

**The Body in Law in Early New England, 1630–1675**

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## Introduction

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In a trial held on the 3rd of October in 1632, magistrates in Massachusetts ordered local townsman Nicholas Frost fined, severely whipped, and branded in the hand with a hot iron. Once the punishments had been administered, he was to be banished from the colony. Should he return, he faced death. Convicted of theft, drunkenness, and fornication, the court declared that Frost “shalbe kept in boults till his fines be paid,” and the rest of his punishment would be meted out afterward.<sup>1</sup>

Records like this one indicate that the leaders of the Puritan society in the Massachusetts Bay Colony thought it natural to discipline the body in various ways as a fitting punishment for certain sorts of crime.<sup>2</sup> These punishments included wearing a letter denoting the crime on a garment, being placed in public ‘bill-bowes’ (e.g., iron bars with sliding shackles) for a set amount of time, and other sentences, shameful, painful, or both. To modern Americans, such punishments look, at the least, strange or even perverse.

A hundred years later, towards the end of the eighteenth century, the newly formed nation of the United States witnessed the end of punishment as a public spectacle. A more modern criminal justice system would instead turn to penitentiaries, prisons, and other institutions to discipline transgressors behind closed doors. According to Michel Foucault’s study of the same phenomenon in Europe, by the end of the eighteenth century, “the body as the major target of

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<sup>1</sup> Nathaniel B. Shurtleff, “The Colony’s Records: 1630–1641,” in *Records of the Governor and Company of the Massachusetts Bay in New England*, vol. 1, 1628–1641 (Boston: The Press of William White, 1853), 100.

<sup>2</sup> It should be noted that recent historians have abandoned using the term “Puritan” to describe the Protestants who sought change in Elizabethan England. As “Puritanism” never emerged as a specific religious organization, they are now often referred to as “reforming Christians” or “the more enthusiastic sort of Protestants,” etc. In this thesis, I opted to keep “Puritans” and “Puritanism” with a capital P instead of a lowercase p, as it is used in reference to a group of religious individuals who would eventually migrate to New England. For more information on this terminology, see John Spurr, *English Puritanism, 1603–1689*, ed. Jeremy Black (New York: Palgrave Macmillan, 1998).

penal repression disappeared.” But despite the disappearance of the barbaric forms of torture on the physical body, modern discipline of the minds and souls of criminals often exerted a far greater intrusion than the bodily punishments that preceded it.<sup>3</sup> Historians since Foucault have produced many notable works dealing with crime, punishment, and law in early New England. Most, however, have focused on the Foucauldian transformation that occurred in the eighteenth and early nineteenth centuries; few have specifically explored the role of the body in criminal courts.<sup>4</sup>

Even though Foucault argues that bodily punishments were no longer the public spectacles they had once been, it does not necessarily mean that they disappeared altogether. Sometimes public viewing just took another form. For example, sociologist Kai Erikson notes “it is interesting that the ‘reform’ which brought about this change in penal practice coincided almost exactly with the development of newspapers as a medium of mass incarceration.”<sup>5</sup> Sure, we no longer travel to the center of town to witness the beheading of a criminal, but a “considerable portion of what we call ‘news’ is devoted to reports about deviant behavior and its consequences, and it is no simple matter to explain why these items should be considered newsworthy or why they should command the extraordinary attention they do.”<sup>6</sup> Looking through a modern lens, there are several instances in which groups of people received bodily punishments, warranted or not, in the form of torture; these include Jews during the Holocaust

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<sup>3</sup> Michel Foucault, “The Body of the Condemned,” in *Discipline and Punish: the Birth of the Prison*, trans. Alan Sheridan (New York: Vintage Books, 1995), 8.

<sup>4</sup> For post seventeenth century works dealing with law, see Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639–1689* (Chapel Hill: University of North Carolina Press, 1996); Martha J. McNamara, *From Tavern to Courthouse: Architecture and Ritual in American Law, 1658–1860* (Baltimore: Johns Hopkins University Press, 2004); and Christopher L. Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010).

<sup>5</sup> Kai Erikson, “On the Sociology of Deviance,” in *Wayward Puritans: A Study in the Sociology of Deviance* (New York: John Wiley & Sons, Inc., 1966), 12.

<sup>6</sup> Erikson, “On the Sociology of Deviance,” 12.

who were stripped of their identities through various means of torture; alleged affiliates of known terrorist groups, held by the United States military, who underwent ‘enhanced interrogation techniques’ (a euphemism for systematic torture); and minorities in the American criminal justice system who still live with inhumane bodily experiences such as violence, sexual abuse, discrimination, overcrowding, and other threats to health and safety. In fact, modern Americans often contend that the main goal of the criminal justice system is correction and rehabilitation; but the very nature of imprisonment—with its emphasis on involuntary confinement—implies a *de facto* bodily punishment. These examples from the modern world are meant to highlight the idea that bodily punishments have not completely disappeared.

Foucault’s most fundamental argument maintains that the transformation from bodily punishment to moral reform created a dividing line between the early modern and modern periods. But examination of bodily punishments in seventeenth-century Massachusetts reveals complexities not anticipated in Foucault’s model. To further examine and analyze punishment in colonial Massachusetts, this thesis explores at least 250 cases drawn from the first legal records of the Massachusetts Bay Colony spanning the period from 1630–1675.<sup>7</sup> This colony is often viewed as one of the so-called “Puritan” colonies of early New England, colonies founded in the early seventeenth century by some of the most exacting ‘Hot Protestants’ of the English Reformation. When these Puritans were given the opportunity to create their own legal system, they based it on a modified version of the English common law, transformed in places to fit particular scriptural interpretations. They were careful, however, not to deviate too far from the

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<sup>7</sup> Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England*, 5 vols. (Boston: The Press of William White, 1853).

common law, as they did not want to arouse increased oversight from either their investors or English officials of the church or state.

This thesis investigates the early Puritan legal system of Massachusetts and focuses in particular on how it deployed bodily chastisements in actual practice, as revealed in the early court cases. Bodily punishments such as whipping, branding, shaming, restraint, and banishment may seem cruel—a common and modern stereotype of Puritans would link such severe punishments to the harsh discipline modern Americans often assume prevailed among the Puritans in Massachusetts Bay. Foucault’s analysis of unrelated, unreformed European legal practices suggests that these punishments were just ordinary, unremarkable early modern judicial methods. However, this examination reveals something different. First, the Puritans’ use of bodily punishments were largely confined to crimes that in some way involved the body to begin with. Of all the crimes found in the records, by far the most numerous fell into just four categories: drunkenness, burglary & theft, unruly speech, and malicious speech. Three of these categories clearly involve criminal misbehavior on the body, either on one’s own, or that of another person’s; the fourth, as argued below, involves a bodily crime by analogy. Thus, not only did the punishments meted out focus on disciplining the body, the crimes themselves involved some form of bodily misbehavior that the Puritans abhorred and desired to stamp out. The punishments for these, therefore, fit the crime.

The second argument deals with the Puritan legal system’s intense focus on the body. While the full comparative examination that would be required to prove this point must lie beyond the scope of this senior thesis, it nevertheless explores some ways in which Puritans themselves modified English law, creating a distinct variant of early modern practice. Through

an analysis of both the creation of the Colony's legal codes and the court's intense focus on crimes involving the body, the Puritans arguably revised English law to bring it into closer alignment with their interpretation of the sacred scripture. Finally, these modifications can be seen in the nature and pattern of punishments given out in the court. Although these punishments appear cruel, their primary purpose was, like later 'reformed' methods, to protect the body politic. It is in this sense that Puritan judges and juries meted out bodily discipline with the humane intention of reforming and reincorporating the convicted person. In this sense, then, the Puritan courts meted out punishments with harsh or shameful physical elements not because they were unduly cruel, but because they were attempting to restore order and peacefully reincorporate those who had violated both God's laws and the community's norms. A communitarian intent lay behind even the most brutal sentences.

## Research Design and Methods

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### *Thick Description of Cases*

The way this thesis approaches crime is through the use of *thick description*.<sup>8</sup> Thick description is an explanation of a social action by “recording the circumstances, meanings, intentions, strategies, motivations, and so on that characterize a particular episode. It is this interpretive characteristic of description rather than detail per se that makes it thick.”<sup>9</sup> Furthermore, “it deals not only with the meaning and interpretations of people in a culture but also with their intentions. Thick description builds up a clear picture of the individuals and groups in the context of their culture and the setting in which they live.”<sup>10</sup> It can be contrasted with *thin description*, which is “a superficial account and does not explore the underlying meanings of cultural members.”<sup>11</sup>

For example, in addressing an event that occurred in a 1950s Balinese village, anthropologist Clifford Geertz made use of thick description in order to not only describe a single illegal cockfighting match, but to also extrapolate a larger meaning about Balinese society. Geertz described how the match was more than just a fight in that it was also a “simulation of the social matrix, the involved system of crosscutting, overlapping, highly corporate groups – villages, kingroups, irrigation societies, temple congregations, ‘castes’ – in which its devotees live.”<sup>12</sup> Within the match existed an underlying hierarchy—only respected men and politically

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<sup>8</sup> This term was a method of description coined by 20th century philosopher, Gilbert Ryle, but was expanded by anthropologist Clifford Geertz. See Clifford Geertz, “Thick Description: Toward an Interpretive Theory of Culture,” in *The Interpretation of Cultures: Selected Essays* (New York: Basic Books, 1973), 3–30.

<sup>9</sup> Thomas Schwandt, *Dictionary of Qualitative Inquiry*, 2nd ed. (Thousand Oaks: Sage Publications, 2001), 255.

<sup>10</sup> Immy Holloway, *Basic Concepts for Qualitative Research* (London: Blackwell Science, 1997), 154.

<sup>11</sup> Holloway, *Basic Concepts for Qualitative Research*, 154.

<sup>12</sup> Clifford Geertz, “Deep Play: Notes on the Balinese Cockfight,” in *Daedalus* 134, no. 4 (2005): 74, <https://www.jstor.org/stable/20028014>



involved members of society could attend cockfights, excluding women, children, “the extremely poor, the socially despised, [and] the personally idiosyncratic.”<sup>13</sup> The cocks themselves dually represented both the men in society and their masculinity; the winner received money, and while it was a great amount, it did not compare to the status gain, “namely, esteem, honor, dignity, [and] respect” that came with it.<sup>14</sup>

In the same way that Geertz was able to make a larger claim about Balinese society through a thick description of a single cockfight, this thesis will make a larger claim about Puritan society through a thick description of criminal cases. Because many criminal cases in the Massachusetts court records were minimally written, this thesis will draw upon a few incidents that are representative of certain categories of crimes. A thick description of those few incidents will not only describe the acts of deviance, or crimes, but explain its legal and religious contexts as well, so that it is clear how the physical body is involved in both the performance of the crimes and the punishments that were meted out.

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<sup>13</sup> Geertz, “Deep Play: Notes on the Balinese Cockfight,” 73.

<sup>14</sup> Geertz, “Deep Play: Notes on the Balinese Cockfight,” 60, and 71.

## Origins of Massachusetts Bay Colony and its Legal System

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To understand the legal system of Massachusetts Bay, we first need to grasp its religious and political background as a Puritan colony. The sixteenth century witnessed a profound schism in western Christianity, in which Catholic reformers, objecting to various corrupt practices in the church, withdrew to form a Protestant church guided by Martin Luther's reforms. Luther's beliefs held that one could only achieve salvation *sola fide* (by faith alone), and the only source of spiritual authority rested on *sola scriptura* (the scripture alone)—not church traditions nor papal decrees.<sup>15</sup> While some in England adopted Lutheranism, it was too radical for most. It would be a political crisis, precipitated by King Henry VIII's attempts to divorce his first wife, Catherine of Aragon, that caused England to withdraw from the Roman Catholic Church. In 1534, Henry VIII (r. 1509–1547) established the Church of England, placing himself as its first Supreme Head.<sup>16</sup> This English Reformation brought a new set of ideals and a renunciation of the pope, but retained much of Catholicism's core approaches to divine truth, structure, clergy, rituals, and method of salvation.<sup>17</sup> Arguably, the greatest changes came as King Henry endeavored to consolidate his absolute authority as monarch by eliminating the competing Catholic religious orders and appropriating their property to the crown.

Successive English monarchs, however, did not adhere to a uniform religion with a standard set of beliefs, and this made it difficult for many Protestants to adapt to the changing government. When Catholicism was briefly restored under Queen Mary I (r. 1553–1558), many Protestants were forced to flee and live in exile. At the queen's death, these Marian exiles

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<sup>15</sup> Martin Luther, *Ninety-Five Theses*, 1517.

<sup>16</sup> *Act of Supremacy* 1534, (26 Hen. VIII c.1).

<sup>17</sup> Robert Bucholz and Newton Key, "Reformations and Counter-Reformations, 1536–1558," in *Early Modern England 1485–1714: A Narrative History*, 2nd ed. (West Sussex: Wiley-Blackwell, 2009), 93.

returned hoping Mary's Protestant sister, Elizabeth I (r. 1558–1603), would restore the Church of England's former glory.<sup>18</sup> As a *politique* reformer, Queen Elizabeth was willing to find mutual concessions on doctrinal matters in the interest of peace and unity.<sup>19</sup> Therefore, her legislative agenda consisted of compromises between Protestantism and Catholicism. She allowed several Catholic traditions to remain, including the use of ornate vestments in clerical dress and episcopal hierarchy within the church.<sup>20</sup>

A group of Protestants who sought strict doctrinal purity and uniformity opposed these compromises. According to them, Queen Elizabeth had failed to truly cleanse, or purify, the Church from the evils of Catholicism. This Puritanism emerged as a “belief that the Church of England should be purged of its hierarchy and of the traditions and ceremonies inherited from Rome,” and Puritans deemed that the Church should conform to Biblical beliefs and practices; anything not found in the scripture should be abandoned.<sup>21</sup>

The various religious changes fostered by Elizabeth's successors aggravated Puritan elements still further. King James I (r. 1603–1625), Elizabeth's successor, was also a Protestant who claimed leadership of the Church of England. King James scorned Puritanism but nonetheless continued to allow Puritans to hold seats in Parliament. However, he initiated more intrusive reforms, such as developing a new translation of testament (the King James Bible) and pursuing policies that generally made life difficult for the radical non-conformists. Puritans

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<sup>18</sup> Marian exiles were Protestant exiles during Queen Mary I's reign, some of which became Puritans during Queen Elizabeth I's reign.

<sup>19</sup> Robert Bucholz and Newton Key, “The Elizabethan Settlement and its Challenges, 1558–1585,” in *Early Modern England, 1485–1714: A Narrative History*, 2nd ed. (West Sussex: Wiley-Blackwell, 2009), 123–125.

<sup>20</sup> Bucholz and Key, “The Elizabethan Settlement and its Challenges, 1558–1585,” 124; and Edmund S. Morgan, “Evil and Declining Times,” in *The Puritan Dilemma: The Story of John Winthrop*, 3rd ed. (New York: Pearson Longman, 2007), 16.

<sup>21</sup> Edmund S. Morgan, “The Taming of the Heart,” in *The Puritan Dilemma: The Story of John Winthrop*, 3rd ed. (New York: Pearson Longman, 2007), 5.

maintained that, like Elizabeth, King James allowed the sins of the nation to proliferate by refusing to make further reformatations in the church, and this drew Puritans into “uneasy complicity in a regime they considered no more than half right.”<sup>22</sup>

The accession of King Charles I (r. 1625–1649), James’s son, was accompanied by religious and governmental changes that left Puritans with no choice other than to protest and resist what they viewed as betrayal. King Charles, married to a Catholic princess, promoted Arminianism—a belief, one of which Puritans considered exceptionally heretical, that men could achieve salvation through their own will—and replaced Puritan church courts with Arminian counterparts.<sup>23</sup> This ultimately incited a group of Puritans, known as separatists, to break away from the Anglican Church much like England had done with the Roman Catholic Church just a century ago. But whether fully separating from the Church of England or merely seeking to ‘purify’ it from within, many of these religious radicals chose to journey across the seas in search of a place where they might practice their own version of Protestantism.

### ***Migration to New England***

John Winthrop, the chief architect of the Massachusetts Bay Colony, was among the Puritans in England who disapproved of the religious changes brought forth by the successive monarchs. Even so, Winthrop repudiated separatists for they deserted their fellow peers. As early as 1620, a group of separatists escaped from the Anglican Church and voyaged overseas to Cape Ann and the Plymouth Colony, both in New England.<sup>24</sup> By 1629, members of the larger Puritan

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<sup>22</sup> Morgan, “Evil and Declining Times,” 16–17.

<sup>23</sup> Morgan, “Evil and Declining Times,” 24–28.

<sup>24</sup> Morgan, “Evil and Declining Times,” 27–28; and Morgan, “A Shelter and a Hiding Place,” in *The Puritan Dilemma: The Story of John Winthrop*, 3rd ed. (New York: Pearson Longman, 2007), 29–30.

movement, like Winthrop, perceived the Anglican Church to be increasingly sinful and ungodly. But those who desired to flee needed a valid reason, one that deviated from a separatist's excuse. In the words of historian Edmund S. Morgan, "the men and women who hated evil as much as the separatists did but refused to turn their backs on their brethren were following the path that Puritanism (indeed, Christianity), in its deepest meaning, commanded."<sup>25</sup> Winthrop and his peers wanted to leave England, but they sought to do so "with the approbation of the King and without repudiating its churches and the Christians in them."<sup>26</sup>

Winthrop was not the first Puritan to consider migrating to New England. In 1620, a group of gentlemen and noblemen, known as the Council for New England, received a charter to the entirety of New England. By 1628, because they had not made any serious colonizing efforts, they reconvened the charter to a group of Puritan merchants, organized as the New England Company, to settle and govern a portion of New England.<sup>27</sup> Captain John Endecott and a shipload of servants were sent to the British colonies to collect commodities such as sarsaparilla, sassafras, furs, and silk grass to bring back to England. John Winthrop had encouraged his son, John Jr., to join Endecott's group, and though his son went on a different voyage to the Mediterranean, Winthrop increasingly took an interest in the New England Company. A year later, the New England Company had been transformed into the Massachusetts Bay Company, but in order to solidify its authority in New England, the proprietors needed to obtain a new charter from King Charles I. In March 1629, the king validated their original grant. Once again,

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<sup>25</sup> Morgan, "Evil and Declining Times," 28.

<sup>26</sup> Morgan, "Evil and Declining Times," 28.

<sup>27</sup> Morgan, "A Shelter and a Hiding Place," 30–31.

their company's name transformed from the Massachusetts Bay Company into the Governor and Company of the Massachusetts Bay in New England.<sup>28</sup>

The members of the Company believed that planting a godly colony in New England was an honorable task, and its success was largely dependent on men of ability. Thus, they set out to convince Winthrop that his services were of necessity. Although Winthrop agreed, his conscience held him back; he needed a better reason to depart, as leaving England could have easily been seen as an act of separation. In 1628, John Winthrop gathered a list of grounds into a series of documents, shortened as *Reasons for the Plantation in New England*, in order to convince himself and others of the advantages of relocating to Massachusetts Bay. One of the most convincing reasons for leaving was the fear that God would soon bring wrath upon England—it was far better to set a good example with a new church than to remain in a corrupted one. Winthrop writes,

All other Churches of Europe are brought to desolation, and our sins, for which the Lord begins already to frown upon us and to cut us short, do threaten evil times to be coming upon us, and who knows, but that God hath provided this place to be a refuge for many whom he means to save out of the general calamity, and seeing the Church hath no place left to fly into but the wilderness, what better work can there be, than to go and provide tabernacles and food for her when she be restored. [...] What can be a better work, and more honorable and worthy of a Christian than to help rise and support a particular church while it is in its infancy, and to join his forces with such a company of faithful people, as by a timely assistance may grow strong and prosper, when for want of such help may be put to great hazard, if not wholly ruined.<sup>29</sup>

According to Winthrop, God provided New England as a place where Puritans could take refuge, and the Puritans would be acting as honorable and worthy servants of God by creating a new

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<sup>28</sup> For full text of the March 1629 charter, see “The Charter of Massachusetts Bay: 1629,” Yale Law School: Lillian Goldman Law Library, [https://avalon.law.yale.edu/17th\\_century/mass03.asp](https://avalon.law.yale.edu/17th_century/mass03.asp).

<sup>29</sup> John Winthrop, *Reasons to be considered for justifying the undertakers of the intended Plantation in New England, and for encouraging such whose hearts God shall move to join with them in it*, 1628. For full text, see The Winthrop Society, [https://www.winthropsociety.com/doc\\_reasons.php](https://www.winthropsociety.com/doc_reasons.php).

church void of corruption, unlike that of the Church of England. This passage reveals not only their motivations but also the type of society they wanted to raise, one in which God wholly approved.

Most importantly, the idea that God had set them the task of creating new (and better) churches and society explains the Puritans' concern with creating a revised legal code that matched their religious beliefs. But this new code could not smack of theocracy, or they might otherwise be charged with unlawfully separating from both English law and its official church. With these considerations and needs in mind, Winthrop and his peers prepared to sail for New England, and, by April 1630, they were on their way, aboard the *Arbella*.

The Massachusetts Bay Colony occupied a middle course between two other models of Puritan practice. On one side were the separatists, who had already completely broken with the Church of England. On the other were the more conservative Puritans who wanted to establish a new church structure that would oversee individual congregations, based on the Presbyterian model at home.<sup>30</sup> Winthrop and most in Massachusetts considered themselves in the middle of these two types of reform: they were Congregationalists. What differentiated them from the Presbyterians was their belief that church membership should be limited to the special elect, and that each congregation could make its own covenant with God and choose its own ministers without the authority of any central church organization (the Church of England, after all, was still their central church).<sup>31</sup> The society the initial Puritans settled on was one of which was a

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<sup>30</sup> Kai Erikson, "The Puritans of Massachusetts Bay," in *Wayward Puritans: A Study in the Sociology of Deviance*, (New York: John Wiley & Sons, Inc., 1966), 39.

<sup>31</sup> Erikson, "The Puritans of Massachusetts Bay," 40.

legal extension of England, but a “spiritual revision of everything that was wrong at home.”<sup>32</sup>

Over the years, however, this distinction became less and less prominent, and the Massachusetts Bay Colony transformed into a land devoted solely to the word of God.

The Puritan churches were largely guided by the ideals that existed in the days of the Apostles. They regarded the Bible as a complete guide to Christian living, which “not only supplied rules for the broader issues of church and polity but for the tiniest details of everyday life as well,” and so it was deemed as the ultimate law of society.<sup>33</sup> In the first few years of the colony’s existence, ministers had settled most questions of law because they were accepted as accredited Bible scholars. While the magistrates acted as the secular head who kept order amongst the Puritans, it was the ministers who provided the final authority on policy.<sup>34</sup> Other than the scripture, the Congregationalists had not established a formal set of laws for the Puritans to follow as Winthrop and the other elite members believed laws should be created over time “by practice and custom.”<sup>35</sup> As early as 1635, however, many of them had advocated for a formal set of codes.

### ***Evolution of the Colony’s Law and Government***

From its very beginning, Massachusetts Bay colonists were ruled both by the English common law and a religious moral code. As the colony grew in size and complexity, its leaders realized it would eventually need *positive law*, or a written legal code to clarify its governance of colonists. In 1636, an early form of code, called *An Abstract of Laws and Government*, had been

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<sup>32</sup> Erikson, “The Puritans of Massachusetts Bay,” 43.

<sup>33</sup> Erikson, “The Puritans of Massachusetts Bay,” 47.

<sup>34</sup> Erikson, “The Puritans of Massachusetts Bay,” 57–58.

<sup>35</sup> Erikson, “The Puritans of Massachusetts Bay,” 62; and John Winthrop, *Journal I*, 324.



proposed by John Cotton, a Puritan minister and theologian, but it was never officially adopted. In 1641, the first authorized legal law code was published. Entitled *The Massachusetts Body of Liberties*, the colony finally had a deliberate, systematic code of law, all its own. Written by Nathaniel Ward, a Puritan clergyman, it drew upon the *Magna Carta* (1215) and the English common law, but also on Cotton's earlier *Abstract* to create a list of liberties and privileges to be enjoyed by the colonists. The *Body of Liberties* applied to the entire colonial population in a uniform way—a simplification of the English common law in which different parts of the English population might have had different rights based on somewhat idiosyncratic regional or institutional custom. Separated into ninety-eight sections, the *Body of Liberties* included rules for the entire population (sections 1–17), judicial proceedings (sections 18–57), free men (sections 58–78), women (sections 79–80), children (sections 81–84), servants (sections 85–88), foreigners and strangers (sections 89–91), animals (sections 92–93), capital laws (section 94), churches (section 95), and how to deal with these laws (sections 96–98).<sup>36</sup>

The succeeding legal document, *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts* [sic], published in 1648, included a more thorough list of laws that comprised not only the liberties but enumerated certain restrictions on colonists' behavior.<sup>37</sup> These *Laws and Liberties of Massachusetts* would govern the colony for the next century and included a more meticulous description on the specificities of crime and how punishments were to be carried out.

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<sup>36</sup> Nathaniel Ward, *The Massachusetts Body of Liberties, adopted as law by the General Court of the Commonwealth of Massachusetts Bay*, (December 1641). For full text, see The Winthrop Society, <https://www.winthropsociety.com/liberties.php>.

<sup>37</sup> The sections were now differentiated by alphabetical indicators rather than by numericized sections.

This new code listed not only bodily punishments but also crimes that pertain to the body. Even though this thesis focuses only on four categories of crime (as mentioned above), other bodily crimes were performed and covered within the scope of the law.<sup>38</sup> At least ten different published laws dealt with the body.<sup>39</sup> For instance, a violation of the *Capital Lawes* resulted directly in death, but just as important is the legislation included within the capital laws; murder, anger/cruelty, poisoning, bestiality, sodomy, adultery, man-stealing, and rape were all crimes that affected the body. At the end of each of these capital laws were bible verses, which served as rationales for including that rule in the official law code, and since the scripture was essentially the law, the Puritans justified such punishments through death.

Not all crimes ended in death, however. Some crimes such as Fyre and few cases of Fornication were punished with a fine, and other more severe ones, such as Forgerie, Heresie, or extreme cases of Fornication were punished by standing in a pillory, banishment, or other corporal punishments. Despite the focus on disciplining the body, the Puritans also included limitations in regard to punishment. It was ordered “that no man shall be twice sentenced by civil Justice for one and the same Crime, Offence or Trespasse.” Here, an early version of the modern double jeopardy can be seen as they did not allow one to be tried twice for the same crime. Additionally, for bodily punishments, the Puritans allowed amongst them “none that are in-humane, barbarous or cruel.” Thus even if it appears to be so, it was not their intent. Lastly, when one was subject to be punished by torture, the law stated that “no man shal be beaten with above fourty stripes for one Fact at one time. Nor shall any man be punished with whipping, except he have not otherwise to answer in the Law, unles his crime be very shamefull, and his

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<sup>38</sup> For a more thorough list of laws, see [Appendices C–G](#).

<sup>39</sup> See [Appendix C](#).

course of life vitious and profligate.” This law made clear that a criminal could not be tortured indefinitely and only those that performed shameful, vicious, or profligate crimes could be subject to the lash.

### ***The Influence of the Quaker Threat***

One other important moment in the development of Massachusetts’ criminal justice system occurred in the 1650s as a result of the disruption posed by the Interregnum period, during which the most radical religious experiments were gaining traction in post-civil war English society. In 1655, three years after John Cotton’s death, William Aspinwall, an English Puritan minister, lamented that Cotton’s 1633 code of laws had not been adopted, and he sought to rectify the situation. He published a revised edition of the *Abstract*, in which he enlarged the edition by twenty-three pages and included scriptural citations in support of some of Cotton’s civil rules.<sup>40</sup> This new document served as a principal foundation of governance, as many parts of its text specifically the sections dealing with crimes, corporal punishments, and civil and criminal trials would be reflected in the later Massachusetts laws. As mentioned above, scriptural citations were also used in the ‘Capital Lawes’ of the colony. Despite the *Abstract*’s failure of adoption, the certainty that Cotton’s ideas from 1633 were reflected in the *Laws and Liberties of Massachusetts in 1648*, as well lamented by an English Puritan minister in 1655, denotes that these ideas, including ones that involve the body, remained pervasive and widespread in Puritan society.

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<sup>40</sup> John Cotton, *An Abstract of Laws and Government: Wherein as in a Mirrour may be seen the wisdom & perfection of the Government of Christs Kingdome, Accomodable to any State or form of Government in the world, that is not Antichristian or Tyrannicall*, ed. William Aspinwall (London: Printed by M.S. for L. Chapman, 1655).

The 1650s also saw the arrival of radical Quaker proselytizers in Massachusetts Bay and its neighboring colonies. Given a warm welcome in nearby Rhode Island, Quaker preachers, both male and, in a radical twist for the time, female, made aggressive forays into Massachusetts Bay in waves over the next decade, seeking new converts to their radical Christian doctrine of equality before God regardless of gender, age, or other social conditions. Persecuted in England for their beliefs that the presence of God existed within everyone and that each person has divine authority even without the use of the scripture, Quakers hoped they could find religious freedom in the colonies. Those few that made it to Massachusetts Bay would find that they were unwelcomed in a Puritan society. Quaker beliefs and practices raised the specter of serious disorder in Massachusetts, and the colony's leaders reacted with harsh punishments.

The Quaker movement was radical; it transformed the Protestant Reformation to the most radical elements as Quakers “opposed central church authority, preferring to seek spiritual insight and consensus through egalitarian Quaker meetings. They [also] advocated sexual equality and became some of the most outspoken opponents of slavery in early America.”<sup>41</sup> Additionally, Quakers wanted to get rid of ministers, have individual lay men be their own priests, refused to take their hats off before God (as a sign of respect), and refused to swear oaths on the sacred Bible. In 1658, the Massachusetts Bay Court acted by barring Quakers from the colony altogether;

Whereas there is a pernicious sect, commonly called Quakers, lately risen, who, by word & writing, have published & maintained many dangerous & horrid tennetts, and doe take upon them to chainge and alter the received laudable customes of our nation in giving civill respect to aqualls or reverence to superiors, whose actions tend to undermine the authority of civill government, as also to destroy the order of the churches, by denying all established formes of worship, and by withdrawing from the orderly church assemblies allowed & approved by

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<sup>41</sup> “Quakers executed for religious beliefs,” History, accessed March 22, 2020, <https://www.history.com/this-day-in-history/quakers-executed-for-religious-beliefs>.

all orthodox proffessors of the truth, and instead thereof, and in opposition thereunto, frequenting private meetings of their owne, [...] whereby diverse of our inhabitants have binn infected & seduced, and notwithstanding all former lawes made (upon experience of their arrogant, bold obtrusions to disseminate their principles amongst us) prohibiting their coming into this jurisdiction, they have not binn deterred from their impetuous attempts to undermine our peace and hasten our ruine.

For prevention whereof, this Court doth order & enact, that every person or persons of the cursed sect of the Quakers, who is not an inhabitant off but found within this jurisdiction, shall be apprehended, (without warrant,) where no magistrate is at hand, by any constable, commissioner, or selectman, and conveyed from constable to constable, untill they come before the next magistrate, who shall commit the said person or persons to close prison, there to remaine without baile untill the next Court of Asistants, where they shall have a legall triall by a speciall jury, & being convicted to be of the sect of the Quakers, shall be sentenced to bannishment upon paine of death.<sup>42</sup>

Not only were the Quakers banished, anyone who published and defended the “horrid opinions of the Quakers, by stirring up mutiny, sedition, or rebellion against the government, or by taking up their absurd & destructive practises” could be imprisoned. Had they continued beyond that, they, too, would be banished out of the colony. Several Quakers in the Massachusetts Bay would come to experience this new law.

A year later, on May 11, 1659, six Quakers, Lawrence Southwicke, his wife, Cassandra, Samuell Shattock, Nicholas Phelps, Joshua Buffam, and Josiah Southwicke were sentenced to “bannishment, to depart out of this jurisdiction by the eighth of June next, on paine of death; and if any of them, after the said eighth day of June next, shall be found within this jurisdiction, they shall be apprehended by any constable or other officer, there to lie till the next Court of Asistants, where they shall be tried, & being found guilty of the breach of this lawe, shall be put to death.”<sup>43</sup>

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<sup>42</sup> Shurtleff, *Records*, vol. 4, pt. 1, 1650–1660, 345–346.

<sup>43</sup> Shurtleff, *Records*, vol. 4, pt. 1, 1650–1660, 367.

William Brend suffered the same fate as the six previous Quakers, but three others, William Robinson, Marmaduke Stephenson, and Mary Dyer were sentenced to death.<sup>44</sup>

Robbinson, Stephenson, and Dyer were charged not just for Quakerism but for rebellion, sedition, and presumptuous obtruding. “The Governor, in open Court, declar’d the sentanc to William Robbinson, that was brought to the barr: William Robinson, yow shall goo from hence to the place from whence yow came, & from thence to the place of execution, & there hang till yow be dead. The like sentanc the Gouvernor, in open Court, pronounced against Marmaduke Steephenson & Mary Dier, being brought to the barre one after another, in the same'words.”<sup>45</sup> Mary Dyer stood “upon the gallowes” to witness the execution of Robbinson and Stephenson, but when her turn came, her sentence was reprieved after the Court received a petition by her son, William Dyer. It was ordered that “the said Mary Dyer shall have liberty for forty eight howers after this day to depart out of this jurisdiction.”<sup>46</sup> Even after being given the chance to leave the colony, Dyer, however, returned a year later, knowing full well that returning meant death.

Mary Dyer came before the Court on May 30, 1660, and after being asked “what she had to say why that sentence should not be executed, she gave no other answer, but that she denied [the Puritans’] lawe, came to beare Witnes against it, & could not choose but come & doe as formerly. The whole Court mett together voted, that the said Mary Dyer, for hir rebelliously returning into this jurisdiction, (notwithstanding the favor of this Court towards hir,) shall be [...]

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<sup>44</sup> Shurtleff, *Records*, vol. 4, pt. 1, 1650–1660, 371, and 383–384, respectively.

<sup>45</sup> Shurtleff, *Records*, vol. 4, pt. 1, 1650–1660, 383.

<sup>46</sup> Shurtleff, *Records*, vol. 4, pt. 1, 1650–1660, 384.

carried to the place of execution, and, according to the sentence of the Generall Court in October last, be put to death.”<sup>47</sup>

In May 22, 1661, another order against the Quakers was passed, stripping them naked, branding them with the letter R on the left shoulder, severely whipping them, and banishing them upon pain of death upon return, as previously stated in 1658.<sup>48</sup> Quakers Judah Broune & Peter Peirson were “taken out of prison, & stript from the girdle upwards by the executioner, & tied to the carts taile & whipt thro the toune with twenty stripes, & then carried to Roxbury, and then delivered to the connstable there, who is also to tie them, or cause them, in like manner, to be tied to a carts taile, & againe whip them thro the toune with tenn stripes, & then carried to Dedham, & delivered to the constable there, who is againe in like manner to cause them to be tjied to the carts tayle & whipt with tenn stripes thro the toune, & from thene they are imediately to depart this jurisdiction at their perrill.”<sup>49</sup>

While these punishments were meted out in the Massachusetts Bay, an English civil war was occurring at home. A discrepancy over the governance of England resulted in the execution of King Charles I in 1649, the disposition of King Charles II (r. 1649–1651) and the accession of Oliver Cromwell in 1653—Cromwell would not rule for more than a decade as death came for him in 1658. As the civil wars seemed to continue inevitably, in 1660, parliament summoned King Charles II (r. 1660–1685) to become king of England once more. The monarchy was restored, and in that moment of stability, King Charles II demanded significant reform of Massachusetts’ odd legal system to bring it in line with non-Puritan English norms, and this

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<sup>47</sup> Shurtleff, *Records*, vol. 4, pt. 1, 1650–1660, 419.

<sup>48</sup> Shurtleff, *Records*, vol. 4, pt. 2, 1661–1674, 3.

<sup>49</sup> Shurtleff, *Records*, vol. 4, pt. 2, 1661–1674, 20.

meant repealing the punishments given to Quakers. On November 27, 1661, an order suspending the laws about Quakers was sent to the colony.

Att this Court a letter from the kings majesty was read in Court, bearing date the ninth day of September last, in the thirteenth yeare of his majestys reigne, in & by with his majestys pleasure in relation to the people called Quakers was signified, etc.

The just & necessary rules of our government & condition for preservation of religion, order, & peace hath induced the authority here established from time to time to make & sharpen lawes against Quakers in reference to their restles intrusions & impetuous disturbance, & not any propensity or any inclination in us to punish them in person or estate, as is evident by our graduall proceeding with them, releasing some condemned & others liable to condemnation, & all imprisoned were released, & sent out of our borders; all which, notwithstanding their restless spiritts, have mooved some of them to returne, & others to fill the royall eares of our soveraigne lord the king with complaints against us, and have, by their wearied solicitations in our absence, so farr prevailed as to obtaine a letter from his majesty, to forbear their corporall punishment or death. Although wee hope, & doubt not, but that if his majesty were rightly informed, he would be farre from giving them such favour, or weakening his authority here so long & orderly settled, yet, that wee may not in the least offend his majesty, this Court doth heereby order & declare, that the execution of the lawes in force against Quakers, as such, so farr as they respect corporall punishment or death, be suspended untill this Court take further order.<sup>50</sup>

After the executions of Robinson, Stephenson, and Dyer, no other Quaker suffered the same fate; all corporal punishments and death sentences against the Quakers had been effectively halted.

The Puritans were exceptionally cruel to the Quakers because they were deemed as outsiders; they had no intentions of reincorporating such deviants into society as the crime of following radical ideas and practices were so heretical that both banishment and death were fitting punishments. Unlike the penalties given to other crimes committed by fellow Puritans, the focus against Quakers did not lay on disciplining the physical body to restore order. Instead, the

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<sup>50</sup> Shurtleff, *Records*, vol. 4, pt. 2, 1661–1674, 34.



punishments against Quakers were purposely retributive in order to stamp out Quakerism as a whole. Through banishment, there was no need of inflicting pain on the body in order to correct behavior because there was no behavior to correct in the first place—no form of Quakerism was acceptable in the eyes of the Puritans. If banishment was not enough, death, the quickest and most successful form of punishment, was the answer. In other words, The Puritans believed that Quakers were a lost cause.

With a basic understanding of the evolution of Massachusetts's laws, as well as a few examples of how cases played out, the ensuing sections will now turn to the colony's court cases organized by a discussion of the main types of crimes performed, followed by an analysis of the uses of bodily punishments characteristic of each type. The cases reveal the Puritans' intense focus on the body, in both the crimes performed and the punishments meted out.

## Summary of Data

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### *Defining Crime*

In this thesis, *crimes* are defined as acts of deviance which the social group, in this case the Puritans, considered dangerous, so much so that these acts are then met with one or more kinds of sanction or punishment. As Kai Erikson wrote in his classic historical sociology of Puritan New England, “deviance is not a property *inherent in* any particular kind of behavior; it is a property *conferred upon* that behavior by the people who come into direct or indirect contact with it.”<sup>51</sup> Thus it is the members of society who define which acts are deviant and “create the machinery of control in order to protect itself against the ‘harmful’ effects of deviation.”<sup>52</sup> In the trial of Nicholas Frost that opened this thesis, the acts of deviance involved theft, drunkenness, and fornication, and the punishments conferred upon him were a fine, whipping, and branding, respectively.

Furthermore, some cases included unclear descriptions of crimes or no description of the type of crime at all, but the clerk nevertheless recorded explicit penalties. These are defined as *obscure crimes*. For example, in September 1630, John Goulworth was “whipped and sett in the stocks,” but it was not clear what crime he performed, for the record states only that he was punished “for a felony committed by him.”<sup>53</sup> Similarly, there are cases in which obvious crimes were committed, but the descriptions of the punishments were obscure or never listed. These are defined as *obscure punishments*. For example, in June 1637, John Hathaway was accused of

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<sup>51</sup> Erikson, “On the Sociology of Deviance,” 6.

<sup>52</sup> Erikson, “On the Sociology of Deviance,” 8.

<sup>53</sup> Shurtleff, “The Colony’s Records: 1630–1641,” in *Records of the Governor and Company of the Massachusetts Bay in New England*, vol. 1, 1628–1641 (Boston: The Press of William White, 1853), 77.

“adultery with Margaret Seale, wife of Edward Seale.” Even though the Grand Jury found “the bill of indictment to be true,” no trial, verdict, nor punishment were recorded.<sup>54</sup> In Hathaway’s case, it was handled with an indictment and dealt by a Grand Jury. No trial apparently followed, and hence no punishment. Courts did not often desire to prosecute adultery cases if they could be handled informally. This specific case still appears in the total count of adultery cases, however, because there were other similar cases of adultery or adulterous behavior charged under a lesser crime in which clear punishments, such as whipping and banishment, were given to those convicted.<sup>55</sup>

### ***Data Figures***

Often, criminal cases were written with brevity, and therefore many lack the background information or context that is typical of today’s court records. What is available in lieu of extensive records are small fragments of day-to-day crimes. Even though these cases are scanty in text, some crimes occurred often enough (and were also met with similar kinds of punishment) that their collective analysis reveals how law and governance were intended to enforce the social norms of seventeenth century Massachusetts.

The following tables summarize the total amount of crimes and punishments as well as the most prominent types of crimes committed and punishments meted out. An analysis of the colony’s Court records from 1630 to 1675 revealed a total of 287 crimes and 323 associated punishments. The four most performed crimes can be broken down into four large categories: Drunkenness, Theft, Unruly Speech (cursing, swearing, lying), Malicious Speech (rebellion,

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<sup>54</sup> Shurtleff, “The Colony’s Records: 1630–1641,” 198.

<sup>55</sup> These obscure crimes and punishments make up a portion of the fifth categories in [Table 2](#) and [Table 3](#); they constitute the “Obscure” in “Obscure & Other Crimes” and “Obscure & Other Punishments,” respectively.

rumor mongering, and contempt for authority), and the rest of the crimes were combined together into Obscure & Other Crimes.

**Table 1: Total Crimes and Punishments**

Total Crimes	Total Punishments
286	323

**Table 2: Crimes**

Crimes Performed				
Drunkenness	Burglary/Theft	Unruly Speech	Malicious Speech	Obscure & Other Crimes <sup>56</sup>
64	30	25	21	146

**Table 3: Punishments**

Punishments Meted Out				
Fines	Whippings/ Severe Whippings	Settings in Bill-bowes/ Stocks	Banishments	Obscure & Other Punishments <sup>57</sup>
96	89	28	15	95

[Table 1](#) indicates that there is a greater number of total punishments than total crimes.

This is because the data accounts for some individual crimes that resulted in more than one type

<sup>56</sup> This is the sum total of a combination of all other crimes performed, but they amount to less than any of the previous categories as individual crimes. See [Appendix A](#) for the full list of crimes.

<sup>57</sup> This is the sum total of a combination of all other punishments given, but they amount to less than any of the previous categories as individual punishments. See [Appendix B](#) for the full list of punishments.

of punishment. Additionally, the amount of crimes and punishment in the data appear comically low in number, implying that there may be many factors working to channel cases into other forms of resolution and preventing their disposition in the court system. This meant that there were other ways to handle crime through entirely informal means (as they did with John Hathaway's case) or to place criminals in the hands of the church, rather than the state, thereby lessening the total number of cases that appeared in the official rolls. The issue of crimes being handled informally, whether routed into the family community or into congregational discipline, is part of the complicated and overlapping system of jurisdiction or dispute resolution mechanisms in the early modern system.

Included in [Table 2](#) are crimes that were performed, displayed in descending order, the greatest amount of times. While three of these categories, Drunkenness, Unruly Speech, and Malicious Speech, involve direct criminal misbehavior on the body (Drunkenness and on one's own; Unruly and Malicious Speech on another's), Burglary/Theft involves a bodily crime by analogy. For instance, drinking is a criminal misbehavior on one's own physique, as alcohol is consumed through the body. The state of drunkenness is a physical effect that occurs when alcohol interferes with both mental and biological processes.<sup>58</sup> Furthermore, the acts of cursing, swearing, and lying as well as the use of malicious speech against the government are connected to the body in that they are uttered through the mouth; in these cases, the mouth served as an agency of vocal opinion, with the former serving as a criminal misbehavior against the body of the government, and the latter as a criminal misbehavior against the body of one's own morality,

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<sup>58</sup> "Alcohol's Effects on the Body," National Institute on Alcohol Abuse and Alcoholism, accessed on February 26, 2020, <https://www.niaaa.nih.gov/alcohols-effects-body>.

which, in turn, also affects others around; both, however, were actions the courts deemed unacceptable.

As stated earlier, the fourth category, Burglary/Theft, involves a bodily crime by analogy.

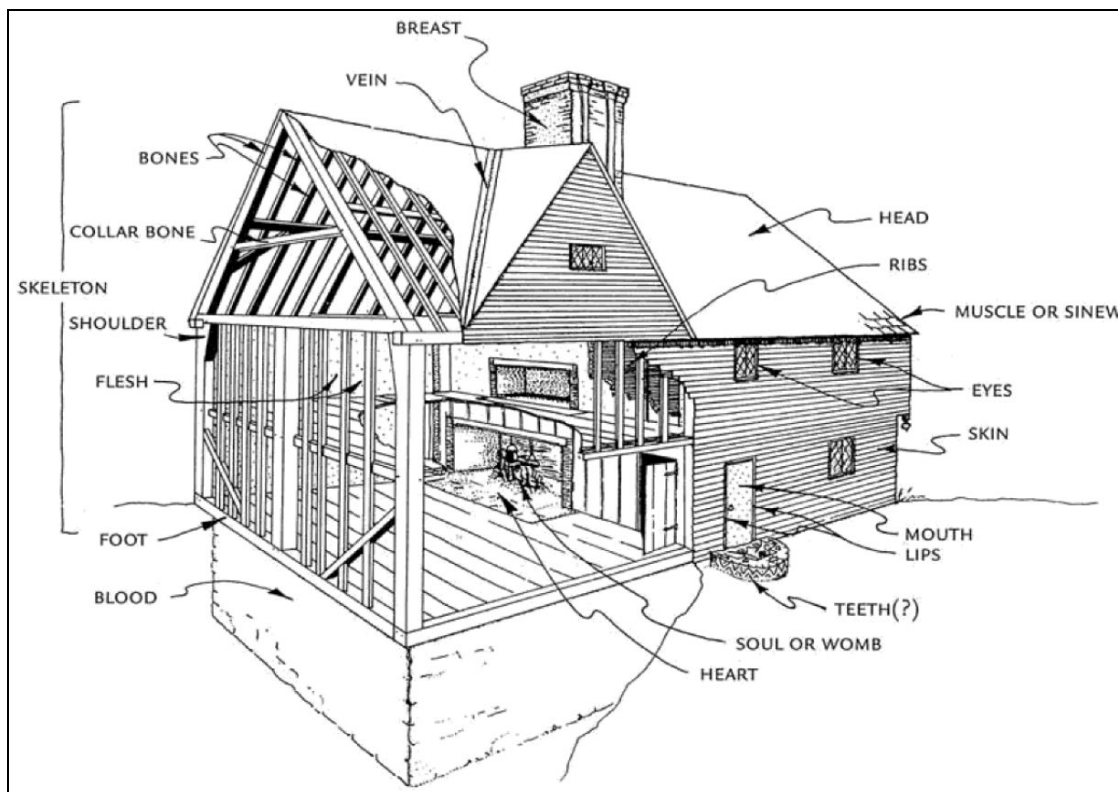
What also occurred throughout seventeenth-century New England were witchcraft trials and investigations. According to historian Robert Blair St. George, there exists a “metaphoric equivalency drawn between the dwelling house and the human body, between architecture and the extended range of meanings attached to the concept of embodiment.”<sup>59</sup> Witches attacked houses, destroying them through igniting fires or flying above roofs using sticks and stones, because “these structures of wood, brick, and stone were material metaphors of the human body; because of the extended meanings of the body, the house references malefic assaults against the family unit (the “little commonwealth,” or dynastic body), the church (Christ’s body), government (the political body), and community order (the social body).”<sup>60</sup> A majority of those convicted of witchcraft were women, condemned by New England culture as responsible for attacks on houses “precisely because they were the recognized spatial domain of women, individuals seeking ways to redress the patriarchal structure of law and property that contained their actions, that limited their lives.”<sup>61</sup>

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<sup>59</sup> Robert B. St. George, “Witchcraft, Bodily Affliction, and Domestic Space in Seventeenth-Century New England,” in *A Centre of Wonders: The Body in Early America*, eds. Janet M. Lindman and Michele L. Tarter (Ithaca and London: Cornell University Press, 2001), 14.

<sup>60</sup> St. George, “Witchcraft, Bodily Affliction, and Domestic Space in Seventeenth-Century New England,” 14–15.

<sup>61</sup> St. George, “Witchcraft, Bodily Affliction, and Domestic Space in Seventeenth-Century New England,” 15.



**Figure 1: St. George, Robert B. *The Human House and Its Parts in Seventeenth-Century New England*. Drawing.** An explicit visual associating parts of the home with parts of the body.

Women who strayed from their ‘normal’ or accepted roles in Puritan society became targets of witchcraft, spirit communication, and possession. Those targeted (widows, property owners, or women who exhibited gender non-conformist personalities) were usually ones who defied the social norms, and attacking the house demonstrated their rejection of the patriarchal order. By linking womens’ bodies with household items (and, hence, household duties), they became susceptible targets, as men were afraid of the potential power such women possessed.<sup>62</sup> Using this metaphor between the dwelling house and the human body, it is easier to discern how burglary and theft is a crime against the body.

<sup>62</sup> John P. Demos, “Chapter 4,” in *Entertaining Satan: Witchcraft and the Culture of Early New England* (New York: Oxford University Press 1982), 97-131.

Transitioning now to the bodily chastisements found in the court records, [Table 3](#) lists out the most common punishments meted out, also displayed in descending order. With the exception of fines, the other punishments, such as whippings/severe whippings, settings in bill-bowes (similar to pillories) or stocks, and banishments, directly affected the body. A certain punishment was not necessarily given to those who performed particular crimes. Some crimes were guaranteed a definite punishment—capital crimes, as mentioned earlier, unquestionably resulted in death. Others, however, were not as concrete. Some crimes, such as fornication, had more than one kind of penalty, including a marriage between the transgressors, a fine, or other corporal punishment.<sup>63</sup> Turning to Nicholas Frost’s case once more, he committed three different crimes, one of which was fornication, and received three different punishments: a fine, a whipping, and a branding. While fornication could have been what led to either a fine, whipping, or branding, drunkenness, which Frost also committed, was yet another crime that may have caused the same fine and corporal punishments. With that said, the punishments meted out in the court records varied greatly, as some transgressors performed multiple crimes and some crimes led to multiple punishments. While pinpointing certain punishments to crimes may not be simple, the court records reveal *which* of those punishments appeared the most often, and of those punishments that do appear, many target the physical body.

Covering every crime and every punishment found in the records lies beyond the scope of this thesis, which is why only the four most prominent crimes and punishments are analyzed. However, within the ‘Obscure & Other’ categories, included *Tables 2 & 3*, are crimes that

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<sup>63</sup> See “Fornication” under [Appendix C](#) for the full legal entry.



involved bodily misbehaviors and punishments that focused on disciplining the physical body.<sup>64</sup>

The Puritans' intense focus in the body is apparent in both the court records and the colony's legal codes. For example, they sought to rectify sexual (hence bodily) transgressions, such as filthy/unchaste behavior, adultery, fornication, and rape; and violent transgressions against the physical body, such as murder, abusive behavior, burning houses, manslaughter, and striking. Furthermore, the Puritans sought to punish these transgressions by targeting criminals' bodies; this included imprisonment, hard labor, the death penalty, forcing their tongues in a cleft stick, cutting off their ears, and branding them with a hot iron. The crimes they prosecuted were suited to their interpretation of—what was morally wrong in the eyes of God—the sacred scripture, and the punishments they meted out were meant to reform and reinporate convicted persons back into society.

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<sup>64</sup> In [Table 2](#) and [Table 3](#), the other crimes and punishments constitute the “Other” in “Obscure & Other Crimes” and “Obscure & Other Punishments,” respectively. See [Appendix A](#) and [Appendix B](#) for this full list of crimes and punishments.

## Analysis of Most Performed Crimes

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### *Drunkenness*

Drunkenness was the most common crime, tried in court sixty-four times between 1630–1675. Here the court seemed most concerned with the potential for social order and secondarily, with the crime as a fundamental abuse of one's own body. In other words, the court was worried that a drunkard, especially a habitual one, was inflicting violence to the body given to them by God.

According to the law, a drunkard was one who is “bereaved or disabled in the use of his understanding, appearing in his speech or gesture.” This abuse of one's own body is defiling God, subverting his will, and placing one's own disobedient will above his; hence, it is a crime to be a drunkard. Of course, it was a crime in England too, but Puritans emphasized, beyond normal English objections, their religious reasons behind their objection to drunkenness. In the sermon, *Wo to Drunkards*, Reverend Increase Mather claimed that in the eyes of God,

if there be any *excess* in the use thereof, that's *Drunkenness*; if there be an inordinate affection or love to strong drink, that's *Drunkenness* [...] when a man is so *overcome with wine*, as that he can neither speak nor act like a rational Creature, when reason is disturbed thereby, and Sense and Speech and Motion fail, when neither the Head nor Hand can do their offices aright. [...] We must know that a man may be deeply and damnably guilty of this evil in the sight of God. [...] *If we look into the Original and Causes of this sin, we shall see the evil of it*: And it hath no better an author then the Devil himself, who never was the author of any good since he was a Devil. Drink is in it self a good creature of God, and to be received with thankfulness, but the abuse of drink is from Satan; the wine is from God, but the Drunkard is from the Devil [...] Therefore he that committeth drunkenness (for that is sin) that is, if in his ordinary course he commit it) is of the Devil. [...] Hence even Heathens, that have had nothing but the light of nature to guide them, yet have spoken against this evil, yea and made severe Laws to punish it. *Solon* (who is accounted amongst the wisest of the *Grecian Princes*) made it a Law, that if a man in publick place should abuse himself with drink, his Crime should be deemed Capital. If he were Drunken but once, he was punished with death for that transgression: which I mention not to

justify the severity of that Law, but to shew how odious this detestable evil hath been, even to those that have had nothing but the Light of Nature and Reason to guide them.<sup>65</sup>

Drinking, per say, was not evil, but an excess of it was. Since the Puritans followed the scripture, they viewed drunkenness as a crime as it was a sin precipitated by the Devil. Furthermore, they argued that this sin could also guide drunkards into performing increasingly atrocious acts such as robbery, adultery, and even murder.<sup>66</sup> Even heathens, Mathers argued, considered drunkenness an evil and created a harsh law that resulted in the transgressor's death. The Puritans, however, desired reincorporation, so they did not sentence transgressors to death but arranged for a more gradual system of penalties that encouraged a drunkard to reform.

In most instances, the penalty was merely a fine, but there were occasions in which one was bound to good behavior. More serious or repeat offenders might have been set in bill-bowes/stocks (a public and visible punishment), or, in extreme cases, whipped or severely whipped. The colony leaders recognized that the sale of wines, beers, and other victuals in houses of common entertainment in each commonwealth were a necessity, but "because there [were] so many abuses of that lawfull libertie, both by persons entertaining and persons entertained, there [was] also a need of strict Laws and Rules to regulate such an employment."<sup>67</sup> For those 'entertaining,' these laws included the requirement of a license to sell wine, ale, beer, and other 'strong waters' (hard alcohol), and those licensed are not able to "suffer any to be drunken, or drink excessively." This means that licensed sellers could only sell "half a pinte [sic]

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<sup>65</sup> Increase Mathers, *Wo to drunkards: Two sermons testifying against the sin of drunkenness: wherein the wofulness of that evil, and the mistery of all that are addicted to it, is discovered from the word of God.* (Cambridge, Mass.: Printed by M. Johnson and sold by E. Ranger, 1673), 3–5.

<sup>66</sup> Mathers, *Wo to drunkards*, 5–6.

<sup>67</sup> *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts*, (Cambridge: Printed according to order of the General Court, 1648), 29.

of wine for one person at one time” and were not allowed to “continue tippling above the space of half an hour, or at unseasonable [sic] times, or after nine of the clock at night in, or about any of their houses.”<sup>68</sup>

For the first offence, the penalty was a fine of ten shillings, and failure to pay led to either imprisonment until the money was paid or to be set in the stocks “in some open [meaning public] place” for one or more hours.<sup>69</sup> For the second and third offences, the fines were doubled and tripled, respectively, however a drunkard in his third offence was also subject to punishment by whipping of ten strikes, and “he that offend[ed] in excessive or long drinking [was] put into the stocks for three hours.” For the fourth offence, the penalty was imprisonment until the drunkard was able to sufficiently guarantee his “good behavior.”

Robert Coles, a freeman who was both religiously orthodox and socially on the margins of orderly Puritan society, was one such habitual drunkard who committed at least four drinking offences and appeared in court in the span of three years.<sup>70</sup> There were other drunkards tried in court, but these were not as detailed nor included as many elements of the law as Coles’s case did. His first appearance was on August 16, 1631, along with Mr. Shepheard. Both Coles and Shepheard were fined for “abuseing themselves disorderly with drinkeing to much strong drinke abroad the Frendshipp, & att Mr Maveracke his howse at Winettsem [sic].” Apparently, Coles had not learned his lesson; he reappeared seven months later, on March 6, 1632, in which he was fined yet again for “being drunke at Charlton in October last, & [was] injoyed to confesse his fault to the Court [sic].” As in line with the law, Coles’s third and fourth appearances had more

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<sup>68</sup> *The Book of the General Lawes*, 30.

<sup>69</sup> There was an extra fine of three shillings four pence for excessive drinking, two shillings six pence for going above half an hour tippling, and five shillings for tippling at unreasonable times or after nine o’clock.

<sup>70</sup> For Robert Coles’s four appearances in court, see Shurtleff, *Records*, vol. 1, 1628–1641, 90, 93, 107, 112, and 118, respectively.

grievous consequences. On September 3, 1633, he was not only fined for “abuseing himselfe shamefully with drinke, intiseing John Shotwell’s wife to incontineney, & other misdemeanors” he was also “enjoynd to stand with a white sheete of paper on his back,” in which the word *drunkard* was “written in greate [i.e., either large or capital] lettres to stand therewith soe longe as the Court thinks meete [sic].” Then on March 4, 1634, Coles was “disfranchized, wear about his necke, & soe to hange upon his outward garment, a [letter] D, made of redd cloath, & sett upon white.” This punishment would not be brief nor take place behind closed doors for he was required “to continue this for a year, & not to leave it of att any time when hee comes amongst company; also, hee is to wear the D outwards, & is enjoynd to appeare att the nexte Genall Court, & to continue there till the Court be ended [sic].”

The law against drunkenness, as carried out in Robert Coles’s court trials, reveals that the Puritan leaders did not always resort to the body as the first avenue of punishment. As Coles’s case presents, he was simply fined on his first two offences. Bodily punishments, however, were an important mechanism for enforcing the law. The physical body was usually only brought in, either as a primary or secondary form of punishment, for severe cases that called for more serious sanctions. For cases in which capital crimes were committed or when people of lower statuses (e.g., women, servants, and slaves) performed crimes, bodily punishments often occurred right away. However, if minor crimes were committed, when people of a higher status performed crimes, or when repeat offenders, such as Robert Coles, had not learned their lesson through non-physical means, bodily punishments served as secondary alternatives.’

Although Puritans believed alcohol was a necessary form of entertainment, indeed deeming it a ‘lawful liberty,’ they only accepted it if taken in moderation. Excessive drink was

not only a sin but was also a disturbance, and the behaviors of repeat offenders only served as examples of its disruptive manifestations. Coles' trials reflected the notion that repetition of an undesired behavior in Puritan society led to repercussions with increasing severity, often using the physical body in order to publicly shame a deviant. For example, in his third offence, Coles merely had to stand for a couple of hours holding a simple sheet of paper with the word drunkard *written* on it, whereas in his fourth offence, he was forced to wear for an entire year a red-colored letter D *sewn* on a white-colored garment—the juxtaposition between the red and white cloths ensured public visibility.

Bodily punishments were often meant to be a temporary condition, a ritual which set a member apart and made obvious to the rest of society that he or she had made a mistake. The criminal is first “separated from the village, inducted, go through a change-of-status ceremony, and are then reincorporated into the village with new status” as a noncriminal and a regular member of society.<sup>71</sup> Whether the purpose was to temporarily shame an individual or leave a visible mark, such penalties were not meant to last forever nor meant to ostracize members of society, but instead provided in order to correct deviant behavior. It was pertinent for the punishments to be visible because they not only served as deterrents but as methods of placing social pressure on deviants. In a godly society such as Massachusetts Bay, belonging meant striving to be a better individual and accepting the advice and help of other comrades.

Thus, the punishments for repetitive drunkards may appear cruel at first glance, but the underlying purpose of the law was to ensure social order and, therefore, protect the body politic. On May 14, 1634, Robert Coles made his fifth appearance but, this time, in a redeeming manner.

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<sup>71</sup> Stephen Bigger, “Victor Turner, Liminality, and Cultural Performance,” review of *Victor Turner and Contemporary Cultural Performance*, by Graham St. John, *Journal of Beliefs and Values* 30, no. 2 (November 2009): 209, <https://doi.org/10.1080/13617670903175238>.

Just two months prior, he was sentenced to a year of public scrutiny, but seeing his “submission and [hearing] testimony given of his good behavior,” the court reversed their initial decision in the fourth trial.<sup>72</sup> This indicates that, perhaps, the social and public pressures placed upon Coles through visible means had been effective in altering his behavior. It also suggests that Puritan leaders placed an emphasis on rewarding acceptable and repentant behavior for they were willing to reverse ‘cruel’ bodily punishments.

The court’s attempts to reincorporate Coles into Puritan society would ultimately fail as he would depart the colony, following his excommunication, in the exodus to Providence, Rhode Island during the Antinomian Crisis of 1637. The Puritans argued that after his “excommunication, & falls, [his wife, Mary, charged with intemperance] did too much favor his ways, yet not as to incur any just blame, she lived an afflicted life, by reason of his unsetlednesse & removing fro place to place.”<sup>73</sup> Even though Coles was not reincorporated, the Puritans’ endeavors in doing so demonstrated their humane intentions in disciplining deviants.

### ***Burglary & Theft***

Burglary and theft, the second most common category of crime, were transgressions that also almost always instantaneously resulted in a bodily punishment. The law states that,

If any person shall commit Burglarie by breaking up any dwelling house, or shall rob any person in the field, or high wayes; such a person so offending shall for the first offence be branded on the forehead with the letter (B). If he shall offend in the same kinde the second time, he shall be branded as before and also be severally [sic] whipped: and if he shall fall into the like offence the third time he shall be put to death, as being incorrigible.

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<sup>72</sup> For Robert Coles’s fifth appearance in court, see Shurtleff, *Records*, vol. 1, 1628–1641, 118.

<sup>73</sup> Boston Registry Department, *Records Relating to the Early History of Boston* (Boston: Rockwell and Churchill, City Printers, 1884), 6.

And if any person shal commit such Burglarie, or rob in the fields or house on the Lords day besides the former punishments, he shal for the first offence have one of his ears cut off. And for the second offence in the same kinde he shal loose [sic] his other ear in the same maner [sic]. And if he fall into the same offence a third time he shal be put to death if it appear to the Court he did it presumptuously.

For the prevention of Pilfring [sic] and Theft, it is ordered by this Court and Authoritie thereof; that if any person shal be taken or known to rob any orchard or garden, that shall hurt, or steal away any grafts or fruit trees, fruits, linnen, woollen, or any other goods left out in orchards, gardens, backsides, or any other place in house or fields: or shall steal any wood or other goods from the water-side, from mens doors, or yards; he shall forfeit treble damage to the owners therof. And if they be children, or servants that shall trespasse heerin, if their parents or masters will not pay the penaltie [sic] before expressed, they shal be openly whipped ...

And where the offender hath nothing to satisfie [sic] such Magistrate may punish by stocks, or whipping as the cause shall deserve, not exceeding ten stripes. It is also ordered that all servants & workmen imbeazling [sic] the goods of their masters, or such as set them on work shal make restitution and be liable [sic] to all lawes & penalties as other men.<sup>74</sup>

Under this code, it appears that the body was a major target for those who committed burglary or theft; such punishments included branding various parts of the body with a hot iron, whipping, cutting off thieves' ears, and death. However, the law in practice did not emerge as harsh as it did in writing. In fact, the Puritans did not often resort to branding thieves with hot irons nor sentencing them to death. Nevertheless, they directed other sanctions towards the physical body. Of the thirty burglary and theft cases, depicted in [Table 2](#), twenty-five resulted in whippings or severe whippings, and two of the thieves who were whipped were also branded with a hot iron—one on the hand and the other on the head.<sup>75</sup> No whippings were administered in the remaining five cases, but three

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<sup>74</sup> *The Book of the General Lawes*, 4–5.

<sup>75</sup> See Shurtleff, *Records*, vol. 1, 1628–1641, 100, and 162, respectively.



involved public sanctions in which the thieves were either set in the bill-bowes, set in the stocks, or forced to wear the letter T, for thief, upon his garment.<sup>76</sup>

If those of a lower status performed the crimes, bodily punishments were often inflicted right away; not only were they more susceptible to committing burglary or theft, but they were also more likely to be tried in court for doing so. One such group were the indentured servants. English youths who sought to migrate to the colonies of the New World, but were “unable to borrow elsewhere the money necessary for the passage fare, borrowed against the future returns from his labor. The indenture was thus a promise to repay the loan, and the security on the loan was the servant himself. The length of the term depended on the amount of time necessary for repayment.”<sup>77</sup> While under the contract, servants were not allowed to marry, have children, nor own property. Thus they were more likely to steal practical objects meant for everyday use, such as victuals (food or provisions), a boat, a pair of shoes, etc., not luxurious items they coveted. For instance, the following servants were whipped: Bartholomewe Hill for “stealeing a loafe of breade, which he himselfe confeseth,” Benjamin Cribb, John Cable, and Morris Trowent for “stealeing 3 piggs,” Christopher Tarling for “stealeing victualls [sic] from his master & for running away,” John Cole for “stealeing a sheete and a pre [pair] of shoes,” William Shepheard for “stealeing victualls from his [master] & beanes from the Indians,” and Ebedmelecks for “stealing victualls and breaking open a window on the Lords day.”<sup>78</sup> These examples reveal that servants desired the most fundamental items, such as food or clothing, in which their masters (or people of higher status) often had plenty enough of. In other words, servants were caught

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<sup>76</sup> See Shurtleff, *Records*, vol. 1, 1628–1641, 144, 313, and 268, respectively.

<sup>77</sup> Christopher Tomlins, “Planting: ‘Directed and Conducted Thither,’” in *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010), 80.

<sup>78</sup> See Shurtleff, *Records*, vol. 1, 1628–1641, 82, 85, 112, 155, 172; and *Records*, vol. 4, pt. 1, 1650–1660, 137, respectively.

stealing items of necessity, not of greed, and they were frequently caught as they attempted to run away.

Some indentured servants lost further freedoms upon committing burglary or theft; they were subject to tighter scrutiny from their masters, and bodily punishments were used in order to incapacitate them, force them to serve longer terms, or turn them into slaves.<sup>79</sup> Clement Cole, Peter Pyford, Simon Bird, William Barker, William Downes, and George Wilby, a group of servants, were not only whipped but were forced to “serve their said maisters twice soe longe att the end of their time.”<sup>80</sup> Additionally, Roberte Scarlett, who had already been previously caught and whipped from running away, was sent to the courts yet again as “a knowen theife, whoe since his comeing hither hath comitted divers fellonies,” was sentenced to be “severely whipt & branded in the forehead with a T,” and after sent to his master to be “lieable to satisfie for such damages.”<sup>81</sup> For breaking into a house, Edward Woodley was “censured to be severely whiped 30 stripes, a yeares imprisonment,” and more importantly “kept to hard labor, with course dyot, & to wear a collar of iron.”<sup>82</sup> For both burglary and theft, John Haslewood and Gyles Player were “delivered up” as slaves “to whom the Court shall appoint”<sup>83</sup> and for running away and stealing, John Neale was “severely whiped, & comitted to his master to bee kept chained.” For stealing money and “diverse small things from his master,” Richard Wilson was put fourth to servise for [an extra] 3 or 4 yeares,” unless he could procure the money he stole, but he was also to “have a

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<sup>79</sup> This is not to be confused with African enslavement. Migrant labor, including indentured servitude and slavery (in its early sense), specified terms and conditions of service, but such conditions were temporary, and “it was African enslavement that would establish the cardinal measure of servility, designating a segment of the early American population a permanent underclass of workers.” For more information on migrant labor, see Christopher L. Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010).

<sup>80</sup> Shurtleff, *Records*, vol. 1, 1628–1641, 162.

<sup>81</sup> For Roberte Scarlett’s two appearances, see Shurtleff, *Records*, vol. 1, 1628–1641, 154, and 162.

<sup>82</sup> Shurtleff, *Records*, vol. 1, 1628–1641, 177.

<sup>83</sup> Shurtleff, *Records*, vol. 1, 1628–1641, 246.

T set upon his upmost garment; the servise is to bee with his master, if his master will have him, or else to bee put out [i.e., banished] by the countrey.”<sup>84</sup> Lastly, for burglary, Thomas Savory was “severely whiped,” and for theft he was “to bee sould for a slave until hee have made double restitution.”<sup>85</sup> These cases disclose that bodily punishments were often tied to the loss of freedom, especially for the lower echelons of Puritan society.

As mentioned earlier, robbing or stealing from a house or a person was a crime against the body. Because they were not allowed to own property, servants had no houses of their own. They lacked a body of security and protection, core elements of a home, and burglary and theft against their masters who possessed such bodies were their means of fulfilling that void. Of course, masters viewed this fulfillment as attacks on their own bodies, and since they procured power more easily than their servants, they were able to create the ‘machinery of control’—by using the law as a tool to quell such attacks—in order to protect themselves against the ‘harmful’ effects of deviation.<sup>86</sup>

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<sup>84</sup> Shurtleff, *Records*, vol. 1, 1628–1641, 268.

<sup>85</sup> Shurtleff, *Records*, vol. 1, 1628–1641, 297.

<sup>86</sup> Erikson, “On the Sociology of Deviance,” 6.

### *Unruly Speech*

Unruly speech involves those who curse, swear, and lie. Those who “shall swear rashly and vainly either by the holy Name of God, or any other oath, he shall forfeit to the common Treasurie for everie such severall offence ten shillings.” If a profane swearer was not able or utterly refused to pay the fine, “he shal be committed to the Stocks there to continue, not exceeding three hours, and not lesse then one hour.”<sup>87</sup> Additionally, Puritans were “professed Servants of the God of Truth,” therefore “all lying is contrary to truth, and some sorts of lies are not only sinfull (as all lies are) but also pernicious to the Publick-weal [public will], and injurious to particular persons.”<sup>88</sup> Liars were

[...] fined for the first offence of ten shillings, or if the partie be unable to pay the same them to be set in the stocks so long as the said Court or Magistrate shall appoint, in some open place, not exceeding two hours. For the second offence in that kinde wherof any shall be legally convicted the sum of twenty shillings, or be whipped upon the naked body not exceeding ten stripes. And for the third offence that way fourty shillings, or if the party be unable to pay, then to be whipped with more stripes, not exceeding fifteen. And if yet any shall offend in the like kind, and be legally convicted therof, such person, male or female, shall be fined ten shillings a time more then formerly: or if the partie so offending be unable to pay, then to be whipped with five, or six more stripes then formerly not exceeding fourty at any time.<sup>89</sup>

Unruly speech was not a severe crime punishable with death, so the most common forms of punishment for this crime were whippings and fines. Of the twenty-five cases of unruly speech, eight ended in whippings or severe whippings and six ended in fines.

In the law, lying is one of the only crimes that explicitly had a penalty of whipping “upon

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<sup>87</sup> *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts*, (Cambridge: Printed according to order of the General Court, 1648), 45.

<sup>88</sup> *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts*, (Cambridge: Printed according to order of the General Court, 1648), 35–36.

<sup>89</sup> *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts*, (Cambridge: Printed according to order of the General Court, 1648), 35–36.

the naked body.” In the court records, there was one such case in which this occurred. Sarah Roper, who stood before the court for theft, was fined one pound, nineteene shillings, and three pence and “whipt with tenn stripes [...] upon hir naked body in Boston.” However, she “hath also been convicted of many notorious lies,” and the court also adjudged her to be “whipt againe at Ipswich, upon hir naked body, as before, with tenn stripes, at the end of one moneth [month] from the time of hir first whipping, & stands committed till the sentence be performed.”<sup>90</sup> The court may have been unrelenting in Roper’s case because even though she was only charged for theft and lying, she was accused of burning the house of Major General Dennison. Though she was not found guilty of burning the general’s house, she was nevertheless seen to have attacked someone of a higher status. Additionally, because Roper was a woman, her naked body was precisely targeted because she was not within her place in the domestic sphere to commit such acts.

Furthermore, there was one other punishment, putting a tongue in a cleft stick, that was unique to unruly speech; there were four such cases. For swearing by the blood of God, Robert Shorthouse was to “have his tongue put into a cleft stick, & to stand so by the space of haulfe an houre.”<sup>91</sup> For swearing, raileing, and revileing, Elisabeth Applegate was “censured to stand with her tongue in a cleft stick.”<sup>92</sup> For cursing and swearing, Robert Bartlet was also “censured to have his tongue put in a cleft sticke.”<sup>93</sup> Lasly, for swearing, cursing, lying, theft, and unclean speach, Samuel Haukes was “censured to bee set an hour in the stocks, & have a clefte stick on his tongue.”<sup>94</sup> By using a cleft stick,

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<sup>90</sup> Shurtleff, *Records*, vol. 4, pt. 2 1661–1674, 156.

<sup>91</sup> Shurtleff, *Records*, vol. 1, 1630–1641, 177.

<sup>92</sup> Shurtleff, *Records*, vol. 1, 1630–1641, 177.

<sup>93</sup> Shurtleff, *Records*, vol. 1, 1630–1641, 233.

<sup>94</sup> Shurtleff, *Records*, vol. 1, 1630–1641, 313.

Puritans were able to direct the punishment to the very part of the body that allows one to speak. It effectively conveyed the message that authorities desired to prevent transgressors from uttering such speeches, and by condemning them to stand with the cleft stick for a certain amount of time (e.g., ‘haulfe an houre’), authorities were hoping to ingrain this message so that transgressors do not repeat their actions.

### ***Malicious Speech***

Similarly, some transgressors used malicious speech against the government. Though this was not a sin in the scripture, it was dangerous to hold these opinions for it threatened the stability of the colony. Like unruly speech, a majority of transgressors were also whipped and fined, but those that spoke negatively of the Massachusetts government or had contempt for its authority were also forced to observe the law, were disenfranchised, or banished. For uttering malicious and scandalous speeches against the government and church of Salem, Philip Rafliffe was “whipped, ha[d] his eares cutt of[f], fined, and banished out of the limits of th[e] jurisdiction.”<sup>95</sup> For falsely and maliciously writing to England against the government and execution of justice, Henry Lynn was “whipped and banished [out of] the plantac[i]on.”<sup>96</sup> For speaking reproachful and seditious words against the government and finding fault with the acts of the Court, “saying th[e] captious gount [government] will bring all to naught, adding that the best of them was but an attorney,” Thomas Dexter was set in the bill-bowes, disenfranchised, and fined.<sup>97</sup> Lastly, for several reproachful expressions uttered against their honored Governor, and “those which reflect deeply on the freemen of this jurisdiction,” the Court judge William

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<sup>95</sup> Shurtleff, *Records*, vol. 1, 1630–1641, 88.

<sup>96</sup> Shurtleff, *Records*, vol. 1, 1630–1641, 91.

<sup>97</sup> Shurtleff, *Records*, vol. 1, 1630–1641, 103.

Cotton's offence to be "heynous, & aggravated, and doe therefore order him to be disfranchised & disabled to beare any millitary office, & be whipt openly, not not exceeding tenn stripes."<sup>98</sup>

The authorities desired it best to disenfranchise or prevent from holding office those who spoke against the government; if one did not agree to the government, the Puritans believed they then should not have a say in it.

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<sup>98</sup> Shurtleff, *Records*, vol. 4, pt. 2, 1661–1674, 105.

## Conclusion

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Thus, seventeenth-century Massachusetts court records reveal that punishments for crimes focused on disciplining the body. By analyzing the most performed crimes, such as drunkenness, burglary & theft, unruly speech, and malicious speech, it becomes intelligible that the crimes themselves involved some form of bodily misbehavior, which the Puritans abhorred and desired to stamp out.

The Puritans arguably revised English law to bring it into closer alignment with their interpretation of the sacred scripture; they turned certain sins, such as the excess of alcohol and lying, into crimes, and they justified some of their punishments through the use of scripture. Although some of the punishments appear cruel, their primary purpose was to protect the body politic. The Puritans' intentions lay in reforming and reincorporating convicted persons back into society.



## A Note on Sources

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Transcribed by Nathaniel B. Shurtleff, M.D., in 1853, the *Records of the Governor and Company of the Massachusetts Bay in New England* includes court records from the General Court, Court of Assistants, and Quarterly Courts in the years from 1630 to 1686. Its five volumes also include the Colonial Charter, the company records from 1628 to 1630, and the Colony Records from 1630 to the reorganization of 1686.<sup>99</sup> There are a total of five volumes, but in this thesis, only Volumes I, II, IV (Parts I and II), and V are used.<sup>100</sup> The thesis focuses on the Colony prior to King Philip's War of 1675 to 1676, which many scholars cite as a major watershed in the composition, organization, and governance of the colonies. Therefore, this thesis concentrates on the years from 1630 to 1675. Volume III is omitted because it contains legislative records from the House of Deputies rather than judicial and administrative records from the General Court.<sup>101</sup> Furthermore, Volume IV Part I begins right where Volume II concludes, so the court records from Volume II and IV Part I are contiguous even with the omission of Volume III.

In forty-five years spanning the activities of the courts, there were three secretaries in charge of writing the records: Mr. Simon Bradstreet from 1630–1636, Mr. Increase Nowell from 1637–1650, and Mr. Edward Rawson from 1651–1675. Although they were inscribing the same types of documents, the idiosyncrasies of their writing styles are enough to suggest that any trends found in crime may not necessarily due to the fact that crime rates were increasing or decreasing, but because these secretaries simply wrote, or kept notes, differently. In other words,

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<sup>99</sup> See Nathaniel B. Shurtleff, *Records of the Governor and Company of the Massachusetts Bay in New England*, 5 vols., (Boston: The Press of William White, 1853). Volume IV, Part I begins right where Volume II concludes, so the court records from Volume II and IV, Part I are contiguous even with the omission of Volume III.

<sup>100</sup> See Shurtleff, *Records*, vol. 1, 1628–1641; *Ibid*, vol. 2, 1642–1649; *Ibid*, vol. 4, pt. 1, 1650–1660; *Ibid*, vol. 4, pt. 2 1661–1674; and *Ibid*, vol. 5, 1674–1686.

<sup>101</sup> See Shurtleff, *Records*, vol. 3, 1644–1657.

it seems as if there were more cases during Mr. Bradstreet's time, but there was no particular organization, and cases appeared more sporadically across the records. He was also more detailed in describing both punishment and crimes. For example, Mr. Bradstreet would write that someone was fined a certain, exact amount for "mispending their time in company keeping, drinking stronge water, & selling other, contrary to an order of Court," while the two other secretaries would simply write that someone was "fined for the penalty of drinking." Additionally, both Mr. Nowell and Mr. Rawson had written in a more organized, systematic manner; they recorded cases under certain sections such as 'petitions.' For these reasons, this thesis did not categorize crimes and punishment based on five, ten, or higher year increments, but, instead, viewed them holistically.

New England began the year in March as opposed to the modern January, and this is reflected in the way the secretaries wrote their dates. For consistency, this thesis reported on the cases exactly as they were listed in the original sources. Furthermore, spelling was not yet standardized in the seventeenth century. The letters 'j' & 'i', 'u' & 'v', and 'i' & 'y' were often interchanged (e.g., iurisdiction, seuerall, and fyned) and names were often shortened with colons (e.g., Jo: Winthrop). For simplicity and clarity, this thesis attempted to correct the interchanged letters (jurisdiction, several, and fined) and the shortened words (John Winthrop), but all other original spelling was maintained.

## Appendices

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### *Appendix A: Other Crimes*

<b>Total</b>	<b>146</b>
Obscure Crimes	36
Selling/Giving Alcohol	16
Filthy/Unchaste/Whoarish/Lewd Behavior	16
Adultery	12
Fornication	11
Quakerism	9
Misdemeanor	8
Murder	8
Running Away from Master	6
Abusive Behavior	6
Felony	4
Fire/Burning Houses	3
Manslaughter	2
Striking (Hitting) Someone	2
Incontinency	2
Rape	2
Idleness	2
Witchcraft	1

### *Appendix B: Other Punishments*

<b>Total</b>	<b>95</b>
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Obscure Punishments	30
Bound to Good Behavior	13
Imprisonment	11
Hard Labor (with use of iron collars, chains, ropes around necks)	7
Hanging or other Death Penalty	5
Disenfranchisement	5
Acquittal	5
Tongue in Cleft Stick	4
Ears Cut Off	3
Branded with Hot Iron	3
Letter on Paper	3
Letter on Clothing	3
Kept in Boults	1
Whipping Post	1
Seizure of Property/Possession/Goods	1

### ***Appendix C: Laws Pertaining to the Body***

#### **Bond-slavery**

It is ordered by this Court and authoritie therof, that there shall never be any bond-slavery, villenage or captivitie amongst us; unlesse it be lawfull captives, taken in just warrs, and such strangers as willingly sell themselves, or are solde to us: and such shall have the libertyes and christian usages which the law of God established in Israel concerning such persons doth morally require, provided, this exempts none from servitude who shall be judged thereto by Authorie.

#### **Capital Lawes**

##### ***[1] Idolatrie***

If any man after legal conviction shall HAVE OR WORSHIP any other God, but the LORD GOD: he shall be put to death. *Exod. 22. 20. Deut. 13. 6. & 10. Deut. 17. 2. 6.*

## 2 Witch-craft

If any man or woman be a WITCH, that is, hath or consulteth with a familiar spirit, they shall be put to death. *Exod. 22. 18. Levit. 20. 27. Deut. 18. 10. 11.*

## 3 Blasphemie

If any person within this Jurisdiction whether Christian or Pagan shall wittingly and willingly presume to BLASPHEME the holy Name of God, Father, Son or Holy-Ghost, with direct, expresse, presumptuous, or high-handed blasphemy, either by willfull or obstinate denying of the true God, or his Creation, or Government of the world: or shall curse God in like manner, or reproach the holy Religion of God as if it were but a politick device to keep ignorant men in awe; or shall utter any other kinde of Blasphemy of the like nature & degree they shall be put to death. *Levit. 24. 15. 16.*

## 4 Murther [Murder]

If any person shall commit any willfull MURTHUR, which is Man slaughter, committed upon premeditate malice, hatred, or crueltie not in a mans necessary and just defense, nor by meer casualty against his will, he shall be put to death. *Exod. 21. 12. 13. Numb. 35. 31.*

## 5 Anger or Cruelty

If any person slayeth another suddenly in his ANGER, or CRUELTY or passion, he shall be put to death. *Levit. 24. 17. Numb. 35. 20. 21.*

## 6 Poysoning

If any person shall slay another through guile, either by POYSONING, or other such devilish practice, he shall be put to death. *Exod. 21. 14.*

## 7 Bestialitie

If any man or woman shall LYE WITH ANY BEAST, or bruit creature, by carnall copulation; they shall surely be put to death: and the beast shall be slain, & buried, and not eaten. *Lev. 20. 15. 16.*

## 8 Sodomie

If any man LYETH WITH MAN-KINDE as he lieth with a woman, both of them have committed abomination, they both shall surely be put to death: unless the one party were forced (or be under fourteen years of age in which case he shall be severly punished). *Levit. 20. 13.*

## 9 Adulterie

If any person commit ADULTERIE with a married, or espoused wife; the Adulterer & Adulteresse shall surely be put to death. *Lev. 20. 19. & 18. 20. Deu. 22. 23. 27.*

## 10 Man-Stealing

If any man STEALETH A MAN, or Man-kinde, he shall surely be put to death. *Exodus 21. 16.*

## 11 False-Wittnes

If any man rise up by FALSE-WITNES wittingly, and of purpose to take away any mans life: he shall be put to death. *Deut. 19. 16. 18. 16.*

## 12 Conspiracie

If any man shall CONSPIRE, and attempt any Invasion, Insurrection, or publick Rebellion against our Common-Wealth: or shall indeavour to surprize any Town, or Townes, Fort, or Forts therein; or shall treacherously, & perfidiously attempt the Alteration and

Subversion of our frame of Politie, or Government fundamentally he shall be put to death.

*Numb. 16. 2. Sam. 3. 2. Sam. 18. 2. Sam. 20.*

### *13 Child curse or Smite Parets [Parents]*

If any child, or children, above sixteen years old, and of sufficient understanding, shall CURSE, or SMITE their natural FATHER, or MOTHER; he or they shall be put to death: unles it can be sufficiently testified that the Parents have been very unchristianly negligent in the education of such children; or so provoked them by extream, and cruel correction; that they have been forced therunto to preserve themselves from death or maiming. *Exod. 21. 17. Lev. 20. 9. Exod. 21. 15.*

### *14 Rebellious So[n]*

If a man have a stubborn or REBELLIOUS SON, of sufficient years & understanding (viz) sixteen years of age, which will not obey the voice of his Father, or the voice of his Mother, and that when they have chastened him will not harken unto them: then shal his Father & Mother being his natural parets [parents], lay hold on him, & bring him to the Magistrates assembled in Court & testifie unto them, that their Son is stubborn & rebellious & will not obey their voice and chastisement, but lives in sundry notorious crimes, such a son shal be put to death. *Deut. 21. 20. 21.*

### *15 Rape*

If any man shal RAVISH any maid or single woma[n], comitting carnal copulation with her by force, against her own will; that is above the age of ten years he shal be punished either with death, or with some other greivous punishment according to circumstances as the Judges, or General court shal determine. [1641]

## **Crueltie**

It is ordered by this Court and Authoritie therof; That no man shall exercise any tyranny or cruelty towards any bruit creatures which are usually kept for the use of man. [1641]

## **Death Untimely**

It is ordered by this Court and Authoritie therof; That whensoever any person shall come to any very sodain [sudden], untimely or unnatural death, some Assistant or the Constable of that town shall forthwith summon a Jurie of twelve discreet men to inquire of the cause and manner of their death, who shall present a true verdict thereof, to some neer Assistant, or to the next Court (to be holden for that Shire) upon their oath. [1641]

## **Fyre**

It is ordered by this Court and the Authoritie therof, that whosoever shall kindle any fyres in woods or grounds lying in common or inclosed, so as the same shall run into such corn grounds or inclosures; before the tenth of the first month or after the last of the second month, or on the last day of the week, or on the Lords day shall pay all damages and half so much for a Fine, or if not able to pay then to be corporally punished by *Warrant* from one Magistrate or the next County Court as the offence shall deserve, not exceeding twenty stripes for one offence. Provided that any man may kindle fyre in his own ground at any time, so as no damage come thereby either to the Country or any particular person. And whosoever shall

wittingly and willingly burn or destroy any frame, timber hewed, fawn or ryven, heaps of wood, charcoal, corn, hay, straw, hemp or flax he shall pay double damages.

### **Forgerie**

It is ordered by this Court and Authoritie therof, That if any person shall forge any Deed or conveyance, Testament, Bond, Bill, Releas[e], Acquittance, Letter of Attourney or any writing to pervert equitie and justice, he shall stand in the *Pillory* three severall Lecture dayes and render double damages to the partie wronged and also be dissabled to give any evidence or verdict to any Court or Magistrate. [1646]

### **Fornication**

It is ordered by this Court and Authoritie therof, That if any man shall commit Fornication with any single woman, they shall be punished either by enjoyning to marriage, or Fine, or corporall punishment, or all or any of these as the Judges in the courts of Assistants shall appoint most agreeable to the word of God. And this Order to continue till the Court take further order. [1642]

### **Heresie**

*ALTHOUGH no humane power be Lord over the Faith & Consciences of men, and therefore may not constrain them to believe or professe against their Consciences: yet because such as bring in damnable heresies, tending to the subversion of the Christian Faith, and destruction of the soules of men, ought duly to be restrained from such notorious impiety, it is therefore ordered and decreed by this Court;*

That if any Christian within this Jurisdiction shall go about to subvert and destroy the christian Faith and Religion, by broaching or mainteining any damnable heresie; as denying the immortalitie of the Soul, or the resurrection of the body, or any sin to be repented of in the Regenerate, or any evil done by the outward man to be accounted sin: or denying that Christ gave himself a Ransom of our sins, or shal affirm that wee are not justified by his Death and Righteousnes, but by the perfection of our own works; or shall deny the moralitie of the fourth commandment, or shall indeavour to seduce others to any the herisies aforementioned, everie such person continuing obstinate therein after due means of conviction shall be sentenced to Banishment. [1646]

### **Idlenes**

It is ordered by this Court and Authoritie therof, that no person, Housholder or other shall spend his time idly or unprofitably under pain of such punishment as the Court of Assistants or County Court shall think meet to inflict. And for this end it is ordered that the Constable of everie place shall use speciall care and diligence to take knowledge of offenders in this kinde, especially of common coasters, unprofitable fowlers and tobacco takers, and present the same unto the two next Assistants, who shall have power to hear and determin the cause, or transfer it to the next Court. [1633]

### **Manslaughter**

It is ordered by this Court and Authoritie therof; that if any person in the just, and necessarie defence of his life, or the life of any other, shall kill any person attempting to rob, or murther in the field, or high-way, or to break into any dwelling house if he conceive he cannot with safety of his own person otherwise take the Felon, or Assailant, or bring him to Tryall he shall be holden blameles. [1647]

#### ***Appendix D: Laws on Liquor and Drunkenness***

##### **Cask & Cooper**

It is ordered by this Court in authority thereof, that all cask used for any liquor, fish, or other comoditie to be put to sale shall be of London assize, and that fit persons shall be appointed from time to time in all places needfull, to gage all such vessels or cask & such as shal be found of due assize shal be marked with the Gagers mark, & no other who shal have for his paines four pence for every turn, & so proportionably. And every County court or any one Magistrate upon notice given them shall appoint such Gagers to view the said cast, & to see that they be right, & of sound & wel seasoned Timber, & that everie Cooper have a distinct brand-mark on his own cask, upon payn of forfeiture of twenty shilling in either case, & so proportio[n]ably for lesser vessels . [1642 1647].

##### **In-keepers, Tippling, Drunkenes**

*Forasmuch as there is a necessary use of houses of common entertainment in every Common-wealth, and of such as retail wine, beer and victuals; yet because there are so many abuses of that lawfull libertie, both by persons entertaining and persons entertained, there is also need of Strict Laws and rules to regulate such an employment: It is therefore ordered by this Court and Authoritie therof;*

That no person or persons shall at any time under any pretence or colour whatsoever undertake to be a common Victuailer, Keeper of a Cooks shop, or house for common entertainment, Taverner, or publick seller of wine, ale, beer or strong-water (by re-tale), nor shall any sell wine privatly in his house or out of doors by a lesse quantitie, or under a quarter cask: without approbation of the selected Townsmen and Licence of the Shire Court where they dwell: upon pain of forfeiture of five pounds for everie such offence, or imprisonment at pleasure of the Court, where satisfaction cannot be had.

And every person so licenced for common entertainment shall have some inoffensive Signe obvious for strangers direction, and such as have no such Signe after three months so licenced from time to time shall lose their license: and others allowed in their stead. And any licenced person that selleth beer shall not sell any above two-pence the ale-quart: upon penaltie of three shillings four pence for everie such offence. And it is permitted to any that will to sell beer out of doors at a pennie the ale-quart and under.

Neither shall any such licenced person aforesaid suffer any to be drunken, or drink excessively viz: above half a pinte of wine for one person at one time; or to continue tippling above the space of half an hour, or at unseasonable [unreasonable] times, or after nine of the clock at night in, or about any of their houses on penaltie of five shillings for everie such offence.



### *Appendix E: Laws on Stealing*

#### **Burglarie & Theft**

Forasmuch as many persons of late years have been, and are apt to be injurious to the goods and lives of others, notwithstanding all care and meanes to prevent and punish the same;

[1] It is therefore ordered by this Court and Authoritie therof that if any person shall commit Burglarie by breaking up any dwelling house, or shall rob any person in the field, or high wayes; such a person so offending shall for the first offence be branded on the forehead with the letter (B). If he shall offend in the same kinde the second time, he shall be branded as before and also be severally [severely] whipped: and if he shall fall into the like offence the third time he shall be put to death, as being incorrigible. And if any person shall commit such Burglarie, or rob in the fields of house on the Lords day besides the former punishments, he shall for the first offence have one of his ears cut off. And for the second offence in the same kinde he shall lose his other ear in the same manner. And if he fall into the same offence a third time he shall be put to death if it appear to the Court he did it presumptuously. [1642 1647]

2 For the prevention of Pilfring and Theft, if is ordered by this Court and Authoritie therof; that if any person shall be taken or known to rob any orchard or garden, that shall hurt, or steal away any grafts or fruit trees, fruits, linnen, woollen, or any other goods left out in orchards, gardens, backsides, or any other place in house or fields: or shall steal any wood or other goods from the water-side, from mens doors, or yards; he shall forfeit treble damages to the owners therof. And if they be children, or servants that shall trespassed herein, if their parents or masters will not pay the penaltie before expressed, they shall be openly whipped. And forasmuch as many times it so falls out that small thefts and other offences of a criminall nature, are committed both by English & Indian, in townes remote from any prison, or other fit place to which such malefactors may be committed till the next Court, it is therefore hereby ordered; that any Magistrate upon complaint made to him may hear, and upon due proof determine any such small offences of the aforesayd nature, according to the laws hereby established, and give warrant to the Constable of that town where the offender lives to levie the same: provided the damage or fine exceed not forty shillings: provided also it shall be lawfull for either party to appeal to the next Court to be holden in that Jurisdiction, giving sufficient caution to prosecute the same to effect at the said Court. And every Magistrate shall make return yearly to the Court of that Jurisdiction wherein he liveth of what cases he hath so ended. And also the Constables of all such fines as they have received. And where the offender hath nothing to satisfy such Magistrate may punish by stocks, or whipping as the cause shall deserve, not exceeding ten stripes. It is also ordered that all servants & workmen imbeazling the goods of their masters, or such as let them on work shall make restitution and be liable to all laws & penalties as other men. [1646]

#### **Trespassed**

It is ordered, decreed and by this Court declared; that in all trespasses, or damages done to any man or men, if it can be proved to be done by the meer default of him or them to whom the

trespasse is done, it shall be judged no trespasse, nor any damage given for it. [1641]

## ***Appendix F: Laws on Speech***

### **Lying**

*Wheras truth in words as well as in actions is required of all men, especially of Christians who are the professed Servants of the God of Truth; and wheras all lying is contrary to truth, and some sorts of lyes are not only sinfull (as all lyes are) but also pernicious to the Publick-weal [public will], and injurious to particular persons; it is therefore ordered by this Court and Authoritie therof,*

That everie person of the age of discretion [which is accounted fourteen years] who shall wittingly and willingly make, or publish any Lye which may be pernicious to the publick weal [will], or tending to the damage or injurie of any particular person, or with intent to deceive and abuse the people with false news or reports: and the same duly proved in any Court or before any one Magistrate (who hath heerby power graunted to hear, and determin all offences against this Law) such person shall be fined for the first offence of ten shillings, or if the partie be unable to pay the same them to be set in the stocks so long as the said Court or Magistrate shall appoint, in some open place, not exceeding two hours. For the second offence in that kinde wherof any shall be legally convicted the sum of twenty shillings, or be whipped upon the naked body not exceeding ten stripes. And for the third offence that way fourty shillings, or if the party be unable to pay, then to be whipped with more stripes, not exceeding fifteen. And if yet any shall offend in the like kind, and be legally convicted therof, such person, male or female, shall be fined ten shillings a time more then formerly: or if the partie so offending be unable to pay, then to be whipped with five, or six more stripes then formerly not exceeding fourty at any time.

The aforesaid fines shall be levied, or stripes inflicted either by the Marshal of that Jurisdiction, or Constable of the Town where the offence is committed according as the Court or Magistrate shall direct. And such fines so levied shall be paid to the Treasurie of that Shire where the Cause is tried.

And if any person shall finde himselfe greived with the sentence of any such Magistrate out of Court, he may appeal to the next Court of the same Shire, giving sufficient securitie to prosecute his appeal and abide the Order of the Court. And if the said Court shall judge his appeal causlesse, he shall be double fined and pay the charges of the Court during his Action, or corrected by whipping as aforesaid not exceeding fourtie stripes: and pay the costs of Court and partie complaining or informing, and of Wittnesses in the Case.

And for all such as being under age of discretion that shall offend in lying contrary to this Order their Parents or Masters shall give them due correction, and that in the presence of some Officer if any Magistrate shall so appoint. Provided also that no person shall be barred of his just Action of Slaunder, or otherwise by any proceeding upon this Order. [1645]

### **Profane Swearing**

It is ordered, and by this Court decreed, that if any person within this Jurisdiction shall swear rashly and vainly either by the holy Name of God, or any other oath, he shall forfeit to the

common Treasurie for everie such severall offence ten shillings. And it shall be in the power of an Magistrate by Warrant to the Constable to call such person before him, and upon sufficient proof to passe sentence, and levie the said penaltie according to the usuall order of Justice. And if such person be not able, or shall utterly refuse to pay the aforesaid Fine, he shall be committed to the Stocks there to continue, not exceeding three hours, and not lesse then one hour. [1646]

### **Secrecie [Secrecy]**

It is ordered, decreed, and by this Court declared; that no Magistrate, Juror, Officer or other man shall be bound to inform, present or reveal any private crime or offence wherein there is no perill or danger to this Colonie, or any member therof, when any necessary tye of conscience, grounded on the word of God bindes him to secrecie; unles it be in case of testimonie lawfully required. [1641]

## ***Appendix G: Laws on Punishments***

### **Arrests**

It is ordered and decreed by this Court & Authoritie therof, That no mans person shall be arrested or imprisoned for any debt or fine if the law can finde any competent meanes of satisfaction otherwise from his estate. And if not his person may be arrested and imprisoned, where he shall be kept at his own charge, not the Plaintiffs, till satisfaction be made; unless the Court that had cognisance of the cause or some superior Court shall otherwise determine: provided neverthesse that no mans person shall be kept in prison for debt but when there appears some estate which he will not produce, to which end any Court or Commissioners authorized by the General Court may administer an oath to the partie or any others suspected to be privie in concealing his estate, but shall satisfie by service if the Creditor require it but shall not be solde to any but of the English nation. [1641: 1647]

### **Condemned**

It is ordered by this Court that no man condemned to dye shall be put to death within four days next after his condemnation, unles the Court see speciall cause to the contrary, or in case of martial law: nor shall the body of any man so put to death be unburied twelve hours unles it be in case of anatomy. [1641]

### **Criminal Causes**

It is ordered by this court & Authoritie therof, That everie man that is to answer for any criminal cause, whether he be in prison or under *Bayle* his cause shall be heard and determined at the next Court that hath proper cognisance therof and may be done without prejudice of justice. [1641]

### **Fines**

*Whereas divers persons indebted to the Countrie for publick Rates, & others for Fines who for avoiding payment sometime sell their houses and lands, and send away their goods to other*

*Plantations, it is therefore ordered by the authoritie of this Court,*

That the Treasurer shall graunt *Warrant* to the Marshall to attach the bodyes of such persons, & keep them til they make satisfaction; and all such persons are to pay any fines if they have not lands or goods to be distreined shall have their bodyes attached to make satisfaction.

Provided that any Court of Assistants or County Court may discharge any such person from imprisonment if they shall finde thme indeed unable to make satisfaction. [1638]

### **Imprisonment**

It is ordered, and by this Court declared; that no mans person shall be restrained or imprisoned by any authoritie whatsoever before the Law hath sentenced him therto: if he can put in sufficient securitie, *Bayle or Mainprize* for his appearance, and good behaviour in the mean time: unles it be in crimes Capital, and contempt in open Court, and in such cases where some expresse Act of Court doth allow it. [1641]

### **Inditements [Indictments]**

If any person shall be indicted of any capital crime (who is not then in *durance*) & shall refuse to render his person to some Magistrate within one month after three Proclamations publickly made in the town where he usually abides, there being a month betwixt Proclamation and Proclamation, his lands and goods shall be seized to the use of the common Treasurie, till he make his lawfull appearance. And such withdrawing of himselfe shall stand in stead of one wittnes to prove his crime, unles he can make it appear to the Court that he was necessarily hindred. [1646]

### **Juries, Jurors**

[1] It is ordered by this Court and Authoritie therof, that the Constable of everie town upon Proces from the Recorder of each Court, shall give timely notice to the Freemen of their town, to choos so many able discreet men as the Proces shal direct which men so chosen he shall warn to attend the Court whereto they are appointed, and shall make return of the Process unto the Recorder aforesaid: which men so chosen shall be impannelled and sworn truly to try betwixt partie and partie, who shall finde the matter of fact with the damages and costs according to their evidence, and the Judges shall declare the Sentence (or direct the Jurie to finde) according to the law. And if there be any matter of apparent equitie as upon the forfeiture of an Obligation, breach of covenant without damage, or the like, the Bench shall determin such matter of equitie.

2 Nor shall any tryall passe upon any for life or bannishment but by a special Jurie so summoned for that purpose, or by the General Court.

3 It is also ordered by the Authoritie aforesaid that there shall be Grand-Juries summoned everie year unto the several Courts, in each Jurisdiction; to inform the Court of any misdemeanours that they shall know or hear to be committed by any person or persons whatsoever within this Jurisdiction. And to doe any other service of the Common-wealth that according to law they shall be enjoyned to by the said Court; and in all cases wherin evidence is so obscure or defective that the Jurie cannot clearly and safely give a positive verdict, whether it be Grand, or Petty Jurie, it shall have libertie to give a *Non liquet* or a special verdict, in which last, that is, a special verdict the judgement of the Cause shall be left unto the

Bench. And all Jurors shall have libertie in matters of fact if they cannot finde the main issue yet to finde and present in their verdict so much as they can.

4 And if the Bench and Jurors shall so differ at any time about their verdict that either of them cannot proceed with peace of conscience, the Case shall be referred to the General Court who shall take the question from both and determin it.

5 And it is further ordered that whensoever any Jurie of tryalls, or Jurors are not clear in their judgements or consciences, concerning any Case wherein they are to give their verdict, they shall have libertie, in open Court to advise with any man they shall think fit to resolve or direct them, before they give in their verdict. And no Freeman shall be compelled to serve upon Juries above one ordinary Court in a year: except Grand-jurie men, who shall hold two Courts together at the leaft, and such others as shall be summoned to serve in case of life and death or bannishment. [1634] [1641 1642]

### **Punishment**

It is ordered, decreed, and by this Court declared; that no man shall be twice sentenced by civil Justice for one and the same Crime, Offence or Trespasse, and for bodily punishments, wee allow amongst us none that are in-humane, barbarous or cruel. [1641]

### **Torture**

It is ordered, decreed, and by this Court declared; that no man shall be forced by torture to confesse any crime against himselfe or any other, unles it be in some Capital case, where he is first fully convicted by clear and sufficient evidence to be guilty. After which, if the Case be of that nature that it is very apparent there be other Conspirators or Confederates with him; then he may be tortured, yet not with such tortures as be barbarous and inhumane.

2 And that no man shal be beaten with above fourty stripes for one Fact at one time. Nor shall any man be punished with whipping, except he have not otherwise to answer in the Law, unles his crime be very shamefull, and his course of life vitious and *profligate*. [1641]

### **Tryalls**

*Whereas this Court is often taken up in hearing and deciding particular Cases, between partie and partie, which more properly belong to other inferiour Courts, it is therfore ordered, and heerby declared,*

[1] That henceforth all Causes between partie and partie shall first be tryed in some inferior Court. And that if the partie against whom the Judgment shall passe shall have any new evidence, or other new matter to plead, he may desire a new Tryall in the same Court upon a *Bill of Review*. And if justice shall not be done him upon that Tryall he may then come to this Court for releif. [1642]

2 It is ordered, and by this Court declared, that in all Actions of Law it shall be the libertie of the Plaintiffe and Defendant by mutuall consent to choos whether they will be tryed by the Bench or a Jurie, unles it be where the Law upon just reason hath otherwise determined. The like libertie shall be graunted to all persons in any criminal Cases.

3 Also it shall be in the libertie both of Plaintiffe and Defendant, & likewise everie delinquent to be judged by a Jurie, to challenge any of the Jurors, & if the challenge be found just and reasonable, by the Bench or the rest of the Jurie as the Challenger shall choos, it shall

be allowed him, & *tales de circumstantibus* impannelled in their room.

4 Also, children, Ideots, distracted persons and all that are strangers or new comers to our Plantation shall have such allowances, and dispensations in any Case, whether criminal or others, as Religion and reason require. [1641]

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