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## 'An Egyptian and noe Xtian Woman': Gypsy Identity and Race Law in Early America

Ann Marguerite Ostendorf <sup>¥</sup>

### Abstract

*Though many scholars have referenced Joan Scott as the earliest Gypsy in North America, thanks to a 1695 Henrico County Virginia court record identifying her as "an Egyptian and noe Xtian woman," none have explored her life further. Despite this, an examination of the fornication charge against Scott suggests much about her life. Scott entered the colony twenty years before her fornication charge and while unmarried bore a child whose father the court considered a man of color. In these ways, Scott's life appears similar to her contemporaries. Yet, in other ways Scott's experience differed. By allowing the court to believe in her Gypsy identity and non-Christian religion she worked the court in her favor and saw her case dismissed. When historicized and contextualized, the meager details known about Joan Scott enhance our understanding of the colonial American Gypsy experience and contribute to a broader American historical narrative.*

**Keywords:** *Joane Scott; Egyptian; Virginia; Henrico County; fornication.*

### Introduction

Joan Scott appears to be the earliest Gypsy in colonial North America.<sup>1</sup> The *Virginia Magazine of History* (1894: 100) first documented her existence when it published in 1894, devoid of any context, a single sentence from her 1695 court hearing concerning an accusation of fornication. Ever since, scholars have regularly cited this item and reasserted Scott's court case as being "the earliest known mention of Gypsies in Virginia," but without exploring her life any further (Wright, 1938: 12; Hancock, 1987: 85; Sway, 1988: 37; Belton, 2005: 70; Taylor, 2014: 92). An example so resonant with scholars of American Gypsies deserves fuller examination not only for the sake of Joan Scott, a woman who lived as a witness to the complex and diverse American past being "an Egyptian and noe Xtian woman" in colonial Virginia, but also for scholars exploring a more complex narrative of United States history.

Although evidence about her is sparse, four references to Scott in the Henrico County Virginia Record Books reveal details about the life of this

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<sup>1</sup> Scott's first name is spelled "Joan," "Joane" and "Jone" in the original records. I have chosen to use the contemporary spelling of "Joan," unless used in a quotation, in which case I retain the original spelling. Her last name is consistently spelled "Scott" in the original records, even though the *Virginia Magazine of History* author renders it "Scot." Here, I have chosen to use the original spelling of "Scott."



woman previously unconsidered and provide scholars a window into legal considerations of emerging racial categories in the region (Henrico County Virginia Record Book no. 3, 1694-1699: 73, 81, 88; Henrico County Virginia Record Book no. 5, 1688-1697: 580). This article historicizes and contextualizes the life of Joan Scott by describing her experiences navigating within the various legal and social confines of colonial Virginia. Joan Scott's distinctive and unique identity, as considered by the colonial Henrico County Court, reveals a world before legal racialization had hardened to limit the recognition of more diverse identities.

### **Colonial Egyptians**

Though lacking further evidence confirming Scott's identity, the Henrico County Court's reference to her as "an Egyptian," when read in concert with other sources, strongly suggests they considered her a Gypsy. Seventeenth- and eighteenth-century English speakers used the words "Egyptian" and "Gypsy" (also commonly spelled "Egipitian" and "Gipsy") interchangeably, though they tended to use "Egyptian" more often in legal and official language and "Gypsy" in common speech (Cressy, 2016: 4; Johnson, 1755: s.v. "Gipsy"; Diderot and d'Alembert, 1751: 438-439). Not until 1713, in a revival of a 1597 vagrancy act, did an English law first use the word "Gipsy." In both the original and revived statute, and the many other versions issued in between, "Egyptian" remained the term of choice, even though the 1713 law employed both words (Fraser, 1992: 136; Eccles, 2012: 11). When the colony of Virginia implemented this vagrancy statute, the colonial version only used the word "Egyptian." From a collection of English laws "now in force; and adapted to the constitution and practice of Virginia" from 1736, among the long list of persons who "are declared to be rogues, vagabonds, and sturdy beggars," included "all such as pretend to be *Egyptians*, and are found wandering, or pretending to tell fortunes." If caught, one would have been "whip'd til their body be bloody" and then banished (Webb, 1736: 349). This evidence implies that when the colonial Virginia court identified Joan Scott as "an Egyptian," it meant they considered her a Gypsy.

The only known Gypsies in the Americas prior to Scott lived in Spanish and Portuguese colonies (Pym, 2007: 35-41; Donovan, 1992: 33-53). It is possible that Gypsies had arrived to English colonies before Scott's 1674 arrival since transportation as a punishment for vagrancy and vagabondage, crimes that Gypsies had often been tried for, had been practiced in Britain throughout the seventeenth century (Patent Book no. 6, 1666-1679: 529-530; Morgan and Rushton, 2004: 9-15). A 1652 act allowed English Justices of the Peace to condemn any "undesirable" to colonial transportation (Donoghue, 2015: 117); enough criminals had arrived in Virginia by 1663, that the colonial court prohibited, albeit unsuccessfully, the importation of any more (Morgan and Rushton, 2013: 28). In 1664, a Report of Committee of Council for Foreign Plantations entitled "Certain Propositions for the better Accommodating the



Foreign Plantations with Servants,” advised that these servants could be obtained “from felons condemned to death, sturdy beggars, gypsies, and other incorrigible rogues, poor and idle debauched persons” (Sainsbury, 1880: 222-231). In addition, significant numbers of Scottish Covenanters, both men and women, were shipped to Barbados, Virginia, and Tangiers between 1666 and 1690 adding to the “steady trickle of criminals” regularly being transported from Scotland to the plantations (Morgan and Rushton, 2013: 70; Dobson, 1984: v). According to Edinburgh Tolbooth Records, this trickle included six men and two women described as Gypsies, and who as prisoners were to be transported from Greenock to New York in 1682, although no evidence exists of their arrival or lives in the colony (Dobson, 1984: 6-7, 71, 76, 188; Fairley, 1923: 221).

Why Joan Scott ended up in Virginia is unknown. Though she could have arrived as a criminal, she could also have come voluntarily. If she was like most others who departed the British Isles during these years, she did so with an indenture. As seventeenth century England experienced political upheaval, civil war, population growth and an uncertain economic situation, migration away from one’s home, whether to an English town, city, or colony, became a realistic option for many young people (Jones, 1998: 60-61; Suranyi, 2015: 133-134). As such, Scott could have chosen to pursue a new life in the colonies by indenturing herself to labor in exchange for her passage. She could also have arrived underage and without an indenture and then been assigned a term of service at her arrival by the colonial courts. This seems to have been the fate of hundreds of underage servants, mostly in their early teens, in Virginia each decade during the second half of the seventeenth century (Tomlins, 2010: 593-595).

### **The Records**

The four brief accounts written in the Henrico County court records mentioning Joan Scott reveal explicit information about her identity and crime. The records identify her as “an Egiptian” and “noe Xtian” (or non-Christian) who bore a child out of wedlock, a crime leading to her being charged with fornication. Of these four references, only one names Scott as “an Egiptian.” In the list of court decisions, and the one that mentions her identity, as recorded on February 1<sup>st</sup>, 1695, we learn that the court threw out the case against her. The full statement clarifies why the court made this decision: “Joane Scott is discharged from the presentment of the Grand Jury it being the opinion of this Court that the Act against fornication does not touch her (She being an Egiptian and noe Xtian woman).” From this entry we also learn that Scott had been present and addressed the court herself, since two men, “Mr. Henry Lound and John Dawson, security for the appearance this day of Jone Scott are discharged by her coming to answer” (Henrico County Virginia Record Book no. 3, 1695: 88).

These two men also appear in an earlier reference to Scott providing more detail about their role in her court appearance. Lound and Dawson guaranteed with a pledge of twenty pounds sterling that “Joane Scott shall personally appear” at the next county court and that she will “answer to what shall be objected against her on the presentment of the grand jury and abide the award of the said court” (Henrico County Virginia Record Book no. 3, 1695: 81). Such a pledge strongly suggests that both men held some authority over Scott if they were willing to ensure not just her appearance in court, but also that she accept her punishment. At the time of her court appearance Scott lived either in Lound’s household or on his property, which was adjacent to that of Dawson (Henrico County Virginia Record Book no. 5, 1688-1697: 459-460; Mayes and Du Lac, 2004: 48). During the early 1690s, Henrico County paid John Dawson “smith” hundreds of pounds of tobacco for various jobs, including regular production of leg irons for the prison (Henrico County Virginia Record Book no. 5, 1688-1697: 354, 447, 605). A neighbor of these two men, one Nicholas Perkins, had paid for Scott’s passage to Virginia in 1674, along with five other female and five male passengers, including “Scipio, Negro,” for which he received over 500 acres (Patent Book no. 6, 1666-1679: 529-530).<sup>2</sup> That Perkins only marked one of his transportees with race suggests that he considered the others, including Scott, to inhabit the category of whiteness. On the same day Perkins registered his land patent so did his neighbor just across the James River; Henry Lound received 516 acres due to a combination of direct purchase and for the transportation of two people (Patent Book no. 6, 1666-1679: 529-530).<sup>3</sup> Lound, like Perkins, eventually achieved the status and wealth of landed colonial gentry.

The final two references to Scott in the court records prove that her illegal sexual activities had led to the birth of a child. The first records her court summons and clarifies her charge: “It is ordered that Jone Scott at Mr. Lound’s be summoned to the next court to answer the presentment of the grand jury for having a bastard child” (Henrico County Virginia Record Book no. 3, 1695: 73). She again appears in a June 1<sup>st</sup>, 1695 list of eleven people who had been presented to the court. This list, which also named the crimes each had committed, included those in the habit of swearing, skipping church, and appearing drunk in public. The final two people on the list were women: “Nann at Mr. Edwards for bringing of a bastard. Jone Scott at Mr. Lounds for the same” (Henrico County Virginia Record Book, no. 5: 580).

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<sup>2</sup> This Henrico County Scott woman’s name has variously been transcribed in the published patent books as Jane and James Scott, though the original record clearly reads Joan (Nugent, 1977: Vol. 2, 154; Hall, 1957: 5). She is not referred to as an Egyptian in the original patent book. For the location of Perkins land see (Foley, 1974: 174; Mayes and Du Lac, 2004: 26, 41, 47, 72, 97).

<sup>3</sup> The property of Henry Lound, variously spelled as Lowne, can be recreated from surrounding patents (Mayes and Du Lac, 2004: 22, 49, 53, 57, 72).



## Her Crime

Colonial legal codes defined fornication as “sexual intercourse by any man with a single woman,” an act criminalized in all of the English colonies (Norton, 1996: 66). By the decade of Scott’s accusation, however, Virginia courts rarely prosecuted anyone for the moral aspects of fornication, it being very difficult to prove and requiring much word of mouth testimony. Though still carrying the taint of sin, this civil crime utilized secular punishments to discipline unwed mothers and ensure the father’s identity and financial accountability for any child. Thus, courts concerned themselves primarily with bastardy, since a child without a publically recognized and financially supportive father had an increased potential of becoming an expense to a female servant’s master, or if free, to the community at large (Brown, 1996: 191-192). These costs constituted a considerable expenditure with some Virginia parishes devoting up to forty percent of their budget to poor relief, much of this for the upkeep of illegitimate children (Pagan, 2003: 84). In fact, the presence of a bastard child triggered half of all sex-crimes prosecuted in the colonial Chesapeake (Norton, 1996: 336). In one county in nearby Maryland, one fifth of all female servants from the second half of the seventeenth century were presented to the courts for bearing a bastard child (Horn, 1994: 210). Clearly, Scott’s crime set her behavior squarely in line with the choices made by many other women in the region.

The specific law Joan Scott broke, or at least the law she claimed an exemption from, expressed concern less with sex out of wedlock, than with sex out of wedlock crossing the color line. The Virginia law from 1662, infamous for declaring that a child’s status follow the condition of the mother and thus ensuring that slavery became an inherited status, also dealt with fornication. This law explicitly utilized the terminology of “Christian” to define the boundaries of the law’s application (Pascoe, 2009: 20). It decreed “that if any Christian shall commit fornication with a Negro man or woman, he or she so offending shall pay double the fines imposed by the former act” (Hening, 1823: Vol. 2, 114, 170). (This “former act” mentioned no distinction for a fornicator’s punishment based on their race or religion, but named a 500-pound tobacco fine for each convicted man and woman, or whipping or extension of indenture for those unable to pay.) While not explicitly stating that a non-Christian was exempt from this act, one can see how it could be interpreted as such. As Scott’s decision explicitly noted her discharge due to her being “noe Xtian woman,” this is almost certainly the law she gained exemption from. If so, the court considered Scott’s partner a man of color.

Presumably, Joan Scott was not versed enough in the written law to draw her argument from a close textual reading. Rather, she had most likely witnessed the inconsistent prosecution of fornication charges when those the law referred to as “Negroes” partnered with non-Christians (presumably Indians), and when they partnered with Christians (presumably Europeans). Religion remained relevant in deliberations of race during this era, although later scientific thought would eliminate this consideration. At a time when racial groups were still in

the process of being codified into clear legal categories, and racial ambiguity appeared less disconcerting to locals than it would later become, this inconsistency remained the norm (Morgan, 2003: 327-337; Brown, 1996: 187-211). In fact, evidence does suggest that the courts treated Indian servant women differently than white servant women during inter-racial bastardy cases from the era. The Virginia courts expressed no interest in identifying the paternity of illegitimate children born to black fathers and Indian mothers, an inconsistency which may have stemmed from their lack of Christianity, and which provides a possible explanation for why the court never explicitly named a father in Scott's case (Brown, 1996: 200). Though lacking data from Henrico County specifically, studies of nearby Virginia counties suggest, "black men were competing all too successfully for white women, even in the face of severe penalties" (Morgan, 2003: 336). Threatening not only white men's access to potential mates, but also their property and wealth, free black men increasingly saw their rights removed by the free white male citizenry. This 1662 anti-miscegenation law was just the first in a long line to come (Higgenbotham and Kopytoff, 1989: 1967-1968). Although the authors of the 1662 law almost certainly used the term "Christian" to mean a white European (who should all be Christians), how Scott fit into these racial categories as they were coming into being might appear uncertain. Calling herself an "Egipitian," or letting the court work under the assumption she was, allowed her non-Christian status to be considered a more likely and acceptable reality.

Although the law considered Scott's partner to be a person of color this does not necessarily mean it considered her to be white. The court could have seen her occupying a unique category, that of an "Egipitian;" this is after all how they labeled her in the proceedings in which they determined how her case should be considered. In fornication cases from this era, courts commonly marked a woman's heritage, precisely because the laws increasingly delineated differentiated punishment based on criteria of ancestry as well as appearance. As such, Scott's "Egipitian" label fits neatly into the regularized habit of the courts to mark a woman as Indian, African, English, white, black, "negro" or "mulatto" in the records (Brown, 1996: 5-6, 187-188, 212-216). Though this "Egipitian" category may not have been regularly (or even ever again) employed as a colonial Chesapeake legal category, this does not mean it was not available in the seventeenth century before later normalized legal categories forced everyone into the framework of Indian, white or black. As such, Scott's experience with the court appears to have progressed from a belief in her unique category of identity, that of an "Egipitian," revealing both the court's recognition of her distinctiveness from other women, as well as the local liberality regarding racial categorization in general.

Though the evidence suggests that Scott occupied a distinct legal category of identity as an "Egipitian," it is also possible that the court considered her to be white, and that they attached significance to her religion when they termed her "an Egipitian." If so, because Virginia law banned interracial marriage in



1691, had Scott wanted to and been free to, she and her partner could not have made this choice. This law reads, “whatsoever English or other white man or woman being free shall intermarry with a negroe, mulatto, or Indian man or woman bond or free shall within three months after such marriage be banished and removed from this dominion forever” (Hening, 1823: Vol. 3, 87). Despite this anti-miscegenation law, such relationships continued both within and outside marriage, as they had in the prior decades, often as long-term and loving commitments. Yet, “the lowly origins of free people of color—outside the ranks of the propertied classes,” condemned them to poverty and social exclusion. As Ira Berlin, (as cited in Heinegg, 2005) historian of American slavery and race notes, “the poverty of their parents—particularly their black fathers—denied free children of color the patrimony and the allied connections necessary for social advancement” (forward). In the decades that followed the 1691 act, “the children produced by those illicit unions were automatically classified as illegitimate.” Among these mixed race progeny, “maternal ties were considerably more important than paternal ties,” since legal legitimacy functioned to guarantee property inheritance through the paternal line. As a result, some free people of color utilized maternal surnames (Brown, 1996: 229), a decision Scott’s descendants may have made.<sup>4</sup> Even without the 1691 law banning interracial marriage though, if Scott had been a servant her terms of service would likely have prevented any marriage. If enslaved, his certainly would have. Thus, once authorities became aware of Scott committing “fornication with a Negro man,” (Hening, 1823: Vol. 2, 170) religion became her only viable recourse to escape punishment; marriage was not an option.

### **Punishment**

Fornication convictions led to serious punishments. Had Scott been found guilty of fornication with a white man her punishment would have been a payment of ten pounds sterling. If unable to pay, she could choose between thirty lashes “well laid on,” or three months in jail. If Scott had been a servant at the time, her master would have had to pay the fine or have Scott whipped. She would also have had an additional six months added on to her term of service. Because Scott also bore a child out of wedlock, her punishment expanded. She would then have to serve an additional two years “in regard of the loss and trouble her master doth sustain,” or pay two thousands pounds of

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<sup>4</sup> In his extensive work on the Scott family known to have descended from those in Henrico County, the genealogist Paul Heinegg (2005: 1030-1040) believes Joan Scott “Egipitian” to be the matriarch of this prolific clan of free black Virginians. If he is correct, Scott fared better than many others in her circumstances; she founded a family, whose descendants (including her two daughters) continued as landowners despite the increasing legal strictures against their seeming non-whiteness. Yet, other experiences in the lives of her descendants, such as the requirement that free black servant women bound out their children to white families to labor under long term contracts, illustrate the elimination of the ability to exist between formalized racial groups and paint a disturbingly consistent picture of the erosion of free black family life in eighteenth-century Virginia (Brown, 1996: 217-219, 230, 236).



tobacco. The forfeited wealth of the guilty woman would be divided three ways: toward the upkeep of the church, the maintenance of the minister, and the informant of her crime. If Joan Scott had failed in her claim of exclusion from the law specifically concerning “fornication with a negro,” her punishment would have been fifteen pounds sterling or being “disposed of for five years” into servitude, at the discretion of the churchwardens (Hening, 1823: Vol. 2, 115; Vol. 3, 74-75, 87). No matter which of these punishments Scott faced, she considered it worthwhile to try the non-Christian exemption implied by the law and that she had likely witnessed in the law’s application against fornication across the color line.

Yet, this strategy would not come without its own problems. A colonial Virginia law of 1662 decreed a 2000 pounds tobacco fine for refusing to have one’s child baptized with the money split, “half to the informer, half to the public” (Hening, 1823: Vol. 2, 165-6). By publically declaring herself a non-Christian, her hand would be forced in that matter with her child. No longer able to slip under the radar with her personal religious beliefs, the churchwardens, able to raise revenue off any of her known moral faults, would surely be keeping a close eye on her. Not bringing her child in for baptism, or bearing another child without marrying, could potentially enrich anyone willing to inform. The child itself could have been endangered by this strategy as well. Joan Scott’s illegitimate child, whose existence had originated the fornication suit, may have been bound out as an indentured servant to prevent her or him from becoming a public charge. The 1691 law provided that if “any English woman being free shall have a bastard child by a negro or mulatto . . . such bastard child be bound out as a servant by the said church wardens until he or she shall attain the age of thirty years” (Hening, 1823: Vol. 3, 87).

The realities of life in the Chesapeake in the 1690s, combined with the increasingly strict laws regulating race and sex, did little to encourage legitimate family formation. Although the gender imbalance would have increased the likelihood of Scott receiving offers of marriage, the institution of indentured servitude severely limited, if not directly prohibited, marriage by servants, just as legal codifications of race prevented interracial marriages (Tomlins, 2010: 59). Such prohibitions could potentially have led to the actions that resulted in the charge of fornication facing Joan Scott. According to historian Kevin Mumford (1999), “fornication was one of the leading causes of a servant’s involvement with the legal system, and marriage was one of the most carefully regulated servant relations,” resulting in bastardy rates for female servants in the Chesapeake two or three times as high as in England or New England (p. 292). This led to what historian Kathleen Brown (1996) has called “generational patterns of sexual misconduct” (p. 205). After 1691 all children born to a white mother and a non-white father were considered illegitimate since laws declared illegal both marriage and sex across the color line. As punishment, the courts bound out these illegitimate children for thirty year terms of service, during which time they were forbidden to marry as part of their labor agreement.



Because few people at the time waited so long to form a sexual union, any children they bore while bound could not be sanctioned as legitimate. Thus, the cycle of illegitimacy continued (Brown 1996: 205).

That other women who made up Joan Scott's world were found guilty of and punished for fornication is evidenced by entries in the court order book accompanying Scott's records. The court ordered one Elizabeth Goff "to be corrected as the law against fornication directs," by two men who owned land near where Scott lived "at Henry Lounds." Goff had confessed to the crime, whereas Scott had chosen to fight the charge. Further investigation into Goff, as well as "Nann at Mr. Edwards" mentioned above and who also lived nearby, reveals Joan Scott's fortune that John Dawson and Henry Lound had agreed to post security ensuring her appearance in court. When neither Mr. Edwards nor Goff's mistress agreed to post bond, the court ordered both women taken into custody and held until the next court (Henrico County Virginia Record Book no. 3, 1695: 81, 88; Mayes and Du Lac, 2004: 72, 123, 131, 139).

### Conclusion

As an individual case study, Joan Scott "an Egyptian and noe Xtian woman" provides insight into both the experiences of colonial American Gypsies, as well as into the minds of Virginians grappling with how to consider the multitude of identities within their new social order. Though much about Scott remains unknown, local archival records reveal previously unconsidered details about her life. She entered the colony twenty years before her fornication charge, which suggests she arrived as a young woman or even a girl. While unmarried, she bore a child whose father the court considered a man of color. All of these show Scott experiencing colonial Virginia life in ways similar to other late seventeenth-century Henrico County women. But in other ways, Scott's life sets her apart from other women. By allowing the court to believe in her Gypsy identity and non-Christian religion she worked the court in her favor and saw her case dismissed. Her success in such an official venue suggests a degree of knowledge of how the law worked in the local context, as well as a disregard for the formal institutions of legitimized marriages and moralizing law. She won her case by claiming that colonial courts had no legal power to regulate her moral code, a fact they tacitly agreed with.

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