A Litigating Society:
Victimhood and the Prosecutors of Assault

Unlike today, many early-eighteenth-century assault victims had a great deal of agency as prosecutors. Victims chose whether or not they would prosecute. They could decide to prosecute an assault by indictment, which could result in a trial, or by bringing their complaint to a JP, which would usually generate a recognizance against their attacker. The majority chose the latter. They had to convince a local JP of the legitimacy of their complaint in order to prosecute by recognizance. If the JP was convinced, he issued a warrant, and, if a constable was not present, the victims themselves might have to take the warrant to the constable and ask him to serve it. The victims established the identity of their attacker, if at all possible, and the victims, rather than the police, investigated the crime and accumulated evidence against him or her.

These victims’ agency was, of course, heavily circumscribed by their means. If assault victims could not pay for a prosecution, or if they could not spend the time developing a strong case against their attacker, or if they were grievously injured and lacked friends and family to prosecute on their behalf, their assailant would never be brought to justice. In many cases prosecutors were also limited to choosing the binding-over method of prosecution because it was all they could afford. Conversely, people with sufficient means and motive could take advantage of this prosecutorial agency, inventing false prosecutions and aggressively promoting their passage through the courts. Nevertheless, as one of the most affordable methods of prosecution, recognizances bear the echoes of hundreds of active prosecutors, bringing stories of real or imagined violence. This chapter will highlight prosecutors’ agency in documenting the petty violence against them and gaining satisfaction from
their assailants. I have coined the word *victimhood* to describe the source of these assault victims’ power. The term *victimization* is insufficient, for it implies an action, something done to the victim in addition to the assault. *Victimhood*, instead, should be understood as a status taken on by the victim after he or she decided to go to the courts. *Victimization* implies powerlessness; *victimhood*, as I shall argue, allows for empowerment.

This was not necessarily a conscious strategy on the part of eighteenth-century prosecutors. Indeed, it probably often happened at an instinctive level. Nevertheless, it is best understood as “self-fashioning,” a practice that literary scholars have discerned in the writing of Renaissance England. From this era on, they argue, “there appears to be an increased self-consciousness about the fashioning of human identity as a manipulable, artful process.” The assault prosecutions studied here are thus also an exercise in self-fashioning, where litigants artfully establish their identity as injured victims in order to strengthen their case.

Because recognizances reveal little of what transpired after a prosecution began, we can focus only upon prosecutorial initiative. It may seem incomplete to address the issue of prosecutorial power without looking at the eventual success of a suit, but as many records of nonfelonious prosecutions in the courts of Augustan London end before a trial ever took place, we must assume that trial verdicts were not the prosecutorial goal when minor offenses were involved. The brunt of the punishment of the binding-over method of prosecution was most likely in the infamy of having to appear before Quarter Sessions. By using the courts, prosecutors could bring an attack to the attention of their community. They frequently resorted to this formal channel to resolve fairly minor interpersonal disputes.

We should not be surprised that Londoners made use of the courts in their disagreements, because men and women of all classes were expected to participate in the administration of the law. They responded to cries of “stop thief” and “bear witness.” They apprehended suspected offenders and appeared before the secular and church courts as witnesses for a variety of matters. Many Londoners could receive an education in the criminal justice system through the course of daily life.

In addition, JPs were fairly accessible in the early eighteenth century. They heard complaints, issued warrants, examined defendants, and often personally arbitrated disputes, helping the parties in conflict find resolution. In assault cases, JPs listened carefully to victims’ accounts of the attack upon them and their injuries, and often prosecutors’ own descriptions affected the wording of the recognizances. Thus, prosecutors could use particular tactics to strengthen their case in assault recognizances. In some instances, of course,
the JP or his clerk may have prompted them, but in other cases, as we shall see, the victims’ own vehemence as prosecutors probably influenced the record and strengthened their prosecutions. One of the most obvious strategies for assault victims was to stress their weakness and the severity of their injuries. Men did so as much as women, showing that masculinity and victimhood were not mutually exclusive.

The final section explores the agency of a particular group of victims. A significant number of recognizances were counterprosecutions—an individual binding over a defendant who had also had him or her bound for a similar offense. These counterprosecutions were often labeled vexatious prosecutions, but—as we shall see—they are more appropriately understood as a competition for victimhood.

Almost any early-eighteenth-century Londoner could become a savvy prosecutor in the lower courts. It would have been difficult to move about on London’s streets without receiving some sort of informal education on the workings of the criminal justice system. When Shorland Adams heard a watchman call, “stop theife,” he gave chase to a fleeing culprit and helped to bring him before the authorities. James Mortimer, a Middlesex “Cowkeeper,” spotted a man whom (for various reasons) he suspected “to be a Horsetealer.” He immediately marshaled some nearby haymakers “to assist him in apprehending” the man, who was later indeed formally charged with horsetheft. When a man tore Hester Pepper’s pocket and ran away with it, she followed him, grabbing hold of him and tearing his sleeve. Though he eluded her twice, she kept the torn cuff and cried, “stop thief,” and other Londoners came to her aid. As with the capture generated by James Mortimer, Hester Pepper’s tenacity resulted in the accused thief being “taken and carry’d before a Justice, where the Cuff was produc’d and agreed with his coat.”

Unlike modern cities, where, rather than getting actively involved, people are generally advised to call the police when they witness a violent crime, early modern Londoners were expected to help. When Job Famworth, John Presley, and Richard Page “heard a woman calling out for help, or else her husband would bee murder’d,” they went “hastily” in the direction of her cries and tackled the pistol-wielding aggressor, apprehending him and bringing him to the proper authorities. Elizabeth Webster deposed that when she was attacked while walking down a London street, she “cryed out murder murder,” and because she was just outside her home, her father and mother
rushed into the fray.\textsuperscript{13} We are safe in assuming that Webster might not have been helped so readily if she had not been so near to her home, and that not everyone was as brave as Famworth, Presley, and Page. However, the summoning potential in the scream “murder!” was nevertheless very well known. Assailants tried to prevent their victims from crying “murder,” realizing that most people who heard would respond.\textsuperscript{14}

Although it was generally male Londoners who answered calls of “stop thief” and “murder,” women could also be called upon to assist victims of crime, and both women and men used the courts in their interpersonal disputes. The rich depositions for defamation cases heard at the Bishop of London’s Consistory court reveal that many women played an important role as witnesses, and it is clear that both men and women understood the workings of London’s justice system. Mary Hall had a very heated verbal exchange with her former employer Phillip Ruggsby in 1695, and when he “called the sayd Mary Damme theevish whore,” Hall immediately “bid” the women around her to “bear witness.”\textsuperscript{15} Beth Clarke also warned witnesses to take note of Jane Barnes’s insulting words because she would need their testimony in a defamation suit. In fact, witness Catherine Hartill claimed that she remembered Barnes’s insulting words specifically because of Clarke’s “calling out to Beare witness.”\textsuperscript{16} These female prosecutors and their female witnesses knew that the courts could intervene in these matters. By telling bystanders to “bear witness,” both Hall and Clarke reveal their knowledge of the laws against defamation and their need to have reliable supporting testimony. Their witnesses, in turn, knew that they must make careful note of the insults in question.

Though there are no depositions to indicate what happened in similar disputes brought to the Westminster Quarter Sessions, Londoners made even more frequent use of these courts to resolve minor conflicts. When Richard Beale, a carpenter, got into an argument with widow Mary Pearson in her shop, he shouted at her and her customers and vowed “not to stir from thence until forced by Law.”\textsuperscript{17} We know about this incident only because Mary Pearson did go to the law. She wound up asking Justice Crake that Beale be bound to appear and answer for assaulting her. Though Pearson was the prosecutor, this record suggests that Richard Beale was just as insistent upon involving the law in their dispute. The recognizances for assault show many different tensions between Londoners.\textsuperscript{18} Sarah Glover prosecuted John Williams for assault; on the same day, he prosecuted her for assaulting his wife.\textsuperscript{19} John Allen, a butcher, complained that Ann Mcgrath had assaulted him “when he came to demand mony due to him for Butchers meat,” yet four days before, Mcgrath had identified herself as the victim, binding Allen “for
assaulting her in her house.” 20 More often than their rural counterparts, Londoners brought their disagreements into the courts and launched formal prosecutions.21

Londoners’ knowledge of the mechanics of the law was further aided by the comparative accessibility of Justices of the Peace. The Consistory Court depositions again offer a window into the secular courts—specifically, into the potential for very personal interaction between Londoners and their JPs. Mary Clift charged Justice of the Peace Narcissus Lutrell in 1720 with defamation over an insult he gave her during petty sessions. The testimony reveals the intimate contact that was possible at these sessions. With her second husband, Peter, Mary Clift (formerly Mary Regatty) had gone to Fulham to renew her alehouse license at a petty sessions held at the Upper King’s Arms. The JPs sat at a table in the tavern, and when Peter Clift approached, Justice Lutrell reportedly said, “[D]id you marry that common whore Mrs Regatty, to wch the sd Peter reply’d” in the affirmative, and Lutrell “then added . . . she is a whore & has had sevll bastards & putt the Parish to an hundred pounds charge.” 22 Mary Clift immediately went “up to the table where they were sitting at, & desired in handsome terms, that his worship would let her know her accusers.”23 Justice Lutrell was of a much higher station than Mary Clift. He was a wealthy and prominent member of the Chelsea community, involved in national as well as local affairs, and the familiarity of his interaction with Clift (and hers with him) reveals much about the relationship between Londoners and their JPs.24

Though he moved in elite circles, Lutrell knew Mary Clift. If his allegations were true, he would have come into contact with her in an earlier petty session where she petitioned for poor relief as a bastard bearer. He recognized her and expressed his sympathy to her husband, another man well below his station, and Clift herself was not so intimidated by Lutrell’s status to avoid approaching him directly and demanding to know why he had insulted her. The personal hostility between Lutrell and Clift could exist only in a context that allowed a certain amount of familiarity between Londoners and JPs. Petty Sessions occurred between the Quarter Sessions’ sittings and generally involved a gathering of two or more JPs, who mainly ruled upon matters of parish administration, including licensing. Though the Westminster Quarter Sessions were held in the formal surroundings of Westminster Hall, petty sessions could be held in taverns and inns.25 Most significantly for our purposes, JPs could take recognizances in their homes.26 Though such informality was decreasing by 1720, it is not entirely unthinkable that a Justice of the Peace—even one of the elite stature of Narcissus Lutrell—could interest himself in the sexual proclivities of a woman who was no longer a cost to the
parish and could deny a license brought to him by her husband. The people of the metropolis had relatively easy access to the JPs and the courts, knew their avenues for prosecution, and made use of them with assurance. The thousands of prosecutors who asked Westminster JPs to bind over their assailants reveal this confidence. A substantial proportion of complainants returned more than once to prosecute new assaults, which suggests that they were satisfied with the outcome of their original case and had decided to use the same method again rather than trying one of the alternative forms of prosecution available to them. Aside from wartime, more than one-third of all the prosecutors in a sample of three five-year periods between 1685 and 1720 appeared more than once as complainants in assault recognizances (table 2.1).

In every period, the proportion of repeat prosecutors is higher than the number of assailants who were bound over multiple times by recognizance (table 2.2). Though these numbers may be skewed slightly by cases where a complainant has been named in several recognizances because he or she charged multiple defendants for one assault, it nevertheless seems safe to say that prosecutors were not dissatisfied with the outcome of their case, and they often returned, resorting to similar channels to resolve subsequent conflicts.

Edward Vaughan complained about Robert Dickenson in August of 1717 and turned again to Westminster Quarter Sessions in June of 1718, before a different justice to have Ann Keel and Mary and Edward Hubbard bound over for assaulting him. Two years later he went to a third justice to have three gentlemen bound for an alleged attack upon him. Daniel Allen was bound for assaulting Mary Dunkey, who, three years later, had John Brabin bound before a different JP for assaulting her. Clearly, this procedure was deemed worth-

### Table 2.1

<table>
<thead>
<tr>
<th>Time*</th>
<th>Repeat Complainants</th>
<th>Total Complainants</th>
<th>%</th>
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<tr>
<td>Apr 1685–Jul 1690</td>
<td>289</td>
<td>858</td>
<td>33.7</td>
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<tr>
<td>Jan 1701–Oct 1705</td>
<td>216</td>
<td>763</td>
<td>28.3</td>
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<tr>
<td>Jan 1716–Oct 1720</td>
<td>648</td>
<td>1772</td>
<td>36.6</td>
</tr>
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Note: Recognizances to prosecute assault have not been included.
*This column is broken down into three periods of exactly twenty sessions each, with each roughly corresponding with a five-year period. Note that rather than four there are only two extant sessions for 1689 (27 Jun and 2 Oct).
while for Vaughan and Dunkey, and though Vaughan seems to have met with a fair amount of petty violence over the years, he was not plagued by attacks from the same individuals after he prosecuted them. Because complainants returned to Quarter Sessions more often than defendants, we can see that they considered recognizances to be an effective form of prosecution. Indeed, we can consider early-eighteenth-century assault prosecutors as consumers, making particular choices by balancing the relative cost and efficacy of a particular avenue of prosecution. This is most visible when victims sought assault recognizances for goals more commonly associated with civil suits. One handbook warned JPs to be wary of savvy prosecutors who tried to use the cheaper criminal courts to redress primarily civil grievances. According to this author, these prosecutors could disguise their civil case “under the Colour of Felonies, Force, or Assault.” Norma Landau has discerned a similar sort of practice in assault indictments, but the descriptions in several assault recognizances suggest that prosecutors sometimes resorted to this even cheaper avenue.

We will never know for sure, but it seems likely that certain prosecutors who had defendants bound over for assault actually wanted to extract money from the defendant for economic losses suffered in the attack. Several recognizances recount financial damage that is at least as substantial as the physical. Market vendor Joan Griffith complained that a man and two women had “throw[n] about her goods . . . and Stamp[ed] them under their Feet,” and William Hopkins complained that a man had spoiled his bread, in the course of two separate assaults at the Covent Garden Market. According to the information on their recognizances, neither Griffith nor Hopkins pursued the matter to an indictment, so they must have found sufficient satisfaction in binding their

Table 2.2
Individuals Appearing More than Once as Defendants in Assault Recognizances

<table>
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<tr>
<th>Time*</th>
<th>Repeat Defendants</th>
<th>Total Defendants</th>
<th>%</th>
</tr>
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<tr>
<td>Apr 1685–Jul 1690</td>
<td>112</td>
<td>869</td>
<td>12.9</td>
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<tr>
<td>Jan 1701–Oct 1705</td>
<td>114</td>
<td>779</td>
<td>14.6</td>
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<tr>
<td>Jan 1716–Oct 1720</td>
<td>510</td>
<td>1849</td>
<td>27.6</td>
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Note: Recognizances to prosecute assault have not been included. *This column is broken down into three periods of exactly twenty sessions each, with each roughly corresponding with a five-year period. Note that rather than four there are only two extant sessions for 1689 (27 Jun and 2 Oct).
antagonists to appear. Presumably, they used the recognizance to show their seriousness as prosecutors—perhaps they threatened further action—forcing their attackers to compensate them for the goods they had damaged. There are many other examples that suggest a similar strategy, and the financial losses range from shopkeepers’ goods to the loss of an apprentice’s labor. These recognizances reveal wily complainants, constrained by a slim purse, who prosecuted assaults in order to involve the courts in their economic disputes.

Having established that Londoners were familiar with their courts, benefited from relatively easy access to JPs, and made effective use of recognizances in prosecuting assaults, we can now examine assault victims’ strategies more closely. Many prosecutors stressed their personal vulnerability and weakness in order to gain power before the law. Elizabeth White’s petition to the Westminster JPs in 1705 offers some insight:

The Humble Petition of Elizabeth White wife of Barnett White Marriner on board the [torn] Eagle: Every night . . . Mary Tully sent one of her Fellows to abuse your Poor Petitioner as she stood at her own door Calling her Bitch and threatening to kick her & the said Mary Tully did likewise throw two pails of clean water upon your poor Petitioner & young Infant as sucking at her Breast & did likewise barbarously beat her sister who is blind & not being satisfied therewith she falsely swore a Robbery of Burglary & Felony agt your Poor Petitioner. Therefore . . . what is sworn agt yr Poor Petitioner by the sd Mary Tully is nothing but spight for having amongst other neighbours informed the Worship Justis Dyer of the Disorderly hous kept by sd Mary Tully.

Though she is trying to reverse a robbery charge against her by alleging plaintiff Tully’s malicious motivations, White’s overall stress is upon her own defenselessness to Tully’s abuse. She begins by presenting herself as the wife of an absent mariner, and her claims of injury go on to state nightly visits from people who, in fact, do no serious physical damage to her personally. The effectiveness of her allegations lay in her self-depiction as suckling an infant and the mention of a blind sister, which implicitly provided an image of a female head of household, laden with helpless dependents. In the construction of pardon tales for sixteenth-century France, Natalie Zemon Davis notes that a common tactic was to “fatten the preamble with other facts which made the supplicant appear more pitiful,” for example, “poor disabled widow,” “burdened with five children,” and the like. Even if she was gen-
unequely guilty of the felony against Tully, White’s petition provides insight into
the ways in which London’s prosecutors paradoxically strengthened their
position by emphasizing their own weakness.

There is substantial evidence to suggest that JPs cooperated with assault
complainants in deciding the wording of recognizances. Whereas indict-
ments were governed by stringent rules, making the account of the offense
conform to very specific criteria, recognizances bore no such restrictions.
Indeed, JPs frequently advocated colorful descriptions of assaults that visibly
departed from any legal formula. It seems highly likely that they were
informed by the victim’s account of the attack. When the JP issued a warrant
to summon the accused, with sureties, before him, one manual strongly rec-
ommended that he “read” the proposed text of the warrant “to the
Complainant, that if any Mistake has been made, . . . it may be rectified.”
In other words, should an individual feel that the JP missed a significant fac-
tor in describing his or her complaint, he or she could actively solicit an addi-
tion. Though we will never know for certain, it seems likely that
warrants—because they were formed at the initiation of a prosecution—
would be helpful in the subsequent stage, when the JP’s clerk drew up the
recognizance.

Also, when a recognizance had been drawn up, the JP was expected to
“read the condition to the Parties bound,” asking them to “acknowledge to
owe unto our Sovereign Lord the King” the full amount of the bond, if the
condition was not met. Possibly, when plaintiffs were also present at this
time, wording on the condition may have been changed slightly, and such
additions are visible in some of the Westminster recognizances. Such evi-
dence is very rare, however, and the interaction between plaintiffs and record-
ing officials probably occurred more often during the drawing up of the
warrant. Nevertheless, because of these interactions between prosecutors and
JPs with the binding-over method of prosecution, the former enjoyed a fair
amount of agency in defining the attack upon them.

The assault recognizances make clear that JPs (and the clerks who actual-
ly wrote the recognizance) were swayed by tales of dramatic injury. Charles
Brent came in his wife’s place, presumably because she was too ill from the
attack to prosecute it herself, and his claim that George Martiner had assault-
ated her “in so violent a manner that she vomitted handfuls of blood” found
its way into the record, and strengthened the Brents’ case against Martiner.
Similarly, Grace Tongue successfully convinced the JP that her husband’s
attacker should be bound, and the justice accepted her account that the
assault had left him “bruiz’d in his side” and unable to leave his bed. One
recorder deemed it necessary to underscore the fact that an assault on
Elizabeth Albon caused “A Rupture in her belly,” presumably because Albon’s account had been so dramatic. Mary Andrews’s claim of the severity of a cut to her hand caused the JP to indicate in the record against her attacker “that it is believed that she will loose the use of [it].” Prosecutors’ claims of vulnerability found their way into the record in a significant number of cases, and the added descriptions attest to the influence complainants might have over the charges leveled at defendants. These prosecutions are clearly an opportunity for victims’ self-fashioning.

Although the majority of these cases depict female victims, the mantle of victimhood was just as easily a masculine fashion in the early eighteenth century. Male prosecutors also needed to stress their weakness in order to strengthen their assault charges, and they did so with apparent success. James Lewis convinced a JP that Diana Laughlin should be charged with “threatening to Kill him with a knife she then had in her hand, unless he was Lewd with her,” and many other men represented themselves as victims of female seduction. The thousands of male assault victims were not afraid of losing their masculinity by describing their injuries from an attack. JPs readily included this testimony in the recognizances binding their attackers. Laborer Rober Eddows said that he had been assaulted “in a most barbarous and cruel manner” by a glazier, who attacked him first with a large ring of church keys, and then with a “steel shod shovel,” which caused him to lose so much blood “that he swounded away twice.” John Storman’s wounds were carefully listed as “six . . . wounds on his face, arms and finger,” and Henry Bateman was said to be “in danger of loosing one of his eyes” and was heavily bruised after being assaulted “in a violent manner.” William Ogleby claimed to have been knocked down, bruised, and wounded by Gilbert Norwell, and Ogleby swore an oath that he was so afraid of Norwell that “he dare not go about his business for fear of” him. Like women, male assault victims stressed their weakness and injury in order to strengthen the case against their attacker.

The legal definition of assault included “fearfull speech,” which allowed prosecutors to target people who had not actually laid a hand upon them. We have seen that bruised or bleeding prosecutors aroused JPs’ sympathies, but complainants who were only emotionally harmed would have had a more difficult task. They needed to wax eloquent before their JPs in order to carefully recount how their antagonist’s behavior had caused them emotional harm. Of the total of 7,129 recognizances to answer assaults, 129 attested to the complainant’s “fear” for his or her life or bodily harm, and many more express complainants’ opinions about the danger they were in or about future damage they anticipated from the assailant. Some of these were undoubtedly part
of a legal formula, as victims who wished to bind people over to keep the peace or ensure good behavior toward them had to swear, as part of the process, that they were in fear of their lives. However, we should not presume this to remove all real meaning from the words. For example, when Constable Thomas Shepheard claimed to fear for his life after being beaten with “a red hott poker and tongs,” the fear was certainly no less real for its having been part of a legal formula. Even without bruises, complainants may have told a convincing tale of psychological terror and thereby convinced the JP to issue the recognizance primarily on this basis. Jane McKensey’s complaint of an assault resulted in a recognizance professing “that she believes and has good Reason to think her life to be in Danger,” and another record depicts assault victim Edward Reynolds as giving “his corporall Oath . . . that he goes in danger of his life by [his assailant] or by her procurem[en]t.” Victims recounted their fright in order to strengthen their prosecution.

In addition to fashioning themselves as weak and vulnerable, assault complainants sometimes convinced JPs that the attacks upon them were entirely unprovoked. Justicing handbooks allowed “any private man to beat, stricke, or wound another, in defence and safegard of his own person, from killing, wounding or beating.” In addition, the eighteenth-century courts allowed a fair amount of behavior to be characterized as provoking, giving manslaughter verdicts to cases that today would be considered murders. Carleton Allen has dubbed the eighteenth-century individual found guilty of manslaughter as “the phlegmatic Englishman”—a man who draws his sword to deal a death blow at the slightest sign of physical aggression. The Old Bailey Proceedings recount many cases where provocation was a central issue. Given the law’s capacity for more lenience in assaults that involved provocation, prosecutors would have been eager to establish its absence in their complaints.

This is very clear in some of the recognizances. Thomas Hatch and Thomas Jones had two men bound to appear at the same sessions “for assaulting them without any provocation.” Interestingly, this idea that provoked assaults were more acceptable applied to female assailants as well as male. Elizabeth Wright had Mary Wright bound for “assaulting her without any provocation” with a blow that had knocked her down, and Sarah Boddy had to appear to answer Steven Davdale “for violently assaulting [him] . . . without any provocation.” The complainant and Justice of the Peace also did not balk at binding “gentleman” Thomas Probatt “for assaulting beating and abusing . . . in the street in the night without any provocation.” Though it is possible that court officials influenced the record by prompting the complainant to attest to the lack of provocation, it is equally likely that Londoners knew that only certain forms of petty violence were justified. Several prose-
Prosecutors’ agency in fashioning themselves as victims is most visible in a very particular category of assault recognizances. Many recognizances are scattered among the Westminster Quarter Sessions rolls between 1685 and 1720 in which X charged Y with assault, and Y turned around and prosecuted X (or his/her spouse) for the same or a similar offense. Sharon Howard has also discerned a significant number of reciprocating recognizances in Wales over the same period, and Ruth Paley noticed a similar phenomenon when editing Henry Norris’s justicing notebook for eighteenth-century Hackney. Paley dubbed these counteraccusations “vexatious actions,” noting that “such examples could be multiplied virtually ad infinitum.” However, Paley found only one actual malicious prosecution “in the strict legal sense of the word,” where the complainant had pursued his suit “in the full knowledge that the accusations [were] without foundation.” In that single prosecution Justice Norris refused to accept the charges because he discerned the complainant’s pernicious motives. Nevertheless, complainants frequently got away with the lesser “vexatious actions,” where each had some grounds for—and perhaps genuinely believed—their own victimhood.

Most recognizances could be taken only if the complainant was successful in convincing the JP that his or her suit was not malicious. However, in these “vexatious action”–based recognizances, the victim actually had more agency than the justice, according to Michael Dalton’s justicing handbook. According to Dalton, if a JP had reason to doubt a prosecutor’s motives, he “shall doe well (as I think) not to be too forward in granting” the recognizance. Dalton instead advised the justice “to perswade” the prosecutor of the danger of such a prosecution. However, if the prosecutor “will not be perswaded, but will take his oath that he is in fear (where indeed he neither doth fear, nor hath cause to fear) this oath shall discharge the Justice, and the fault shall remain upon such complainant.” In other words, if a defendant bound by recognizance insisted on counterprosecuting the complainant, a JP could allow this seemingly malicious prosecution by asking the victim to take full responsibility for it. These types of recognizances would thus occur in an instance when both complainants were extraordinarily vehement in attesting to their own victimization. Thus, rather than simply labeling them “vexatious actions”—lesser versions of malicious prosecutions—as Paley does, it is more illuminating to investigate them as com-
peting claims to victimhood.

Given the greed of the “trading justices”—infamous London JPs reputed to be interested in their office only to line their own pockets—we might instead argue that the JPs were the real motivating factor. It is possible, we might think, that they encouraged, not merely permitted, so many apparently vexatious prosecutions.71 If this were the case, however, the recognizances themselves would indicate that the parties had come to an agreement well before Quarter Sessions, and the defendant would have been released from his or her obligation to appear.72 None of the assault recognizances studied below indicate that such a process had occurred, and very few of them appear to have come from JPs fitting the profile of a trading justice.73 In fact, this type of prosecution would probably be an area that such JPs would try to avoid, having been warned extensively in their handbooks about the dangers of promoting malicious prosecutions.74 Thus, although JPs certainly bore a role in creating these records, we can safely examine them as evidence of early-eighteenth-century prosecutors’ strength and initiative in assault litigation. These types of recognizances represent roughly 4 to 10 percent of the total number of assault recognizances in a given year, showing that, when Londoners competed for victimhood before a Justice of the Peace, the JP often gave both of their claims legitimacy.75

When these Westminster JPs were presented with contradictory suits for very different offenses brought by the same parties against one another, the resulting recognizances reveal the justices’ personal views of the allegations. They also reveal the relative success of one prosecutor over the other, in convincing the JP of his or her greater claim to victimhood. Throughout the period there are recognizances binding X for assaulting Y, and separate recognizances binding Y to keep the peace or be of good behavior toward X.76 On the same day that Anne Lewis was bound for “assaulting . . . and causing a Ryot about” Hannah Rumbold, Justice Hawke issued a recognizance binding Rumbold “to be of good behaviour toward Anne Lewis,” and many other justices took similar actions for other complainants.77 Did one recognizance have more impact than the other? Historians are uncertain of the impact of binding over to keep the peace or be of good behavior, and Norma Landau argues that neither was enforceable with any effectiveness.78 Londoners were legally entitled to swear the peace against someone for any breach of the peace and to bind to good behavior anyone believed guilty of “stealing, being common disturbers of the peace, idleness, frequenting bawdy . . . or gaming houses, and begetting bastard children.”79 We simply cannot know for certain whether JPs had more sympathy for the victims of assault or for those who required the peace or good behavior of their opponents. Nevertheless, both of
the conflicting demands for a recognizance were granted.

The relative strengths of competing claims to victimhood are more apparent in other recognizances. The JP who agreed to bind Richmond Brewer “for violently Assaulting” John Palmer “without any Provocation given” probably felt considerably less sympathy for Brewer than for Palmer, whom he bound only for “assaulting” and “beating” Brewer and his companion. After hearing Richard Ward’s complaint, Justice Saintlo bound George and Andrew Ward for “assaulting” Richard Ward “in a violent manner.” In contrast, Richard’s recognizance “for assaulting” George and Andrew Ward specified that the offense occurred “in a very violent manner,” and additionally it labeled Richard “a very dangerous person.” Abigall Cole was only bound for “assaulting” Thomas Cavanaugh on May 18, while he was accused of putting her “in danger of her life” by raising the mob on her—an illegal act he was said to have performed “several times.” These recognizances seem to show JPs valuing the claims of one complainant over the other. Both men and women brought counterclaims of victimhood, and the hundreds of conflicting recognizances suggest that both male and female victims could garner more judicial sympathy, depending upon the circumstances.

In other recognizances with two different claims of full and rich description, both victims apparently convinced their justice that two entirely different scenarios could have taken place. Richard Dermeth was bound for assaulting Mary Taylor, but she was in turn bound the same day to “answ’re . . . Richard Dermeth upon suspicion of having feloniously taken from him several padlocks and keys.” It is certainly plausible that Dermeth could have assaulted Taylor and she could have stolen from him, but it is fascinating that they both attested so vehemently to their victimization, and the JP accepted both claims. Sharlott Bragg probably did assault Margery Rant and threw “Durt on her,” and Rant may have assaulted Bragg “in a Riotous manner” and struck her, as the recognizances, taken by Justice William Stone on the same day, read. These actions sound like a fight, but rather than charging them both with disturbing the peace, Justice Stone allowed each to represent herself as a victim in her own right—which attests to their own assertiveness in their audience with him. Similarly, two “brokers” of the “Church Court St. Martins”—Elizabeth Moye, who thought that Joseph Sketchley had assaults her, and Sketchley, who instead accused Moye of “disturbing his servants at their work”—may both have had valid claims. JPs heard conflicting interpretations of these people’s victimhood and accorded each complainant the possibility of being genuine. For prosecutors, male and female, the more evidence one could marshal to fashion oneself as weak and injured, the stronger one could appear.

Many recognizances were taken by Westminster Quarter Sessions officials
between 1685 and 1720 which record opposite accounts of virtually the same type of offense. The recognizances effectively mirror one another, in other words. Presumably, complainants were giving two different versions of the same incident, with each presenting a tale where he or she was the victim. By granting a recognizance to both complainants, JPs accorded equal credibility to both parties. Margaret Budden brought a complaint accusing Rebecca Mall for “assaulting & beating” her, and on the same day Mall had Budden bound for “assaulting and beating” her.\(^8\) Similarly, Mary Symcock and Elizabeth Roberts stood before Justice Knollys on the same day, each accusing the other of “assaulting and beating” her.\(^9\) Not all of the mirroring recognizances used such formulaic language, either. On August, 28, 1717, Justice Alex Hardine took two recognizances against female fruiterers. Mary Brown was accused of giving Elizabeth Hutchinson “reproachfull scandalous Language, saying she and her husband had the Pox . . . creating a Riot, and putting her in fear of her life.”\(^90\) Hutchinson, on the other hand, was also said to have used “reproachfull language” against Brown, “calling her husband cuckhold, creating a Riot and being a common disturber.”\(^91\) Both Francis Mills and Joseph Leach, coachmen, were accused of “assaulting” each other, and both William Hopkins and Luke Pemberton were bound on the same day “for violently assaulting” each other.\(^92\)

Recording officials thus seemed to have no problem utilizing exactly the same language in many of the counter-recognizances. Ann Haies was bound by Elizabeth Robinson “who chargeth her upon oath for assaulting & beating her,” yet Robinson was simultaneously “chargeth . . . upon oath for assaulting and beating” Haies.\(^93\) Robert Clayton and Mary Thornerly both had “sworne” that they went “in danger of [their] life” by the other, and Humphrey Walbosse and John Bushnell both brought complaints of each “assaulting and striking” the other “in the streete in the night,” and both claimed to have lost their hats as a result.\(^94\) In two recognizances involving the same four people, Elizabeth Axton and Ann Smith were separately bound for “assaulting and beating” each other, as were Mary Smith and George Hand, though Ann Smith’s husband Thomas was also named in the assault on Hand and Axton.\(^95\) Thomas Spratley and Thomas Sabin each went before the same JP on the same day to be bound at the complaint of the other for “raising a mob and tumult about” the other’s house.\(^96\) Margaret Murfield was both plainant and defendant opposite Edith Williams, who had accused her of “calling her common Whore & Bitch, . . . being a common Disturber, . . . assaulting . . . & threatening” Williams, and Murfield in turn accused her of “calling her whore to a bargeman . . . daily disturb[ing] her peace, & assaulting her.”\(^97\) Many more recognizances exist where parties
have brought a complaint and been bound on the same day for virtually the same offense. Certainly, in some instances, these charges must have resulted from a pitched battle where blows fell almost simultaneously, and choosing a single aggressor would be impossible. In other cases one party or both parties may have trumped up a suit in anticipation of their rival’s litigation. Nevertheless, the virtually duplicate language chosen to describe the offenses in the recognizances indicates that the Justice of the Peace was faced with two contradictory claims of victimhood and was forced to give them equal relevance. In the above examples both men and women approached the Westminster Quarter Sessions with the dual identity of victim and aggressor and were sufficiently credible on both counts to appear in the record. They were able to fashion their own victimhood.

It may seem counterintuitive to look for empowerment beneath the tales of blood, fear, and suffering told by the Westminster assault recognizances. Nevertheless, the records themselves stand as evidence that a prosecution had occurred and that an individual had actively sought satisfaction for the act against himself or herself. Those people associated with the beatings and bruising described in the final two sections of this chapter are no different from the “savvy litigants” recounted in the previous sections. Londoners knew enough about the power of the justice system to call out “stop thief” or “bear witness.” They knew their potential power as prosecutors. Whether consciously or subconsciously, they relied on the status of victimhood, paradoxically stressing their weakness in order to strengthen their case.

Although there was no legal pressure upon early-eighteenth-century Londoners to prosecute assault, they came out in substantial numbers to bind over their attackers. In some cases their stories of victimhood may have been imagined or invented. Whether genuine or malicious, the thousands of assault recognizances show that Londoners were knowledgeable prosecutors who frequently made use of the Westminster Quarter Sessions to resolve even minor disputes. Because the public played a significant role in the administration of criminal justice, Londoners of all walks of life could get a rudimentary education on the workings of the law by simply being out in the street. Both men and women donned the mantle of victimhood, with the cooperation of their JPs, and stressed their weakness or used assault recognizances as a cheaper way to gain civil damages. Some disputes continued long after Westminster Quarter Sessions had become involved, and when Londoners were especially vehement, they could launch counterprosecutions.
in a drawn-out competition for victimhood. By focusing on prosecutorial ini-
tiative, rather than the outcome of suits, we can see London litigants released
from passivity and, to a certain extent, empowered by their own profession
of victimhood. The assault recognizances, therefore, represent an exercise in
self-fashioning not dissimilar from that observed by scholars of early modern
literature.