contrast, women's value as essential producers in the fishing economy, as well as reproducers of family work units within that economy, remained intact and forestalled any masculinist project within plebeian culture to circumscribe their lives.

But what efforts were made by local middle-class administrators, merchants, and churchmen to rein in plebeian womanhood on the southern Avalon? To examine the question, let us return to two key players in the Peggy Mountain story: the court system and the Catholic Church.

Irish Plebeian Womanhood and the Court System

Within the British legal tradition, the court system—a patriarchal regime dominated by male legislators, judges, lawyers, and juries—was one of the chief mechanisms for the regulation of female sexuality.[21] However, it is important to recognize women's agency within this framework and to anchor their experiences in specific historical contexts. We have already seen that plebeian women were a significant part of the court life of the southern Avalon, using the courtroom as one of several alternative venues for conflict resolution. Their visibility in the formal court system and the pragmatic treatment they often received at the hands of magistrates in the area suggest that the legal milieu—at least at the local level—may not have been as inhospitable to women as it was in many other British jurisdictions. And a sharpening of our focus to matters dealing specifically with female sexuality still reveals a fair degree of *laissez faire* on the part of local magistrates in monitoring plebeian womanhood in the study area.[22]

Seduction and Paternity Suits

Seduction law in the eighteenth and early nineteenth centuries fit comfortably with constructions of female sexuality as passive and woman as virtual possession. The tort was based in the English common-law principle that a master could sue for the loss of a servant's services due to injury. The action, usually taken against a recalcitrant suitor or an employer who had compromised a female servant, could only be initiated by a woman's legal guardian (usually her father), not the woman herself. The guardian, not the woman, was considered to be the injured party in the action, and damages were evaluated in terms of *the guardian's* loss of a daughter's domestic services during pregnancy and lying-in, not in terms of *her* pain and suffering or reduced social and economic expectations.[23]

The seduction action was not uncommon in other British and American jurisdictions. It is intriguing, then, that only one case survives in the court records for the southern Avalon. On 4 October 1827, Catharine Delahunty complained that James H. Carter had seduced her daughter Ellen, and she asked for compensation for the loss of Ellen's services in the amount of £100. (As Ellen's father had been dead for sixteen years, her mother was the proper legal personality to initiate the suit.) Ellen herself appeared at the trial as a witness. She told the court that, for the past year, Carter had persistently courted her attention, first by offers of work—knitting socks, cutting sounds on the stage head—and then by more romantic dint of arranging assignations in the forest to cut firewood. According to Ellen, on their second excursion into the woods, Carter had "used some liberties"; she had resisted his advances, but he had succeeded in having "connexion" with her. The couple went on several more woodcutting expeditions, and eventually, Ellen became pregnant. Her mother claimed that Ellen had been unable to carry out her duties from the seventh month of her pregnancy onwards, that her recuperation from childbirth had been slow, and that her capacity to work thereafter had been reduced as a result.

Ellen's sister, Catharine Kelly, appeared as a witness for the defense, claiming that she had recently had to warn Ellen against "walking with Robert Brine… a married man." Her mother countered with character witness Martin Conway, who swore that he had "never seen Ellen Delahunty conduct herself differently from what well behaved Girls in her situation in life do." The effort by the defendant to present Ellen as an "unchaste" woman would not have disproved Catharine's suit, as the action was for compensation for loss of household services only; however, he may have been hoping to lower the valuation for Ellen as "damaged goods." Certainly, the jury awarded far less than the £100 pounds sought by Catharine, but the assessed damages—£ 30 Cy.—were still substantial for the period, and a significant award for this particular court.[24] Indeed, given that seduction suits generally garnered higher damages than paternity suits, and given that James Carter was a member of a wealthy middle-class family in Ferryland, Catharine and Ellen demonstrated a fair degree of legal savvy in proceeding in this manner. No local awards under the bastardy law approached £30 during the period. Case File 33

Still, the bastardy action provided another option for pregnant women who wished to make reluctant fathers live up to their paternal responsibilities. Unlike the seduction suit, the bastardy action was initiated by the woman herself. Backhouse says that in Canada, such proceedings were neither as prevalent nor as successful as seduction actions. But on the southern Avalon, the bastardy suit was the more common approach—suggesting, again, a degree of female agency within the local legal milieu. Court records reveal nine bastardy cases for the period. Granted, this number is not overwhelming, and suggests that either there were other, informal

community mechanisms operating on reluctant fathers, or that single mothers on the southern Avalon had better social and economic prospects (for example, reasonable expectations of work, future marriage, or family support) on the southern Avalon than elsewhere.[25] Audio Sample Perhaps the mere threat of legal action encouraged some fathers towards financial or marital commitment. Still, it is significant that, when less formal methods failed, these nine women were willing to take the public and political action of bringing the purported fathers of their children to court, and that in doing so, they acted as autonomous legal entities rather than legal dependents.

The final disposition of these cases appears in only six of the nine records: in all six, support for the child was ordered; and in three of these cases, the mothers were also awarded lying-in expenses. In April of 1791, for example, Catherine Oudle (also Audle), a single woman of Ferryland, appeared before the magistrates and named John Murry Sr., a fisherman of Ferryland, as the father of her unborn child. Case File 34 The court immediately ordered Murry to appear before them and give a bond for the maintenance of the child. Catherine gave birth to a boy on 22 April, and on 25 April, the court issued an order of filiation and maintenance. Murry may have disputed the paternity of the child, for the wording of the order indicates that he "hath not shewd sufficient Cause why he should not be the reputed Father of the Child." Nonetheless, the mother's affidavit prevailed, and Murry was ordered to pay the following support and expenses:

… the sum of ten shillings… toward the Laying in of the s^{d}. Catherine Audle & y^{e} maintenance of y^{e} s^{d}. Child, to the time of making this Order… the sum of two shillings weekly & ever[y] week from this present time for the maintenance of the s^{d}. Child—so long as the Child shall be chargeable to the s^{d}. Harbour… And… weekly & ever[y] week y^{e} sum of two shillings & sixpence, in Case the s^{d}. Catherine Audle shall not Nurse or take Care of the Child herself.[26]

That same year, Manus Butler admitted to fathering the child born to Elizabeth Carney (likely of Ferryland) the previous August. Case File 35 The court was very thorough in its support order for £9.19.6, detailing expenses for a midwife's attendance (£1.1.0), nursing services for a childbed illness suffered by Elizabeth (£2.2.0), and the nursing and clothing of the child from its birth the previous August to the May court hearing date (£6.16.6). The following week, the magistrates ordered continuing maintenance for the child in the amount of 3s. 6d. per week.[27]

There is no indication that either the mother's character or her sexual history was called into question in these cases. In addition, the mother's word seemed sufficient to establish paternity, although in three of the nine cases, the fathers also admitted the claim. In four of the cases, the purported fathers had already left the district, although this was usually before the bastardy claim was actually made, reflecting again the transience of the male fishing population. In one more dramatic case, a reluctant father, William Walsh, ran from the courtroom and later successfully resisted arrest by brandishing a large knife at the two constables who had been sent to fetch him back. While Walsh was not apprehended, several of his companions were later fined for helping him escape justice.[28] Indeed, the court took pains to arrest absconding fathers or, if unsuccessful, to attach any wages remaining in the hands of employers in the district. Of course, the magistrates were primarily concerned that mother and child not become a financial burden to the community, as evident in the stock phrasing of various sworn complaints "that the said bastard Child is likely to become chargeable to the Port of ------."[29] But the bastardy law provided women with some recourse to financial assistance and the opportunity to act as independent agents in the court. Furthermore, local magistrates were receptive to their claims and made reasonable efforts to have fathers acknowledge their responsibilities.[30]

Infanticide and Concealment of Birth

The vast majority of defendants in infanticide and concealment of birth cases in British and colonial courts shared a similar profile: they were young, unmarried, plebeian or working-class women, very often servants. Most of these women, already caught in difficult socioeconomic circumstances, acted out of fear of the social disgrace and reduced employment prospects that unwed motherhood would bring. Courts were generally disinclined to prosecute, and juries, reluctant to convict on infanticide charges. The lesser charge of concealment was more often successfully tried, but even in these cases, the court often demonstrated a certain tolerance, or at least an understanding, of the desperation and limited options that motivated the mothers' actions (although sentences for mothers convicted of concealment in Newfoundland were generally heavier than those meted out in Canada).[31]

Remarkably, no cases of infanticide or concealment of birth survive in the court records from the southern Avalon.[32] It is unlikely that local courts would have turned a blind eye to such matters. However, as noted earlier, illegitimacy was not stigmatized within the Irish plebeian tradition on the southern Avalon. Family or community support often cushioned the hardship of illegitimate births, and single plebeian mothers were thus in a stronger position to survive socially and economically than those elsewhere, especially in urban areas. Furthermore, given

the responsiveness of local magistrates, plebeian women had access to the court system to seek financial assistance from reluctant fathers. These factors may have lowered the fear of unwed motherhood and provided some preventative to infanticide on the southern Avalon.

Prostitution

The manifestation of female sexuality that most invoked patriarchal anxieties about the moral order was prostitution. More than any other woman, the prostitute, with her blatant sexual agency, flouted middle-class constructions of female passivity and threatened the rationality and self-control that defined middle-class masculinity. Furthermore, by conducting her business in public, she transgressed the careful ordering of public and private spheres. Yet, ironically, courts in British jurisdictions often treated prostitutes with a degree of tolerance, seeing them as a necessary social evil; they were an essential component of servicing an "irrepressible" male lust that was beyond the capacity of "respectable" wives and mothers. Thus, only the most outrageous examples drew harsh disciplinary responses from the legal system.[33]

Intriguingly, no evidence survives in the court records of the southern Avalon of any specific charges laid against women for prostitution or even the catchall charge, vagrancy. On the surface, this suggests that there was a dearth of concern among local constables and magistrates about women of "ill repute." There were, however, two sexual assault cases in which the court did take action against female complainants who were deemed to be threats to the moral order. In 1773, for example, Mary Keating accused Stephen Kennely of attempting to sexually assault her. He had come into her house, she claimed, and "sat upon the Bed after her husband went out… [and] treated her in a barbarous and cruel manner wanting to get his will of her." Kennely would have killed her, Mary claimed, had not one John McGraugh prevented him. However, a number of Ferryland's "principal Inhabitants" (a term that referred to those of higher socioeconomic rank) testified that the Keating house was a "disorderly house" where they entertained "riotous friends"; the defendant, Kennely, by contrast, was represented as "a man of an Honest Character." On the basis of these character profiles, the magistrates ordered that Mary and her husband be "turned out of the country."[34]

The court took similar action against Catharine Power of Renews, a woman "notorious" for her drunken and promiscuous behavior, when she complained of a sexual assault in 1806. Catharine alleged that William Deringwater (or Drinkwater) had entered her house sometime between 10:00 PM and midnight while she was sleeping and had assaulted and "ill treat[ed]" her. The jury, however, was

not convinced by the "unsoported solitary deposition" of this "woman of infamous character." Furthermore, a defense witness swore that he had put Catherine to bed intoxicated earlier in the evening, and three others testified that Deringwater had been at his own home at the time of the alleged assault. The court acquitted the defendant and ordered that the plaintiff, Catharine, be sent back to Ireland at the first opportunity.[35] Case File 36

The most intriguing aspect of each of these two cases is the order for removal of the complainant. As noted earlier, local courts issued sentences of transportation to the home country with some regularity in cases involving property crimes, especially in the eighteenth century. However, in terms of breaches of the peace or crimes against the person, an order of deportation was generally issued only in the most extreme cases of violence or riotous behavior. The banishment of Mary Keating and Catharine Power therefore suggests that the behavior of these women of "infamous character" was similarly seen as an extreme threat to the moral and social order—that, despite a generally relaxed attitude towards the conduct of plebeian women, there were some boundaries set for their sexual behavior by the middle-class magistrates and "principal inhabitants" of the southern Avalon.

Rape

While plebeian women on the southern Avalon were often aggressors as well as victims of physical violence in the study period, the status of rape victim was exclusively a female preserve in eighteenth- and nineteenth-century courts. Incidents of rape, like other forms of male violence against women, are seen as indicators of unequal power relations between men and women. It is again intriguing, then, that only eight cases involving complaints of rape or assault with intent to commit rape survive in the local court records from the period. Of course, such incidents were likely under-reported; however, women's ability to fend for themselves in physical confrontations and the respect they generally enjoyed within the plebeian community may have acted as deterrents to sexual assault. Of the eight reported cases, three resulted in guilty verdicts and three were dismissed; in another, the defendant was cleared of the rape charge but found guilty of a common assault; any record of the disposition of the remaining case has not survived. Two of the three dismissals emanated from *Keating v. Kennely* and *Power v. Deringwater* (discussed above), but there is insufficient detail in the records on the third case to determine the reason for discharge.[36]

Although this conviction rate seems middling in comparison to that for other assault matters in the area, the rate was quite high in comparison to rape convictions in other British jurisdictions of the day. Certainly, in the cases

resulting in guilty verdicts, there appears to have been a level of responsiveness to women complainants on the part of the magistrates and juries. Corroboration was obviously not essential to proving the charge, for in only one of the three cases—the attempted rape of Mary Jenkins—did the complainant provide a supporting witness. In the Jenkins matter, the main offender had absconded and could not be brought to trial, but two of his companions were deemed accessories and ordered to pay fines (£1 each) and actual compensation to the victim (£2 each)—an unusual resolution of an assault case for this particular court. Even the witness for the complainant—a timid shoemaker who had been present in the house at the time of the attempted rape—was fined for not rendering assistance (an early "good Samaritan" ruling).[37] Case File 37 In the other two cases ending in convictions (in 1829 and 1841), the defendants were given prison terms of twelve months and one month, respectively.[38] Both attacks—but particularly the 1829 assault, in which the defendant violently beat an Aquaforte woman on the public road "with an intent… against her will feloniously to ravish and carnally know [her]"—appeared to have warranted sentences beyond the court's usual range of small fines and orders to keep the peace for lesser assaults.

In many jurisdictions, the treatment of female sexuality as a precipitating factor in sexual assault made the rape trial an ordeal for victims. Consistently and effectively, "a model of female sexuality as *agent provocateur*, temptress or seductress"[39] was deployed by the defense as the sexual, moral, and social history of the complainant and her previous relationship with the accused were minutely examined to determine how she had "contributed" to her own "downfall." On the southern Avalon, however, the character and history of the woman complainant were called into question in only two cases—the alleged assaults of Mary Keating and Catharine Power discussed above—reflecting the persistent attitude in the justice system that women of "ill repute" could not be raped. Yet only in the case of Mary Keating did the court make its finding solely on the basis of the previous character of the parties involved (although it is possible that it may have come to the same decision in *Power v. Deringwater*—even without testimony of the four defense witnesses—based on the flagrant "immorality" of Catharine Power).

Loss of Consortium

Under English common law, a husband had legal rights to his wife's body, with exclusive rights to her domestic and sexual services. If denied her sexual services, a husband could seek a writ of *habeas corpus* to force his wife to return to the matrimonial bed. He could also initiate various court actions against a third

party and demand compensation for loss of consortium: criminal conversation (having sexual relations with the wife); enticement (encouraging the wife to leave her husband); and harboring (providing the wife with refuge after she had run away). Wives had no similar recourse under the law.

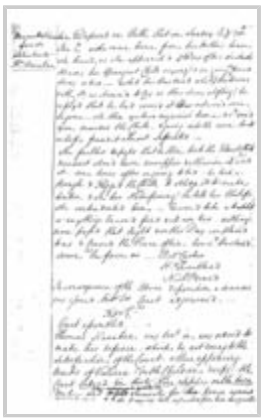
There are only two brief documentary references to matters respecting loss of consortium on the southern Avalon during the study period. In the 1773 court records for Ferryland district, a court order directed Simon Pendergrass to pay Edward Farrel £5 in compensation for having had "criminal correspondence" with Farrel's wife—a relationship that had apparently been going on "for some time."[40] The other matter was fleetingly referred to in the letterbooks of the colonial secretary's office in Newfoundland. In October of 1760, Governor James Webb ordered William Jackson, justice of the peace for the district of Trepassey, "to take up and send hereunder custody one Clement O'Neal, who has carried with him ye Wife of Jos^{h}. Fitzpatrick as Likewise all his Moveable Effects."[41] Given the phrasing of the order and the peculiarities of punctuation stylings of the period, it is difficult to tell whether O'Neal and his effects were to be taken into custody, or whether O'Neal had caused offense by taking away both the wife *and* the effects of Fitzpatrick. (If the latter, it would be interesting to know which was deemed to have caused the greater injury to Fitzpatrick, the loss of his wife or his other "possessions.")

While details are sketchy, there does appear to be a difference in the way the two cases were handled, possibly reflecting a difference in attitude between the authorities involved (local versus central). The Ferryland court seems to have dealt fairly leniently with the 1773 case: a small payment was ordered to compensate the plaintiff, Farrel, for a rather long-term encroachment on his conjugal rights. The other order, issued by the governor after a hearing in St. John's, had a more ominous and punitive tone: O'Neal was to be arrested and (possibly) his effects attached; not stated but implied was that Mrs. Fitzpatrick was to return to the matrimonial home and bed. While the evidence is meager, it is possible that the local magistrates had a laxer attitude towards the issue of consortium than authorities more removed from local circumstances. Certainly, the scarcity of consortium cases from this period corresponds with the prevalence of informal marital arrangements, the acceptance of informal separation and divorce, and the lack of preoccupation with primogeniture and legitimacy in the study area—all elements of a marriage regime that kept relatively loose control over female sexuality.

Wife-Beating

The southern district court records from the period reveal only four cases involving domestic violence against women. As with incidents of rape, domestic

violence was likely under-reported, although the low numbers may have been a further indicator of plebeian women's significant status within their families and their ability to hold their own in physical struggles. At any rate, the magistrates on the southern Avalon appeared to be sympathetic to the woman complainant in each of the reported cases. In two matters, the alleged abusers were made to enter into peace bonds and ordered to return for trial; unfortunately, the final judgments in these two cases were either not recorded or have not survived. The other two matters resulted in what were essentially court orders for separation and maintenance. There is no indication in the records that in their handling of the four cases, the magistrates made any effort to encourage the complainants to return to their husbands.



Indeed, in a 1791 matter involving extreme domestic violence, the court moved quickly to protect the wife and children and remove them from the abusive situation. Margarett Hanahan (also Hanrahan) complained on 31 January that upon returning home the previous evening, she had discovered her husband, Thomas, trying to suffocate their youngest child, and that he had later "ill-used" and flogged their older child with a bough "to oblidge it to make water." When Margarett had tried to interfere, Thomas had threatened her with a hatchet. The court observed the marks of violence on wife and children and sentenced Thomas to thirty-nine lashes on the bare back as well as imprisonment until he could provide security for a peace bond. The magistrates also granted Margarett's request to be separated from her husband. And two and a half months later, the court ordered the husband to leave the district—effectively issuing an order for divorce over 175 years before the Supreme Court of Newfoundland had jurisdiction to grant divorces.[42] Case File 38 Given the flexible marital regime at the local level, Margarett was certainly free to move into an informal family arrangement; indeed, she did precisely this, for by the taking of the 1800 census, she and her two children were living with John Ellis in Ferryland, and her assumption of John's surname suggests that the couple had gone through an informal marriage ceremony or that their relationship was otherwise accepted locally as a legitimate form of marriage.[43]

In none of the southern Avalon cases were women forced to remain in abusive marriages or be deemed to have deserted and forfeited all rights to maintenance and child custody. Furthermore, the outcome of *Hanahan v. Hanahan* indicated the court's willingness to punish excessively violent husbands in kind. The cases were few, but their disposition certainly contrasted with eighteenth- and nineteenth-century

cases in Britain and other British colonial jurisdictions, where courts generally dealt with wife-beaters rather leniently and encouraged women to return to abusive situations for the sake of preserving the marriage, regardless of the violence of the assault—an approach that frequently placed battered women in even greater danger and certainly discouraged the reporting of domestic violence.[44]

Desertion, Separation, and Maintenance

Local magistrates were not often called upon to hear matters involving separation and maintenance. Indeed, Newfoundland courts did not obtain jurisdiction in matrimonial causes until 1947 and could not grant divorces until 1967.[45] They did, however, exercise a *de facto* jurisdiction in granting separations, or *divorces a mensa et thoro* ["from bed and board"], and support for deserted spouses and children.[46] On these bases, at least seven matrimonial cases were brought before the magistrates on the southern Avalon during the study period.

Only one of these actions was initiated by the husband, and it was exceptional for the area in that it was the only matter in which a husband was awarded a form of child support. In 1750, Philip Moloy (also Molloy) of Ferryland petitioned the court for redress after his wife had turned him and his child (whether a child of this marriage is not specified) out of the house. After examining Mrs. Moloy and several local inhabitants, the court ordered that "the Wife do pay him three Pounds which is to be in full of all Demands he shall pretend to have on the House and Goods in Consideration that he has a Child to maintain."[47]

In the remaining six cases, wives maintained custody of the children of the marriage—perhaps a further reflection of the more transient nature of the male population through much of the period, but again demonstrating the stabilizing role of women in early communities. All six of these cases were initiated by wives, on grounds of desertion, neglect, and/or ill treatment, and the local magistrates again demonstrated pragmatism and responsiveness to the women involved, sanctioning *de facto* separations and awarding maintenance for wives and children. In a 1791 case, for example, the court ordered that Philip Forestall provide support to his wife and child in the amount of 3s. 6d. per week and stipulated that monies be stopped from his wages for this purpose. The magistrates also directed the local constable to put Mrs. Forestall in possession of the family home. Effectively, the court was acknowledging a separation that was already playing out on the ground and was taking steps to ensure that wife and child were provided for. There was no indication in the records that Mrs. Forestall was encouraged by the magistrates to reconcile with her husband.[48]

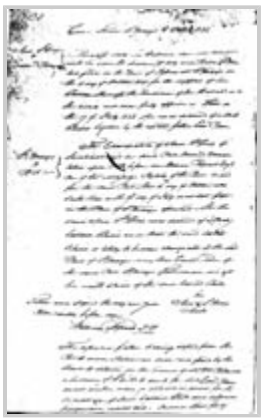
Indeed, none of the wives in these six matters were pressured by the court to return to their spouses, and support was ordered whether it had been the wife or the husband who had deserted or committed marital infidelity. Furthermore, women who had separated from their husbands were not expected to live the remainder of their lives in sexual denial or forfeit all rights to child custody and support.[49] On 14 March 1791, for example, Mary Dunn brought a complaint that her husband, Timothy (or Tim), had refused to support their child and asked for the court's assistance. The court ordered that £5 be retained from Tim's wages for the maintenance of the child.[50] The recording of the case is sparse, and there is an automatic inclination to interpret the situation in terms of a husband's desertion of wife and child. It is possible, however, that Mary may have been the one to leave the marriage, especially given that maintenance was awarded for the child only. Certainly, the nominal census taken for the district several years later, in 1800, indicates that Mary was cohabiting with a William Hennecy. She was then using the name "Mary McCue"—possibly her maiden name, or the surname of an intervening husband/partner. In the 1800 household were Mary's child by Tim, Martin Dunn (born in 1786 or 1787), and four Hennecy children (the first of whom was born in 1788 or 1789—two to three years before Mary's day in court).[51]

The two sets of records together raise the possibility that Mary may have already left Timothy Dunn at the time of her 1791 action (unfortunately, parish records do not exist for the time frame, making the tracking impossible). If this was the case, Mary's desertion did not influence the court's decision to award her support for Timothy's child. Nor does any hint of moral judgment survive in the records regarding Mary's later living arrangements. Under the English legal regime inherited by Newfoundland, a woman who committed adultery, even after separation, would no longer be entitled to support from her husband and would often lose custody of any children of the marriage.[52] Yet there is nothing in the records to indicate that this happened in Mary's case (although this may also have merely been a reflection of Tim Dunn's lack of interest in pursuing the matter).

Similarly, Ann St. Croix of St. Mary's was not penalized for her post-separation relationship with another man. On 16 October 1821, Ann brought her husband, Benjamin St. Croix, to court for neglect and ill treatment and sought an order for support for herself and their seven children. Ann was only thirty-three years old, much younger than her seventy-seven-year-old husband—a fact that the court clerk obviously felt worthy of note, as he underscored their ages twice in the court records. The unhappy couple had

already been living apart since 1819, and the court recognized this *de facto* separation. It also ordered Benjamin to give up the use of his house and garden to Ann and the children, to pay her £6 at the end of the current fishing season, and to pay £5 annually for the future support of the children, who were to remain in Ann's care.[53]

Meanwhile, in the two years since the couple had ceased cohabiting, Ann had obviously taken alternative measures to support herself and her large family. Indeed, she may have already moved into another, informal marital relationship with one Edward Power, a fisherman of St. Mary's. Whether this was the case, or whether her newfound freedom from Benjamin had simply put her in a



celebratory mood, is unclear, but on 17 July 1822, almost nine months to the day after her court-sanctioned separation from her husband, Ann gave birth to a male child who, she claimed, had been fathered by Power. That October, she went back to court to seek support for the child from her new paramour, but he had already left the area and was not expected to return. Nonetheless, the court ordered that the balance of his wages with his employer, in the amount of £4.15.4, be retained for the support of the child, and that from this amount, 40s. be paid for lying-in expenses, and 3s. per week support until the wages were depleted.[54] Furthermore, there was no hint of moral judgment about Ann's extra-marital relationship with Power, and she was not deemed to have thus jeopardized her original claim for child custody or support from Benjamin St. Croix. Case File 39

Neither was the wife's character during the marriage an issue in awarding support, as an estranged husband in Biscay Bay, near Trepassey, learned in 1804. In a maintenance hearing on 13 August 1804, Mary Kearney told the court that her husband, Andrew, had "turned her to Door" about fifteen months earlier and that she had since been supported by her brother. Andrew testified that, since their marriage, Mary had "behaved very Ill frequently getting drunk and totally neglecting her household affairs." Furthermore, six months after the nuptials, Mary had been delivered of a male child who, according to Andrew, was not his. Yet, despite the husband's insinuations of Mary's slatternly nature and sexual immorality, maintenance for Mary was ordered in the amount of 3s. per week for life, provided that she had no children by any other man. Furthermore, the order was issued despite the fact that Mary obviously had some alternative means of support (her brother); thus, the court was acting not out of concern that Mary would become a charge on the community, but in recognition of her right to maintenance from her husband who had turned her out of the matrimonial home. Case File 40 Indeed, this is the only

case on record from the southern Avalon in which the court had the husband sign a written maintenance agreement (Andrew's signature was joined by that of Michael Kearney, possibly his father or brother, as extra surety).[55]

As we saw at the beginning of the chapter, Peggy Mountain was also not penalized by the local court for what was likely an extra-marital indiscretion. The magistrates acknowledged the *de facto* separation of the couple, and ordered her husband to pay support for wife and expected child. They also made various efforts to find alternate accommodations for Peggy, and ultimately, after repeated interference by the parish priest, magistrate Robert Carter himself took her in for several days. Throughout his diary entries about the incident, Carter's tone was usually sympathetic, never judgmental.

What is most striking in the above discussion of the legal environment of the southern district is its relatively benign regime over female sexuality when compared with other jurisdictions in Britain, Canada, and even Newfoundland (particularly St. John's). Christopher English has offered some explanations for the court's pragmatism in its dealings with both men and women in the late eighteenth and early nineteenth centuries. He notes that the *Judicature Acts* of 1791, 1792, and 1809 had provided that English law be received in Newfoundland only "'so far as the same can be applied.'"[56] The local magistrates were men with stakes in the community, he argues, who dispensed justice based on an understanding of local issues and a familiarity with local inhabitants. If English law was deemed deficient or inappropriate for Newfoundland situations, local magistrates simply made new law.[57] These are useful insights into how the legal regime manifested itself on the ground in many outports during the period.

However, local magistrates and administrators on the southern Avalon were also part of the emerging middle class with its middle-class ideals of femininity. Certainly, the behavior of women within their own class was carefully monitored, particularly by the nineteenth century. Although there were some eighteenth-century women from the local elite who had led public and independent lives, most women of this class were retiring into lives of genteel domesticity by the following century (see Chapter 9). Wives and daughters socialized only with other middle-class families in the area or in St. John's (some, such as the Carters, also wintered in England). They married members of their own class. They did not labor on flakes or in fields, as did plebeian women; rather, their work entailed the rearing of children and the supervision of domestic servants. They did not appear personally in the courthouse; in such matters that did involve them, such as probate or debt collection, they were represented by men from their own circle. Certainly, their names did not appear in any of the cases involving assault, bastardy, slander, rape, or domestic violence. (This is not

to suggest that such incidents did not occur among the middle class, but merely that they were not played out in public.) These women's lives were increasingly circumscribed by the parameters of middle-class ideology; indeed, the gentility and respectability of these women helped to maintain class boundaries in small fishing communities, where contact between middle-class and plebeian men was more frequent, and social distance therefore less clearly demarcated.

Yet, while middle-class contemporaries in Britain were trying to encourage a modified form of respectability among the working class—one that involved a reformulated construction of female respectability—middle-class magistrates and administrators on the southern Avalon had reason to pause in trying to impose similar restrictions on plebeian women. These men were predominantly either merchants or agents themselves, or were connected by kinship or marriage to local mercantile families who made their money by supplying local fishing families in return for their fish and oil. And the resident fishery had become overwhelmingly dependent on household production, in which the labor of plebeian women—work that took place in public spaces, on stages and flakes—was essential. In addition, these women, in their various economic capacities, were an intrinsic part of the exchange economy and the truck system—the system of supply and credit that underwrote the resident fishery. The working woman was not a "social problem"; she was an economic necessity. It was therefore not in the interests of local magistrates to encourage the withdrawal of plebeian women into the private sphere.[58]

Now let us turn to the final key player in Peggy Mountain's drama. Why was the contrast in the responses of the priest and the magistrates to Peggy's situation so stark?

Irish Plebeian Womanhood and the Catholic Church

> Woman [Eve] destroyed life's gathered crown:
> But woman [Mary] gave long-lasting joys of life.
> —Columbanus (Irish missionary, seventh century)

Father Browne was also a man with a stake in the local community. He, like the magistrates, was familiar with local circumstances and personalities, for he had been at the mission in Ferryland for twenty years. Yet he did not try to accommodate Peggy, as the local justices did. Instead, he hounded her out of the community, because her "aberrant" sexuality deviated from his perceptions of female respectability.

Father Browne's reaction was certainly not out of line with church efforts to monitor women's sexuality. When the Catholic Church was finally permitted to

operate openly in Newfoundland after 1784, the priests were overwhelmed by the numbers of informal family arrangements in their new mission. In Father Ewer's 1789 report on Ferryland district, it was the indecency of women's having multiple partners that became the particular focus of paternalistic concern (or, perhaps, blame), as he noted:

> The magistrates had for custom here, to marry, divorce & remarry again different times, & this was sometimes done without their knowledge, *so that there are women living here with their 4th husband each man alive & form different familys in repute*. I would wish to know if these mariages are but simple contracts confirmed & disolved by law, or the sacrament of matrimony received validly by the contracting partys. If the latter it will be attended with much confusion in this place, with the ruin of many familys & I fear the total suppression of us all as acting against the government.[59]

British authorities in Newfoundland had acknowledged the validity of local marriage customs, given the lack of access to formal marriage rites in this period. But the Irish Catholic Church, having grown far from its Celtic Christian roots by the late eighteenth century, was not so indulgent and, while realizing that it must tread carefully around local regulations, was determined to untie such bonds that yet "remain[ed] to be separated from adultery."[60] With the priests, then, came a concerted effort to bring women into formalized marriages within the precepts of the Catholic Church; and as their efforts met with increasing success (as revealed by the parish records available from the 1820s onwards), the options of cohabitation and informal separation and divorce disappeared.

The dichotomized construction of woman as respectable wife and mother or temptress Eve was part of Catholic discourse. And even the respectable woman was seen to have inherited from her foremother the proclivity to tempt man—a further rationale for the monitoring of her sexuality by the morally and intellectually superior male members of the church.[61] Women—especially women in their sexual prime—were constructed as "occasions of sin." Thus, with the priests came the practice of churching women after childbirth—a perfunctory, shady ritual, usually a few prayers mumbled at the back door of the priest's residence over a woman who had to be "purified" for the "sin" of conceiving a child.[62] With the priests also came more systematic shaming of adulterous wives and unwed mothers, reflecting a sexual double standard that laid the "sin" of pre- and extra-marital sexual relationships overwhelmingly at the feet of "unchaste" women. Particularly in terms of illegitimacy, mothers were punished more harshly than fathers, suffering public humiliation, even ostracism, as they were denounced from the altar and denied (either for a limited period of public

penance, or indefinitely) churching and the sacraments.[63] Here, then, was a reinforcement of the chastity requirement of middle-class ideology.

Church efforts to control "unruly" womanhood and protect female "virtue" gained momentum after Bishop Michael Fleming took over the reins in Newfoundland in the 1830s. The need to patrol and protect female chastity, for example, underscored his appeal to the ringleaders of the Father Duffy affair to surrender quietly to authorities, as he begged them to "contemplate the establishment of a military Section among your wives and daughters at a season when of necessity your avocations will require the abandonment of your families, of your homes and firesides to the unbridled licentiousness of soldiers without the presence of a single magistrate, a single local tribunal to restrain them."[64]

The monitoring of female sexuality and virtue was also the primary motivation in Fleming's decision to bring the Presentation nuns to Newfoundland from Galway in 1833. In his 1837 report to *Propaganda Fide*, he expressed his abhorrence of the way in which "the children of both sexes should be moved together pell-mell" in the island's schools, declaring coeducation to be "dangerous" and "impeding any improvement of morals."[65] In a later letter to Father O'Connell, he explained his urgency in sponsoring the sisters' mission, even at considerable personal cost:

> I felt the necessity of withdrawing female children from under the tutelage of men, from the *dangerous associations which ordinary school intercourse with the other sex* naturally exhibited; for whatever care could be applied to the culture of female children in mixed schools, they must lose much of that *delicacy of feeling and refinement of sentiment which form the ornament and grace of their sex*. Besides, viewing the *great influence that females exercise over the moral character of society—the great and useful and necessary influence that the example and the conversation of the mother has in the formation of the character of her children, as well male as female—I judged it of essential importance to fix the character of the female portion of our community in virtue and innocence*, by training them in particular in the ways of integrity and morality; by affording them the very best opportunities of having their religious principles well fixed, by imparting to them, while their young minds were daily receiving the elements of a general and useful education, a course of religious instruction that should teach them the true value and the proper use of those mental treasures by which they were being enriched; for I felt that which all must feel—namely, that when *once the future mothers are impressed with the truths of religion*—once they are *solidly instructed in the Divine precepts of the Gospel*, once their young minds are enlarged and enlightened, and strengthened by

> educational knowledge, *the domestic fireside is immediately made the most powerful auxiliary to the school*, and instruction and true education, the basis of which is virtue and religion, are instilled into the little ones at their mother's knee, and they go abroad by-and-by, into school or into society, with all the elements that fit them to become virtuous citizens.[66]

In separate schools, the nuns could prepare young Catholic women for motherhood and domesticity, and lead them to their destiny as moral guardians of their families. A curriculum that included knitting, netting, and needlework (the *three N's* of women's education) would ease the transition from work on flakes and in gardens to pursuits more properly reflecting womanly respectability.[67] Thus "solidly instructed in the Divine precepts of the Gospel," they would abandon the ancient customary practices that were an alternate source of female power.

In this last ambition, the church was acting as more than a vehicle of middle-class gender ideology. The status of Irish women as mediators of the supernatural world was in competition with the church's own authority within the spiritual realm. Church efforts to diminish the power of the alternative belief system, and consequently women's role as spiritual guides within this informal system, can be seen as part of a larger agenda of the Irish Catholic Church in the nineteenth century to broaden its range of influence—institutionally, geographically, socially, economically, and politically—in Ireland and abroad.[68]

The Presentation sisters did not actually arrive in communities on the southern Avalon until the 1850s and 1860s, and thus the impact of their role in domesticating young women in the area fell primarily outside the period of this study.[69] But the effort to rein in unruly womanhood had begun with the arrival of sanctioned Catholicism, and was articulated as early as Father Ewer's expression of concern about women's living arrangements. Furthermore, the endeavor intensified as the nineteenth century unfolded. The church's efforts fit perfectly with middle-class ideology of the day. And while a conflict existed for local magistrates between ideology and economic reality, there was no such conflict for the church in the pursuit of its civilizing mission on the southern Avalon. Within the framework of Catholic orthodoxy, the denial of female sexuality, the celebration of selfless motherhood, and the increasing pressure on women to transform their homes into spiritual havens, removed from the outside world, were impelling women to retire into domesticity and respectability.[70] (One oral informant, a St. Mary's woman in her 80s, tells the story of a great-uncle chastising her grandmother for singing around the house: "What are you doing sitting there singing," he demanded, "when you should have your bades [rosary beads] in your hand?"[71]) These pressures would intensify as the repercussions of the devotional revolution in the Irish Catholic Church in the latter part of the

nineteenth century[72] were felt through the regular recruitment of religious personnel from Ireland.[73]

Still, church constructions of femininity met with resistance from the plebeian community because they clashed with the realities of plebeian women's lives. But some inroads were being made by the 1830s. Father Browne's success in hounding Peggy Mountain out of Ferryland suggests a widening of the wedge. A further indicator was the virtual withdrawal of plebeian women from the courtroom in matters specifically related to female sexuality. Although they continued to appear in the court records on matters such as debt, wages, common assault, and property, their willingness to pursue matters such as sexual assault, domestic violence, bastardy, separation, and maintenance seemed negligible after the 1830s; only four such cases survive in the records after this period—one sexual assault (1841), one case of domestic violence (1843), and two bastardy suits (both 1854)—despite a growing population. Women were increasingly reluctant, then, to air these matters in public, a reluctance that can be linked more to church attributions of shame and guilt to female sexuality than to magisterial hostility. Increasingly wary of public court actions, plebeian women were left with the weaker options of either handling these matters privately, or not pursuing them at all.

Conclusion

Middle-class feminine ideals of domesticity, passivity, and respectability bled into Newfoundland society through the island's English legal regime and an emerging local middle class of administrators, churchmen, and merchants. But these constructs of female respectability did not easily insinuate themselves into Irish plebeian culture on the southern Avalon, where women had played such a significant role in community formation, where women held property and inhabited public spaces such as courthouse and stagehead, where they had a joint custodial role in terms of culture and the spiritual life of their communities, and where they played vital roles in subsistence and the production of saltfish for the marketplace. Furthermore, while local administrators and magistrates on the southern Avalon were part of the emerging middle class, and certainly espoused domesticity and dependence for women of their own social rank, they had reason to tread lightly in efforts to impose restrictions on plebeian women. As members of local mercantile networks, they were dependent on the public presence of plebeian women in the economic life of the region. These local magistrates *cum* merchants therefore had a vested interest in forestalling the equation between plebeian female respectability and the private sphere. The Catholic clergy, by contrast, saw the regulation of "unruly" womanhood as part of their civilizing (and consolidating) mission in Newfoundland and pursued this goal with increasing zeal

as the nineteenth century progressed. While church ideals on femininity conflicted with plebeian realities, their efforts were already making inroads as the *Water Lily* slipped its moorings at Ferryland and carried Peggy Mountain into historical obscurity.

Notes:

Note 1: See PANL: GN 5/4/C/1, Ferryland, box 1, 57-60 and 64, *Margaret Mountain v. Michael Mountain*, 23, 29, and 30 December 1834, 2, 12, and 19 January, and 23 February 1835; and MG 920, Robert Carter Diary, 30 and 31 December 1834, and 1, 5 and 12 January, 14-16, 19-21, 23, and 28 March, and 6 and 9 May 1835. Note that the name *Margaret* appears in the court records, but throughout his diary entries, Carter refers to her by the more familiar form *Peggy*. back

Note 2: Magistrates Carter, Thomas Wright, and Benjamin Sweetland ordered that she be allowed 5 lb. bread, 3½ lb. pork, ½ lb. butter, 1 qt. flour, 1 pt. of molasses, ¼ lb. tea, and 3 lb. fish per week. See PANL, GN 5/4/C/1, box 1, 60, Order, 19 January 1835. back

Note 3: This concept is borrowed from Susan M. Edwards, who discusses "the patrolling of the boundaries of thought on the nature of the sexuality of women" in Edwards, *Female Sexuality and the Law: A Study of Constructs of Female Sexuality as They Inform Statute and Legal Procedure*, ed. C. M. Campbell and Paul Wiles (Oxford: Martin Robertson, 1981), 173. back

Note 4: The literature upon which the following discussion is based includes: Constance Backhouse, *Petticoats and Prejudice: Women and Law in Nineteenth-Century Canada* (Toronto: Osgoode Society, 1991); Linda Cullum and Maeve Baird, "'A Woman's Lot': Women and Law in Newfoundland from Early Settlement to the Twentieth Century," in *Pursuing Equality: Historical Perspectives on Women in Newfoundland and Labrador*, ed. Linda Kealey, Social and Economic Papers, no. 20 (St. John's: ISER, 1993), 66-162; Anna Clark, *The Struggle for the Breeches: Gender and the Making of the British Working Class* (Berkeley: University of California Press, 1995); Joy Damousi, *Depraved and Disorderly: Female Convicts, Sexuality, and Gender in Colonial Australia* (Cambridge: Cambridge University Press, 1997); Leonore Davidoff, "Regarding Some 'Old Husbands' Tales': Public and Private in Feminist History," in Davidoff, *Worlds Between: Historical Perspectives on Gender and Class* (Cambridge: Polity Press, 1995), 227-76; Leonore Davidoff and Catherine Hall, *Family Fortunes: Men and Women of the English Middle Class, 1780-1850* (Chicago: University of Chicago Press, 1987); Karen Dubinsky, "'Maidenly Girls or Designing Women?': The Crime of Seduction in Turn-of-the Century Ontario," in *Gender Conflicts: New Essays in Women's History*, ed. Franca Iacovetta and Mariana Valverde (Toronto: University of Toronto Press, 1992), 27-66; Dubinsky, *Improper Advances: Rape and Heterosexual Conflict in Ontario, 1880-1929* (Chicago: University of Chicago Press, 1993); Edwards, *Female Sexuality and the Law*; Bridget Hill, *Women, Work, and Sexual Politics in Eighteenth-Century England* (Oxford: Basil Blackwell, 1989); Angela John, introduction to *Unequal Opportunities: Women's Employment in England, 1800-1918*, ed. Angela John (Oxford: Basil Blackwell, 1986); Susan Kingsley Kent, *Sex and Suffrage in Britain, 1860-1914* (Princeton, NJ: Princeton University Press, 1987); Theodore Koditschek, "Gendering of the British Working Class," *Gender and History* 9, no. 2 (August 1997): 333-63; Lynda Nead, *Myths of Sexuality: Representations of Women in Victorian Britain* (Oxford: Basil Blackwell, 1988); Mary Anne Poutanen, "The Homeless, the Whore, the Drunkard, and the Disorderly: Contours of Female Vagrancy in the Montreal Courts, 1810-1842," in *Gendered Pasts: Historical Essays in Femininity and Masculinity in Canada*, ed. Kathryn McPherson, Cecilia Morgan, and Nancy M. Forestell (Oxford: Oxford University Press, 1999), 29-47; Roy Porter, "Mixed Feelings: The Enlightenment and Sexuality in Eighteenth-Century Britain," in *Sexuality in Eighteenth-Century Britain*, ed. Paul-Gabriel Boucé (Manchester: Manchester University Press, 1982), 1-27; Jane Rendall, *Women in an Industrializing Society: England, 1750-1880*, Historical Association Studies (Oxford: Basil Blackwell, 1990); Sonya O. Rose, *Limited Livelihoods: Gender and Class in Nineteenth-Century England* (Berkeley: University of California Press, 1992); G. S. Rousseau and Roy Porter, introduction to *Sexual Underworlds of the Enlightenment*, ed. Rousseau and Porter (Chapel Hill: University of North Carolina Press, 1988), 1-24; Mary Lyndon Shanley, *Feminism, Marriage, and the Law in Victorian England, 1850-1895* (Princeton, NJ: Princeton University Press, 1989); and Carol Smart, "Disruptive Bodies

and Unruly Sex: The Regulation of Reproduction and Sexuality in the Nineteenth Century," in *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality*, ed. Carol Smart (London: Routledge, 1992), 7-32. back

Note 5: Judith Walkowitz, *City of Dreadful Delight: Narratives of Sexual Danger in Late-Victorian London* (Chicago: University of Chicago Press, 1992), 23. back

Note 6: In some English and Welsh communities, couples were married by the simple expediency of placing a broom slantwise across the threshold of a house and jumping over it before witnesses. If either party touched or moved the broom, the marriage was deemed invalid. An informal divorce was just as easily effected by the couple (or, in some areas, the husband only) stepping backwards over the broom before witnesses. See: Hill, *Women, Work, and Sexual Politics*, 206 and 218; and Stephen Parker, *Informal Marriage, Cohabitation, and the Law, 1750-1989* (New York: St. Martin's Press, 1990), 18 and 27. back

Note 7: As the name suggests, a smock wedding was an informal ceremony in which the woman was married only in her smock. Because she brought nothing but her smock to the marriage, according to custom, she could maintain her separate identity and hence her own property, financial rights and obligations, and rights to her children. See Parker, *Informal Marriage*, 24 and 69. back

Note 8: Handfasting was practiced particularly in the Scottish highlands and in Wales. Couples joined hands and pledged to live together for a year and a day. If the two were compatible, the marriage was extended for life. If the couple wished to part, they merely turned their backs on each other and left the house through separate doors. See: Hill, *Women, Work, and Sexual Politics*, 206 and 218; and Parker, *Informal Marriage*, 18. back

Note 9: See, for example: Clark, *Struggle for the Breeches; Hill, Women, Work, and Sexual Politics*; Parker, *Informal Marriage*; Sean J. Connolly, *Priests and People in Pre-famine Ireland, 1780-1845* (Dublin: Gill and Macmillan, 1982); Rendall, *Women in an Industrializing Society*; Ellen Ross, *Love and Toil: Motherhood in Outcast London, 1870-1918* (New York: Oxford University Press, 1993); and James G. Snell, *In the Shadows of Law: Divorce in Canada, 1900-1939* (Toronto: University of Toronto Press, 1991). Carol Berkin and Leslie Horowitz also note the frequency of informal separations and marriages in colonial America. See: Berkin, *First Generations: Women in Colonial America* (New York: Hill and Wang, 1996); and Berkin and Horowitz, eds., *Women's Voices, Women's Lives: Documents in Early American History* (Boston: Northeastern University Press, 1998). back

Note 10: Kathleen Brown discusses the differences in systems of knowledge about gender between England and Gaelic Ireland in *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1994), 33-37. See also Peter Berresford Ellis, *Celtic Women: Women in Celtic Society and Literature* (London: Constable, 1995), chaps. 4 and 5. back

Note 11: As with other customary practices, the Catholic Church in Ireland was only able to lead its congregation where it wanted to go and would only make inroads on informal marriage practices when the community desired stricter regulation. Connolly argues that this tightening of control coincided with the demographic shift that occurred during the Great Famine. In pre-famine Ireland, frequent subdivision of land had permitted a less rigid marital regime among the landless majority of the population. However, with the collapse of the potato culture and the decimation of the landless class at mid-century, the small farmer emerged as the dominant social group in Ireland. Farmers practiced more cautious management of family land and greater control over marital arrangements in order to ensure the careful transfer of property to the following generation (reflected in the increasing incidence of the arranged match in post-famine Ireland and the wholesale shift to impartible inheritance). Church efforts to regulate sexual activity and marriage simply meshed with the social and economic requirements of this rising farmer group—hence, their increasing success after mid-century. See Connolly, *Priests and People*, chap. 5. back

Note 12: The elopement is self-explanatory, but the other methods require clarification. Couple beggars were suspended priests who made their livings by performing marriages outside church jurisdiction. They were frequently employed by couples who had difficulty in meeting the requirements of a formal marriage (e.g., lacking parental consent, being too closely related or of mixed religious backgrounds) or who simply could not afford the formal ceremony. The runaway match was another option for a couple who could not

obtain parental or clerical consent to their marriage. The pair would spend a night together at the home of a sympathetic relative or friend and, being thus "compromised," would force the issue. Reluctant parents often relented and consented to a more formal marriage, and the church usually acquiesced after a period of penance had been observed. The abduction employed similar pressure tactics: the reputation of a young woman who had been abducted was in jeopardy, and most parents and the church would ultimately agree to the couple's marriage. Some abductions were genuine and were employed as a means of obtaining the fortunes of the daughters of well-to-do farming families. Others were staged, with a suitable display of maidenly reluctance on the part of the abductee. See Connolly, *Priests and People*, 200-10. back

Note 13: There were several priests on the island when O Donel arrived who were functioning without faculties from any bishop, including Father Patrick Power, who attempted to establish himself as parish priest in Ferryland in opposition to O Donel's appointee, sparking the Ferryland riot (see Chapter 5). These missionaries claimed to be operating under ancient papal authorization that was outside the jurisdiction of any bishop. Aside from their lack of compliance, O Donel found their morals and habits to be egregious, and often wished himself to be rid of these "strolling priests." See Cyril J. Byrne, ed., *Gentlemen-Bishops and Faction Fighters: The Letters of Bishops O Donel, Lambert, Scallan, and Other Irish Missionaries* (St. John's: Jesperson Press, 1984), 1-142; the quotation comes from 98-101, O Donel to Archbishop Troy, Dublin, 24 December 1789. back

Note 14: In 1824, Catholic clergy were put on equal footing with Anglican clergy in terms of celebrating marriage; in 1833, authority to celebrate marriage was also extended to Dissenting ministers. For a discussion of early marriage law in Newfoundland, see Trudi D. Johnson, "Matrimonial Property Law in Newfoundland to the End of the Nineteenth Century" (Ph.D. diss., Memorial University of Newfoundland, 1998), 120-32. back

Note 15: Byrne, ed., *Gentlemen-Bishops*, 77-79, Ewer to Troy, 30 November 1789. back

Note 16: PANL, GN 2/1/A, vol. 1, 115, 136 and 141, Petition and Deposition of Elizabeth Gobbett, "commonly call'd Elizabeth Allen," 27 and 31 August 1750, and Patent granted to her by Governor Drake, 31 August 1750. back

Note 17: PANL, GN 2/1/A, vol. 2, 396, Order in response to Coombs' Petition, Edwards to JPs at Bay Bulls, 14 October 1757. back

Note 18: PANL, GN 2/1/A, vol. 3, 44-45, Order, Edwards to the fishing admirals and magistrates of Ferryland, 13 October 1759. back

Note 19: PANL, GN 5/4/C/1, Ferryland, box 1, 25-26, *Catharine Weston v. Hannah and William McDaniel*, 8 March 1787. back

Note 20: PRL, 340.9 N45, St. Mary's, *Mary Stokes v. William Kearney*, 30 September 1802. back

Note 21: See: Backhouse, *Petticoats and Prejudice*; Cullum and Baird, "'A Woman's Lot'"; Dubinsky, "'Maidenly Girls'"; and Edwards, *Female Sexuality*. back

Note 22: See Appendix B for a discussion of court cases in the author's database. The reader is urged not to clump the numbers of cases in this section in a total that will have little significance. We cannot read the same meaning into a woman's objectification in being deported for prostitution, for example, as we do into another woman's agency in bringing her husband to court for abuse or desertion. Furthermore, in many of the following categories (e.g., seduction, infanticide, prostitution, loss of consortium, domestic violence, and rape), low numbers are positive indicators of women's status. back

Note 23: See Backhouse, *Petticoats and Prejudice*; and Dubinsky, "'Maidenly Girls.'" back

Note 24: PANL, GN 5/2/C/1, Ferryland, box 1, 142-45, *Catharine Delahunty v. James H. Carter*, 4 October 1827. back

Note 25: Illegitimacy was deemed a serious breach of moral standards in most British and colonial jurisdictions; it was frowned upon by local communities and condemned and

regulated by civil and religious leaders alike, with single mothers bearing the brunt of the social shame. See, for example: Backhouse, *Petticoats and Prejudice*; Berkin and Horowitz, eds., *Women's Voices*; Cullum and Baird, "'A Woman's Lot'"; Elizabeth Jane Errington, *Wives and Mothers, Schoolmistresses and Scullery Maids: Working Women in Upper Canada, 1790-1840* (Montreal: McGill-Queen's University Press, 1995); Allyson N. May, "'She at first denied it': Infanticide Trials at the Old Bailey," in *Women and History: Voices of Early Modern England*, ed. Valerie Frith (Toronto: Coach House Press, 1995), 19-49; and Richter, "The Free Women of Charles Parish, York County, Virginia, 1630-1740," in *Women and Freedom in Early America*, ed. Larry D. Eldridge (New York: New York University Press, 1997), 290-312. Still, bundling (parent-approved, pre-marital sex) and pre-marital pregnancy were tolerated within plebeian communities, provided couples were moving towards a stable family arrangement. See Hill, *Women, Work, and Sexual Politics*, 174-95. The Irish literature also indicates that illegitimacy brought tremendous social shame to both the mother and child; however, much of the discussion is weighted towards the nineteenth century, when women's overall status was in decline, and contrasts with Brown's and Ellis's discussions of Gaelic Ireland's tolerance of illegitimacy (see note 10, above). Irish historians point to the low illegitimacy rates in late eighteenth- and early nineteenth-century Ireland compared with contemporary European rates, and suggest that this was due to early and universal marriage before the Great Famine as well as a sexual chasteness that ran contrary to the sexual ribaldry reflected in Gaelic literature and customs. However, illegitimate birth records do not take into account pre-nuptial conceptions, which are extremely difficult to trace, but may have been more frequent than many Irish historians have allowed for (Connolly, for example, optimistically sets them at one out of ten births, compared with two out of five for England; Mageean, however, notes that the numbers may have been quite high, and thus the extent of premarital sexual activity in Ireland is masked by the statistics). In such cases, local community mechanisms likely came into play to encourage the couple to marry before the child's birth. See: Kenneth H. Connell, *Irish Peasant Society: Four Historical Essays* (Oxford: Clarendon Press, 1968), chap. 2; Connolly, *Priests and People*, 186-218; Hasia R. Diner, *Erin's Daughters in America: Irish Immigrant Women in the Nineteenth Century* (Baltimore, MD: Johns Hopkins University Press, 1983), 21-24; Deirdre Mageean, "To Be Matched or to Move: Irish Women's Prospects in Munster," in *Peasant Maids—City Women: From the European Countryside to Urban America*, ed. Christiane Harzig (Ithaca, NY: Cornell University Press, 1997), 78-79; and Janet A. Nolan, *Ourselves Alone: Women's Emigration from Ireland, 1885-1920* (Lexington: University Press of Kentucky, 1989), 28 and 35. back

Note 26: PANL, GN 5/4/C/1, Ferryland, box 1, *Catherine Oudle [also Audle] v. John Murry, Sr.*, 3/4 (both dates appear in the record) and 25 April 1791. back

Note 27: PANL, GN 5/4/C/1, Ferryland, box 1, *Elizabeth Carney v. Manus Butler*, 16 and 23 May 1791. back

Note 28: PANL, GN 5/4/C/1, Ferryland, box 1, 86-88 and 95, *Margaret Mackey v. William Walsh*, 29 April and 9 May 1836, and 15 February 1837. back

Note 29: The urgency of this issue was noted by local colonial secretary Edward B. Brenton to attorney general James Simms in 1826 after two recent cases had come before the magistrates involving mothers who had abandoned their illegitimate children. Brenton asked what measures could be taken against "these unnatural parents so as to compel them to support their children or to punish them for the desertion of them." Simms replied that the English law would not apply, interwoven as it was with a system of parochial poor law that did not exist in Newfoundland. The property of offending parents could be attached, but the mothers in these cases appeared to be "as destitute of property as of principle." Only legislative enactment would be effectual to check such offenses, he felt. See PANL, GN 2/1/A, vol. 35, 329-31: Brenton to Simms, 28 April 1826; and Simms to Brenton, 29 April 1826. The issue was given priority by the newly formed House of Assembly in Newfoundland with the early passage (on 12 June 1834, in its second session) of *4 Wm. 4, Cap. 7, An Act to provide for the Maintenance of Bastard Children*. By the terms of this act, a woman about to be delivered of an illegitimate child could swear to its paternity before a justice of the peace. The purported father was to provide security for maintenance of the child or, in default, be jailed. If he felt he had been wrongfully charged, "or if the Person charging him be a Woman of ill-fame, or a common Whore," he had recourse to appeal in the next quarter sessions. (Note the discrimination against the "unchaste" woman in the statutory law; whether this scruple was closely adhered to by the local courts in bastardy actions is uncertain, but as noted, there was no reference to the previous character of the mother in any of the southern Avalon cases herein.) To ensure further that the child would not become a charge on the community, any two magistrates could, at their discretion, require either the mother or

the father to provide security in the amount of £20 Stg., to be disbursed by the magistrates for the care of the child. Ultimately, then, both mother and father were deemed financially responsible for the child. Of the nine cases examined on the southern Avalon, five were heard before the passage of this legislation, four after its enactment. back

Note 30: Absent among southern Avalon prosecutions, and Newfoundland cases in general, were the fornication prosecutions that were still common in England and colonial America up to the late eighteenth century. In these other jurisdictions, both male and female parties to sexual intercourse outside marriage had been punished by seventeenth- and early eighteenth-century courts. But by the middle of the eighteenth century, perceptions of women as moral guardians had constructed fornication as a "woman's crime," although this assumption was itself being challenged by the end of the century as the concept of seduction gained greater currency. See Laurel Thatcher Ulrich, *A Midwife's Tale: The Life of Martha Ballard, Based on Her Diary, 1785-1812* (New York: Alfred A. Knopf, 1990), 148-49. As noted above, however, the seduction action had its own pitfalls for women in terms of their being perceived as sexually passive and lacking in legal agency. back

Note 31: See, for example: Backhouse, *Petticoats and Prejudice*; Berkin and Horowitz, eds., *Women's Voices*; Cullum and Baird, "'A Woman's Lot'"; May, "'She at first denied it'"; and Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Alfred A. Knopf, 1982). back

Note 32: By contrast, Connell notes that infanticide rates were more significant than illegitimacy rates in Ireland, but again, he is working with data from the nineteenth century, when women's economic and social options were in decline. See Connell, *Irish Peasant Society*, chap. 2. back

Note 33: See: Backhouse, *Petticoats and Prejudice*; Edwards, *Female Sexuality*; Randolph Trumbach, "Modern Prostitution and Gender in *Fanny Hill*: Libertine and Domesticated Fantasy," in *Sexual Underworlds*, ed. Rousseau and Porter, 69-85. Poutanen notes, however, an increased targeting of female vagrancy, particularly prostitution, in Montreal through the early decades of the nineteenth century as uncertainties and unrest arising from changing socioeconomic conditions induced an emerging male bourgeoisie to demand greater state control of the street life of the city. See Poutanen, "Contours of Female Vagrancy." back

Note 34: PRL, 340.9 N45, Ferryland, *Mary Keating v. Stephen Kennely*, 14 September 1773; see also Mannion Name File, Ferryland, "Keating, Mary." back

Note 35: PANL, GN 5/4/C/1, Ferryland, box 1, *Catharine Power at the Suit of the Crown v. William Deringwater, alias Drinkwater*, 20 September 1806. back

Note 36: In 1831, a jury acquitted John Power of assault with intent to commit rape after hearing the testimony of two witnesses: alleged victim Mary Ann Lanine and Bridget Lanine. Whether the two women substantiated or contradicted each other's testimony is not clear from the record, but at the end of the day, Power was a free man. See PANL, GN 5/2/C/1, box 1, 267-68, *Rex, on the prosecution of Mary A. Lanine, v. John Power*, 14 October 1831. back

Note 37: PANL, GN 5/4/C/1, Ferryland, box 1, *Mary Jenkins v. John Power, James Callinan [also Callanan], and Patrick Cahill*, 24 February 1794 (this is the date that appears in the records, but the year was more likely 1795, as the record falls between matters heard on 17 November 1794 and 20 May 1795). back

Note 38: PANL: GN 5/4/C/1, Ferryland, box 1, 2, *Rex v. Timothy Callahan*, 21 August 1829; GN 5/2/C/1, Ferryland, box 1, 227 and 229-30, *Rex v. Timothy Callehan*, 29 October 1830; GN 5/4/C/1, Ferryland, box 2, *Mary Place v. John Higgins*, 17 February 1841. back

Note 39: Edwards, *Female Sexuality*, 50. See also: Backhouse, *Petticoats and Prejudice*; Cullum and Baird, "'A Woman's Lot'"; and Dubinsky, "'Maidenly Girls.'" back

Note 40: PRL, 340.9 N45, Ferryland, Order, William Parker, Surrogate, to Simon Pendergrass, 8 October 1774; see also Mannion Name File, Ferryland, "Farrell, Ed." back

Note 41: PANL, GN 2/1/A, vol. 3, 115, Order, Webb to Jackson, 6 October 1760. back

Note 42: PANL, GN 5/4/C/1, Ferryland, box 1, *Margarett Hanahan v. Thomas Hanahan*, 31 January, 1 February, and 11 April 1791. Christopher English has interpreted the judgment as a "virtual divorce"; see English, "The Reception of Law in Ferryland District, Newfoundland, 1786-1812," paper presented to a joint session of the Canadian Law and Society Association and the Canadian Historical Association, Brock University (2 June 1996), 40-42. back

Note 43: PANL, MG 205, Pole Papers, 1799-1800. This option was also pursued by other separated or deserted women in the area (see below). back

Note 44: See, for example: Backhouse, *Petticoats and Prejudice*, chap. 6; Anna Clark, "Humanity or Justice? Wifebeating and the Law in the Eighteenth and Nineteenth Centuries," in *Regulating Womanhood: Historical Essays on Marriage, Motherhood, and Sexuality*, ed. Carol Smart (London: Routledge, 1992), 187-206; Margaret R. Hunt, "'The great danger she had reason to believe she was in': Wife-Beating in the Eighteenth Century," in *Women and History*, ed. Frith, 81-102; Judith Norton, "The Dark Side of Planter Life: Reported Cases of Domestic Violence," in *Intimate Relations: Family and Community in Planter Nova Scotia, 1759-1800*, ed. Margaret Conrad, Planter Studies Series, no. 3 (Fredericton: Acadiensis, 1995), 183-4; Hill, *Women, Work, and Sexual Politics; and Shanley, Feminism, Marriage, and the Law.* back

Note 45: Christopher English, "From Fishing Schooner to Colony: The Legal Development of Newfoundland, 1791-1832," in *Law, Society, and the State: Essays in Modern Legal History*, ed. Louis A Knafla and Susan W. S. Bunnie (Toronto: University of Toronto Press, 1995), 84. back

Note 46: Again, the priority of ensuring that deserted families did not become a charge on the community was evidenced by the early passage (12 June 1834) by the new local legislature of *4 Wm. 4, Cap. 8, An Act to afford Relief to wives and Children, Deserted by their Husbands and Parents*. Here was an acknowledgment of women as legal entities with responsibilities under the law, for the act stipulated that "any Person, being such Husband, Father or *Mother*" who had absconded or was about to leave "his or *her* usual place of abode" without making provision for a wife, child, or children left behind was to be apprehended and required to enter into security to provide reasonable support for the deserted family members. Upon refusal or neglect of this requirement, justices or magistrates were empowered to attach wages or seize goods and chattels belonging to the offender of sufficient value to provide sufficient maintenance. The act stated that upon "willful" refusal or neglect on the part of the offender, the said "Father, Husband or *Wife* shall be deemed a Rogue and Vagabond" (epithets usually reserved for male recusants in colonial courts) and could, at the discretion of the justices or magistrates, be imprisoned for a month on bread and water (the option chosen by the Ferryland magistrates against Michael Mountain). Further, the act provided that if "any person being a Father, Husband or *Mother*, and being able to work," failed to provide support "by his or her neglect of work, or by spending his or *her* money in Ale Houses, Taverns, or in any other wasteful and improper manner," s/he would be "deemed to be an idle and disorderly *person*," and the justices or magistrates were empowered to sentence the offender to prison and hard labor, "or, not being a female, to Labor on the Public Roads," for a period not exceeding fourteen days. (Italics added throughout.) As in the case of bastardy actions, any person who felt him- or herself wrongly charged could appeal the decision in the next quarter sessions. While this legislation did not explore the possibility of a wife's deserting a husband, and denied women offenders the dubious honor of serving their time on road work (perhaps too public a spectacle, although other forms of hard labor were permitted), it was relatively gender-inclusive, recognizing the financial accountability of both men and women in the support of their families. Of the southern Avalon cases discussed herein, only *Mountain v. Mountain* was heard after the passage of this Act. back

Note 47: PANL, GN 2/1/A, vol. 1, 115, *Re: Petition of Philip Moloy*, 27 August 1750. back

Note 48: PANL, GN 5/4/C/1, Ferryland, box 1, *Re: Forestall*, 13 June 1791. back

Note 49: Again, this contrasts with cases in most British jurisdictions, in which the character of the wife, both during marriage and after separation, was at issue in awarding child custody and support. Within the English common-law tradition, wives had to prove their "worthiness" to the court. Those who committed adultery or deserted the marriage, except under the most extreme circumstances (e.g., the husband's adultery in

combination with violent abuse, incest, sodomy, or bestiality), lost entitlement to custody and maintenance. Indeed, a wife who had sexual relations with a man other than her husband even after separation was no longer entitled to support. See, for example: Backhouse, *Petticoats and Prejudice*; Cullum and Baird, "'A Woman's Lot'"; Errington, *Wives and Mothers*; Hill, *Women, Work, and Sexual Politics*; Joan Perkin, *Women and Marriage in Nineteenth-Century England* (Chicago: Lyceum Books, 1989); and Merril D. Smith, "'Whers Gone to She Knows Not': Desertion and Widowhood in Early Pennsylvania," in *Women and Freedom*, ed. Eldridge, 211-28. back

Note 50: PANL, GN 5/4/C/1, Ferryland, box 1, *Mary Dunn v. Timothy Dunn*, 14 March 1791. The records do not indicate whether this was a lump-sum settlement or an annual maintenance. back

Note 51: PANL, MG 205, Pole Papers, 1799-1800. back

Note 52: Cullum and Baird, "'A Woman's Lot.'" back

Note 53: PANL, GN 5/4/C/1, St. Mary's, 111, *Ann St. Croix v. Benjamin St. Croix*, 16 October 1821. back

Note 54: PANL, GN 5/4/C/1, St. Mary's, 130-31, *Ann St. Croix v. Edward Power*, 17 July 1822. back

Note 55: PRL, 340.9 N45, *Mary Kearney v. Andrew Kearney*, 13 August 1804. back

Note 56: *49 Geo. III, Cap. 27.* back

Note 57: English, "Reception of Law," 44. See also English and Christopher P. Curran, "A Cautious Beginning: The Court of Civil Jurisdiction, 1791," in *Silk Robes and Sou'westers: The Supreme Court, 1791-1991* (St. John's: Jesperson Press, 1991). Berkin also notes the tailoring of English laws to local circumstances in some American colonies, although she notes that others preserved the older laws, even after England itself had abandoned them. See Berkin, *First Generaions*, 155. back

Note 58: In this regard, resident magistrates may have been more pragmatic and utilitarian than governors, chief justices, and visiting surrogates, who were not directly involved in the fishery. This may, to some extent, explain the difference in my observations and those of Cadigan in relation to the court's perception of women's "place" in Conception Bay, particularly in the debt collection cases of Butler and Lundrigan of the 1820s, which resulted in harsh corporal punishments and provided much fodder for the reform movement in Newfoundland. Cadigan argues that the purpose of the whippings imposed by surrogates on these men was to punish them for the roles their wives played in physically resisting the attachment of their properties for debt. The two men were being disciplined, Cadigan writes, not so much for their contempt of court in a socially turbulent time, as has always been believed, but because of their inability to keep their womenfolk in line—their failure as patriarchs—as the court tried to impose a gentry-bourgeois model of patriarchy on the local fishing population. See Cadigan, "Whipping Them into Shape: State Refinement of Patriarchy among Conception Bay Fishing Families, 1787-1825," in *Their Lives and Times: Women in Newfoundland and Labrador: A Collage*, ed. Carmelita McGrath, Barbara Neis, and Marilyn Porter (St. John's: Killick Press, 1995), 48-59. It is possible that the involvement of visiting surrogates rather than local magistrates in these two cases was a factor in their outcome. Still, it is difficult to understand why, if the intention of the court was to make examples of these two men as failed patriarchs, the surrogates permitted the message to be so completely lost on the local community. Why play into the hands of local reformers by leaving the entire population suffering from the "misapprehension" that the punishments were for contempt of court? And can we interpret the attitudes of two surrogates as representative of the broader local legal regime? Certainly, similar actions by wives on the southern Avalon did not attract corporal punishment for their husbands. The Butler and Lundrigan matters aside, however, Cadigan still observes a much greater effort by courts in Conception Bay to impose standards of female respectability and domesticity than I have found in my study area—again, possibly reflecting differences in ethnic mix and economic development in the two areas. back

Note 59: Byrne, ed., *Gentlemen-Bishops*, 77-79, Ewer to Archbishop Troy, 30 November 1789; italics added. Prefect Apostolic O Donel had already expressed similar concerns to Leonardo Antonelli, Cardinal Prefect of Propaganda Fide. See Byrne, 55, O Donel to

Antonelli, [December] 1785. The clergy were also worried about the close degrees of consanguinity in Newfoundland marriages. See, for example, Byrne, 329-33, Bishop Thomas Scallan to Cardinal Francesco Luigi Fontano, Prefect of Propaganda Fide, 6 October 1822. back

Note 60: Byrne, ed., *Gentlemen-Bishops*, 55, O Donel to Antonelli, [December] 1875. back

Note 61: The concept that women, as descendants of Eve, had inherited her capacity for temptation was espoused by most Protestant sects as well. Of the Christian churches, only the Quakers believed that the burden of Eve's "sin" had been transmuted by Christ's death and resurrection. See Berkin and Horowitz, eds., *Women's Voices*, 125-26. back

Note 62: There was no real association of churching with thanksgiving in the study area. Nor did oral informants link it with "uncleanliness" associated with blood and the birthing process. The overwhelming perception of the rite was that it was a form of absolution for the shame of women's participation (albeit necessary) in the sexual act for the purpose of procreation. back

Note 63: The information on perceptions of women as occasions of sin, churching, and shaming comes from the oral tradition of the area, with informants relating what the Irish Catholic community understood the church's attitudes and interpretations to be. These perceptions tend to correspond with the literature on the declining status of women within the Catholic Church in Ireland. The Irish historiography, for example, also notes that the greatest disgrace for illegitimacy was borne by the mother and, to a lesser extent, the child, particularly as the nineteenth century progressed. Indeed, that century was marked by a decreasing tolerance of illegitimacy and increasing sexual restriction. The Catholic Church in Ireland was extremely active in patrolling sexuality and found that its efforts met with increasing success as its desires meshed more closely with the more "respectable" farming class that dominated post-famine Irish society. As on the southern Avalon, however, church discourse fashioned a sexual double standard. See, for example: Connolly, *Priests and People*; Diner, *Erin's Daughters*; Mageean, "Irish Women's Prospects"; Kerby Miller, David Doyle, and Patricia Kelleher, "'For love and liberty': Irish Women, Migration, and Domesticity in Ireland and America, 1815-1920," in *Irish Women and Irish Migration*, ed. Patrick O'Sullivan, Irish World Wide Series, vol. 4 (London: Leicester University Press, 1995), 41-65; and Nolan, *Ourselves Alone*. Lynne Marks notes that Protestant churches in Upper Canada also carefully monitored the sexual behavior of their congregations, but, by contrast, their efforts were aimed more at establishing a single sexual code for both men and women rather than reinforcing the sexual double standard of secular discourses. See Marks, "No Double Standard?: Leisure, Sex, and Sin in Upper Canadian Church Discipline Records, 1800-1860," in *Gendered Pasts*, ed. McPherson, Morgan, and Forestell, 48-64. back

Note 64: Michael McCarthy, *The Irish in Newfoundland, 1600-1900: Their Trials, Tribulations, and Triumphs* (St. John's: Creative Publishers, 1999), 157-58, citing Bishop Fleming, Pastoral Letter, 10 May 1836. back

Note 65: Mons. Michael Anthony Fleming, *Report of the Catholic Mission in Newfoundland in North America*, Submitted to the Cardinal Prefect of Propaganda (Rome: Printing Press of the Sacred Congregation, 1837), 3-4. back

Note 66: CNS, Michael Anthony Fleming, "Letter on the State of Religion in Newfoundland," 11 January 1844, addressed to the Very Rev. Dr. A. O'Connell, Dublin (Dublin: James Duffy, 1844), 18; italics added. back

Note 67: For a discussion of the nuns' efforts, see Frank Galgay, Michael McCarthy, Sr. Teresina Bruce, and Sr. Magdalen O'Brien, *A Pilgrimage of Faith: A History of the Southern Shore from Bay Bulls to St. Shott's* (St. John's: Harry Cuff, 1983), particularly chap. 9, "Ministry of the Presentation Sisters on the Southern Shore." back

Note 68: For a discussion of the development of an institutionalized Catholic Church in Newfoundland under Bishop Fleming, and its increasing influence on the social and political life of the colony, see John E. Fitzgerald, "Conflict and Culture in Irish-Newfoundland Roman Catholicism, 1829-1850" (Ph.D. diss., University of Ottawa, 1997). back

Note 69: Ironically, convent living provided those women who entered the orders with

some latitude, even as the church's espousal of female domesticity and passivity sought to confine women's independence. Convent life meant freedom from the domestic authority of fathers and husbands, release from domestic routines, and the opportunity to perform socially useful work (teaching, nursing, social work) without the loss of "respectability" this normally would have entailed for women who remained single. Also, convents were all-female institutions with considerable autonomy in running their day-to-day affairs, although they were increasingly brought under the control of the male church hierarchy after the Middle Ages. See Caitriona Clear, "The Limits of Female Autonomy: Nuns in Nineteenth-Century Ireland," in *Women Surviving: Studies in Irish Women's History in the Nineteenth and Twentieth Centuries*, ed. Maria Luddy and Cliona Murphy (Dublin: Poolbeg Press, 1989), 15-50. back

Note 70: This impetus is noted in the Irish literature cited above. Campbell also observes a similar phenomenon in New South Wales. He notes that the Catholic Church discouraged women's involvement in rough agricultural work and "unfeminine labour." Middle-class ideals of domesticity and fragility were espoused, and the *Holy Family* (Christ and his parents, Mary and Joseph) was held up as a model for all Irish families. The Irish mother, located firmly within the home, was glorified. Indeed, the church actually invented a link between female domesticity and a "traditional" and distinctive Irish way of life—a linkage that had been far from the reality of many Irish women's lives. See Malcolm Campbell, *The Kingdom of the Ryans: The Irish in Southwest New South Wales, 1816-1890* (Sydney: University of New South Wales Press, 1997), 130-32. back

Note 71: QC, interview by author, St. Mary's, 11 September 1999. back

Note 72: Brian Clarke provides insight into these processes in industrializing Toronto. He argues that Irish Catholic women gained some moral authority in their homes at a time when their economic contribution to the household was increasingly discounted. Recruited by the church to promote an increase in devotional practices, these women were exhorted to create spiritual havens for husbands and children, removed from the materialism of the outside world. Still, their moral authority was very much grounded in the cult of domesticity, and Catholic women were located very firmly in the home, with some mediating influence between household and parish. It was also an influence rooted in constructions of "female virtues" of piety, purity, obedience, humility, dependence, self-sacrifice, and service, as epitomized by church images of the Virgin Mary. Like Mary, Catholic women could create their own "holy family" by instructing their loved ones at the domestic hearth. Clarke observes that this image of "true womanhood" was quite convenient for Irish Catholic men, and while it gave Catholic women some authority in the home, it gave them very little influence outside it. Also, although they participated significantly in parish fund-raising, selling their baked and hand-crafted goods at bazaars and fairs, women's contribution was seen as an extension of their roles as wives and mothers, and they were subservient to male clergy, sodalities, and finance committees. See Clarke, *Piety and Nationalism: Lay Voluntary Associations and the Creation of an Irish-Catholic Community in Toronto, 1850-1895* (Montreal: McGill-Queen's University Press, 1993), chap. 4. back

Note 73: Because the Catholic population of Newfoundland was predominantly Irish, a strong link was naturally forged with the Catholic Church in Ireland. From the latter eighteenth century through the nineteenth century, Irish religious orders monopolized the spiritual stewardship of the island's Catholic congregation. Irish Augustinian friars and Irish Franciscan Recollet priests spearheaded this ministry; Presentation Sisters from Galway and the Sisters of Mercy from Dublin arrived in the colony in 1833 and 1842, respectively, to educate Catholic girls; and the Irish Christian Brothers came out to teach Catholic boys in 1875. Although these orders eventually admitted native Newfoundlanders, generations would pass before a substantial complement could be drawn from the local population. Furthermore, there was an early perception that local people would not make "proper" priests, nuns, or brothers. Recruitment of personnel from Ireland was thus quite significant, even into the twentieth century. See Byrne, ed., *Gentlemen-Bishops*; Arthur P. Monahan, "Canada," in *A History of Irish Catholicism*, ed. Patrick J. Corish (Dublin: Gill, 1971), 1-34; Rev. Michael F. Howley, *Ecclesiastical History of Newfoundland* (Boston: Doyle and Whittle, 1888; reprint, Belleville, ON: Mika, 1971); Sister M. Williamina Hogan, *Pathways of Mercy in Newfoundland, 1842-1984* (St. John's: Harry Cuff, 1986); Paul O'Neill, *Upon This Rock: The Story of the Roman Catholic Church in Newfoundland and Labrador* (St. John's: Breakwater Books, 1984); and A. L. O'Toole, *Challenged: The Story of Edmund Rice and the Christian Brothers in North America Since 1825* (Bristol: Burleigh Press, 1975). back

