Rape and Resistance: Women and Consent in Seventeenth-Century English Legal and Political Thought

Julia Rudolph

During the Exclusion crisis, the figure of a tyrant rapist, a ruler undone by his own lust and cruelty, briefly appeared on the London stage. Early in December 1680, Nathaniel Lee’s Lucius Junius Brutus was performed by the Duke’s Company in the Dorset Garden Theater. Lee’s play recounted the tale of the rape of Lucretia and the subsequent actions taken by Brutus in resistance to this act of tyranny. This theatrical production was by all accounts a success, yet the play was banned from the stage after only six days; the order of the Lord Chamberlain stated objections to its “very Scandalous Expressions & Reflections upon ye Government.”¹ Lee’s Brutus was, however, soon available in print, published by Richard and Jacob Tonson in June of 1681. Like other Exclusion publications, Brutus offered a powerful argument against tyranny and arbitrary government, and the play was evidently construed as an attack on the Stuart monarchy. Many modern commentators have specifically noted the anti-Catholic overtones of Lee’s drama and have read it within the context of the Popish Plot scare.² Yet the central theme of Lee’s play is, of course, the association between tyranny and rape: it is the tyrant’s


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violation of woman (not of religion) that justifies resistance. In Lee’s
drama, just as in Livy’s history, the chaste and honorable Roman matron
Lucretia is raped by “the lustful bloody Sextus,” a prince of the proud
and tyrannical house of Tarquin. In both stories, Lucretia’s rape and her
subsequent suicide set off a train of revolutionary events: Brutus seizes
the bloody knife from Lucretia’s twice-violated body and, holding it to
his lips, vows with his fellow Romans never to suffer Tarquin “nor any
other king to reign in Rome.” The first citizen, Brutus, is driven to
“shake the building of the tyrant down” by the foul deed, the rape,
perpetrated by the house of Tarquin:

So from the blackness of young Tarquin’s crime
And furnace of his lust, the virtuous soul
Of Junius Brutus catches bright occasion.
I see the pillars of his kingdom totter.
The rape of Lucrece is the midnight lantern
That lights my genius down to the foundation.\footnote{3}

In this play, justifiable resistance to the tyrant is founded on resistance
to rape. Lee depicts the other citizens of Rome as similarly motivated
and resolved; they express their hatred of kings, princes, and courtiers
who “handle,” “swing,” “deflower,” “seduce,” and “assault” the
bodies of their wives and whose lewd and violent actions ensure that
“the daughters of the wise citizens have had their vessels broken up.”

While these violations and the rape of Lucretia act as a catalyst,
providing just cause for resistance to government, other marks of tyranni-
cal rule are also described in Brutus. Specific past crimes of the king
against established tradition and constitution are enumerated:

Invading fundamental right and justice
Breaking the ancient customs, statutes, laws,
With positive power and arbitrary lust;
And those affairs which were before dispatched
In public by the fathers, now are forced
To his own palace, there to be determined
As he and his portentous council please.\footnote{6}

\footnote{3} Nathaniel Lee, Lucius Junius Brutus act 1, line 447, in Stroup and Cooke, eds.,
Works. Also see Livy, The Early History of Rome 1.57–60.

\footnote{4} Lee, Brutus, act 1, lines 270–75. And cf. Lee’s description of another tyrant raped
in his drama Cæsar Borgia, act 1, lines 297–309, 589–611, in Stroup and Cooke, eds.,
Works.

\footnote{5} Lee, Brutus, act 2, lines 51–52, 59–60, 70–72, 98–102, 104–5.

\footnote{6} Ibid., act 2, lines 179–85.

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The violation of law and ancient custom, and the frustration of the proper role of the public council, are cited as justifications for resistance along with the violation of women. These complaints against tyranny and this defense of limited or mixed government surely sounded familiar to audiences in 1680, justifying the Lord Chamberlain's suspicion that Lee's play was intended as a defense of a Whig Exclusionist position. In depicting the deposition of a tyrant, and in recounting the dramatic founding of the Roman Republic, this play was also easily associated with a more radical commonwealth ideology; in fact this same parallel between the Stuarts and the Tarquins had been made by commonwealthmen like Marchamont Nedham and John Milton in the 1650s.

The unwelcome connection between the rape argument and republicanism had even been reinforced not long before Lee's Brutus was performed and published, in the work of that Whig nemesis Sir Robert Filmer. In 1679, a very different interpretation of the rape of Lucretia was offered in Filmer's Observations upon Aristotle's Politics; this was one of several of Filmer's works republished during Exclusion as an instrument of Tory propaganda. For Filmer, the story of Lucretia and Brutus provided yet another indication of the instability and illegitimacy of government founded upon popular consent. The rape of Lucretia occurred, Filmer insists, only because the Roman matron consented to young Tarquin; in some sense, then, it was no rape at all:

The fact of young Tarquin cannot be excused, yet without wrong to the reputation of so chaste a lady as Lucrece is reputed to be, it may be said she had a greater desire to be thought chaste than to be chaste. She might have died untouched and unspotted in her body if she had not been afraid to be slandered for inconstancy. Both Dionysus Halicarnasseus and Livy, . . .

1 As other scholars have noted, Lee dedicated his play to the Earl of Dorset, who was a satirist, poet, patron, and one who concurred in the invitation to William of Orange. See DNB, s.v. "Sackville, Charles"; Annabel Patterson, Reading between the Lines (Madison, Wis., 1993), p. 211.

2 Donaldson, Rapes of Lucretia, p. 112. Lee soon took action to repudiate any affiliation with such commonwealth or even Whig ideas. By the end of Exclusion, his political inclinations definitively changed, and after 1681, Lee wrote strongly Tory plays and poems, often working with his old friend and collaborator John Dryden. See Nathaniel Lee, To the Duke [of York] on his Return (London, 1682) and Constantine the Great (London, 1684). Dryden wrote the epilogue for Lee's Constantine and collaborated with Lee on the tragedy The Duke of Guise (London, 1682). Lee would change political affiliation once more in his lifetime, making overtures to the new monarchs after 1688. See DNB, s.v. "Lee, Nathaniel"; and Stroup and Cooke, "Introduction," pp. 14–15, 17.

so tell the tale of her as if she had chosen rather to be a whore than to be thought a whore. To say truth, we find no other cause of the expulsion of Tarquin than the wantonness and licentiousness of the people of Rome.10

According to Filmer’s analysis, the fact of Lucretia’s choice, her consent to young Tarquin, is central to the question of whether a rape occurred; and he criticizes her refusal to suffer passively the violence of the ruler’s will. Filmer concludes that this is not a story of rape and justifiable resistance against tyranny, but it is rather a story about the “wantonness and licentiousness” of this woman and of this people. It is also a story that calls into question the advisability and the value of rule based on popular consent. Indeed, Filmer’s analysis helps to highlight the connection between Whig theories of contract and consent and the rape and tyranny argument.

Filmer’s attention to this story of tyranny and rape is also indicative of the enduring importance of the Lucretia tradition and the more general tradition of the tyrant rapist in political thought. In part, the Whigs employed the rhetoric of rape because of these traditions. In addition to its long dramatic history, of which Lee’s _Brutus_ is a part,11 the image of a tyrant rapist had an ancient heritage in Western politics and philosophy. Livy’s depiction of Sextus Tarquiniius is perhaps the most famous and influential account, but the tale of a tyrant undone by his own lust, or the lust of his relatives or subordinates, appears in many other stories about the founders and political heroes of ancient Rome and Greece.12 This link between tyranny and violent lust is also a feature of ancient political philosophy, appearing, notably, in Plato’s and Aristotle’s delineations of the cycles of constitutions and in their discussions of the characteristics of a good ruler.13 And the humanist history and political philos-

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12 Donaldson refers to the stories of Harmodius and Hipparchus as well as Virginia and Appius Claudius. He also notes that the narratives of Lucretia’s rape appearing in Livy, Dionysus of Halicarnassus, Ovid, and Plutarch all derive from older sources that survive only in fragments. Rebecca Bushnell draws attention to the influence of Tacitus, Suetonius, and Seneca in disseminating stories about the Roman emperors and the savage passions of tyrants. See Donaldson, _Rapes of Lucretia_, pp. 6–8; Rebecca W. Bushnell, _Tragedies of Tyrants: Political Thought and Theater in the English Renaissance_ (Ithaca, N.Y., 1990), p. 32.

13 Aristotle, _Politics_ 1314b18; Plato, _Republic_ 571a–576b.
ophy of the sixteenth century further defined and elaborated on this ancient image of a tyrant. These origins, and the enduring influence of the ancient image of the tyrant as a man ruled by desire rather than reason, offer some clues to the ways in which this later discourse about tyranny might become, in Rebecca Bushnell’s words, “structured in terms of sexuality, gender, and identity.”

The association among rape, tyranny, and resistance endured in the Whig political literature of the later seventeenth century. The argument justifying resistance to government based on the ruler’s “rape of wives and virgins” appeared in the work of Whig theorists writing in defense of the events of 1688/89. The language of ravishment, deflowering, violation, and adultery—what I will refer to as the “rhetoric of rape”—was used by Whig theorists in the justification of resistance to James II. This rhetoric appears in conjunction with particular accusations against James, along with charges of his abusing the dispensing power, packing Parliament, and controlling the courts. The usual Whig justification of resistance based on the abrogation of fundamental laws, liberties, and religion, the very constitution of church and state, is joined by this idea of the violation of the female body.

The Whig use of this rape rhetoric is not simply attributable to the persistence of literary or classical traditions. Nor is the appearance of this argument simply a rhetorical flourish, evidence of a reliance on a well-worn depiction of a tyrant. The connection between rape and tyranny is an aspect of Whig political theory that deserves further reflection especially because it appears in conjunction with social contract theory, because it appears alongside an emerging language of consent, social contract, and natural law. By asking why and how this argument endures, I propose to offer some suggestions about the nature of Whig political ideology and about the complex status of women in seventeenth-century English political thought. I will address the peculiar ambiguities that are underscored by the appearance of the accusation of rape within the Whig justification of resistance. My essential claim is that the rhetoric of rape, especially when it was employed in the context of Whig contract theory, invoked ideas about consent and even contributed to the tentative definition of a woman as a rational and free individual; at the same time, however, this argument relied on a traditional understanding of women as subordinate to men and an understanding of rape as a violation of a species of male property.

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15 Bushnell, Tragedies of Tyrants, p. 9.
In this article, I further illuminate this ambiguity, or flexibility, of the rape argument by considering some of the legal rules governing women's property rights and those governing the prosecution of rape in early modern England. There are two important reasons for considering this broader legal context. First, generally, we must consider the legal context because women's legal status forms part of the assumptions underlying Whig theory; property law and rape law, like natural law, were contexts (or languages) within which Whigs were operating. Second, and more specifically, in terms of property ownership, and especially in terms of the legal definition and prosecution of rape, there is a similar and important ambivalence regarding female consent and female agency that may help us better to understand Whig political discourse. As this article will demonstrate, the association between tyranny and rape was attractive to Whig resistance theorists precisely because it could accommodate opposing lines of thought: on the one hand, a traditional and gendered understanding of women as property and as sexuality and, on the other, a heightened sensitivity to the violation of persons and some tentative recognition of women as persons.

Resistance and Self-Defense in Men and Women

In the Convention debates of 1689, and in the political literature for at least a decade thereafter, Whig politicians and theorists mounted a defense of the Revolution that was founded on notions of consent, contract, and resistance. As they sought to justify the Revolution and Settlement, Whig authors confronted familiar challenges posed by arguments for divine right, absolute power, and passive obedience. The fundamental goal of the Whig response to such theories was to establish the consensual origins of civil society and the limits of sovereign power. In the campaign to refute absolutist and patriarchalist doctrines, many Whigs argued that England's ancient constitution was founded upon an original contract, and many advanced this argument not only in historical but also in natural law terms. They posited that men are not born into subjection but rather enjoy natural liberty, equality, and reason. In this

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original state of nature, men live together according to reason and natural justice; but when this natural law is abrogated, and human freedom and preservation are consistently threatened, government becomes necessary. The law of nature, reason, and a concern for human good dictate the formation of an original contract of government. According to Whig theory, civil authority is then conferred upon rulers through compact, and this authority is a trust to be administered for the common good. In this way, Whig theorists asserted that reason and nature demonstrate that legitimate government is founded upon consent and formed by a contract of free individuals in a state of nature.17

This insistence that the foundations of government lay in contract and consent enabled Whig authors to articulate a theory of resistance. A common Whig defense of the Revolution was that James II had broken the contract of government since he had not governed according to law and the fundamental constitution; again, contractual resistance was defended both as a natural and as a historical right. Many Whig authors also relied on the argument for resistance in extremis—that the normal rules of nonresistance are suspended in extraordinary instances of necessity. This was a popular proof that resistance at the Revolution was lawful and even sanctioned by the authority of William Barclay, Thomas Bilson, William Falkner, and Hugo Grotius.18 Whig arguments for resistance were, in fact, greatly influenced by natural law theorists such as Grotius and Samuel Pufendorf. Typically Grotian arguments for resistance in extremis were often reiterated by Whig theorists, who affirmed, for example, a right to resist a ruler who alienates or abdicates his kingdom or one who wages war against his own people or their property.19

17 See, e.g., A Discourse Concerning the Nature, Power, and Proper Effects of the Present Conventions in Both Kingdoms Called by the Prince of Orange (London, 1689); Sir P. Geogesom, The Defence of the Parliament of England in the Case of James II (London, 1692); White Kennett (doubtful attribution), A Dialogue between Two Friends, Occasioned by the Late Revolution of Affairs (London, 1689); A Political Conference between Aelius, a Courrier; Denox, a Country-man; and Civicus, a Citizen (London, 1689); Matthew Tindal, An Essay Concerning Obedience to the Supreme Powers, and the Duty of Subjects in All Revolutions (London, 1694); James Tyrrell, Bibliotheca Politica: or An Enquiry into the Ancient Constitution of the English Government; Both in Respect to the Just Extent of Regal Power and the Rights and Liberties of the Subject (London, 1694), esp. Dialogues 3 and 9–12.


These Whig arguments for resistance in extremis, and their arguments for natural liberty and a natural right of self-preservation, were linked to the argument for resistance to the lustful tyrant, the violator of women and girls. One example of this use of the rhetoric of rape is found in the Whig tract *A Political Conference between Aulicus, a Courtier; Demas, a Country-man; and Civicus, a Citizen* (1689), which offers both an argument for resistance from contract and an argument for resistance in extremis. Civicus, the Whig interlocutor, is the voice of moderation as the dialogue sets out the “original [origins] of civil government, [and] the powers and duties of sovereigns and subjects.” The author depicts a state of nature in which natural freedom and reason lead to the formation of a social contract; this contract is described as a two-stage process, beginning with a social contract that creates a community and ending with the election and contract of a governing authority. In the event that the ruler violates the fundamental contract and constitution of government, resistance is justified. However, such resistance does not lead to radical change: the author asserts that freedom and power return to the members of the social contract to place the next heir—or at most, to elect another family—to fill the vacancy in the throne. This characteristically Whig tract at once advances a contract and resistance interpretation of James II’s abdication while preserving the thesis of vacancy and the continuity of the ancient constitution.

The accusation of rape appears in *A Political Conference* as a part of the explanation of natural law in terms of the defense of a natural right of self-preservation and a right of resistance. Distinguishing between a king’s “natural” and “civil” capacities, the author argues that submission is due only to the just exercise of the civil authority; once a king uses “extrajudicial force,” he is no longer a king but is a tyrant who may be resisted in self-defense. “It is beyond doubt,” the author explains, “that there is a difference betwixt a King’s Natural and his Civil Capacity; if a King should invade a Subject to kill him, or to ravish his Wife or Daughter, he might lawfully resist.” Men regain the right of nature when sovereign authority violates its trust and contradicts reason and the common good. A threat to life, or to the chastity of a man’s wife and daughter, returns the tyrant and his subjects to a state of nature where the king, in his natural capacity, may be resisted like any other man.

Note, too, that Whigs were confronted by another kind of dissemination of Grotius’s thought in Filmer’s discussion of *De Jure Belli ac Pacis* in his *Observations Concerning the Original of Government, upon Mr Hobs ‘Leviathan,’ Mr Milton against Salmassius, H. Grotius ‘De Jure Belli’* (1652; London, 1679).


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This kind of natural law defense of resistance against a tyrant rapist appears in other Whig texts. And Whig authors were quick to note that even their opponents admitted this right of resistance against a tyrant who violated the law of nature by violating women. For example, the Whig gentleman Sir P. Georgeson, author of The Defence of the Parliament of England in the Case of James II (1692), employed this tactic of using the words of his opponents in order to defend resistance. Georgeson's wide-ranging attack on theorists of absolute and arbitrary power included arguments from natural law and social contract, from Scripture, and from the histories of England as well as histories of the Roman Catholic and Reformed Churches. In defending resistance to, and even the deposition of, tyrants, the connection between rape and tyranny is made. Even Milton's critic Salmasius, Georgeson notes, the boldest of all the "asserters and maintainers of absolute power," admits that a king loses his right to his kingdom when he becomes an "open enemy" to the people—"when [the king] doth not only shed his Peoples Blood right or wrong, but when he supresseth Religion, commits Adultery with other Mens Wives, deflowers Virgins, seizeth and appropriates to himself Mens Estates, breaks his word, does abrogate and disannul Privileges and Charters, and every where showeth himself a contemner of divine and human Laws." "And to speak freely," Georgeson adds, "there are but a few practical Tyrants that are not guilty of all these wicked misdemeanors." 22 Here the charge of ravishment is again used as a justification for resistance according to natural law theory; it is one among other indications of the tyrant's contempt for "divine and human law." Adultery and defloration are also being included in a list of particular accusations meant to reflect the actual charges—dispensing with laws, violating property, packing Parliament, and threatening the established church—leveled against James II.

This recourse to an opponent's rhetoric, and the appearance of the tyrant rapist in that rhetoric, is employed by one of the most important Whig theorists, James Tyrrell. 23 In the third dialogue of Bibliotheca


Politic a (1694, 1702), Tyrrell’s comprehensive treatise of Whig history and constitutional theory, the Whig interlocutor sets out a theory of resistance as justified by natural law; here he calls upon the authority of Barclay, the critic of George Buchanan and Philippe Duplessis Mornay. In enumerating a variety of potential tyrannical evils, Barclay affirms a natural right of resistance against the lust of a tyrant. This very same passage from Barclay’s De Regno et Regali Potestate also appears in the work of another important social contract theorist, Tyrrell’s friend John Locke. The contention that rape is among the tyrant’s evil actions appears once more in Tyrrell’s third dialogue, but this time it is an example of one of the many flawed arguments arrayed against resistance theory. Mr. Meanwell, Tyrrell’s Tory spokesman, denies that violation of wives and daughters, change in religious establishment, or burdensome taxation are justifiable claims for a right of resistance. Once again the accusation of rape appears as part of a list that echoed the specific complaints lodged against the Stuart king. Moreover, in denying the right of subjects to resist the lusts of a tyrant (or his cronies), Meanwell affirms that a tyrant may very well violate women: “When a Prince doth commonly himself violate the Chastities of the Wives or Daughters of the Subjects, which tho’ it hath been the ruine of divers Princes, yet is he able to do this only to some few particular Persons, and tho’ if he should permit his Soldiers or Officers to do this, without any Punishment; yet even this, can hardly, if ever, extend to all the Wives, Daughters, or Women in a whole Country: And therefore both these cases are to be born withal.” Such resistance, he implies, would be mere rebellion, the work of only a faction of men whose wives and daughters had been ruined. Tyrrell may be allowing Meanwell to voice this argument in order to ridicule and discredit the Tory point of view, to show that Tory theories would lead to rape, Catholicism, and poverty. But the repetition of the rape

24 Tyrrell, Bibliotheca Politica: The First Complete Edition Containing the Fourteenth Dialogue of 1702 (New York, 1979), pp. 148–49 (all subsequent page references to Tyrrell’s Bibliotheca Politica are from this edition). Barclay defends resistance to a tyrant who seeks the destruction of his people, claiming that “Wives and Children [must not] be exposed to the lust of a Tyrant” (ibid., p. 149; quote is from William Barclay, De Regno et Regali Potestate adversus Buchananum, Bratum, Boucherium et Religios Monarchonachos [Paris, 1600], bk. 3, chap. 8).


26 Tyrrell, Bibliotheca Politica, p. 163.
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argument, and its connection to the other wrongs committed by the tyrant, lend it a peculiar credence. Here in particular, the rape argument is associated with another loathsome mark of tyranny—the standing army.

This connection is made even clearer in the treatise *An Enquiry into the Measures of Submission* (1689) by the Whig stalwart Gilbert Burnet. Burnet's defense of resistance to tyranny even contemplates the entire dissolution of government resulting from the tyrant's imposition of his standing army and his encouraging it to rape. Just after pointing to the tyrannical practice of packing the bench with corrupt judges, and just before complaining about the dangers of popery and illegal taxation, Burnet warns: "If an Army is kept up in time of peace ... and if the Soldiery are connived at and encouraged in the most enormous Crimes, that so they may be thereby prepared to commit greater ones, and from single Rapes and Murders proceed to a Rape upon all our Liberties and a Destruction of the Nation; if, I say, all these things are true in Fact, then it is plain that there is such a Dissolution of the Government made, that there is not any one part of it left sound and entire."37

The fact that Gilbert Burnet and James Tyrrell, consent theorists as well as Whig historians, make this association between rape and tyranny is not coincidental. In all of these examples, the image of a tyrant rapist appears in texts that set forth strong natural law and social contract theories. One aspect of this Whig argument against tyranny, then, has to do with the violation of natural law. The "rape of wives and daughters" is one of many actions that express the tyrant's indifference toward the law of nature; and it is the violation of this law, rather than the violation of the woman, that demands resistance. The violated woman herself might, however, be seen as a person capable of justifiable resistance in self-defense. Although the tyrant's evil lies in his violation of the natural law of self-preservation, the right of resistance based on this natural law may be seen to reside in a woman as well as a man.

There is support for this view of women offered by Grotius, the authority favored by many Whigs. In the second book of *De Jure Belli ac Pacis*, Grotius equates preservation of self and preservation of chastity: "That the same right to kill should be conceded also in defence of chastity is hardly open to question; not only the general opinion of men, but also the divine law puts chastity on a plane with life. Thus Paul the

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jurist said that virtue could properly be defended by such an act." The chapter concludes with historical examples of "men who were slain by women" acting in defense of chastity. In his earlier enumeration of justifiable cases of resistance in extremis, Grotius does not, like Barclay, include the example of self-defense against the lust of a tyrant. But here a woman's natural right of resistance against sexual violation—the defense of chastity—is termed by the Dutch theorist "in the highest degree justifiable" among the causes of just war. In demonstrating a woman's right to act against sexual violation, Grotius articulates an argument for female agency, rationality, and equality under the law of nature.

In many of the Whig texts that set forth strong natural law and social contract theories, there is, as in Grotius, this recognition of women's inclusion within the law of nature and of women's ability to consent. And, as my examples show, it is within such texts that the image of a tyrant rapist has appeared. At times in Whig resistance texts, the emphasis on contract and consent seems to lead to a recognition of equality and full humanity in all individuals, male and female. If there is no natural subordination, if each individual is said to be born with the freedom to consent to a governing authority, then women too must not be naturally subject and must have a right to consent and even a right to resist authority. Theorists are led to make broad statements about the composition and the role of the people, especially when these authors employ the languages of natural law and social contract. Indeed, in the course of denying the legitimacy of their opponents' absolute patriarch, Whig theorists confront the issue of woman's identity, and they affirm her possession of natural freedom and reason. For example, Whig theorists accord women a natural right of self-preservation against a tyrannical husband; there is a parallel between the subject's release from obedience to a ruler turned tyrant and a wife's freedom from subjection to a husband who either will not or cannot rule. The right to act in order to preserve well-being and life is justified in the woman who operates according to reason and natural law. Moreover, some theorists suggest that as a rational being, a woman shares parental authority with a man, and she too is responsible to maintain the well-being of herself and her family. If we follow

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29 Kennett, A Dialogue between Two Friends, p. 17; Richard Kingston, Tyranny Detected and the Late Revolution Justify'd (London, 1699), pp. 50–51; A Political Conference, p. 30.

30 Tyrrell, Patriarcha non monarcha, pp. 110–11; Locke, Two Treatises, second treatise, paras. 81–84; Melissa A. Butler, "Early Liberal Roots of Feminism: John Locke
those theorists who pursued the implications of natural law theory, it becomes clear that referring to rape would be to invoke an argument for resistance against a tyrant who violates both a law of nature and a person—a female agent—who may resist. In this justification of resistance to tyranny, the defining characteristic of the act of violation would be the woman’s lack of consent.

Yet Whig theorists stopped short of according an independent agency and a public right of resistance to women. Although there is some admission of the question of female consent associated with the rape charge, Whig theorists were not affirming that the tyrant rapist violates a woman’s private personality through her body. There is a fundamental ambivalence in Whig theory between the recognition of woman’s status as an autonomous individual and the insistence on her difference or exclusion, her fundamental lack of freedom or power. Although Whig theory does, at times, attribute the natural characteristics of freedom, rationality, and equality to all humans, natural capacities and attributes are also sexually differentiated, and women’s capacities are deemed insufficient. At the same time that women are depicted as autonomous and rational beings, they are also judged to be naturally subordinate to men, incapable of consent or participation in the social contract and incapable, then, of justifiable resistance.

Mary Astell was one contemporary critic who challenged this contradiction in Whig theory and pressed home the implications of consent theory:

For if Arbitrary Power is evil in itself, and an improper Method of Governing Rational and Free Agents it ought not to be Practis’d any where; Nor is it less, but rather more mischievous in Families than in Kingdoms. . . . What tho’ a Husband can’t deprive a Wife of Life without being responsible to the Law, he may however do what is much more grievous to a generous Mind, render Life miserable, for which she has no Redress, scarce Pity which is afforded to every other Complainant. It being thought a Wife’s Duty to suffer everything without Complaint. If all Men are born free, how is it that all Women are born slaves? And the Attack on Patriarchy, in Feminist Interpretations and Political Theory, ed. Carole Pateman and Mary Shanley (University Park, Pa., 1991), pp. 74–94.

31 There is this association between the question of female consent and rape not only because of contract theory but also because of the contemporary legal definition of rape. See below, pp. 176–79.


34 Mary Astell, Reflections upon Marriage, in Political Writings, ed. Patricia Springborg (Cambridge, 1996), pp. 17–18.
As Astell knew, at least part of the answer lay in common contemporary notions about women's nature and about the construction of marriage and family in the state of nature. Of central importance was the belief that the social contract was premised on the marriage contract. Within this marriage contract, male authority, of husband and then father, was seen to exist naturally before civil authority. Relying heavily on the strength of Scripture, on the influential work of Samuel Pufendorf, and on common sense, theorists like Tyrrell, Locke, and Burnet set forth generally accepted reasons for this view of a wife's subjection to her husband. They cited the biblical evidence and divine command of woman's subordination; they noted the practical reasoning against divided sovereignty—that a family cannot have "two heads"; and finally, they affirmed the natural inferiority of woman in body and mind. Since sexual difference was said to connote intellectual difference, women were believed to be deficient in natural reason. Perhaps even more important, women were understood to be restricted in various ways because of the deficiencies of female biology: in the natural and in the social state, the ability to bear children renders women weak and in need of support both during pregnancy and in rearing their offspring. According to this view, natural weakness makes a woman's control of the property in her own body tenuous; any ownership of real or movable property, through labor or occupancy, was regarded as insecure and untenable. Because of this divinely ordained, rational, and natural inferiority, woman must be subject, and she enters a marriage, before any other contract, as a subordinate to her husband. Woman is both free and unfree: she is envisioned consenting to marriage, but her choice is constrained and her subordination necessary; she is capable of entering into a marriage contract, yet she is unable to join the social contract. A woman is considered to be "con-

35 Margaret Sommerville has recently argued for an analysis of contractarian thinking within this context of attitudes toward and theories about women in early modern Europe. I disagree, however, with her conclusion that this kind of contextual interpretation will explain away the contradiction in Whig thought. See Margaret R. Sommerville, Sex and Subjection: Attitudes to Women in Early-Modern Society (London, 1995), pp. 4-5 and chap. 8.


37 Tyrrell, Patriarcha non monarcha, pp. 84, 110-11; Pufendorf, De Jure Naturae et Gentium, 2:845, 853, 859-60, 862, 916. Although Locke attributes more autonomy to the married woman, and even defends the reasonableness of divorce, he too acknowledges the natural subordination of women. Locke, Two Treatises, first treatise, para. 47; second treatise, para. 82. And for the general agreement on the scriptural authority for female subordination see Burnet, Enquiry, sec. xiv.
cluded by [her] Husband," and she is "commonly unfit for civil business" according to Tyrrell.\textsuperscript{38} She has the natural right of a rational woman to resist a tyrannical husband but no right or identity as an individual outside of the family in the state. By demonstrating that marriage was a natural state, and thus necessary and reasonable, Whig theorists confirmed that the social and political order was indeed based on the law of nature. A reference to the tyrant's violation of wives or daughters would, then, be a reference to his violation of marriage and chastity, an attack on a husband or father.

Violation of Property and Person

The core of the association between rape and resistance was that the violation of a woman was seen as tantamount to the violation of life, liberty, and estate. But as this argument was used by Whig theorists, the right of resistance to the tyrant rapist lay in the father, or husband, or brother, and the violation was still perceived as an assault on the liberty or estate of a man. This perception is evident in the very language used: women are defined as "wives and daughters," that is, defined in relation to men. Thus the most obvious interpretation of the rhetoric of rape in Whig resistance theory is that the "rape of wives and daughters" was simply presented as another element of the complaint against the tyrant's unlawful seizure of property (women) belonging to the family patriarch. That association made by Burnet and Tyrrell, between the tyranny of a standing army and the tyranny of rape, might easily be understood in this way: citizens are violently forced to endure the seizure of many different kinds of property when the tyrant's plundering and raping soldiers are billeted in their homes.

This property interpretation of the rape rhetoric is confirmed not only by notions of female inferiority revealed in Whig theory but also by various aspects of women's legal and social experience in seventeenth-century England. The most prominent example is to be found in the law of coverture. A husband's control over his wife's property and person was legally expressed by the fact that a married woman was defined by the common law as a "feme covert": her legal existence was suspended or incorporated into that of her husband. As such, a married woman could not contract, bring suit, or obtain credit in her own name, and she lost her personal property and control over her real property to

\textsuperscript{38} Tyrrell, \textit{Patriarcha non monarcha}. pp. 83–84.
her husband. With regard to married or unmarried women's potential to inherit property, the common law dictated that if a man died intestate, his freehold property would pass to his eldest son, and only in the absence of sons would all daughters inherit jointly. In distributing land during their lifetime and in drawing up wills, many men followed this practice. And the Whigs' choice of the rape rhetoric, as an image identifying women with men's property, might even be said to reflect the fact that women's legal and economic position was deteriorating in the later seventeenth and eighteenth centuries. Amy Erickson, for one, has gathered evidence indicating that the rationalization and centralization of the common law as well as certain demographic, economic, and cultural changes resulted in greater restrictions on women's "already limited entitlements to property." In the theory of coverture and women's legal incapacitation, in the common association of women's dower and sexual honor, and even in the loss of a maiden name upon marriage, there were, Erickson asserts, ways in which women were treated as a form of property in early modern England.

This property interpretation of Whig rhetoric is also confirmed by laws regarding rape in early modern England. Rape was first associated with abduction—the theft of a woman—and was less identified with the sexual violation of a person. From medieval times, the crime of rape was defined as "unlawful carnal knowledge of a woman by force and against her will," but the statutory understanding of female will or con-


41 Erickson, Women and Property, p. 233.


sent was often contradictory and generally confused with issues of property and abduction. For example, the First and Second Statutes of Westminster demonstrate that rape was primarily regarded as an attack on the possession of female virginity and female chastity. The First Statute of Westminster (1275) "prohibittest that none do ravish, nor take away by force, any Maiden within Age, neither by her own consent, nor without; nor any Wife or Maiden of full Age, nor any other Woman, against her Will" (emphasis added). The Second Statute of Westminster (1285) affirmed that questions of force and female consent were part of the legal definition of rape, but also reinforced the identification of rape and abduction and returned both to the status of a felony. Both statutes maintained that consent was not admissible in cases involving the violation or abduction of minors. Any attention paid to the question of female consent in these statutes was largely based on concerns about the defloration of daughters; usually these statutes had to do with particular fears about the abduction and defloration of minor heiresses, and they did not reflect a more general concern with the abuse of female children.

With regard to women above the age of majority, legal interest in the question of consent also related to concerns about property claims. The Second Statute of Westminster provided that a man would be guilty of rape not only if he "ravished" a woman without her consent, but it would also be considered rape "although she consent after." The fact that this caveat was not prompted by a desire to protect women from coercion is evident from the provision that immediately followed. The next clause stated that a woman who eloped with "her Advouterer ... shall be barred for ever of Action to demand her Dower, that she ought to have of her Husband's lands." The focus on consent in this dower clause stemmed from anxiety about the preservation of husbands' dower rights against adulterous wives. The law discounted a woman's consent, emphasizing the primacy of property considerations over the concerns or volition of the woman herself. Overall, J. B. Post notes, these statutes

47 The identification of women as male property is further underscored in the final clause of this statute, which states: "He that carrieth a Nun from her House, although she consent, shall be Punished by three Years Imprisonment, and shall make convenient Satisfaction to the House from whence she was taken, and nevertheless shall make Fine at the King's Will" (Ibid.). Post concurs that this clause on nuns "emphasized, by implication, the material motivation of the whole chapter" ("Ravishment of Women," p. 157).
were geared to protect family interests and male property, "By interpretation and extension," he concludes, "the Statutes of Westminster turned the law of rape into a law of elopement and abduction, which inhibited the purposes of the woman herself... and fostered the interests of those who wanted material recompense for the material disparagement wrought by self-willed womenfolk and suitors."^{48}

A 1382 statute furthered this identification of the law of rape with the law of elopement and abduction, again protecting the familial property interest before the woman’s interest. In this statute, the point is once again underscored that regardless of the fact of a woman’s consent to her ravisher, both ravisher and ravished are disabled to "have or challenge all Inheritance, Dower or Joint Feoffment after the Death of their Husbands and Ancestors," and these interests now "descend, revert, remain or fall" as they would if ravisher and ravished were deceased. This statute concludes that the husband, or father, or male kin "have from henceforth the Suit to pursue, and may sue against the same Offenders and Ravishers in this behalf, and to have them convict of Life, and of Member, although the same Women after such Rape do consent to the said Ravishers."^{49} Property concerns clearly determined the kind of attention being paid to consent, and served to diminish the relevance of female consent, as the association between rape and abduction (which was linked with elopement or adultery) remained strong. Moreover, the application of these statutes in the early case law appears to indicate that the accusation of rape was used not only by aggrieved husbands but also by women’s kin who sought to force the issue of marriage on couples engaging in consensual sexual relations. "The accusation of rape," Post explains, "was often used as a procedure for invoking family shame at illicit defloration."^{50} The law was concerned with the material, social, and familial impact of female sexual relationships, and rape was defined primarily as a crime against property.^51

By the sixteenth century, rape and abduction were finally classified as separate capital crimes. But the two crimes were still linked, and much

^{48} Post, "Ravishment of Women," p. 160. Post adds that the dower clause was also aimed to ensure that heirs would retain their estates intact; the fact that the clause was frequently invoked, Post claims, demonstrates that it met a real need.

^{49} Statutes of the Realm, 6 Ric. II, Stat. 1, c. 6. 1382. Post, "Ravishment of Women," p. 160. Note that the passage of this 1382 statute, and of a similar statute of 1487, was motivated by ongoing property disputes between families—these laws were passed in order to help particular families.

^{50} Post, "Ravishment of Women," pp. 152–53, 157. The rape charge was also used occasionally by the couple itself, against family objections to a match, in order to force acceptance of elopement.

of the significance of rape lay still in the idea of theft. As the well-known seventeenth-century treatise *The Lawes Resolutions of Women's Rights* demonstrates, the accepted legal definition of rape still encompassed both abduction and violation:

There are two kinds of rape, of which though the one be called by the common people and by the law itself, ravishment, yet in my conceit it borroweth the name from *rapere*, but improperly, for it is no more but ... a hideous hateful kind of whoresdom in him which committeth it when a woman is enforced violently to sustain the fury of brutish concupiscence, but she is left where she is found, as in her own house or bed as Lucrece was and not hurried away as Helen by Paris or as the Sabine women were by the Romans, for that is both by nature of the word and definition of the matter. The second and right ravishment, ... [(is) when anyone abducts a woman of honest fame, whether she be a virgin, a widow, or nun, (and) it is (done) against the will of them in whose power she is].

Whig references to a tyrant’s propensity to rape wives and daughters relied on this common and legal understanding of rape as abduction, a violation of patriarchal interest—of father, husband, or male kin—in women. Whig authors, many of them lawyers, clerics, and dons (and some of them property theorists), were almost certainly familiar with these fundamental points of marriage, property, and rape law.

However, that same ambivalence that appeared in Whig contract theory—between an emphasis on female subordination and a focus on a woman’s capacity to exercise consent—is also reflected in the treatment of women under law. And so this property interpretation of the rhetoric of rape and tyranny is too one-sided; it must be modified in two important ways. First of all, the simple definition of wives and daughters as a form of male property obviously does not accord with what we know about the actual complexity of women’s domestic authority and their possession of and control over property. The workings of equity, ecclesiastical law, and manorial law meant that property ownership was not regulated solely by the common laws of coverture and primogeniture. So, for example, daughters could inherit property along with their

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52 See, e.g., *Statutes of the Realm, 4 & 5 Ph. & M., c. 8, s. 3, 1557–58*. In this statute, the link between rape and abduction is reaffirmed, and the focus is on disinheritance and the forfeiture of property when a person abducts, deflowers, or contracts secret marriage with a “maid or woman-child.”

53 *The Lawes Resolutions of Women’s Rights*, bk. 5, sec. 21 (bracketed material is in the modern edition being cited here. It is a translation of a Latin phrase that I have omitted). For an analysis of the significance of *The Lawes Resolutions of Women’s Rights*, see Prest, “Law and Women’s Rights.”

54 Erickson, *Women and Property*, pp. 5–6 and chap. 2.
brothers; once married, wives could maintain separate property interests (in trusts and jointures) despite the law of coverture; and widows were often the executors and beneficiaries of their husbands’ estates. These are broad generalizations, to be sure, but they do help to correct the impression made by the legal and theoretical literature. The very complexity of women’s experience and status ensured that there were many aspects of familial and social life that challenged the simple theory of female subordination.

Perhaps even more important for the analysis of the Whig rape rhetoric, the legal understanding of rape was not merely confined to issues of property and theft. There was, as I have already noted, at least some acknowledgment of the role of consent in the legal definition of rape. By law, the crime of rape was defined as “carnal knowledge” of a woman “against her will”; and all of the statutes concerning rape from the thirteenth to the sixteenth centuries acknowledged the fact of female will—the ability to give or deny consent—in various ways. The real concern about daughters and wives who might elope, which motivated a good number of the rape statutes, demonstrates some recognition of female agency and the effects of female consent. And in fact, some scholars have argued that there is a growing importance attached to female consent in the legal definition of rape in the sixteenth and seventeenth centuries. This is said to be evident, for example, in the work of the renowned seventeenth-century jurist Sir Matthew Hale. According to Miranda Chaytor, Hale placed a new emphasis on consent in his lengthy chapter on the felony of rape in Historia Placitorum Coronae (1736). For Hale, she claims, the question of the victim’s consent was the key to establishing a finding of criminal rape. Yet Chaytor does not acknowledge the fact that Hale also adheres to the statutory allowance for instances in which the fact of female consent is irrelevant to the legal definition of rape. Although Hale does pay a good deal of attention to the issue of female consent, he takes care to reiterate those provisions established by the Second Statute of Westminster that confirm a finding of rape and transfer an appeal of rape to male kin even if a woman has “consented after.” Chaytor is, however, partially correct: although she

53 Amussen, Ordered Society, chap. 3; Erickson provides summaries of her findings in Women and Property, pp. 18–20, 223–28.
54 It has frequently been argued that women’s theoretical legal subjection must be compared with their actual experience and independence. See, e.g., Amussen, Ordered Society, pp. 93–96; Erickson, Women and Property, pp. 4, 8, 18.
56 Hale, Historia Placitorum Coronae, 1:631.
overstates the novelty of Hale’s position on female consent, she is right to highlight the attention that is paid to the issue of female consent in this work. In Historia Placcitorum Coronae, there is a new emphasis on the validity of methods by which a woman’s consent may be gained and a new focus on accepted indications of consent. It should be particularly noted that Hale here rejects the common contemporary equation of conception and consent.59

Perhaps what is most striking about Hale’s definition of rape is his emphasis on the sexual nature of this crime. In his definition of rape, and in the guidelines he offers for the prosecution of rape, Hale focuses on the specific physical actions and physical manifestations of sexual violation. In setting forth the legal definition to be used in an indictment of rape, Hale underscores the fact that there must be “actual penetration or res in re”; without such evidence of penetration, he explains, the presence of sperm alone cannot be taken as evidence of rape.60 Moreover, in order adequately to differentiate a case of rape from an instance of consensual intercourse, the “party ravished” ought to be “of good fame,” and she must immediately reveal to some witness the physical marks of sexual violation, those “circumstances and signs of the injury, whereof many are of that nature, that only women are the most proper examiners and inspectors.”61 This change from a depiction of rape as a property crime to a depiction of rape as a sexual crime is thus tied to the issue of female consent, to questions about women’s consensual sexual activity. Part of the increasing focus on the question of proving or disproving the victim’s consent was the fact that rape was increasingly seen as a question of female sexuality—the victim’s desire, resistance, morality, will—rather than property. In Hale’s treatise, greater emphasis was placed on the character and sexual experience of the woman, on the necessity of producing clear physical proof of her violation, and on the speed with which she offered “fresh discovery and pursuit of the offense and offender, otherwise it carries a presumption that her suit is but malicious and feigned.”62 There was, it seems, an increasing interest in demonstrating consent because there was an increasing concern about a woman’s ability to lie about her consent. Indeed, Hale concludes his chapter on the felony of rape with a lengthy discussion of malicious suits brought against innocent men.63

60 Ibid., p. 627.
61 Ibid., p. 633.
62 Ibid., p. 632.
63 Ibid., pp. 634–35. Along with other examples, Hale repeats a sensational story about a case brought by a fourteen-year-old girl and her parents. This case was one among
Evidence of this growing concern for the male defendant is also apparent in the persistence of confusion about the statutory definition of the age of consent in girls. As Antony Simpson has demonstrated for the eighteenth and early nineteenth centuries, there was a tendency for the English legal system to interpret the rape statutes in such a way as to offer fewer protections to women and girls. Particularly important, he notes, was the reliance on an Elizabethan rape statute that lowered the age of consent for a girl to ten, “two years below that [age at] which a girl could legally marry.” 64 In this period, Simpson concludes, the major focus of rape law shifted toward a concern for the male defendant and toward an increased emphasis on the question of female consent in the definition of rape. 65 William Blackstone’s influential Commentaries on the Laws of England (1765–69) also provides evidence of this shift. Blackstone accepts the lowered age of female consent in rape cases and reaffirms Hale’s focus on the dangers of female sexuality and the woman’s need to prove her lack of consent. 66

This suspicion surrounding female sexuality, and the attendant focus

many, Hale claims, that was inspired by a recent successful indictment of rape in this locality. In this case, the accused man proved his innocence, and the woman’s malicious intent, by dropping his trousers in front of the jury: “for all his bowels seemed to be fallen down in those parts that they [the jury] could scarce discern his privities, the rupture being as full as big as the crown of a hat, whereupon he was acquitted” (p. 635).

64 Simpson, “Vulnerability and the Age of Female Consent,” pp. 182, 184–87. As Simpson explains, the First and Second Statutes of Westminster introduced a fundamental confusion regarding the established age of female majority and consent. The Second Statute of Westminster, while making rape once again a felony, ignored the case of the rape of a minor with her consent. Thus consensual intercourse with a girl under the age of twelve remained classified only as a misdemeanor under the First Statute of Westminster. A sixteenth-century statute finally remedied this discrepancy by making it a felony to rape a minor with or without her consent (Statutes of the Realm, 16 Eliz. I, c. 7, 1576). However, this statute also lowered the definition of female majority to ten years of age, adding a new source of confusion to the law books. The eighteenth-century courts generally accepted the Elizabethan statute and at the same time generally ignored the fact that despite this lowered age of consent, the rape of a girl between the ages of ten and twelve was still an indictable misdemeanor. No similar confusion plagued the legal understanding of male majority and autonomy. Although a mature woman was thus variously defined as a girl who had reached ten or twelve years of age, a boy legally became a man only at the age of fourteen. And in fact, as Hale explained, a boy below the age of fourteen could not be found guilty of committing a rape since he was considered to be “impotent as well as wanting discretion” (Historia Placitorum Coronae, 1:629).

65 Simpson, “Vulnerability and the Age of Female Consent,” p. 187; and Bastar, “Rape in England,” pp. 34–35, provide some statistical evidence of this concern for the male defendant.

66 William Blackstone, Commentaries on the Laws of England, vol. 4, Of Public Wrongs, ed. Robert Malcolm Kerr (Boston, 1962), pp. 235–41. Although Blackstone perpetuates the confusion about the age of female consent—and takes Hale to task for viewing the rape of a girl under twelve as a felony—he does recognize that the rape of a girl between the ages of ten and twelve would be an indictable misdemeanor.
on the veracity of a victim’s denial of consent, is also evident in some of the rape cases documented by Chaytor and by Nazife Bashar. 65 Many of the cases of rape that came to trial in seventeenth-century England apparently were not brought by minors or by privileged women but rather involved adult and ordinary women bringing suit for rape. And many of these women continued to describe their rape in the traditional language of property violation, or the devaluation of a woman’s domestic worth. Their claim that the rape was a trespass upon a species of male property was presumably less threatening: it evoked less concern for the male defendant than an assertion of female autonomy and sexual integrity, and it was hoped that it might be more likely to end in conviction. 66 These rape victims faced the fact that as the focus of rape prosecution changed from the protection of male property to the protection of the female body and female sexuality, the application of the law of rape (while never stringent) was becoming increasingly lenient. Or, to put it another way, the trend in the law of rape showed a movement away from a fear of the loss of property toward a fear of female sexuality. Since the law was thus increasingly motivated by a fear of malicious rape prosecutions, the attendant increased focus on consent was double-edged: on the one hand, the emphasis on female consent was tied to a definition of a woman as an autonomous person, a rational agent; on the other hand, the whole issue of consent was also tied to a definition of woman as sexual, dangerous, and irrational, as female identity was being equated with female sexuality. The same ambivalence that is apparent in Whig theory is here apparent in the law. There is some recognition of female agency, but at the same time, there is a reemphasis on female “nature”—determined by female sexuality—and on female subordination.

Meanings of Rape

The rhetoric of rape and tyranny that appears in Whig resistance theory is significant because it is not only about property. It is also part of the development of ideas about autonomy, contract, and consent and part of the development of ideas about women’s place in this social con-

65 Chaytor, “Narratives of Rape”; Bashar, “Rape in England.”
66 Bashar agrees that by the seventeenth century, rape is regarded more as a crime against the person than against property and that still “only the rapes that had in them some element of property, in the form of virginity, ended in the conviction of the accused” (“Rape in England,” pp. 41–42). Chaytor regards this language of property in the cases as a language of repair and distancing—part of a search for justice and control over violent sexual assault—rather than as a practical strategy (“Narratives of Rape,” pp. 385, 392–96).
tract tradition. This image of the tyrant rapist had multiple layers of meaning for Whig authors. It fit with the less egalitarian aspects of contract theory, with the conception of a sexual contract as well as a social contract. The notion of woman subsumed by, or subject to, husband and father also made some sense within the context of seventeenth-century property law and rape law. But the charge against the tyrant’s “rape of wives and virgins” was an accusation of sexual violation as well as property violation, and it involved recognition of the element of consent at issue in the definition of rape. The rhetoric of rape, especially when it was employed in the context of Whig contract theory, raised questions about consent and was part of a suggestive definition of a woman as a rational and free individual. However, the very focus on the question of women’s consent was also part of a gendered understanding of women as defined by their sexuality.

The image of woman defined primarily by her sexuality may have been useful as well because it could easily be combined with the picture of a tyrant as an uncontrolled sexual predator. The argument for resistance could describe the tyrant as both effeminate and dangerously oversexed. This kind of inflamed rhetoric about a tyrant rapist fit with the sexual slanders being traded between Whig and Tory. The Whigs were depicted by their opponents as cruel, impotent cuckold, guilty of financial tyranny. Whig authors painted the theorists of absolutism as licentious, French in political theory and in sexual practice. Here the rhetoric of rape is again clearly linked with Whig arguments about the dangers of absolutism and the importance of consent.

This vital connection between rape rhetoric and consent theory once

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69 For effeminacy as one of the classic attributes of tyranny, see Bushnell, *Tragedies of Tyrants*, pp. 63–69.
71 One example of this type of slander is evident in Locke’s code name for the *Two Treatises*: the doctor, employing double entendre, called his manuscript *De Morbo Gallico*—the French disease (see Peter Laslett, “Introduction,” in *Two Treatises*, by Locke, pp. 62–64). Also cf. Gilbert Burnet, *A Sermon Preached before the House of Peers in the Abbey of Westminster, on the 5th of November 1689. Being Gun-Powder Treason Day. As Likewise the Day of His Majesties Landing in England* (London, 1689), for this idea of tyranny as a French disease. There are further examples of sexual slander in the wild accusations against a tyrant rapist in *A Friendly Debate between Dr Kingsman, a Dissatisfied Clergyman, and Gratianus Trimmer, a Neighbor Minister* (London, 1689), p. 58; and in Charles Blount, *An Appeal from the Country to the City, for the Preservation of His Majesties Person, Liberty, Property, and the Protestant Religion* (London, 1679), p. 2.
again had dramatic power after 1688. Nicholas Brady’s *Rape: Or the Innocent Impostors*, another Whig drama centered on the theme of tyranny and rape, was performed at the Theatre Royal in Covent Garden in 1692. Like Lee’s *Brutus*, published eleven years earlier, Brady’s work was dedicated to the Whig patron, the Earl of Dorset. And Brady’s Whig credentials were, perhaps, even stronger than Lee’s. Brady was an active Williamite during the Revolution and later served as chaplain to William and Mary as well as to Anne before and after her accession. However, Brady’s play does not offer the kind of clear commentary on contemporary politics that was central to Lee’s Exclusion drama. Moreover, unlike Lee’s play (and unlike the Whig treatises cited above), the primary goal of Brady’s work was not to justify resistance to tyranny. The primary trajectory in this play about Vandal conquerors and subjected Goths is not from tyranny to resistance; the dramatic movement is, rather, from conquest to consent. Brady’s play opens with the depiction of a Vandal king, Gunderic, celebrating his “glorious conquest” and ruling over his Gothic subjects through force and fear. Over the course of the drama, the tyrannies committed by this conqueror are challenged, and the fragility of rule based on force is exposed. By the end of Brady’s play, the conquering Vandal king’s sovereignty has been legitimized, as the foundation of his title to the throne is transformed from arms to consent sealed by marriage. In depicting this triumph of the Goths, and of rule by consent, Brady is also clearly situating his play within the Whig historical tradition of Gothic liberties—the inheritance of freeborn Englishmen.

The catalyst in this change from conquest to consent, from illegitimate to legitimate rule, is rape. And Brady’s drama strongly associates rape with tyranny. Rape is first figuratively linked to tyranny in the language of ravishment employed by Genseric, nephew of the Vandal king Gunderic. Genseric desires the Gothic princess Eurione, and he complains that a proposed royal marriage between the Vandal prince Agilmond and Eurione would be an act of violation and tyranny. For

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72 See Nicholas Brady’s dedicatory preface “To the Right Honourable Charles, Earl of Dorset and Middlesex,” in his *Rape: Or the Innocent Impostors* (London, 1692); and see above p. 159 and n. 7.

73 DNB, s.v. “Brady, Nicholas.”

74 Brady deliberately emphasizes the fragility of a sovereignty based on the right of conquest, exposed as it is to conquest and defeat itself (*Rape: Or the Innocent Impostors*, pp. 43–44). This repudiation of conquest theory may be the contemporary political commentary offered by the play—perhaps Brady is pointing to William III’s title by marriage and consent as well as by conquest. However, any association being made between William III and the play’s Vandal king is ambiguous and dangerous since it would also entail an association with tyranny.
Genselaric, the marriage directly threatens "to ravish from [him] / A Mistress and a Crown" as "the Tyrant ravishes from [his] soul / All it holds dear and precious" (emphasis added). Yet further evidence of the Vandal king's tyranny is provided when it is revealed that the princely bridegroom is actually a princess: this "innocent impostor" Agilmond has been forced to hide her identity since birth in fear for her life, since the tyrant king promised to kill any "Female Birth" delivered by his queen. For the audience, then, the proposed royal marriage is an act of tyranny on more than one level.

The figurative rape of Genselaric's desires then inspires an actual rape: in order to satisfy his lust, and to thwart this royal marriage, Genselaric proceeds to rape the Gothic princess. The Gothic subjects regard this rape as the culmination of a whole series of acts of tyranny perpetrated by the Vandal rulers. Instead of uniting his peoples in marriage, the Vandal king is finally confronted by this strongest association with tyrannical rule. His repudiation of the rape will coincide with his repudiation of tyranny.

The central theme, then, of Brady's play is the association between tyranny and rape: the ruler's various acts of tyranny culminate in the violation of a woman, and this tyranny justifies Gothic resistance. All of the familiar ambivalence toward women and consent that is characteristic of the Whig literature can be found in Brady's drama. The rape of Eurione is, first of all, clearly depicted as a property crime. The Gothic princess is depicted as a prize belonging to a king, given to a prince, and stolen by a cousin. Once stolen and spoiled, Eurione bemoans the loss of her worth and the stain on her family and her nation that must be avenged by her male kin. The proper situation, the protection of the violated woman, is then affirmed in yet another revelation of mistaken gender identity. The right to appeal and revenge this rape is secured when the true gender identity of Eurione's sister is unmasked: this sister is really a brother, and as the sole surviving Gothic prince, he vows to avenge Eurione's honor, defend his property, and retake his father's throne.

The rape of Eurione is, however, also graphically depicted as a sex

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73 Ibid., pp. 5, 20.
74 Ibid., pp. 3, 13–14.
75 Ibid., pp. 4–5, 16, 20–21, 27.
76 Ibid., pp. 25–26, 29–30. This depiction of the rape as a property crime is also affirmed in the text devised for the falsely accused Agilmond. If he/she refuses to take these spoiled goods in marriage, his/her innocence will be proved. "His Royal Blood will prompt him to endure / Ten thousand Deaths, rather than marry one / That's ravish'd by another" (p. 34).
crime. Brady has the Vandal rapist describe "the mighty Transports of hot Love" and his longing to "grapple with the Princess": "How full my Veins swell, and my boiling Blood / Bubbles and foams as it would break its Channels!" Genseric complains as he seeks to "melt" Eurione with the "hot Flames" and "raging burnings of [his] Fever." The circumstances of this dramatic rape also conform to many aspects of the legal definition of sexual violation being formulated in the case law and in treatises like Hale's. Eurione is attacked in a secluded place; she has physical marks of violation, which she quickly reveals to a competent female witness; and her accusation is speedily brought to trial. As a sex crime, as a violation of her body and her person, the rape of Eurione has to do with consent as well as property.

Moreover, this narrative of rape is at the center of a drama that teaches that consent is the foundation of legitimate rule. It is not surprising that ideas about women and consent are invoked. Brady acknowledges female agency and rationality not only in his depiction of the rape but also in his emphasis on women's actions, particularly the power of mothers and daughters in resisting patriarchal tyranny. The two examples of gender disguise and reversal, which are the engine of Brady's play, are cleverly devised by mothers who succeed in resisting the decrees of a tyrannical ruler. The figure of Prince Agilmond is also an important symbol of female agency, bravery, and rationality. As a woman successfully disguised as a man, Agilmond demonstrates woman's ability and woman's possession of those virtues usually associated with men. Finally, the Vandal king's discovery that this son is really a daughter leads him to repudiate the gender tyranny he had earlier imposed and to recognize woman's worth. When confronted by the deception engineered by his wife and child, Gunderic violates his own oath to kill this daughter and instead gratefully accepts his child:

Nor have I lost
By this Exchange; since for a Son, whose weakness
Has often made me blush, I gain a Daughter
Well worth the owning. Madam, rise; and let
This strict Embrace atone for all the troubles
Which my rash Vow has caus'd you.  

79 Ibid., p. 23.
80 Ibid., pp. 23–26, 52–55, and see above, pp. 177–78. There is no proof of penetration in the play, although the prominent focus on the dagger used by the rapist might be interpreted as a symbol of penetration.
81 Ibid., p. 49.
In this same breath, however, the natural difference between male superiority and female inferiority is reaffirmed. The King relinquishes an effeminate son in order to gain an unusually valuable daughter; and the breach in family and nation is fully repaired when the king then offers this daughter to the Gothic prince, thereby finally sealing his subjects' consent in marriage. Brady's drama at once tests the boundaries by attributing a degree of rationality, autonomy, and identity to women and reasserts those boundaries by affirming female inferiority, sexuality, and difference. A secure male authority is reestablished as gender confusion is sorted out and as both a social and a sexual contract are created.

This flexibility or ambivalence, this simultaneous recognition of female agency and reaffirmation of female subordination, is characteristic of the rape and tyranny argument. And it is, I think, what accounts for its appeal to Whig authors. Whig authors developed theories of social contract and ideas about autonomy and consent that were articulated within a traditional understanding of social and political authority. The Whig "Revolution Principles" of abdication and vacancy posited non-revolutionary revolution—contract and resistance without change in the ancient constitution.82 In a similar manner, within this Whig justification of the Revolution the charge against the tyranny of rape presented women as individuals, as persons capable of consent (and thus of violation). But it also relied on the common understanding of women as property and as sex, and, in the end, it also reaffirmed the status quo.

82 See Rudolph, Revolution by Degrees.