Introduction

Every exploration, no matter how speculative and abstract, has to find some event or landmark through which it can gain access to the labyrinths of culture and power.

—Lawrence Grossberg

... race haunts us who call ourselves Americans.

—Donna Haraway

For two weeks in the summer of 1994, U.S. audiences were held captive by their televisions, their newspapers, and their radios as the fate of two young boys from Union, South Carolina, unfolded. Their mother, Susan Smith, would eventually be charged in their deaths. Not until the subsequent O. J. Simpson trial would the production of cultural attitudes toward crime again be so evident—both cases involved family issues (or, more accurately, the unraveling of “family values”), matters of race, class distinctions, and the popularized conjunction of violence and sexuality. As Susan Smith’s guilt in the death of her sons stunned the media-controlled public, the revelations of Smith’s own traumatized childhood and that she had been sexually violated by her stepfather quickly complicated the public’s initial reactions to the revelation of her guilt. That Smith had played the race card by insisting that a black man had stopped her car and kidnapped her children added a level of cultural guilt to our recognition of complicity in so quickly accepting such an allegation and aligning our sympathies with the young, white mother. The “our” of this assertion, of course, would hardly have been embraced by most African American viewers; rather, it reflects the dominant values assumed in
the media discourse surrounding the revelations of Smith as the real murderer of her children. While the decency of Smith’s parents in so quickly denouncing their daughter’s use of race deserved recognition, the media quickly co-opted their decency to elide Smith’s astuteness in recognizing what would be the best deflection from herself: the white media and audience would, for the most part, readily accept such an accusation. Not only was there a long history of constructions of the black man as violent—going back to the fear tactics used to argue for the continuation of slavery and for the spontaneous lynching-executions of black men—but there was the contemporary inculcation of such images through the media, especially in nightly television newscasts that focused on black gangs and black violence, as well as the recent, infamous use of Willie Horton by the Republican Party to propagate such attitudes. The media were far less ready to deal with the emerging knowledge that Smith had a long history of being the victim of violence within her own family, and they were even less willing to confront the ways in which Smith reacted to her victimization, especially when it included sexually acting out. The reporters were, of course, more than ready to reveal the titillating details of these aspects of her life—but an analysis of the information’s significance and the ways in which it might lead us collectively to consider the complicated conjunctions of family and violence, of sexuality and violence, and of race constructions and violence was never forthcoming. Subsequently, scholars in various disciplines have considered these issues to some extent, but the mass media have quickly moved on to new dramas.

There has been little attempt to unravel the complex causes of violence in U.S. culture or the deeply complicated connection between gender, crime, and the legal system in which young women are typically criminalized in connection with issues of sexuality, and young men in connection with violence. Nor has there been extensive examination of the ways in which such criminal cases become cultural productions. It is an old adage that if we do not understand our past, we are doomed to repeat it. It is equally true that until we unpack some of the complications of our cultural past, we will never truly understand it or be able to enact social change. The epigraph to this chapter signifies Grossberg’s focus on rock and roll in *we gotta get out of this place* as a site for addressing major debates of his time. His comment is appropriate to this book for that point—that mass culture can reveal significant cultural underpinnings—but equally so for another of the lyric’s significations: “we gotta get out of this place” suggests too that we must never allow ourselves to be stuck in intellectual, social, and political ruts, that radical and new perspectives and their cultural ramifications are necessary elements of academic work.
To contemplate the intersection of women’s lives and writings with the law in eighteenth-century America, we necessarily must engage the constructions of race and gender that emerged during the late seventeenth and eighteenth centuries. Such constructions both impacted the colonial and early Federal craftsmen of legal texts and were culturally inculcated by those same legal authors. The conceptions of race and gender in the long eighteenth century were largely created by Enlightenment philosophy and the Scientific Revolution. While scientific racialism has long been discussed as a nineteenth-century phenomenon in the United States, we now recognize that its origins came at least a century earlier and arose from an international intellectual exchange that was both astoundingly invigorating and, for some, immensely oppressive. Only very recently has a significant body of scholarship appeared on the issue of “race” and the Enlightenment. Even in this resurgence of interest in the period, so vital to our understanding of race constructions then and now, there remains an academic resistance to treading upon the great Enlightenment philosophers with anything but absolute reverence. While they were often brilliant, radically changed modern thinking, and should be studied in great depth, they also were deeply influenced by their times, for all that they were changing those times; and it is in terms of gender and race matters that this becomes most evident. As the Zimbabwean novelist J. Nozipo Maraire reminds us, “Racism is a phenomenal thing; it is like a thick mist that obscures the vision and judgment of even great minds.” If we have learned anything from postmodernism, it is, as Linda Martín Alcoff has argued, “that freedom is precisely not to be found in teleologies of progress that preordain the glorious future and preassign the roles we shall all play in it, roles inevitably indexed to the identities constructed for us by systems of oppression.” If true for the late twentieth century, it was equally so for the eighteenth century’s teleologies of progress preordained in the discourse of its many revolutions—scientific, American, and French. The recent interest in the eighteenth century’s emergent scientific racialism has demonstrated how it impacted every realm of exchange—cultural, intellectual, economic, and legal. To study the terrain of scientific racialism is important precisely because it was so pervasive but also because we must adjust the discussion to emphasize that we are in fact talking about a realm of ideological development that is better understood as gendered scientific racialism. The work that feminist scientists and history of science scholars have added to this discussion has yet to be fully realized within early American studies. And we are only beginning to understand the impact of gendered scientific racialism on the development of the law in the United States.
Race and Gender in Enlightenment Thinking

The scientific analyses of the period of exploration and settlement were rife with racialized and gendered assumptions that became distributed as “truths” about the “New World” and about human beings in general. These assumptions form a significant background to this study, and it is worthwhile to highlight some of the contexts in which they developed. Even in this early period, legal issues were inseparable from how explorers read the people they encountered. As Margarita Zamora has observed, “In the so-called ‘Capitulations of Santa Fe’ (17 April 1492) Christopher Columbus’s legal rights and obligations on his first westward voyage in the Ocean Sea were carefully spelled out. So was the mercantilistic and imperialistic nature of the enterprise. In the Santa Fe document Columbus was commissioned by the Catholic monarchs to discover, take possession, govern, and trade in whatever islands and mainlands he might come across on his westward voyage.”

Everything that Columbus wrote for his supporters was shaped by his own legal obligations and thus shaped his own inscriptions of what was “inherent” about the indigenous peoples he encountered. Part of the success of his mission depended upon finding differences—and thereby potential resources for exploitation—between Europeans and the people of “the Indies.” Thus indigenous people are described in detail: “a very handsome people; their hair not curly but loose and thick like horsehair and all with very wide foreheads and heads, more than (any) other race which I have seen up to now. And their eyes (are) very handsome and not small, but the color of Canary Islanders.” The people must be valued enough to attract the attention of Columbus’s supporters, but their physical beauty is described as a counterpoint to their lack of morality as determined by European custom: “[A]ll go naked, the women as well as the men, just as they came into the world, with the exception of some women who covered themselves with a leaf or something made of cotton which they make for that purpose. . . . They are incredible cowards . . . when I have sent two or three men to some village . . . they fled so that even the fathers forsook their children.” That it is the fathers who abandon their children is an important element in the Columbian inscription of the indigenous people—both their beauty and their cowardly behavior feminize the men and thereby make them more conquerable. As Joan Wallach Scott has argued, the creation of gender differences is a means of establishing “distributions of power . . . gender becomes implicated in the conception and construction of power itself.” And Columbian descriptions of the process of conquering others helped shape such ideas during the period of exploration. Louis Montrose and Shirley Samuels have each
demonstrated that the subsequent allegorical personification of America as a nude native female pervaded drawings and written texts for centuries to come and abetted the idea that Native Americans were a challenging but ultimately conquerable people. By the time the Enlightenment philosophers and scientists were offering their own versions of racial and gender difference, they already had a cultural base on which to build their systems of classification. As Etienne Balibar notes, “There is in fact no racism without theory (or theories). [And those theories] are ‘rationalized’ by intellectuals.” Thus to understand the conjunction of race, gender, and class in eighteenth-century women’s lives and why the law was seen by the dominant culture both as a means of maintaining systems of supremacy and as a system for change, we must look to the intellectual revolutions of the eighteenth century to understand the systemic classification of existence that was the background for racism, classism, and sexism, and for the challenges to those “isms.” That violence played a major role in this conflict over existence should not be surprising; every revolution of the period manifested violent means of operation. Equally important is the means by which the law was crafted to support such systems of classification and their hierarchical consequences of supremacy and inferiority.

When philosopher-politicos such as Carl Linnaeus and the Comte de Buffon sought to classify the human races, Caucasians (synonymous with Europeans) became the standard against which all other races were measured. Linnaeus created detailed lists of distinguishing features: The European or Caucasian had “Hair yellow, brown, flowing; eyes blue; gentle, acute, inventive. Covered with close vestments. Governed by laws.” The African was described as “Hair black, frizzled; skin silky; nose flat; lips tumid; crafty, indolent, negligent. Anoints himself with grease. Governed by caprice.” Supposedly shifting the idea of creation from a biblical narrative to one rooted in scientific reason, the hierarchical structures of Christianity (including the Great Chain of Being) were not abandoned but rather became the source for inscribing a “natural,” God-created order for human beings, animals, flora, and fauna. Indeed, most Enlightenment philosophers did not deny monogenism’s assertion that all people descended from Adam and Eve. As Stephen Jay Gould notes, in this thinking the degeneration from the perfection of Eden was equated with the degeneration of the races, with whites the least degenerative and blacks the most. The most extreme racists and supporters of slavery, however, rejected monogenism for polygenism, asserting that the races “were separate biological species, the descendants of different Adams. As another form of life, blacks need not participate in the ‘equality of man.’” The power of naming articulated in Genesis is transferred to the
scientist, but the gendered script of male/female hierarchy is embedded in Enlightenment thinking. As Linnaeus described the process of classification, “It is the exclusive property of man, to contemplate and to reason on the great book of nature. She gradually unfolds herself to him who, with patience and perseverance, will search into her mysteries.” Just as the Columbian writings had eroticized Native American men, Linnaeus’s description of the project of classification of systems implicates the female body in an erotic fashion which implies that man’s contemplation and reasoning includes the conquering of the female body.

The climate theory of racial difference dominated the eighteenth century and focused on skin color as a marker of difference; just as nature is figured in Linnaeus’s imagery as a female body that a male may enter and explore, it was often the genitalia of people of color that became the point for racial difference. Buffon, for instance, argued that Africans were born white and then changed to black within days, but it was important to theories of racial supremacy that blackness was not something that could be hidden:

M. Littré, who dissected a Negro in the year 1702, remarked, that the end of the glans, which was covered was perfectly white. This observation demonstrates, that the air is necessary to produce the blackness of Negros. . . . [F]or it has been observed, that the children of Negroes, as soon as they come into the world, have black genitals, and a black spot at the root of their nails. . . . It is certain that the rudiments of blackness are communicated to them by their parents; that, in whatever part of the world a Negro is brought forth, he will be equally black as if he had been born in his own country.

In Physical Geography, Kant asserted much the same idea: “The Negroes are born white apart from their genitals and a ring around the navel, which are black. During the first months of life the black color spreads out from these parts over the whole body.” Women of color also had immense attention paid to their genitalia. Kant remarks, “Among the Hottentots, as Kolbe reports, many women develop a piece of leather on their pubic bone which partially covers their reproductive organs, and which they are supposed to cut off from time to time. Ludolph reports the same of many Egyptian (Ethiopian) women.” The attention to genitalia allows the Enlightenment scientists and philosophers to mark people of color as sexually promiscuous. Even for Hume, who resisted the climate theory to a degree, the white supremacist attitudes of the scientific arena led to his famous conclusions on race in the 1754 edition of “Of National Characters”: Negroes and “all other
species of men” are “naturally inferior to the whites”; “that the characters of
nations are very promiscuous in the temperate climates”; “[t]here never was
a civilized nation of any other complexion than white, nor even any individ-
ual eminent either in action or speculation.” Thus, Hume can conclude that
nature “made an original distinction between these breeds of men.”

Within this process, anatomy was a particularly important mode of defini-
tion. Linneaus’s 1735 categorizations of Mammalia, for instance, relied upon
the signification of the breast as milk producing; this feature became a defin-
ing characteristic of mammals, in spite of the fact that only females of the
human species actually have such features. However, as Londa Schiebinger
reminds us, during this period women of the upper classes were being encour-
gaged to forego wet nurses, and Linnaeus supported the move away from wet-
nursing. This debate “emerged alongside and in step with political realign-
ments undermining women’s public power and attaching a new value to
women’s domestic roles. Understood in the broadest terms, the scientific fas-
cination with the female breast helped to buttress the sexual division of labor . . . by emphasizing how natural it was for females—both human and non-
human—to suckle and rear their own children.” As the distinctions between
animals and humans continued to develop, female anatomy—classified on a
hierarchical racial basis as well—and those arguments played into the prevailing social constructions of Republican Motherhood and True Womanhood. While these ideologies were
dictated through religion and politics, they were also inculcated as “natural”
and “proved” through scientific discourse. Between the 1750s and 1790s,
anatomists moved from an emphasis on female genitalia as deviant (because it
was found “lacking” in comparison with male anatomy) to attention to skele-
tal formation. There was considerable potential in this reconsideration, but it
ultimately led back to quite traditional conclusions: the female body includ-
ing the brain was not as developed as the male body and brain. For the first
time, female skeletal drawings appeared, denoting difference, but that differ-
ence soon inscribed cultural ideals of masculinity and femininity. The fact that
the female was deemed to have a larger cranial structure than the male in pro-
portion to total body weight did not lead, as one might expect in such a sys-
tem, to a conclusion of greater brain capacity. Rather, it was signified as
incomplete development, with the male's cranial structure aligned not only
with normative development but with a higher capacity for reasoning. Where
women did excel, it was argued, was in the development of a large pelvis in
relation to the rest of her body. In this era “craniologists were quick to point
out that the European female pelvis must necessarily be large in order to
accommodate in the birth canal the cranium of the European male,” which
was believed to be large at birth and then develop into the proportionate, superior size of adult manhood. Thus, “the superior female pelvis complemented the superior male skull.”23 Once again, anatomy becomes destiny: the emphasis upon Caucasian women’s reproductive capacities supported Republican Motherhood ideologies of the woman as necessarily aligned with the domestic, with childrearing, and—as it evolved into True Womanhood ideology—a symbol of piety and spirituality.

Central to all of the studies of female anatomy and racialized classifications was the distinction between Caucasian women and all women of color. In the initial studies of the cranium, scientists such as Petrus Camper used skull measurements to demonstrate the natural alliance between apes, Negroes, and Caucasians. As other scientists advanced Camper’s racialized anatomical studies, a disturbing trend evolved. Some anthropologists suggested that the pelvises of African women were larger than those of European women—and larger was better in this instance. When Camper procured female pelvic bones of African, Asian, and American women, he too concluded that these women seemed to have “wider and noticeably rounder” pelvic structures. However, he argued, this was due only to their living in warmer climates; he asserted that African women elsewhere had narrower pelvises than Europeans, so it was, once again, simply environment that had perverted the “natural” order.24

Although eighteenth-century scientists believed they were relying solely on objective observation for their “facts,” their preconditioned attitudes resulted in a translation of their observations into realities that supported their preconceived hierarchies of race, gender, class—indeed, of every element of “species” identification. Nowhere is this as evident as in Kant’s Observations on the Feeling of the Beautiful and Sublime (1764) in which he asserts, “[T]his fellow was quite black from head to foot, a clear proof that what he said was stupid.”25 In this period of ever-challenged national boundaries, it should not go without remarking that inherent in the process of scientific classification is a nationalist agenda. Both Buffon and Kant articulate race as national difference—Buffon claimed that the Negro’s blackness identified him with “his own country,” and Kant’s emphasized “a civilized nation,” meaning European. As the United States sought to define itself as a new nation, its interest in and reliance on Enlightenment thinking necessarily incorporated concepts of racial and gender difference into the nationalist agenda.

Whether these classifiers identified four or five or more races, a hierarchy was inherent in the classifications. As Stephen Jay Gould observes, “Linnaeus mixed character with anatomy,” such as his assertions that African women had no shame and breasts that lactated profusely.26 Kant identified four “races of man”—Whites, Negroes, Hunnics (Mongolians and Kalmucks), and
Hindu. Native Americans complicated his thinking on the categorizations, and his ultimate decision was that “Americans seem to be a Hunnic race not yet completely adapted.”27 He concluded elsewhere that “[i]n the hot countries the human being matures . . . but does not, however, reach the perfection of those in the temperate zones. Humanity is at its greatest perfection in the race of the whites. The yellow Indians do have a meagre talent. The Negroes are far below them and at the lowest point are a part of the American peoples. . . . The women of the hottest parts of the world already produce children at the age of 9 or 10 and finish before they are 25 years old.”28 The most influential of the classifications of the races was Blumenbach’s _On the Natural Varieties of Mankind_, published in 1776 at the beginning of the American Revolution, in which he asserted that there were five races, all of one species. Blumenbach’s five races were Caucasians, Mongolians, Americans, Malays, and Ethiopians. In spite of his assertion that the races were not separate species, he created a hierarchy around the evolution of each race—the Caucasian was the ideal, and other races “degenerated” from the Caucasian.29 As in most of the systems of racial classification, the Ethiopian was at the bottom of Blumenbach’s hierarchy, while the American was in the mid-range of the ladder. Ethiopians were described as black, with curly hair, “head narrow, compressed at the sides. . . . forehead knotty, uneven. . . . eyes very prominent. . . . the lips (especially the upper) very puffy; chin retreating.”30 As scientifically racialized hierarchies of races developed, the Negro was increasingly aligned with animals, especially after studies of the apes of Africa began to appear. Donna Haraway terms the scientific fascination of the period with primatology as “simian orientalism,” which

means that western primatology has been about the construction of the self from the raw material of the other, the appropriation of nature in the production of culture, the ripening of the human from the soil of the animal, the clarity of white from the obscurity of color, the issue of man from the body of woman, the elaboration of gender from the resource of sex, the emergence of mind by the activation of body. To effect these transformative operations, simian ‘orientalist’ discourse must first construct the terms: animal, nature, body, primitive, female. Traditionally associated with lewd meanings, sexual lust, and the unrestrained body, monkeys and apes mirror humans in a complex play of distortions over centuries of western commentary on these troubling doubles.31

Blumenbach asserted that “the Ethiopians . . . come nearer the apes than other men”; but unlike some of his contemporaries, he cautioned against too
simply aligning Negroes with apes: “how little weight is for the most part to
be attached to this sort of comparison is clear from this, that there is scarce-
ly any other out of the principal varieties of mankind, of which one nation
or other, and that too by careful observers, has not been compared, as far as
the face goes, with the apes.” He himself made such a comparison when he
cautioned against the myths that had been perpetuated about Native
Americans, “It is astonishing and humiliating what quantities of fables were
formerly spread about the racial characters of this variety,” especially that the
men were beardless and that the women did not menstruate. Yet his own
description of Americans was “[c]opper-coloured . . . hair black, stiff, straight
and scanty . . . eyes set very deep; nose somewhat apish but prominent . . .
the shape of the forehead and head in many artificially distorted.” In spite
of his cautionary notes, Blumenbach continued to designate the Caucasian as
the only fully developed member of the species, with all other races degenerate
versions thereof. His cautions were often ignored, and the myths of racial
difference were inculcated into late-eighteenth-century thought. While a few
philosophers challenged the white supremacist classification of the species,
such as James Beattie in An Essay on the Nature and Immutability of Truth, in
Opposition to Sophistry and Skepticism (1770) and J.G. von Herder in Ideas on
the Philosophy of the History of Mankind (1784–91), their resistance to accept-
ing the inferiority of all nonwhite races and to classifying humans based on
skin color, respectively, carried little weight in comparison to the
Enlightenment philosophers who gained fame.

In order to maintain white supremacy, not only skin color but religions
and customs different from those of Europeans had to be denigrated. As
noted above, Linnaeus had juxtaposed Caucasians as ruled by custom (qua
reason) with Africans as ruled by caprice. Kant took exception to non-
Christian practices: “The religion of fetishes so widespread among them [the
Negroes of Africa] is perhaps a sort of idolatry that sinks as deeply into the
trifling as appears to be possible to human nature.” Even their actions under
slavery were interpreted as cowardice. Kant agreed with Montesquieu in
observing that “the weak-heartedness that makes death so terrifying to the
Indian or the Negro also makes him fear many things other than death that
the European can withstand. The Negro slave from Guinea drowns himself
if he is to be forced into slavery. The Indian women burn themselves. The
Carib commits suicide at the slightest provocation.” Ironically, white
supremacy was taken to its extreme by Linnaeus, who has been credited with
moving science away from its basis in Christian assumptions to the placing
of “man” in his taxonomic order of Primates as Homo sapiens; in spire of this
gesture, Linnaeus “referred to himself as a second Adam, the ‘eye’ of God,
who could give true representations, true names, thus reforming or restoring a purity of names lost by the first Adam’s sin. . . . the role of the one who renamed the animals was to ensure a true and faithful order of nature, to purify the eye and the word. The ‘balance of nature’ was maintained partly by the role of a new ‘man’ who would see clearly and name accurately, hardly a trivial identity in the face of eighteenth-century European expansion.”

Cultural Representations of Enlightenment Racism and Sexism in Early America

These expansive Enlightenment ideas of race and gender pervaded the thinking of the leaders of the American Revolution and the otherwise innovative thinkers of other countries as well. Nationalism and science were closely linked in this era. An early figure in this alliance was Cotton Mather, who was probably the most interested in science of any early eighteenth-century American figure. Mather longed to be a member of the Royal Society. Founded in 1660, the Society included among its goals the collection and classification of scientific data. Mather began collecting data from America and sent it to the Society as “Curiosa Americana.” As Kenneth Silverman has articulated, Mather felt that America was “an infant country entirely destitute of philosophers” and thus his hope of sending scientific data to the Society “contain[ed] an embryonic element of nationalism,” an element that would significantly increase in the Revolutionary years. Mather’s was important early work, and his data “seems to be the earliest known account of plant hybridization, confirming the then newly announced doctrine that flowering plants reproduce sexually—the basis for the Linnaean system of classifying plants.” Also embryonic in Mather’s accounts, however, was the view that the customs of Native Americans were part of the curiosities of nature. Among such “curiosa” were diverse items such as the account of “a New Englander who had a stone at the root of his tongue yet urinated in intolerable pain as if it had been in his bladder. . . . Monstrous births” and “Indian Methods of Keeping Time.” As the international interest in scientific classification increased, so did the inclusion of non-European customs as signs of racial inferiority.

Revolutionary leaders struggled with the issue of race. Benjamin Franklin—who, perhaps more than his contemporaries, understood the hierarchy of races as cultural—could still assert in Observations concerning the Increase of Mankind (1751) that America should become a land of whites only:
I could wish their numbers were increased. And while we are, as I may call it, scouring our planet, by clearing America of woods, and so making this side of our globe reflect a brighter light to the eyes of inhabitants in Mars or Venus, why should we . . . darken its people? Why increase the Sons of Africa, by planting them in America, where we have so fair an opportunity, by excluding all blacks and tawneys, of increasing the lovely white and red?40

Thomas Jefferson had much the same vision for the United States. As he told James Monroe, he saw progress in terms of the time when the continent would inhabit “a people speaking the same language, governed in similar forms, and by similar laws.”41 Not only would this vision require assimilation, but it could best be achieved by the distant colonization of slaves so that America would, in essence, be homogenous racially as well as linguistically and legally.

Systems of oppression were ironically entrenched in the rhetoric of liberty during the Revolution and in the early Federal period. Scientific racism was perpetuated by several well-known leaders, but two of particular importance will be noted here: Thomas Jefferson and Dr. Benjamin Rush. Like European naturalists, Jefferson used the concept of beauty to argue against the equality of the African race. Asserting that the Negro was ugly because he did not have the “fine mixtures of red and white” in his skin color, Jefferson moved further to declare that the mental and moral characteristics of Africans were equally inferior. In what has become his most famous assertion on the subject, Jefferson proclaimed that “[a]mong blacks is misery enough, God knows, but no poetry. . . . Religion has produced a Phyllis Wheatley, but it could not produce a poet. The compositions published under her name are below the dignity of criticism.”42 As noted above, Jefferson’s goal was the colonization of freed American blacks to Africa. To accomplish this goal, black infants would be removed from their mothers’ care and trained in various artisan skills until they were old enough to be deported. “The separation of infants from their mothers,” Jefferson acknowledged, “. . . would produce some scruples of humanity. But this would be straining at a gnat, and swallowing a camel.”43 The elevation of motherhood that was integral to white women’s role in the new nation was clearly not extended by Jefferson to African American women.

Dr. Benjamin Rush is even more complex than his friend Thomas Jefferson in his racist attitudes. Progressive in many ways—often in his medical research, as a proponent of female education, and, ironically, as the founder of an abolition society44—Rush used his medical expertise to advo-
cate some of the most racist ideologies of the period. The issue of “familiarity” between the races had been subject to considerable public debate by the leaders of the new nation. Rush argued for the inferiority of African Americans in an address to the American Philosophical Society on July 14, 1797. He explained that his medical studies had led to the conclusion that the skin color of the Negro was a disease derived from leprosy. He was influenced by the case of Henry Moss, who was born a slave in Virginia but fought with the Continental Army during the Revolution. Moss had lived for several years in the northern states when he began to develop white spots on his body; within a few years he appeared to be white. In 1796, apparently at the instigation of the Reverend Samuel Stanhope Smith, Moss was exhibited as a scientific curiosity in Philadelphia, where Rush was then living. While most scientists saw Moss’s case as confirmation of the climate theory of racial differences, Rush soon thereafter posited his leprosy theory, explaining that Moss was going through a bodily cure to be restored to his “natural” whiteness. Rush concluded that Negroes were insensitive to pain and that they were carriers of especially resistant venereal diseases. He argued they would “infect” whites if the races intermingled. Rush’s separatist ideology was similar to Jefferson’s argument for distant colonization of freed African Americans—just not as distant. He called for the establishment of an isolated community for African Americans in an outlying county. Separation, he argued, would allow for white Americans to become a virtuous people.

Native Americans presented more complications for whites in the United States. As Rayna Green has noted, between 1575 and 1765,

the bare-breasted, Amazonian Native American Queen reigned. Draped in leaves, feathers, and animal skins as well as in heavy Caribbean jewelry, she appeared aggressive, militant, and armed with spears and arrows. Often, she rode on an armadillo, and stood with her foot on the slain body of an animal or human enemy. She was the familiar Mother-Goddess figure—full-bodied, powerful, nurturing but dangerous—embodying the opulence and peril of the New World.

But, Green argues, with the struggle for “American” independence, the image of the less aggressive and less racially distinctive Indian Princess dominated:

She is Britannia’s daughter as well as that of the Carib Queen, and she wears the triangular Phrygian cap and holds the liberty pole of her later, metamorphosed sister, Miss Liberty. . . . She is young, leaner in the
Romanesque rather than Greek mode, and distinctly Caucasian, though her skin remains slightly tinted in some renderings. She wears the loose, flowing gowns of classical statuary rather than animal skins, and Roman sandals grace her feet. She is armed, usually with a spear, but she also carries a peace pipe, a flag, or the starred and striped shield of Colonial America. She often stands with The Sons of Liberty, or later, with George Washington.\textsuperscript{48}

While the princess could represent the nation seeking its freedom, the once militant and powerful Mother-Queen was reduced to “the savage Squaw.”\textsuperscript{49} As Green observes, in both the Princess and the Squaw roles, the Native woman of the last half of the eighteenth century was “defined in terms of her relationships with male figures,”\textsuperscript{50} bringing her in line with the broader national construction of women as helpmates and mothers and yet always less than her white counterparts.

In order to maintain the concept that the discovery of the Americas was indeed important, Native Americans had to be seen as less degenerated than many other races. Refuting Buffon’s assertions that the continent was geologically immature and its animals inferior in reproductive abilities to those of Europe, Jefferson used a significant portion of \textit{Notes on the State of Virginia} (1785) to craft his argument on the equality of humans as a species but Native Americans and others as inferior based on their achievements.\textsuperscript{51} Thus Caucasians still reigned supreme, but degeneration need not exclude the idea of potential progress.\textsuperscript{52} This idea of using emblems—Native American or otherwise—to represent the legitimacy of the United States and the hierarchies embedded in the new republic has been extensively demonstrated by scholars. From the Native American woman as America, symbol of the New World, to the more exotic emblem of the possum, which reflected the fecundity of the New World, the ideals of explorers and scientists of the period of exploration and colonization filtered into the visual and textual representations of America in the eighteenth century. Ironically, the Native American woman would continue to represent “America” at the same time that indigenous peoples were being further colonized, their land usurped, and their rights largely destroyed. Even the emblem of the possum was converted to the idealization of hierarchies in the new republic. It graphically captured the ways in which its use blended science and the social oppression of women in the United States. As Susan Scott Parrish has discerned, the scientific discussion of the eighteenth century “located the divinity of human women in their generative capacities.”\textsuperscript{53} The longstanding symbol of fecundity thus could easily be adapted to reflect the limitations intended for women’s cultural role:
[S]cientific theories of female anatomy and generation helped to naturalize women as domestic caretakers in both England and British America. The possum, represented by her promoters as a model mother because of her copious generativity and the extended protection provided to her offspring by her pouch, both reflected and offered proof of providential intentions for women. . . . [It represented] an open, abundant, and protective matrix, from the myth of fruitfullest Virginia to the incarnated ideals of the United States. The female possum offered a particularly apt native emblem.54

The first American edition of the *Encyclopaedia Britannica*, published in 1798, demonstrates that racialized and gendered ideas had filtered into the common thinking. The entry for the “Negro” in the *Encyclopaedia Britannica* defines that race as “a variety of the human species” but emphasizes the Negro’s “ugliness, and irregularity of shape” and focuses specifically on women: “The negro women have the loins greatly depressed and very large buttocks, which give the back the shape of a saddle.” The entry concludes, “Vices the most notorious seem to be the portion of this unhappy race: idleness, treachery, revenge, cruelty, impudence, stealing, lying, profanity, debauchery, nastiness and intemperance, are said to have extinguished the principles of natural law, and to have silenced the reproofs of conscience. They are strangers to every sentiment of compassion, and are an awful example of the corruption of man when left to himself.”55 It is not coincidental that this definition appears just when the vigorous arguments are being made for emancipation of slaves. For those opposed to emancipation, many of whom were also supporters of the Naturalization, Alien, and Sedition acts at the end of the century, it offered precisely the description of degeneracy needed to deny the legitimacy of African Americans’ claims for their rights to freedom and equality.56

Yet there were voices for the abolition of slavery, if not for racial equality. The Philadelphia Quaker Anthony Benezet was an ardent voice against slavery, and, as noted above, many Revolutionary leaders argued against the continuance of the slave trade in the states. Five of the thirteen colonies had begun the processes of emancipating slaves before the Constitutional Convention, largely through the effective efforts of antislavery societies; several other states followed soon thereafter,57 though the process was gradual, with the abolishment of the slave trade far exceeding actual emancipation. The petition, which would become an important legal document in slaves’ efforts to be emancipated (see chapter 2), was also being used at this time, however, to resist emancipation efforts of the northern states. Fredrika Teute
Schmidt and Barbara Ripel Wilhelm have demonstrated the use of petitions in favor of slavery in Virginia in the mid-1780s; these petitions rejected the Enlightenment reasoning of the northerners’ arguments, relying instead on scriptural defenses.\(^5\) While the importance of the antislavery movement to the late eighteenth century cannot be overstated, the motives of the white abolitionists were also linked to scripture and to the sinfulness of slavery—but not because of the ill treatment of slaves. Rather, abolitionists argued that slavery had a negative influence on the Revolutionary cause. Many New Divinity men—such as Samuel Hopkins, Jonathan Edwards, Jr., and Levi Hart—used this argument as the basis of their antislavery protests. As John Saillant has noted, Hart asserted in *Liberty Described and Recommended in a Sermon* (1775) that slavery was “‘inconsistent’ with the ‘chief bond of union’ by which society is formed and maintained, since slavery never results from ‘mutual compact.’”\(^5\) Like Jefferson, Hopkins “understood the effort to christianize Africa through the ‘return’ of black Americans as a crucial opportunity for benevolent whites to exercise their virtue.”\(^6\)

**Race, Gender, and the Law in Early America**

The lawyer and novelist Baine Kerr remarks, “The pursuit of truth is what philosophy is for, not law. Law is for regulating behavior and the orderly transfer of wealth.”\(^6\) The legal system of the colonies and subsequently of the United States explicitly and implicitly annotated race and gender as elements of legal discourse in ways that privileged some members of society and oppressed others. It is impossible to separate the constructions of race in the Enlightenment period from the legal systems of the era. As Ludmilla Jordanova has observed about the study of human nature and the law in this period, “Those who tried to theorize sexual behavior and human nature had both legal codifications and legal practice available to them as part of their mental armory.”\(^6\) The historical basis of the legal system meant that past constructions of race and gender melded into constitutional law with surprisingly little interrogation. Peter Charles Hoffer reminds us, “American law requires legislators, lawyers, and judges to search the past for precedent... In the Anglo-American legal system, law is a dialogue between past and present, a continuing enterprise of interpreting the meaning of precedent and legislation.”\(^6\) While the reliance on legal precedence can be beneficial to the citizenry, it can also make change extremely difficult and access to the legal processes to enact such change almost unattainable for the very people who have been oppressed by the existing system. Early Federal law was the terrain
of well-to-do, landed white men; even those legislators, lawyers, merchants, and politicians of good intention concerning the oppressed enacted laws that were inadequate, slow to effect their goals, and often protective of their own class more than the people who were enslaved or oppressed under the law. Only a handful of legal and political leaders, among them Aaron Burr, publicly advocated the immediate abolition of slavery, and such proposals were, without exception, immediately squelched. Indeed, a proposal such as Burr’s in 1785 actually led to more restrictive legal measures. The New York legislature to which Burr had made his proposal subsequently added amendments to antislavery bills that effected a legal status of inferiority for African Americans in the state, including restricting them from holding public office, denying them the right to serve as witnesses in court cases, refusing them suffrage as part of emancipation, and making interracial marriages illegal. As Lawrence M. Friedman has astutely noted, “Criminal law, then, in any period, expresses more than current standards of morality. It is a vehicle for economic and social planning and an index to the division of power in the community.”

Executing Race demonstrates that this division of power and social planning impacted women of all races. The economics of the law—especially family and property laws—and the precedents of racial and gender constructions kept women of all classes and races in categories of legalized inferiority. Women’s access to legal benefits was limited in spite of privileges of class or race. In fact, Cornelia Hughes Dayton notes that, while women always had little access to the court system—which she terms a “legal fraternity”—after 1740, women as witnesses appeared even less often in court than before “because the taking of evidence from midwives and matrons for fornication cases was removed to justice of the peace courts. The diminished presence of women conveyed the message that the legal arena was properly a ground of contest between men. Visually at least, women who entered the field were oddities.” The law was far more effective in legalizing women’s responsibilities under its purview. In the pre-Revolutionary years, not only Blackstone’s system but literature itself reinforced a woman’s duty as familial. As Jay Fliegelman notes,

English law insisted that “the tie of nature is not dissolved by any misbehavior of the parent. . . . The message was reinforced in America by the warnings contained in chapbooks with such titles as The Undutiful Daughter who . . . took to all manner of evil course . . . and continually scoffing her aged mother (1765) and, even more dramatic, The Prodigal Daughter . . . who because her parents would not support her in all her
extravagance bargained with the Devil to poison them (1771). . . . The widely accepted Scottish formulation of natural affections and the Protestant "rediscovery" of familial responsibilities intensified rather than limited the scriptural and legal sanctions by elevating filial obedience to the level of a natural as well as a sacred duty.  

Under the laws regarding family, social relations, and property in the new nation, women were afforded life, very little liberty, and inequality. A woman's husband had the right to "the person of his wife," that is, complete rights to her body; the idea behind such extraordinary rights of men was that the husband would act as his wife's surrogate for her public obligation as a citizen. This was not quite as much a give-and-take situation as it seemed, however; the reasoning for such an exchange was that if a woman acted illegally and was arrested, "the husband would be deprived of the company of his wife, which the law will not suffer." The time of the Revolution, women were well aware of the legal distinctions between their rights and those of men in U.S. society. Abigail Adams observed in 1782, "Even in the freest countrys our property is subject to the controul and disposal of our partners, to whom the Laws have given a sovereign Authority. Deprived of a voice in Legislation, obliged to submit to those Laws which are imposed upon us, is it not sufficient to make us indifferent to the publick Welfare?" The opinions of some conservatives went even further. An anonymous contributor to a Boston newspaper equated women's citizenship with prostitution: "'No cit[izen]ess to my name, I'll have,' says Katy, '[it] means, A woman of the town." Putting such words into the mouth of a woman effectively suggested that all women sought to reject their rights to citizenship, suppressing the fact that the idea was in actuality imposed by the male-dominated legal structure.

The American Constitution of 1787 continued to accept slavery as part of the new system of governance. However, not only did the Constitution seek liberty for white people of the United States; it also protected individuals against the abuses of the government and the legal system itself through the provisions in Article I, sections 9 and 10, against ex post facto laws, for habeas corpus, and through the limitations under which charges of treason could be brought in order to retain the right to express political opposition to those holding power in the government. Even though political power and legal power were inequitably distributed by race and gender, the Constitution offered an important framework for challenges to abuses thereof. James Otis was one of the few men of the period who sought to bring women into the idea of the consent of the governed. In *The Rights of the British Colonies Asserted and Proved* (1764), Otis argued:
Are not women born as free as men? Would it not be infamous to assert that the ladies are all slaves by nature? If every man and woman born or to be born has and will have a right to be consulted and must accede to the original compact [of governance] before they can with any kind of justice be said to be bound by it, will not the compact be ever forming and never finished?72

Had Otis lived to influence the legal ramifications of his ideas, women might have fared much better. But from colonial times through the early Federal period, the law did not treat white women equally with men or women of color. The law and its public manifestation in the courtroom were white male bastions of power and privilege, even though they impacted women's lives in both the private and the public domains. Consent could be used against women, especially in issues relating to sexuality.73 In the post-Revolutionary years, small inroads began to occur in women's rights in relation to property laws. The South Carolina legislature, for example, eliminated the system of primogeniture, allowing daughters to inherit equally with sons; and in 1788 the Connecticut Supreme Court of Errors ruled in Adams v. Kellogg that a married woman could devise her realty according to her own desires, but the case was so controversial that it was overturned in 1805 in Fitch v. Brainerd.74 In spite of such inroads, the changes were sporadic and piecemeal. It would be well into the nineteenth century before changes in women's legal status and property rights would occur to any radical extent, and indeed, it would be the 1970s before systematic legal changes were enacted.

Thus, at the same time that the Daughter and the Mother were the elevated roles for women in both pre- and post-Revolutionary America, the discourse of Founding Fathers overthrowing the Mother Country presented a seemingly unconquerable social conundrum for women. Taking up the banner of Daughters of Liberty was encouraged, but it did nothing to erase the fact that women were still defined solely in familial terms and most often in relation to a male. What occurred was a legalized colonization of all women and men of color. Separation from England changed women's lives to a limited extent; the oppressions of a legally sanctioned patriarchy, which inculcated racism as well as sexism, continued. Martin v. Commonwealth (1801) served to define women as inhabitants of the United States but not as “members of the state.”75 Yet women did challenge legal proscription in the colonial and early Federal periods. The women studied in Executing Race suggest the bases for the resistance movements to come in the nineteenth, twentieth, and twenty-first centuries. They also highlight the understanding of current
feminist thought that women within any country or any movement are not homogenous; their social status, cultural privileges or lack thereof, and their individual experiences make them unique and yet part of the broader realization of women's engagement with the law in eighteenth-century America.

Chapter 1 of this book, “Executing Race: Infanticide Narratives,” examines the ways in which the law impacted women's lives at its most personal, intimate level—at the moment of giving birth. The study of eighteenth-century infanticide cases is a study in the production of cultural attitudes toward women and of women's desperate responses to their restricted lives. The anxiety within Western society about the legitimacy of children is captured in Hume's arguments that the sexes have differing responsibilities toward children and that a woman was the moral locus for legitimacy. Anatomy was the source of his argument: “if we examine the structure of the human body,” he wrote in book three of Treatis, Of Morals, “since, in copulation of the sexes, the principle of generation goes from the man to the woman, an error may easily take place on the side of the former, tho’ it be utterly impossible with regard to the latter. From this trivial and anatomical observation is derived the vast difference betwixt the education and duties of the two sexes.”76Further, class could not be separated from such constructions—or from the law. As Adam Smith declared in The Wealth of Nations, “in civilised society it is only among the inferior ranks of people that the scantiness of subsistence can set limits to the further multiplication of the human species; and it can do so in no other way than by destroying a great part of the children which their fruitful marriages produce.”77 I argue that the cultural obsession with infanticide—with the “bad mother/woman”—is inseparable in the early eighteenth century from the complex origins and playing out of the witchcraft trials in Salem, Massachusetts, at the end of the seventeenth century. Tituba, the slave accused of witchcraft, acts as a connecting figure to racial issues in infanticide decisions. While the witchcraft trials, including their attention to the physical as well as spectral body of the accused, impact the early infanticide cases, later infanticide cases reflect changing cultural attitudes throughout the eighteenth century—about women and about capital punishment in general. This section examines how and why infanticide cases are produced within U.S. culture—that is, what are the causes and how are such cases controlled discursively by the dominant culture? The section engages the argument that the Revolution was not simply a war about liberty (personal and economic) but equally so a cultural site of reconstituting the law.

As chapter 1 reflects on how the law impacted the lives of women who had little or no opportunity to shape the laws that governed them, the remaining
chapters focus on the broader, multilayered meaning of execution. Executions of warfare could be romanticized and/or dramatized (such as in the cultural work of Jane McCrea’s death), but the act of executing need not be related always to death and violence. To execute may also be to implement, perform, and accomplish acts in relation to the laws of the land, and it is in these multivalent ways that “executing” is used in chapters 2 through 6, which examine the life and works of five individual women who either held a certain privilege under the law by their economic class or, in spite of their elevated or depressed economic status, managed in unconventional ways to impact the law and society at large. Understanding their efforts, and their successes and failures, is an important step in understanding the history of privilege and resistance among women in the United States. These chapters also highlight the ways in which acts executing both resistance and domination sometimes can coexist within one woman’s efforts. While Belinda, Margaretta Faugeres, and Lucy Terry offer examples of women who denied the limitations their culture envisioned—and legally sanctioned—for them, Ann Eliza Bleecker and Tabitha Tenney demonstrate that women who may indeed have made important advances for women—through literature and through reconstructed images of white women’s accomplishments in early America—also demonstrate at what cost and to whom those advances were made.

Chapter 2, “Belinda: The Politics of Petitions,” explores how an enslaved woman participated in the execution of a legal tool—the petition—to accomplish more positive results: her freedom and that of her daughter, and compensation for her labor. By emphasizing the legal as well as the autobiographical nature of the petition, I detail how Belinda and her transcriber negotiated the exclusive legal system to exact restitution from her master for her years of enslavement. By refusing the separation of such genres as petitions, autobiographies, slave narratives, and captivity narratives, this chapter highlights the often overlooked connections between such disparate figures as Belinda, Ann Eliza Bleecker, and Lucy Terry. Chapter 3, “Posthumous Constructions: The Writings of Ann Eliza Bleecker,” looks to the concept of authorial endeavors in the early period as an element of artistic execution for positive gain—personal expression, release from sorrow, community and family connection—but also one through which an individual may expose her race and class biases. The Revolution resulted in many extraordinary advances, but it also was a legalized destruction of other cultures in North America, a destruction that was elided in order to effect a nationalist agenda; on a personal level, this allowed Bleecker to hope that she could return to the Edenic pre-war world she had known. The chapter reassesses Bleecker’s
historical narrative *The History of Maria Kittle*, which has been erroneously cast as fiction. By understanding Bleecker as both a victim and a perpetrator of colonizing practices from the period of King George's War through the Revolution, I not only reconstruct the particularized depiction of Bleecker by her daughter, Margareta Van Wyck Bleecker Faugeres, but demonstrate the costs of war for all women, in spite of the privileges that law and custom gave to a person of her socioeconomic status. Not only are Bleecker's writings a link between mothers and daughters, as is the argument of Belinda's petition, but her own daughter's publication of her work both preserved and distorted the mother's work. Faugeres was far more radical a thinker than her mother. Indeed, I argue in Chapter 4, “Margareta Bleecker Faugeres: A Post-Revolutionary 'freedom of mind,'” that she marks this difference by presenting her mother as a forlorn, pre-Revolutionary woman who desires the lost “Eden” of a pre-war world in order to connote herself as the new woman of the Revolutionary period—looking to the future, not the past, and involved in the radical political, legal, and social movements of her day, including the French Revolution and the antislavery and anti-capital punishment movements. Faugeres is in distinct contrast to the post-Revolutionary woman author of Chapter 5, Tabitha Tenney. In “Lost Boundaries: Carnivalizing Race and Sexuality in Tabitha Tenney’s *Female Quixotism*,” I argue that the advances made by Tenney's novelistic executions in representing a white woman who moves outside the conventional practices of a lady and yet does not die at the novel's end are, in fact, dependent upon the racist constructions of the African American female character in the novel. Written in the era of the Naturalization, Alien, and Sedition Acts, Tenney represents the woman who abets colonization not only of her sex but especially of African American women. In the final chapter, “Lucy Terry: A Life of Radical Resistance,” I examine the extraordinary life and accomplishments of Terry, who as a child was kidnapped into slavery, forced from her home in Africa to bondage in America, and yet who became one of the leading resistance fighters of her era, a freewoman and a landowner. Terry was not part of an organized movement, but through her individual endeavors she not only satirized the white exclusivity of captivity narratives—she challenged the legal system head-on. Like Belinda, her execution of legal rights on behalf of her family and her race affected society in many previously unexamined ways. Twice going to court to protect her family's property, she demonstrates the most powerful figure of resistance, and her poetry marks the beginning of an important tradition in African American literature.
As Sandra Harding reminds us, “race is socially constructed yet also ‘lived in’; it is manufactured yet also ‘material.’” It is the lived-in, material experiences that are examined in Executing Race. This era of rampant race and gender codification is the cultural environment in which the women examined in this study lived and matured. For some, it became the force that shaped their oppressive lives; for others, it was the impetus to resistance. Dissent in early American studies, with a few notable exceptions, has typically been rendered as a male venue in the altering political atmosphere of the Revolutionary period; as my study demonstrates, dissent was pervasive in the period and not only a philosophy of men. What constitutes dissent is, of course, both culturally and ideologically defined in any given moment. The leaders of the American Revolution were dissenters in relation to some aspects of political and social orders but largely acquiescent to patriarchal traditions and to many issues concerning women’s rights in eighteenth-century America. While the majority of people in any moment will not be dissenters, the voices of the few who are interrogators constitute significant fractures in the dominant ideologies, and exploring these dissenting opinions enhances our understanding of the diversity within any given cultural moment and our understanding of the dominant ideologies as well. The following study interrogates the longstanding idea that women had no impact on the law in eighteenth-century U.S. society. Certainly, it is true that they had little access or impact in the traditional sense of working within a system of judicial machinery. They did not participate in the execution of such important documents as the Declaration of Independence or the Constitution, but “traditional senses” rely on accepting and perpetuating dominant philosophies. As I explore these issues in Executing Race, I am interested in the complex ways in which race and the law impacted women’s lives—in the extreme instance of infanticide cases—and how women sought to intervene, legally and literarily, in the systems of justice crafted during the formation of the United States. “Literarily” is not an insignificant subset of this study: the law itself is a body of textual productions, and it is where these (con)texts intertwine—the law as text and its production as textual “scripture” within a given culture, and those impacted by and impacting its production—that we must unpack the problematics of law and society to better understand women’s lives in and contributions to eighteenth-century U.S. culture.