Abusing Hugh Davis

Determining the Crime in a 17th Century Morality Case

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THE HUGH DAVIS DOCUMENT

> September 17th, 1630: Hugh Davis to be soundly whipped, before an assembly of Negroes and others for abusing himself to the dishonor of God and shame of Christians, by defiling his body in lying with a negro; which fault he is to acknowledge next Sabbath day.[1]

On a fateful mid-September day in 1630, Hugh Davis found himself accused of horrifying litany of crimes. He had shamed Christians. He had dishonored God. He had abused himself. And he had done all of this by lying with a Negro. He was to be flogged, publically brutalized and humiliated, in front an assembly of colonists, including Negroes. Then, on the next Sabbath, he would be forced to admit his grievous transgressions. The sentence, a mere forty-three words long, outlining Davis' heinous crimes and prescribing the Virginia colony's retribution remains the only place Hugh Davis enters the historical record; it is the only thing for which he is remembered.

Though we know nothing more about Hugh Davis, scholars have long cited his legal difficulties in their efforts to further our understanding of the racial realities of Colonial Virginia. Yet using *Davis* has its problems. Most notably, the Court record does not specify the sex of the unnamed African. While many historians have simply assumed the case involved Hugh Davis and an African woman, George M. Fredrickson was certainly correct when he wrote: "What is often taken as evidence of early revulsion to miscegenation is in fact ambiguous."[2] While historians have recognized that ambiguity, no one has fully explored what it means for using the document.

Historian Joseph Boskin offered a word of caution, noting that "the circumstances surrounding the case of Hugh Davis are unknown." For Boskin, any attempt to determine just exactly why Hugh Davis found himself in court would be a "matter of conjecture." Still

maintained that “the decision is chillingly clear.”[3] Yet, without being able to determine why Hugh Davis ended up in court that September, we cannot assess where the “chillingly clear” sentence fits in the colony’s history and the creation of racial boundaries. Indeed, without knowing what crime Davis committed, the sentence itself is hardly “chillingly clear.”

Here, I will argue that it was different from the usual cases of adultery and fornication because it was, instead, a case of sodomy. Additionally, I argue that such a claim in not mere “conjecture.” We may never be able to establish definitively whether Hugh Davis committed fornication or sodomy, but we can demonstrate that it is more probable he committed sodomy.

The Case Itself

The case against Hugh Davis appears in two collections, one edited by William Waller Hening, a lawyer and Virginia politician in the late 18th and early 19th centuries, and the other by antebellum court reporter Conway Robinson.[4] Both renditions of the case agree exactly on the language used in September of 1630. The forty-three words compose the entirety of what we know about the case, or about Hugh Davis. But the language employed in the case is more telling that it may first appear.

The Virginia Court chose word strikingly similar to a passage in the King James Bible that is typically associated with Paul’s condemnation of homosexuality. [5] The King James Bible had been completed fairly recently, in 1611; since then its impact on the English language has been profound. We certainly should not be surprised to see Biblical language employed in court cases. Rebecca Goetz, who specifically indicated Hugh Davis committed fornication, argued that the colony’s laws were “deeply rooted not only in the common law but also in biblical law.”[6]

The key Biblical passage is 1 Corinthians 6:9. Corinth was renowned for its sexual debauchery. In his letter to the church there, Paul instructed the city’s Christians, in the language

of the King James Bible, that "the vnrighteous shall not inherite the kingdome of God? Be not deceiued: neither fornicatours, nor idolaters, nor adulterers, nor effeminate, nor abusers of themselues with mankind."[7] Clearly the Biblical passage and the Court's use of the reflexive "abusing himself," a phrase the Court did not use in cases known to be interracial fornication.

The phrasing for sodomy appearing in the King James Bible and, it seems, used by the Virginia Court emerged sometime after the fourteenth century. John Wycliffe's translation of the Bible is typically dated to 1380; Wycliffe rendered the key portion of the passage as "…nether thei that doon letcheri with men" indicating a prohibition against homosexual activities. When William Tyndale undertook to translate the Bible in the 1530s, however, the language had shifted. Tyndal finished the relevant sections of the New Testament, before being executed for his efforts; he rendered the key Corinthians passage as "…nether whormongers nether weaklinges nether abusars of them selves with the mankynde."[8] However much modern scholars argue about Paul's Greek words and their exact meanings, another circulating English-language Bible of the early seventeenth century—the Geneva Bible—merely referred to "abusers of themselues with mankind" as "buggerers."[9] Thus, it seems more than just conjecture to argue that when the Court accused Davis of "abusing himself" with a Negro they were, in fact, accusing him of a homosexual act.

A second aspect of the Court's language is also instructive. The Jamestown Court accused Davis of "lying with a negro" whereas they commonly used the words "Negress" or "Negro wench" in other cases specifying that the unnamed Africans in those cases were, indeed, female. Winthrop Jordan, in *White Over Black,* explained "the term 'negro woman' was in very common use." This led Jordan to speculate that Davis' partner "may not have been female."[10] Richard Godbeer ruminated on that problem in a footnote in his *Sexual Revolution in Early*

America, noting that the "passage refers not to a 'negro woman' or a 'negro wench' or 'a negress' but a 'negro' suggesting that Davis may have had sexual contact with a male African."[11]

Davis in Context

We have only forty-three words to work with in directly analyzing *Davis.* To make any real sense of the meaning and significance of the case, we must put it in context. This creates a number of historical problems. First, Hugh Davis may be, and typically is, contextualized using cases of interracial fornication, be it the case against Robert Sweat or, less frequently, the case of William Watts and Mary. However, *Davis* also fits among cases of sodomy or of questionable sexual identity, notably the cases of Thomas Hall and Richard Cornish. By choosing which particular context into which they place *Davis,* historians are necessarily choosing what they intend the case to mean to colonial and American history; as historians, we should be explicit about why we are making the particular choices we are making.

This problem is clearly exemplified by historian Kevin Mumford, who, in "After Hugh: Statutory Race Segregation in Colonial America, 1630-1725" argued "it is not by random chance, but rather a kind of historic regularity that the first extant documents such as Hugh and Sweatt that mention race, they are cases of miscegenation."[12] Mumford has created a meaning for the case by giving it a specific context, but he could have chosen an entirely different context, and therefore created an entirely different meaning, for the case. It would certainly be no random chance, either, to have a case of sodomy in 1630. The colony executed Richard Cornish for sodomy in 1624. Additionally, in 1629 Virginia dealt with what must have been a truly perplexing case of sexual identity. The Court demanded that Thomas Hall declare himself to be either male or female, but Hall maintained he was both. The Court, in disagreement with Hall's master, came to the rather ambiguous determination that Hall must present himself as both male

female; He was ordered to wear men's clothing but also an apron and to have his hair coiffed as a woman's. Yet it reached the decision only after two bodily inspections had resulted in contradictory findings.[13] The next year, the court ordered Hugh Davis flogged. *Davis* could fit either context, but the choice of contexts would give it very different meanings in the course of Colonial legal history.

The specifics of the 1640 are more ambiguous than those of the 1630 case because William Waller Hening and Conway Robinson rendered that case differently from each other. Hening reported the case as: "1640: Robert Sweet to do penance in church according to laws of England, for getting a negroe woman with child and the woman whipt."[14] Robinson offered considerably more information:

> Oct. 17: 1640 *Whereas Robert Sweat* hath begotten with child a negro woman servant belonging unto Lieutenant *Sheppard, the court hath therefore ordered* that the said negro woman shall be whipt at the whipping post and that the said *Sweat* shall tomorrow in the forenoon do public penance for his offense at *James City* church in the time of divine service according to the laws of *England* in that case provided.[15]

Historians have not offered an explanation for the rather substantial differences between Hening and Robinson in this case, and I admit I do not have one.

Both Hening and Robinson agree that the defendant had impregnated a "negro woman" and the Court sentenced him to do public penance "in accord with the laws of England." Both also agree that the woman was sentenced to a whipping. Neither Hening nor Robinson indicate any vitriolic language about shame, dishonor, or defilement directed against the white male defendant, and—most importantly—he was not accused of abusing himself.[16]

Robert Sweat had been born about 1623 and arrived in Virginia in 1638 on the ship *Guiding Star.* Lieutenant Robert Sheppard claimed a headright in Sweat's name. Sweat appears to have had two children with an African woman, the first in 1640 and the second 1642. Clearly, twice impregnating one Lt Sheppard's African Servants indicate repeated instances of

interaction sexual activity, but there is no record of legal action from 1642.[17] Both the 1630 and 1640 cases involved white men of low standing engaging in sex with Africans, but only one of them was flogged.

In his article "Modern Tensions and the Origins of American Slavery" Winthrop Jordan supplied support for the argument that Davis' partner was male, noting that around 1650 a white man and black woman were required to stand before a congregation in Lower Norfolk County clad in white sheets, as a punishment for their illicit relations. In all likelihood, this refers to William Watts and Mary, who received just such a sentence in Lower Norfolk Country in 1649. Jordan explained, "this punishment was sometimes used in ordinary cases of fornication between two whites."[18]

Prominent historians Edmund Morgan, George Fredrickson, and, most recently, Kathleen Brown agreed with Jordan's claim that Virginia courts frequently punished fornication quite similarly regardless of racial make-up of the couple; all three cite the case of William Watts and Mary as part of their explanation—but only one, Morgan, speculates that the *Davis* case may have been about sodomy.[19] William Watts and Mary, specified by the court as a "negro Woman" belonging to Mr. Cornelius Lloyd, were both sentenced to do penance, and Watts was ordered to pay the court fees. This suggests an even more tolerant position than the court had taken in the Sweat case where his unfortunate partner was whipped.[20] In this case, the court punished an apparently consensual, but interracial, liaison between two Christians without much consideration given to race. Regardless, neither the court sentencing Sweat and his partner, nor the court sentencing William and Mary, found it necessary to accuse any of them of dishonoring God, shaming Christians, or, most importantly, abusing themselves.

By the time Leon Higginbotham took up the *Davis* case in the 1980s, the idea that Hugh Davis had committed sodomy had been proffered, but not fully explored.[21] Indeed, it still has not been fully explored. This is intriguing since scholars like Rebecca Goetz have admitted that they see particularly good explanation for why Sweat did not face "such hostile language" coming from the Court, but Goetz does not consider sodomy as a possible explanation.[22] I would contend that Hugh Davis' having committed sodomy instead of fornication is, in fact, a good explanation for the differences. Sometimes, the best we can hope for is a particularly good explanation.

Abusing Davis

Leon Higginbotham addressed *Davis* at least three separate times. In his early explorations, Higginbotham was quite unsure what to make of *Davis,* but by 1996 he had become certain that Davis' partner was female, and that race, not gender, was the defining issue in the case. Indeed, Higginbotham clearly mishandled the evidence in *Shades of Freedom.* Higginbotham offered no explanation for his increasing certainty that Davis committed fornication.

When Higginbotham published *In the Matter of Color* in 1980, he wrote about Hugh Davis with considerable hesitation. He noted, "The *Davis* case raises more issues than it answers. As reported, it fails to reveal Davis's race or legal status: freeman, indentured servant, or slave? The decision notes that Davis's 'mate' was black, but the court does not disclose that persons' sex or legal status." While Higginbotham argued Davis himself was white, and noted that he and his partner had committed a crime that "was more than an infraction of colonial codes; their behavior was contrary to that allowed by the church." Either fornication or sodomy, however, would have been contrary to the laws of the church, and Higginbotham was intentionally ambiguous about which it was.[23]

By the time he wrote *Shades of Freedom,* however, Higginbotham had become sure that Hugh Davis' partner was female. The vitriolic language that had once led Higginbotham to consider the possibility that *Davis* was about homosexuality, now meant something different: "Davis's crime was not fornication, but bestiality." According to Higginbotham, Hugh Davis had engaged in sexual relations with "someone less than human." Yet, Higginbotham's argument simply cannot be sustained.[24]

Higginbotham was now so sure that Davis and Sweat committed the same crime that he wrote: "Sweat 'defiled his body' and shamed God by sleeping with someone less than human." Neither Hening nor Robinson mention defilement or the shaming of God in the 1640 case. Higginbotham transposed the vitriolic language used against Hugh Davis onto the *Sweat* case. All the available evidence indicates that the Virginia court had used quite different language to describe the cases, something Higginbotham seemed well aware of just a decade earlier.[25] Higginbotham subsumed both *Sweat* and *Davis* into his narrative on American race relations, not only superseding the provable but also undermining the integrity of the evidence.

Like Higginbotham, Kevin Mumford has problems with his use of the evidence. In his rendition, Hugh Davis stood accused of "defiling his body in lying with a Negress" instead of a "Negro." Clearly, Mumford believes that Davis's partner was a woman and this belief led him to alter (quite likely unconsciously) the actual wording of the document.[26] Mumford goes further into the realm of supposition; for Mumford, *Davis* represents a "road not travelled, one where white colonists would civilize and show benevolence toward Africans."[27] Even if we assume, as Mumford does, that the Court intended to "educate and guide" Africans in the ways of the colony, that hardly indicates benevolence. Perhaps—almost certainly—they did intend to

demonstrate to Africans that certain transgressions would be punished harshly, but to understand fully the lesson they intended to impart, we must know what crime they were punishing.[28]

For Steve Martinot, flogging Davis in public represented "an instrumentalization of Africans for the purpose of keeping the English in line, reconstituting English social identity as a form of social control." This makes far more sense than Mumford's claim of benevolent guidance. While Martinot, writing in 2007, assumed that Davis' partner was female his core argument that the case was used to reinforce English social identity and control makes even more sense is we suspect Davis committed sodomy rather than fornication.[29] It is quite possible that the Court seized upon Davis' transgression to vent its disgust with both sodomy and interracial sexual contact in general. Carmen Nocentelli argues "the racialization of 'deviant' practices and behaviors" consolidated an emerging discourse on normal sexual behaviors that prioritized patriarchal heterosexual relationships and white privilege. Sodomy, not fornication, was the deviance most associated with the racial "other."[30]

The work of English jurist Sir Edward Coke is helpful at this point. Coke considered sodomy a "detestable, and abominable sin, amongst Christians not to be named" and he had plenty of company in his opinion. Yet, we also find an intriguing note in Coke's work: he believed that good Britons would not have engaged in the "shameful sin of sodomy" (which he was, apparently, willing to name) had it not been introduced to the realm by Lombards. Both fornication and sodomy may have been sins, but sodomy was also distinctly un-English. As the English sought to project their world into the wilderness, Rebecca Goetz suggests, "settlers came to fear the danger of reverting into heathenism even more than death"[31] From the perspective of 1630, threats to English morality could undermine the community and threaten the very existence of the colony.

The Virginia Court's language in 1630 clearly indicates that Davis' behavior threatened the colony's reputation as Christian, and his lying with a Negro threatened the emerging social hierarchy. The problem of "otherness" went even further.[32] As Nocentelli noted, "during the course of the sixteenth and seventeenth centuries, sodomy became so intertwined with 'foreignness' that European travelers abroad felt more compelled to explain its absence than its presence."[33]

All this happened at a time when, as Clare Lyons argues, the "understandings of same-sex sexual practices shifted dramatically." She argues that across the decades from the seventeenth into the early eighteenth century a more rigid legal definition of sodomy emerged across the European capitals. Our case, occurring in 1630, happens notably early in this transformative period, and quite far from the European metropole. The English, Lyons argued, "had tolerated sexual intimacy between men, despite its legal status as a capital offense" but how far that ambiguity and tolerance permeated the Empire is a difficult question. The ambiguity may have been greatest in colonies facing radically skewed sex ratios, but tolerance was likely limited by the nearness of perceived savagery and the demands that men perform English masculinity for the sake of the colony's survival.[34] Davis violated both sexual norms and social hierarchies; His sentence, I maintain, reflected an effort to punish sexual crimes as a way of establishing those norms and hierarchies in a frontier setting.

Davis and Death

For historians making the case that Hugh Davis committed sodomy, one unavoidable fact must be explained: sodomy was punishable by death, whereas Hugh Davis was publically flogged. This fact is the strongest argument presented to support the conclusion that Davis

committed fornication, not sodomy. Historian Thomas Morris, raised this issue as evidence that Davis likely committed fornication, not sodomy.[35]

To Morris' credit, he is one of very few historians who, having determined that Davis committed fornication, actually provides an explanation for why he does not believe Davis committed sodomy. Morris briefly compared the fates of Hugh Davis and Richard Cornish. Recognizing that some scholars had speculated that Hugh Davis may have committed sodomy, Morris determined that this possibility was "very unlikely" primarily because the colony executed Cornish while Davis was merely whipped.[36] As Morris correctly noted, the laws against sodomy mandated execution. Nevertheless, several factors might have saved Hugh Davis' life despite his committing a capital offense.

Historian Robert F. Oaks argues that New England courts may have hesitated to execute people for sodomy because of the labor shortages in the colony.[37] Virginia, even more than New England, faced a chronic labor shortage. Hugh Davis was capable of providing labor; hence, Davis' economic value may have saved his life. Indeed, according to Douglas Greenberg, the labor shortage was the most salient factor in mitigating the operation of the criminal code in the Chesapeake colonies.[38] A clear case in point here would be that of John Pope. When the Court convicted Pope of fornication in 1638, they gave him the choice of building a ferry for public use or receiving forty lashes.[39] We must also consider the possibility that the Court opted not to execute Hugh Davis because his labor actually belonged to a Virginia planter. Morgan concluded: "a servant in Virginia, as long as his term had not expired, was a machine to make tobacco for somebody else."[40] In such a system, Hugh Davis's life may be been spared because it essentially belonged to someone else.

Other factors also undermine the assumption that Davis would automatically have been executed if he had committed sodomy. Sodomy was a difficult charge to prove. Cornish faced testimony from his victim, but we have no idea what evidence the Court had of Davis' crime. The Court may have convicted Hugh Davis only of attempted sodomy, as there may not have been definitive proof of penetration. As historian John Murrin has noted, in England people convicted of attempted sodomy were "certainly considered infamous" but they were not executed; Murrin notes, "A common sentence was an hour in the pillory."[41]

Another unknown to consider would be Hugh Davis' age at the time of the crime. Murrin's survey of sodomy cases across the colonies includes the whipping of six youth in New Haven. In 1653, the Connecticut court convicted the youth committing "much wickedness in a filthy corrupting way one wth another" but they were whipped, not hanged, because of their age.[42] In 1630, Hugh Davis could have been under the age of 14—which Stephen Robertson identified as the age of legal responsibility for most of Colonial America.. The muster of 1624 indicates nearly 80 children, though one historian suggests that that failed to account for 20 other children who were listed as servants. It is certainly possible that Hugh Davis was both a servant and too young to be executed for sodomy.[43]

The Final Salvo

In 2008, Ann Holder wrote "Historians have long, and inconclusively, debated the racial meaning of the infamous 1630 judicial sentence against Hugh Davis for 'defiling his body in lying with a Negro.'" She was, of course, right; historians have debated the case's racial meaning. Yet, like many historians before her, however, Holder failed to recognize ambiguity in the gendered meaning of the case.

A fuller accounting of the available evidence, the language used by the Court, and the cases context all suggest something else. Barring the discovery of new evidence, we will never know absolutely if Hugh Davis committed sodomy or fornication. Yet, Each attempt to demonstrate that Hugh Davis committed fornication encounters problems that point the historian to the probability that he committed sodomy. Indeed, such concerns about un-English behavior embedded themselves into a particular vision of American history where homosexuality remains un-American.

The status of same-sex couples and the civil rights of homosexuals have become "hot-button" issues in 21st century, in the United States as elsewhere. Current problems often inspire historical investigations, and this is as it should be. Within one particular narrative of American history, the one holding that the country is a "Christian nation" placed upon a hill to guide the world, homosexuality still must be beyond the limits of Americanness. As with interracial marriage, the borders of Americanness may well have moved beyond their early inceptions to allow homosexual couples to claim full membership in the society, but resistance to this possibility is certainly widespread.[44]

Davis still entices historians, and the Court's forty-three word diatribe has become sole basis for using, and misusing, the life of one unlucky colonist, Hugh Davis, to understand the racial and sexual climate of Colonial Virginia. Both the racial and sexual worlds were in flux, and Hugh Davis, I contend, drove the Colonial Court to a vindictive frenzy by breaking the taboos of both systems simultaneously.

[1] William Waller Hening, *The Statues at Large: Being a Collection of all the Laws of Virginia, from the First Session of the Legislature in the year 1619* vol. 1 (New York: R&W&G Bartow, 1823), 146. I have used a print edition, but it is available at Google Books:
http://books.google.com/books?id=FMROAQAAIAAJ&dq=hening%20statutes%20at%20large%20hugh%20davis%20volume%201&pg=PP1#v=onepage&q&f=false

The wording for Davis is the same in H. R. McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia,* (Richmond, VA 1924), 479. The Digitized by the Internet Archive, 2009. Accessed 18 April 2012 at Open Library: *http://archive.org/stream/minutesofcouncil00virg#page/478/mode/2up*.

The court sentence appears in the appendix entitled titled "Selections from Conway Robinson's Notes and Excerpts from the Records of Colonial Virginia." In the text, I will refer to this as Robinson's rendition. Notably, this is the edition used by Friedman and Shaffer in their study of the Conway Robinson notes. Lawrence J. Friedman and Arthur H. Shaffer, "The Conway Robinson Notes and Seventeenth-Century Virginia," *The Virginia Magazine of History and Biography* 78 (1970), 259-267. Stable URL: *http://www.jstor.org/stable/4247577.* Accessed 21 March 2012. McIlwaine is available from Google Books.

[2] George M. Fredrickson, *White Supremacy: A Comparative Study in American and South African History* [book on-line] (New York: Oxford University Press, 1981, accessed 9 April 2012), 100; available from Questia, http://www.questia.com/PM.qst?a=o&d=98660619; Internet.

[3] Joseph Boskin, *Into Slavery: Racial Decisions in the Virginia Colony* [book on-line] (Philadelphia: J. B. Lippincott, 1976, accessed 9 April 2012), 39; available from Questia, http://www.questia.com/PM.qst?a=o&d=7745388; Internet.

[4] According to Marguerite Most and Michael Chiorazzi, editors of *Prestatehood Legal Materials* "Of all the losses to Virginia's records over the years, the most dismaying is the almost complete disappearance of the decisions of the colony's general court and other central courts that were constituted from time to time." Most and Chiorazzi, eds. *Prestatehood Legal Materials: A Fifty-State Research Guide, Including New York City and the District of Columbia*, Volume 2 (Psychology Press, Mar 28, 2006), 1300

http://books.google.com/books?id=TUu2gf9vKdsC&lpg=PA1291&ots=fohM5agjfn&dq=minutes%20of%20the%20judicial%20proceedings%20of%20the%20governor%20and%20council%20of%20virginia&pg=PA1300#v=onepage&q=minutes%20of%20the%20judicial%20proceedings%20of%20the%20governor%20and%20council%20of%20virginia&f=false

[5] As part of my own understanding of the relationship between words and event, I draw upon the ideas of Ludwig von Wittgenstein. The work on Wittgenstein's language theories is extensive. Among the works I have drawn on here are Jonathan Havercroft, "Skinner, Wittgenstein and Historical Method" *Paragraph* 34 (2011), 371-387. Havercroft argues that for Wittgenstein "the meaning of words is determined by their use in a particular context, regardless of whether or not a statement is rehearsed or improvised, spoken or written" (375). I also draw on Steven Shaviro, "From Language to 'Forms of Life': Theory and Practice in Wittgenstein" *Social Text* 13/14 (1986), 216-236, stable URL: *http://www.jstor.org/stable/466212*. Accessed April 10, 2013. Christopher Lawn works to solve a tension in the earlier and later Wittgenstein, but notes the Wittgenstein placed the meaning of language in social agreements about the language. He also notes that Wittgenstein found language was often used unreflectively but still followed the imbibed rules of the society in which it was being used; its use was, for Wittgenstein, a "custom" which reflected the culture in which it had become customary. Christopher Lawn, "Wittgenstein, History and Hermeneutics" *Philosophy and Social Criticism* 29 (2003), 281-295, Stable URL: *http://psc.sagepub.com/content/29/3/281*. Accessed April 12, 2013.

[6] Goetz, *The Baptism of Early Virginia*, 47.

[7] The wording and spellings of the 1611 version of the King James Bible I use here are available at The Official King James Bible online: *http://www.kingjamesbibleonline.org/1611-Bible*. On Corinth and the passage from 1 Corinthians 6 see: David L. Balch, ed., *Homosexuality, Science, and the 'Plain Sense' of Scripture* (Grand Rapids, Mich: William B. Eerdmans, 2000), 218, *http://www.questia.com/read/98125573*; David F. Wright, "Homosexuals or Prostitutes? The

Meaning of ἀρσενοκοῖται (1 Cor. 6:9, 1 Tim. 1:10)" *Vigiliae Christianae* 38 (1984), 125-153, JSTOR stable URL: *http://www.jstor.org/stable/1583059*, accessed February 2, 2014.

[8] Both the Tyndale and Wycliffe translations of the Bible are available at the Northwest Nazarene University's Wesley Center, online at *http://wesley.nnu.edu.* McGrath also discusses the Tyndale Bible at some length as it provided the basis for much of the King James Bible. McGrath*, In The Beginning*, 73-89.

[9] Geneva Bible at *http://www.genevabible.org*. The full passage reads: "Know ye not that the unrighteous shall not inherit the kingdom of God? Be not deceived; neither fornicators, nor idolaters, nor adulterers, nor wantons, nor buggerers." The Geneva Bible was typically preferred over the King James by the more Calvinist sects of New England. The King James is well known to have had a dramatic impact on the English language, but John N. King argues that the Tyndale's scriptural translations spawned a "the emergence of a richly diverse and powerful literature." King, "'The Light of Printing': William Tyndale, John Foxe, John Day, and Early Modern Print Culture" *Renaissance Quarterly* 54 (2001), 53. JSTOR stable URL: *http://www.jstor.org/stable/1262220*.

[10] Winthrop D. Jordan, *White Over Black: American Attitudes Toward the Negro, 1550-1812* (Chapel Hill: University of North Carolina Press, 1968), 78, 79n79.

[11] Richard Godbeer, *Sexual Revolution in America*, (Baltimore and London: Johns Hopkins University Press, 2002) 383n31.

[12] Kevin Mumford, "After Hugh: Statutory Race Segregation in Colonial America, 1630-1725," *The American Journal of Legal History* 43 (1999), 284, Stable URL: *http://www.jstor.org/stable/846160*, accessed Nov. 21. 2013.

[13] Kathleen Brown, "'Changed… into the Fashion of a Man': the Politics of Sexual Difference in a Seventeenth-Century Anglo-American Settlement," *Journal of the History of Sexuality* 6 (1995), 171-193, Stable URL: *http://www.jstor.org/stable/3704121*. Accessed, January 25, 2014; H. R. McIlwaine, *Minutes of the Council and General Court of Colonial Virginia*, (Richmond, VA 1924), 194-195.

[14] Hening, *Statues at Large*, p. 552.

[15] H. R. McIlwaine, *Minutes of the Council*, p 477.

[16] The case of one Thomas Twine from 1658 seems to fit the *Sweat/Sweet* pattern more than the *Davis* pattern as Twine was ordered to do penance, though in that case we do not know the fate of his impregnated African partner. Goetz, *The Baptism of Early Virginia*, 77.

[17] Paul Heinegg, "Free African Americans of Virginia, North Carolina, South Carolina, Maryland and Delaware" digitized from State Archives. *http://www.freeafricanamericans.com/Stringer-Talbot.htm.* Accessed 3 April 2012. List of immigrants from George Cable Greer's *1912 Early Virginia Immigrants* is available at *http://www.evmedia.com/virginia/*, accessed February 20, 2014. A Hugh Davis also appears on the list, but it cannot be the same man who was punished in 1630 since he is listed as immigrating to Virginia in 1638.

[18] Winthrop D. Jordan, "Modern Tensions and the Origins of American Slavery," *The Journal of Southern History* 28 (1962), 28; White over Black, 79.

[19] Edmond Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: Norton, 1975), 333; Fredrickson, White Supremacy, 100, Godbeer, Sexual Revolution, 383n31.

[20] Warren M. Billings, ed., *The Old Dominion in the Seventeenth Century: A Documentary History of Virginia*, 1606-1689 (Chapel Hill: University of North Carolina Press, 1975) 161.

[21] Morgan, *American Slavery, American Freedom*, 333. Virginia Bernhard built on Morgan's speculation, but, again, left her own speculation about the possibility that Davis had committed sodomy to footnotes. Virginia Bernhard, "Beyond the Chesapeake: The Contrasting Status of Blacks in Bermuda, 1616- 1663" *Journal of Southern History* 54 (Nov. 1988), 550. Stable URL: *http://www.jstor.org/stable/2209200*. Accessed 21 March 2012; *Virginia Bernhard, Slaves and Slaveholders in Bermuda*, 1616-1782 [book on-line] (Columbia: University of Missouri Press, 1999, accessed 21 March 2012), 54n20; available from Questia, http://www.questia.com/PM.qst?a=o&d=109328532; Internet.

[22] Goetz, *The Baptism of Early Virginia*, 73.

[23] A. Leon Higginbotham, *In the Matter of Color: The Colonial Period* [book on-line] (Oxford, England: Oxford University Press, 1980, accessed 4 April 2012), 23-24, 487; available from Questia, http://www.questia.com/PM.qst?a=o&d=101534302; Internet.

[24] Higginbotham, *Shades of Freedom*, 21.

[25] Higginbotham, *Shades of Freedom* 22.

[26] Kevin Mumford, "After Hugh," 280-305. Making this more problematic, Mumford's footnote reads: "*Laws of Virginia* (New York: Henry's Statutes, 1823), p. 146." It is unclear exactly what this footnote references, since it is untraceable as written. It seems likely it was intended to be Hening's volume, The Statues at Large: Being a Collection of all the Laws of Virginia from the First Session of the Legislature in the Year 1619. The work, typically cited as Statute at Large and as having been published in 1823—though it appeared in several volumes beginning in 1809 and ending in 1823—in New York, includes Davis on page 146. If that is the case, then the word should have been "Negro" not "Negress." I would like to thank both the reference staff at Olson Library at Northern Michigan University and the staff at the Harvard University Libraries for their assistance in attempting to track Kevin Mumford's footnote.

[27] Mumford, "After Hugh," 284.

[28] Mumford, "After Hugh," 281; H. R. McIlwaine, *Minutes of the Council and General Court of Colonial Virginia*, (Richmond, VA 1924). Mumford also raises questions about Hugh Davis' race, based on what he considers the ambiguities of the name "Hugh." Nevertheless, the name "Hugh" simply was not uncommon, and many colonists who were clearly white bore that very name. In McIlwaine, the name "Hugh" appears several times. A few examples include: Mr. Hugh P. Taylor, viii; Hugh Haywood, 33; Hugh Willistone, gent, 49; Hugh Books, 71; Hugh Crowther, gent, 63; Hugh Crowder—who may well be Hugh Crowther—planter, 123; Hugh Hilton, 151; Hugh Hawkridge, 180; Capt. Hugh Bullocke, 201; and Mr Hugh Nevett, 215.

[29] Martinot, "Motherhood and the Invention of Race," *Hypatia* (Spring 2007) 89-90, Stable URL: *http://www.jstor.org/stable/4640063*, Accessed 12 October 2012. Carmen Nocentelli, "The Erotics of Mercantile Imperialism: Cross-Cultural Requitedness in the Early Modern Period," *Journal for Early Modern Cultural Studies* 8 (2008), passim, quoted from 147.

[30] See Goetz, *The Baptism of Early Virginia*, passim.

[31] Goetz, *The Baptism of Early Virginia*, 44; Sir Edward Coke, *The Third Part of the Institutes of the Laws of England: Concerning High Treason And Other Pleas of the Crown and Criminal Causes* (London: E and Brooke, 1797) 58; William Holdsworth, "Sir Edward Coke," *The Cambridge Law Journal* 5 (1935), 332-346, Stable URL: *http://www.jstor.org/stable/4502804*, accessed March 2, 2014; Harold J. Berman, "The Origins of Historical Jurisprudence: Coke, Selden, Hale," *The Yale Law Journal* 103 (May 1994), 1677-1680, stable URL: *http://www.jstor.org/stable/797013*, accessed February 26, 2014. Coke's blaming outsiders for introducing sodomy reflected a fairly common phenomena. Martin Luther had likewise decried Italy, particularly Rome, as a modern Sodom. On Luther, see Christopher Ellwood, "A Singular Example of the Wrath of God: The Use of Sodom in Sixteenth-Century Exegesis," *Harvard Theological Review* 98 (January 2005), 67-93, stable URL: *http://www.jstor.org/stable/4125285* Accessed January 24, 2014. See also Cynthia Herrup, "Finding the Bodies," *GLQ: A Journal of Lesbian and Gay Studies* 5 (1999).

[32] Roger Thompson, "Attitudes toward Homosexuality in the Seventeenth-Century New England Colonies," *Journal of American Studies* 23 (1989), 33, stable URL: *http://www.jstor.org/stable/27555091* Accessed January 25, 2014.

[33] Nocentelli, "The Erotics of Mercantile Imperialism," 143.

[34] Clare A. Lyons, "Mapping an Atlantic Sexual Culture: Homoeroticism in Eighteenth-Century Philadelphia" *William and Mary Quarterly* 60 (January 2003), 119-154 stable URL: *http://www.jstor.org/stable/3491498* accessed Nov. 12, 2013. Thompson, "Attitudes toward Homosexuality," 33.

[35] Thomas D. Morris, "'Villeinage... as It Existed in England, Reflects but Little Light on Our Subject:' The Problem of the 'Sources' of Southern Slave Law" *The American Journal of Legal History*, 32 (1988), 102n34. Stable URL: *http://www.jstor.org/stable/845699*. Accessed 21 March 2012.

[36] Morris, "Villeinage,"102n34.

[37] Robert F. Oaks, "'Things Fearful to Name'": Sodomy and Buggery in Seventeenth-Century New England," *Journal of Social History* 12 (1978).

[38] Douglas Greenberg, "Crime, Law Enforcement and Social Control in Colonial America," *American Journal of Legal History* 26 (1982), 303, stable URL: *http://www.jstor.org/stable/844939*, accessed January 29, 2014.

[39] Pagan, *Anne Orthwood's Bastard*, 184n28.

[40] Morgan, "The First American Boom," 198. In Slavery and Social Death, Orlando Patterson argues that enslavement was often a substitute for death in criminal cases. Hence the idea of substituting one punishment for another in cases where a criminal's labor is value too highly to execute them was an established part of European jurisprudence. Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 38-45, 126-129.

[41] John M. Murrin, "Things Fearful to Name," 9.

[42] John M. Murrin, "Things Fearful to Name," 21.

[43] Stephen Robertson, "Shifting the Scene of the Crime," 233; Moller, "Sex Composition and Correlated Culture Patterns of Colonial America,"114; Hecht, "The Virginia Muster of 1624/5 As a Source for Demographic History," 71 and 84.

[44] James J. Kilpatrick, *The Southern Case for School Segregation* (New York: Crowell-Collier Press, 1962) 92; Robert R. Reilly, *Making Gay Ok: How Rationalizing Homosexual Behavior is Changing Everything* (Ignatius Press, 2014). To Reilly's credit his work is founded on research and logic, setting it quite apart from the homophobic rants so common on the issue of Gay rights. There are many assessments of the Christian Nation narrative of American History, including Alan Scot Willis, "Symbolic History in the Cold War," in Keith Harper, ed., *Through a Glass Darkly: Contested Notions of Baptist Identity* (Tuscaloosa: University of Alabama Press, 2012), 272-295.