Notorious Crimes & High Misdemeanors
New England Women in Court 1620-1690

BY

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To Elizabeth Warren for igniting the spark,

and to Mary Oliver for keeping it alive.

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Abbreviations

Full citations can be found in the bibliography

Blue Laws: *The Blue Laws of New Haven Colony, Usually Called Blue Laws of Connecticut; Quaker Laws of Plymouth and Massachusetts*

Body Of Liberties 1641: *The Book of the General Lawes and Libertyes Concerning the Inhabitants of Massachusetts 1641*

Body of Liberties 1648: *The Book of the General Lawes and Libertyes Concerning the Inhabitants of Massachusetts 1648*

Connecticut: *The Public Records of the Colony of Connecticut Prior to the Union with New Haven*

Essex I: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 1: 1636-1656*

Essex II: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 2: 1656-1662*

Essex III: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 3: 1662-1667*

Essex IV: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 4: 1667-1671*

Essex V: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 5: 1672-1674*

Essex VI: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 6: 1675-1678*

Essex VII: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 7: 1656-1678*

Essex VIII: *Records and Files of the Quarterly Courts of Essex County, Massachusetts: Volume 8: 1680-1683*

Mass Bay I: *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692 Volume 1*

Mass Bay IV: *Records of the Court of Assistants of the Colony of the Massachusetts Bay, 1630-1692 Volume 4*

New Haven I: *Ancient Town Records: New Haven Town Records: Volume 1: 1649-1662.* New Haven: New Haven Colony Historical Society, 1917.

New Haven II: *Ancient Town Records: New Haven Town Records: Volume 2: 1662-1684.* New Haven: New Haven Colony Historical Society, 1919

Plymouth I: *Records of Plymouth Colony: Court Orders: Volume 1:1633-40*

Plymouth II: *Records of Plymouth Colony: Court Orders: Volume 2: 1641-51*

Plymouth III: *Records of Plymouth Colony: Court Orders: Volume 3: 1651-61*

Plymouth IV: *Records of Plymouth Colony: Court Orders: Volume 4: 1661-68*

Plymouth V: *Records of Plymouth Colony: Court Orders: Volume 5: 1668-78*

Plymouth VI: *Records of Plymouth Colony: Court Orders: Volume 6: 1678-91*

Plymouth Town: *Records of the Town of Plymouth: Volume 1: 1636 to 1705*

Providence: *Records of the Colony of Rhode Island and Providence Plantations, in New England.*

Suffolk: *Records of the Suffolk County Court 1671-1680*

Timeline

1620: Founding of Plymouth Colony

1629: Massachusetts Bay Colony receives its charter

1636: Founding of Connecticut Colony

Founding of Rhode Island Colony; royal charter granted 1644

1637: Founding of New Haven Colony

1642-1649: English Civil War

1649: Execution of Charles I

1649-1653: England governed under the Commonwealth Government

1653-1659: Oliver Cromwell serves as Lord Protector of England

1660: Charles II takes the throne in the Restoration

1664: New Haven is absorbed into Connecticut Colony

1675-1676: King Philip's War

1686-1689: The Dominion of New England comes under royal governance

Introduction

Mary Oliver first appeared in the court records of Massachusetts Bay Colony in 1638 and spent at least the next thirty-one years as a thorn in the side of local magistrates. In April of that year, the Essex County Court Records ordered that Mary and her husband Thomas be bound twenty pounds to appear at the next meeting of the Court of Assistants in Boston. Mary had stirred up trouble with her "speeches at the arrival of some newcomers,"[1] though records do not reveal what she said. Whatever it was, it must have represented a significant affront to her community, because in July, the Essex County Court decided to send Mary to Boston to be imprisoned. In October, the Massachusetts Bay Court of Assistants redefined Mary's offense as "Disturbing the Church of Salem," suggesting her speeches were not only offensive to her neighbors and the new arrivals, but to the Puritan ideals governing Salem as well. The Boston court decided to continue Mary's imprisonment until she could provide bond for her future good behavior.[2]

Upon her release, it appears that Mary more or less kept up her end of the bargain, as she stayed out of the court records, with one concerning exception. In 1641 she was charged with condemning the ordinance of God, making a religious claim that was not in line with the colony's official beliefs. Mary received an admonishment for this outburst, so her words or actions must have been relatively mild when compared to her initial offense.[3]

For the next seven years, the records go dark on Mary Oliver, but when she did reemerge, it would be with what magistrates would have viewed as an almost passionate dedication to breaking the colony's laws. Between 1648 and 1649, Mary appeared in the

[1] Essex I, 8.
[2] Mass Bay I, *1*80.
[3] Essex I, 34.

Essex County Court Records eleven times, nine as the defendant and twice as the complainant. On January 2, 1648, Mary was charged with working on a Sunday, spouting a number of mutinous speeches, and abusing a town official. The courts sentenced her to sit in the stocks for an hour as a public punishment for her transgressions. In the fall, Mary was called into court for not living with her husband, a charge she faced again in December 1648 and May 1649. In this last instance, Mary was ordered to go to Thomas in England on the next available ship. Thomas may have been some kind of a mariner by trade, or perhaps he was away fighting in the English Civil War.[4] However, a few months later, Mary still had not left Essex County and was accused of stealing goats from a neighbor. Apparently she was found responsible for this act, as a month later she was in court once more for speaking against the governor in her anger about having to pay for the livestock. On the same day, the court also heard two cases involving Mary, two of her neighbors, and disputes over gardening tools.[5] Her name appeared twice in the final court session of 1649, and though no description of an offense is provided, the December entries disclose that a previous whipping would be respited so long as she left the jurisdiction on the next ship, and a fine would be remitted to allow Mary to use the money for travel expenses for herself and her children.[6]

Whether or not Mary actually went to England to be with Thomas, in August 1667, the Olivers were back in court in Essex County. Thomas "gave satisfactory answer" to the court for living apart from Mary. It would seem their reunion was not an entirely peaceful one, as two years later the pair was once more in court for fighting with one another.[7] After

[4] Daniel Vickers discusses Essex's fishing industry in *Farmers and Fishermen*. Many of the sailors who came through Essex remained transient, though some came to settle in the county. Sailors had erratic business seasons that kept them away from home for long stretches of time (123-124).
[5] Essex I, 182
[6] Essex I, 185-186.
[7] Essex III, 451; Essex IV, 90.

this point, the trail on Mary Oliver goes cold. A Thomas Oliver who was married to another troublesome woman named Bridget, who would later be convicted of witchcraft during the Salem epidemic, appears in the court records in 1677, but whether he was Mary's husband, her son, or someone entirely different is unclear.[8]

At some point after 1646, John Winthrop, the off and on governor of Massachusetts Bay, described Mary Oliver in his journal as possessing "a masculine spirit" and expressed his belief that she could have done more damage than the heretic Anne Hutchinson had she been richer and better regarded by her community. His writings, recorded at least five years after Mary's first case, reveal that Mary expressed that anyone who believed in Jesus should be able to receive communion regardless of how that belief was manifested, and that Paul would consider everyone in Salem to be a saint. Mary also thought that excommunication was no more powerful than a community turning its back on a nonconforming member.

These ideas clashed with the established Puritan beliefs Massachusetts Bay was built upon. While on board the *Arbella*, the lead ship bringing Massachusetts Bay settlers to their new home in 1630, John Winthrop gave a sermon entitled "A Model of Christian Charity." In it, he impressed upon the colonists the need for their community to be a "City upon a hill," meaning that they must serve as an example of the ideal Christian community for the rest of the world to look up to and follow.[9] In order to fulfill this vision, all members of society needed to assiduously follow the orthodox doctrine and adhere to their proper place in the social hierarchy.

Of all Mary's criminal offenses and social transgressions, Winthrop felt the most threatened by her religious unorthodoxy. It seems her community shared Winthrop's

[8] Essex VI, 386
[9] John Winthrop, "A Modell of Christian Charity"

concerns, as Mary received the harshest punishments for her offenses against Massachusetts Bay's orthodox Congregationalism. Religion was the center of life in early New England colonies in so many ways. Each colony had its own relationship with religion, and those relationships shaped legal codes, defined the bounds of acceptable behavior, and structured interactions across all levels of social hierarchies. In each colony, everyone had a specific role to play in their religious community, and those roles were different and distinct for men and women. It was a threat to the credibility and stability of the community for anyone to step out of line, but transgressive women posed a particular problem. In the social hierarchy, women were placed below men. For a woman to rebel by failing to fall in line, it potentially undermined virtually all other social relationships. Oliver, for instance, challenged the religious precepts of her community, challenged the traditional household structure by living away from her husband, and spoke out against colony leaders, three offensive that made her dangerous in the eyes of magistrates. Though many laws implemented in the colonies originated in those they had known in England, New England legal codes especially reflected the region's religious foundations. Breaking a law was a social offense, and it was often a religious offense as well. In early New England, the two were often inseparable.

In this analysis, I argue that the experiences of women in court in seventeenth-century New England were shaped not only by the circumstances of their crimes and established legal and cultural attitudes towards women, but also by the attempts of colony leaders to maintain the hierarchical structure of their communities, especially in times of religious, political, and social crisis. This thesis covers the first seventy years of the English colonies in New England, from 1620 through 1690. The Pilgrims arrived at Plymouth in 1620, marking the start of permanent colonization in the region. I selected 1690 as a stopping point for a

number of reasons. 1690 saw the start of changes to colonial social and governmental structures. It was the year Plymouth Colony merged with Massachusetts Bay and both came under royal governance, meaning colonists had considerably less control over their judicial and legal systems. New England colonies began handing over control in the previous decade, but in the 1690s, these changes became permanent. Up until this point, colonies had made their own legal systems. Those systems were based in part on existing English laws and practices, but colony leaders shaped their legal codes to reflect their values. With the start of the eighteenth century, colonies in New England, as occurred Elsewhere in British colonial North America, began to formalize their legal systems and procedures. As colonial courts began to more closely mimic those in England, professional lawyers became a mainstay in the courtroom, and records became filled with legal jargon and shorthand.[10] Records of the seventeenth century were detailed and included supplemental information about cases that were not directly tied to what happened while the court was in session, but this practice would fall away around the start of the 1700s. Accordingly, in order to have the greatest understanding of the cases studied, I determined it was best to limit the scope to before 1690.

1690 was also two years before the explosion of witchcraft accusations in Salem. Though the witch trials are an interesting and important event in colonial history in general and in colonial women's history, particularly in how those of their sex were treated in the court records, the trials were an usual circumstance that were not indicative of the more typical relationships among women, their communities, and the courts. Past historians have

[10] Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1679*, (North Carolina: University of North Carolina Press, 1995), 48.

produced an extensive amount of work on the trials, and it did not seem necessary for me to repeat what has already been well covered.[11]

My argument rests in part on social crises in New England and the changes they brought to the experiences of women in court. The two main crises facing New England in the scope of my analysis are the English Civil War and King Philip's War. The English Civil War began as a conflict pitting the Anglican King Charles I against the dissenting Protestant Parliament in a bid for power that prompted fighting between their mutual forces in 1642. Parliament's forces, called the Roundheads, came to defeat the Royalist forces, also called the Cavaliers. Charles I was executed by Parliamentary supporters in 1649. The government was run under the Commonwealth of England for a few years until Oliver Cromwell became Lord Protector in 1653 and installed a Puritan state.[12]

Colonial governments tried not to become officially involved in the conflict but the people of New England did hold an investment in the outcome. Most colonies unofficially supported Parliament, while Plymouth was more inclined to sympathize with the Royalists.[13] Because the Civil War was strongly tied to religion and had the potential to change the future of New England, England's northern Atlantic colonies saw the impact of the war in how their governments operated. As I will further explain later in this analysis, New England courts increased the prosecution of certain crimes during the Civil War to avoid the scrutiny of the English government and to maintain order in a time of crisis.

The Restoration of Charles II to the throne in 1660 brought a new set of challenges to New England, especially Massachusetts Bay. Colonial governments experienced an increase

[11] Mary Beth Norton's *In the Devil's Snare* is just one of the excellent works on the Salem trials in publication. Part of the methodology for this analysis was inspired by that in *Snare*.
[12] Carla Gardina Pestana, *The English Atlantic in the Age of Revolution 1640-1661,* (Cambridge: Harvard University Press, 2004).
[13] Pestana, *English Atlantic,* 27.

in challenges to their authority from both the English government and the colonists, but the most violent of these challenges came from the indigenous peoples of the region. King Philip's War, a clash between colonists and Indians led by the Wampanoag sachem Metacomet, alias King Philip, took place during 1675 and 1676. King Philip grew tired of colonial governments asserting power over his people, and eventually, after a series of mutually disingenuous attempts at negotiations, his frustrations led to war. New England governments were able to convince some tribes to align with them, but others chose to fight with Philip. Over the course of a year, Philip and his forces attacked Maine, Massachusetts Bay, Plymouth, Connecticut, and Rhode Island. The colonists defeated Philip's forces late in the summer of 1676. The conflict had been brutal, devastating lives, land, and property belonging to both sides.[14] During this time of heightened awareness and culture of danger, New England magistrates prosecuted both men and especially women more often and more harshly for crimes representing a threat to their society than they did before or after the war.

Historiography

To ensure my study would not mimic those which already exists, and in order to develop the greatest understanding of the topic possible, I consulted an array of historiography covering seventeenth century New England women, crime, and the interaction of the two to find out what my analysis has to say in the ongoing conversation. Primary sources for Rhode Island courts were not as plentiful as I would have hoped, so Sydney James' work on the colony was integral to increasing my understanding of how they

[14] Jenny Hale Pulsipher's *Subjects unto the Same King: Indians, English, and the Contest for Authority in Colonial New England* discusses power relationships in New England between colonial governments and colonists, the English government, and natives in the decades leading up to and during King Philip's War.

operated. [15] Despite the lack of source material, it was important to me to include Rhode Island in my analysis because it acts as a sort of control against which to compare the other colonies. Rhode Island held an official policy of religious tolerance, the first of its kind of any English government in the Atlantic world, and so did not have any religious sect guiding its judicial system. Some religiously based crimes, like holding unorthodox beliefs, were not prosecuted in Rhode Island as they were in other New England colonies. For the remaining colonies, some of the secondary sources I used pointed to religious principles as the primary factor in shaping women's experiences in court, and some pointed more to other social elements. All of these sources addressed both sets of aspects, but the distinctions in their arguments gave me a backdrop against which to draw my own conclusions.

Peter C. Hoffer and N.E.H. Hull pointed to religion as creating a difference between England and New England court systems in *Murdering Mothers*, which looks at infanticide in both sides of the Atlantic. In New England, according to Hoffer and Hull, Massachusetts Bay was the strictest colony with cases of infanticide, as the killing of newborns was a significant obstacle to achieving "City on a Hill" status. Religious convictions, combined with a new 1624 infanticide law in England, caused New England as a whole to strike back harder against the act than had historically been the practice in England.[16]

Hull continued to link religion and New England courts in *Female Felons.* Her analysis of women accused of serious crimes in colonial Massachusetts extends into the 1700s but gives equal treatment to the seventeenth and eighteenth centuries. In discussing the role of religion in the courts, she emphasizes that many women in Massachusetts, especially in Massachusetts Bay, were not orthodox Puritans (like Mary Oliver), which impacted both

[15] Sydney V. James, *Colonial Rhode Island: A History,* (New York: Scribner, 1975).
[16] Peter C. Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England 1558-1803, (*New York: New York University Press, 1984).

the types of crimes women committed and how the courts reacted. Writing primarily on capital offenses and other serious crimes, as well as the punishments meted out to guilty parties, Hull shows the cracks in the ideal religious communities strove for in Plymouth and Massachusetts Bay and how the colonies sought to reconcile those weaknesses.[17]

Elaine Forman Crane also covered women in court in both the seventeenth and eighteenth centuries in *Witches, Wifebeaters and Whores*. Most of the cases she discussed were from the 1700s, but Crane often refers to the previous century to provide context, and these callbacks to earlier legal culture provided more insight for my own analysis, particularly regarding domestic violence. *Witches* also includes chapters on Maryland and Virginia, which helps highlight the impact New Englanders religious values had on their legal systems. Crane further discussed women and the law in the changing economic context of Massachusetts Bay in *Ebb Tide in New England,* creating context for some of the cases discussed in *Witches.*

Ebb Tide serves as a sort of intermediary between my two sets of historiographical sources. Here, Crane's analysis includes a discussion of the Church's role in shaping and policing behavior, but it also emphasizes the growing influence of secular forces like the economy and civil laws in the last quarter of the seventeenth century. Cornelia Hughes Dayton focuses on the courts and their relationship with the community in *Women before the Bar*. Dayton conducts a study of 150 years of New Haven court records from 1639, through the merger with Connecticut in 1664, and up to the beginning of the New Republic. Because of the community orientation of courts in the seventeenth century, Dayton contends, women were allowed and encouraged to have an active role in legal proceedings, even if they were

[17] N.E.H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts*, (Chicago: University of Illinois Press, 1987).

not recognized as having equal social rights to men. Further, she suggests that women were given more protection under the Puritan legal system than in other Anglo-Atlantic legal systems of the seventeenth century, especially against domestic violence. As Connecticut lost touch with its Puritan roots into the eighteenth century, women, especially women's voices, began disappearing from the court records.[18]

With *Governing the Tongue,* Jane Kamensky examines speech crimes in New England, including offenses like defamation, slander, mutinous or disorderly speeches, and speaking against accepted religious beliefs. She stresses that New England magistrates believed they needed to control speech in order to stabilize and protect their new communities. Kamensky also discusses the purpose and power of apology, something that court magistrates frequently put to use to bring a resolution to cases.[19] My analysis contains a chapter primarily dedicated to speech, and Kamensky's work was critical in understanding and interpreting my research. I found much evidence for her arguments in the source material, especially when it came to ordering apologies to rectify pernicious speech cases and the need of magistrates to control speech to prevent further acts of ill speech.

Mary Beth Norton also gave a broader scope to *Founding Mothers and Fathers*, which looked at gender and power relationships in Massachusetts Bay and Virginia during the seventeenth century. Norton applied the philosophical system of Robert Filmer to the ways in which gender functions shaped social interactions within the family and in religious and political arenas. The Filmerian "outlook saw family and state as analogous institutions, linked substantially through their historical origins, aims, and functions," and that the hierarchies that came along with those institutions were not only convenient but necessary to

[18] Dayton, *Women before the Bar.*

[19] Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England, (*Oxford: Oxford University Press, 1997).

the function of both the family and the larger society.[20] Norton's analysis relied on court records, from which she pulled stories of breakdowns in the ideal form of social roles for both men and women. The discussion of differences in the types and frequencies of crimes processed in New England and the Chesapeake demonstrates the differences in values of the two regions.[21] My analysis follows a model similar to Norton's. Though I did not base my interpretations in the ideas of Robert Filmer, my argument does center on the interconnectivity of the larger order of society and the order of individual families as magistrates and colonial authorities tried to maintain control of both.

Taken together, these works, along with several others, gave me a wealth of background knowledge of New England communities in general and the more specific goings on of their courts, as well as the differences in these areas between colonies. These works addressed moments of social, political, and religious crisis, the experiences of women in court, and the need for magistrates to uphold the hierarchical structure of communities, sometimes separately and sometimes in conjunction with one another, but none of the previously published worked focused on synthesizing the three across New England. That is a gap that my analysis helps to fill.

Method

Court records were, of course, the main genre of primary sources that I used. I examined various published records from Plymouth, Massachusetts Bay, Rhode Island, Connecticut, and New Haven, and focused on cases involving women, particularly when they faced criminal charges. Essex County of Massachusetts Bay Colony and Plymouth Colony

[20] Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society,* (New York: Alfred A. Knopf, Inc, 1996), 4.
[21] Norton, *Founding Mothers.*

supplied the most extensive records, covering 1636 through 1682 in eight volumes, and 1633 through 1686 in six volumes, respectively. For Massachusetts Bay, I also used court records from Suffolk County 1675 to 1680, and the records from the Massachusetts Bay Court of Assistants, a court of appeals, from 1630 to 1644 and 1674 to 1690. Connecticut records were available from 1650 to 1680, though applicable entries were a bit sparse, and I also used records from New Haven from 1650 to 1670. I read through Providence Plantation records covering 1655 to 1669 as well. Together, these records provided me with information on what types of crimes women were charged with committing, where, when, and how often magistrates charged them with particular crimes, and how different communities reacted to these offenses, elements that were essential to my investigation of how religion interacted with the presence and treatment of women in the court records. Whenever a case involving a woman presented itself, I recorded information about the location and date of the court session, location of the crime, complainant, defendant, type of offense, and resolution to the case, though not every case provided details for all these categories. At times, I also looked at cases involving male defendants to compare the treatment between men and women who committed similar offenses.

As with any genre of primary source, the colonial court records did come with a set of limitations. In terms of quantity, I was not able to find records for as many communities as I had originally hoped. Rhode Island provided a particular problem in this regard, which was disappointing because of the colony's unique approach to religion's relationship to government authority. For the colonies and counties I was able to track down, there were sometimes gaps in years between the volumes I located. For the Massachusetts Bay Court of Assistants, for example, I was unable to find the records from 1644 to 1674, though I did find

a volume on either side of those years. Qualitatively, in conducting my research I was limited to what was written in the available records. As such, my analysis does not and cannot account for unreported crimes or those that were not deemed necessary to write down. My understanding of individual cases was also largely restricted to what information the recorder decided to include. Occasionally, the same case or individuals would make an appearance in multiple sources, but this was not the norm. In most instances, a brief blurb in the court records was my only window into the lives of the individuals discussed.

To get around these gaps as best I could, I have supplemented the court records with town and colony laws, colony charters, and journals of prominent colonial figures. For the most part, the court records were more informative than they were limiting, which was essential in making my research possible. New Englanders of the seventeenth century were prolific record keepers. As mentioned above, court documents from the colonies in this time were helpfully detailed. The voices of magistrates, complainants, defendants, and their neighbors all come through the court's documentation of criminal activity. Those who wrote down court proceedings strove to keep complete, accurate records, if not professional ones.

Using court records as primary sources is an excellent way to discern the perspective of magistrates, juries, and court recorders, but it does not do much to capture the perspective of the people on the other side of the legal system, the defendants. It also does not necessarily provide the truth. Not everyone who was declared guilty in court was actually a criminal, but it is hard to escape the mindset of the magistrates. While it would have been ideal to have a source from the defendants to capture their voices, I was able to avoid becoming entrenched in the biases of the courts by using the existing historiography to get a better sense of the actual context in which these cases were taking place. These works were informed by sources

that filled in these gaps that I did not have access to, and reading the interpretations of other historians helped me get a better sense of what was actually happening in the cases described by the court records.

Structure

I have decided to organize chapters by grouping similar crimes together. Because I sought to track each colony's reactions to crime, the best way to make this type of comparison was to do so crime by crime. Focusing on one category of offense at a time also made it easier to see where and when shifts in the prosecution of certain offenses occurred. Organizing my analysis chronologically might have made for a neater narrative, but jumping among both colonies and crimes through time would have caused the distinctions between each colony's treatment of specific offenses to become lost. This approach also helped measure how the prosecution of crimes may have varied in accord with local, regional, and trans-Atlantic changes. Jumping among colonies and time might have its drawbacks as well, but the method I chose makes the most sense for my argument.

The first chapter deals with women who challenged the orthodoxy of the church, including those who belonged to what magistrates may have termed the Quaker scourge that spread across New England in the 1650s, as well as with women who absented themselves from mandatory church meetings. These actions amounted to crimes of religious unorthodoxy which, as John Winthrop's journal entry on Mary Oliver demonstrates, represented a significant threat from the perspective of New England officials. Chapter 2 looks at crimes of expression, primarily through speech, but also through what individuals chose to wear. Chapter 3 is dedicated to social offenses involving liquor and the property

crime of theft and their connection to women's roles in the economy. The next chapter delves into some of the more serious crimes women could commit—murder, infanticide, and witchcraft. Finally, Chapter 5 covers the regulation of marriage and sexuality, starting with the premarital offense of fornication, moving into a discussion of adultery, and closing with an examination of divorce.

There was no universal experience for women in court in seventeenth century New England. Whether they were complainants or, more often, defendants, the treatment of women who came before magistrates was shaped by more than just the elements of their cases. Wars, adherence to and rejection of accepted religious practices, and the place of women in the social hierarchies were synthesized when magistrates handed down their resolutions.

Chapter One: Heterodox Women

Beginning in the 1650s, prosecutions of women accused of religious unorthodoxy spiked in New England. During this decade, the English Atlantic world was dealing with the fallout of the English Civil War, specifically processing the beheading of Charles I. For a time, a Commonwealth government ruled England until Oliver Cromwell elevated himself to Lord Protector in 1653.[1] The unstable government in England represented a time of social crisis in New England, especially since the colonies held unofficial allegiances during the Civil War, and that sense of uncertainty translated to an increase in religious crimes in court records. During the 1660s, the number of these prosecutions dropped when Charles II was restored to the throne and the royal government kept a close eye on New England's official religious activity. There was yet another spike in the prosecution of heterodox activities in the mid-1670s that coincided with the next major New England social crisis: King Philip's War.

All manner of unorthodox activities were prosecuted during these spikes, but the group that attracted the most scrutiny, particularly in Massachusetts Bay, was the growing community of Quakers. Women without Quaker associations found themselves called before the magistrates as well throughout the time span of my analysis, with some women raising the concern of colony leaders more than others. The vigilant policing of women's religious activities was closely tied to community leaders' goals of maintaining social control. Though the number of men living in the colonies outnumbered the women, particularly in the earlier years, over time, there were more women who were full church members than men, giving

[1] Carla Gardina Pestana, *The English Atlantic in the Age of Revolution 1640-1661,* (Cambridge: Harvard University Press, 2004).

them a potentially dangerous degree of community influence.[2] If colony officials wanted to prevent women from stepping outside of their position in the social hierarchy, then women's religious activity needed to be closely monitored.

Heretical Women

Mary Oliver, whose narrative opened this analysis, committed a number of offenses during her time in Essex County, but ultimately, it was not what she did, but what she said that drew the attention of the Massachusetts Bay Court of Assistants and earned her an entry in John Winthrop's journal. Oliver's original crime was labeled as "speeches at the arrival of some newcomers" in the local court and "Disturbing the Church of Salem" in the Massachusetts Bay Court of Assistants.[3] Beyond these descriptions, neither court record provides much information as to what Oliver actually said or did. Most of the information on this case came from Winthrop's journal. He begins his description of Oliver and her actions as follows:

> The devil would never cease to disturb our peace, and to raise up instruments one after the other. Among the rest, there was a woman in Salem, one Oliver his wife who had suffered somewhat in England for refusing to bow at the name of Jesus, though otherwise she was comfortable to all their orders. She was (for ability of speech, and appearance of zeal and devotion) far before Mrs. Hutchinson, and so the fitter instrument to have done hurt, but that she was poor and had little acquaintance.[4]

Right away, Winthrop sets Oliver up to represent a significant threat to her community. She had already established a reputation for challenging the church while still in England, and

[2] Carol F. Karlsen, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England*, (New York: W.W. Norton & Company, 1987), 193.
[3] Essex I, 8; Mass Bay I, 80.
[4] *Winthrop's Journal: "History of New England" 1630-1649 Volume I,* Edited by James Kendall Hosmer, (New York: Charles Scribner's Sons, 1908) 285.

now that she had come to Massachusetts Bay her behavior suggested she had no intention of changing her ways.

Winthrop's journal still does not reveal exactly what she had said to the newcomers in Salem to begin her introduction to the court, but he does outline just what her unorthodox religious beliefs entailed. Oliver believed she should be allowed to partake in communion without professing her beliefs in Massachusetts Bay's system of orthodoxy, as well as that anyone who lived in Salem should receive communion simply for believing in Jesus. She thought lay and church leaders should be able to come together and ordain ministers, lessening the authority of religious leaders. Massachusetts Bay's social, political, and moral order depended on granting political rights only to the "saints," to those on whom God had conferred saving grace and became full church members, but Mary thought that Paul would believe everyone who lived in Salem would qualify as a saint, giving everyone the same degree of power. Finally, she dismissed the power of excommunication, saying it was no more than a single Christian community casting someone out. Each congregation was directed by its members and so ostensibly had the power to determine its own doctrine and rules for member ship, and Mary took this to mean that the decision of one congregation to case someone out should have no effect on the actions of others.

As Winthrop laid out in his introduction to Oliver, she was extremely passionate about these ideas and likely wanted to share them with whoever would listen. But, luckily for the leaders of Massachusetts Bay, Oliver occupied a low status in her community, and so her audience would have been limited to those of her rank—those of higher social status would not be inclined to listen to the poor. Though the reach of her speech was limited, the power in the actual words and the power behind them was not, and so the magistrates sought to put out

Oliver's fire before it could become more than a few embers and tucked her away in prison for a few months.

The same entry in Winthrop's journal also provides insight into a later Oliver case, one that again involved a speech offense, though this one lacked the element of heresy. After becoming angry with court magistrates and the governor for having to pay for a goat she insisted she did not steal, Oliver spoke out against her sentencers and found herself facing a whipping. As Winthrop described it, "She stood without tying, and bare her punishment with a masculine spirit, glorying in her suffering."[5] Referring to a 'masculine spirit' draws further attention to the fact that Oliver was not behaving as a woman should in the eyes of Massachusetts Bay and especially of Winthrop. Her actions prevented her from being a full member of her community, and they also prevented her from being a full member of her gender. Further, Mary, according to Winthrop's description, may have viewed herself as something of a martyr, 'glorying' in the punishment resulting from maintaining her beliefs.

There was a particular relationship among women, speech, and religion that made offenses like Oliver's so alarming to the leaders of Massachusetts Bay. It was Eve, a woman, who had tempted Adam with her words and caused mankind's banishment from Eden. From then on, the words of women were distrusted and viewed as predisposed to evil. Any time a woman spoke in an unacceptable way, she threatened the moral sanctity of her community, but when that ill speech was given an explicit religious context, the potential for damage became exponentially greater.

[5] Winthrop I, 286.
A note about quotations—In some of the court records I used, the editor used the original spelling found in the actual records, and sometimes the spelling was translated. Whenever possible, I have tried to keep quotations in their original form.

When discussing Mary Oliver, Winthrop said she had the potential to be more destructive to their community than Anne Hutchinson had been, but this comparison is meaningless without an understanding of Hutchinson and her actions. Oliver aside, an analysis of unorthodox women in early New England without a discussion of Anne Hutchinson would be sorely remiss. Hutchinson and her husband William came to Massachusetts Bay in 1633. While in England, Hutchinson had formed a close relationship with Cotton Mather, one of Massachusetts Bay's most famous ministers. After his sermons, Hutchinson held meetings among women in the community in her home to clarify and elaborate on what he had said. As time went on, Hutchinson dedicated more time to her own interpretations, and when she started talking about the spirit as the means of salvation rather than works, colony leaders decided to get involved.

The situation escalated and soon Hutchinson had her own band of followers made up of both women and men, which was the bigger issue for colony leaders. Together, Hutchinson and her supporters started declaring the colony's established ministers to be wrong and urging others to come around to their way of thinking. Leaders of Massachusetts Bay, along with Cotton Mather and other allies, began meeting with Hutchinson to rein her in, but these meetings made no difference. Hutchinson was put on trial. During the proceedings, Hutchinson spoke as she always did—confidently and with conviction. Even so, the magistrates originally intended the church trial to be a power move to put Hutchinson back in her place. They expected she would be chastened by the spectacle, take back what she had said, and resume her role as a respectable woman of society. However, unable to pass up the opportunity to prove herself against her prosecutors, Hutchinson began cross examinations and started to beat the court at its own game. Understandably frustrated, when

Hutchinson spoke on direct revelation from God in a way which was against the orthodox beliefs of Massachusetts, Winthrop and the other magistrates saw their opportunity and banished Hutchinson from the colony. Hutchinson, her husband, and some of her followers went first to Rhode Island and later to New Netherland, where she would be killed in an Indian attack.

It is obvious that heretical speech was what led to Hutchinson's exile, but ultimately it was not what she said so much as how she said it that sealed her fate. Winthrop and other colony leaders wanted to stop Hutchinson, but they hoped that bringing her through a trial and showing her mercy would be enough to halt her dangerous behavior. Unfortunately for their plans, Hutchinson did not want to play along. Because she continued to speak openly in court, where most women would know to hold their tongue, and spoke against the leaders of the church and the colony, who Winthrop deemed to be her "metaphorical 'fathers,'" she could no longer be allowed to negatively influence the other women, and men, in her community. If control was to be maintained, Hutchinson had to go. [6] As Mary Beth Norton discussed in *Founding Mothers and Fathers,* the labels of family relationships were often applied to other hierarchical relationships because of the close relationship of the state and the household.[7] Punishing Hutchinson as an insubordinate daughter was necessary to keeping the colony's other children, particularly its daughters, in line.

Mary Oliver's unorthodox speech case began in April 1638, just after the Hutchinson disaster. In this context, it is easy to understand why her case was taken so seriously, and why Winthrop felt so threatened. Hutchinson had been a respected woman in the community

[6] Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England,* (Oxford: Oxford University Press, 1997), 81.
[7] Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society,* (New York: Alfred A. Knopf, Inc, 1996), 6.

(Winthrop consistently referred to her as 'Mrs.' Hutchinson), even when she began stirring up trouble, and her controversy still ended in banishment. Months later, here was Mary Oliver, who did not have the same societal clout as Hutchinson, daring to follow in her footsteps. If banishing Hutchinson had not taught the women of Massachusetts Bay, especially those of a lower rank, their place, then what would?

Leaders like Winthrop would have worried that if low status women were getting comfortable acting out in such a bold way, then all of the foundations and hierarchies of society could soon collapse. Before even landing in New England, John Winthrop gave a sermon titled "A Modell of Christian Charity," which addressed the need for adhering to social roles to ensure the success of the community. In the opening line of the sermon, Winthrop states "GOD ALMIGHTY in his most holy and wise providence, hath soe disposed of the condition of' mankind, as in all times some must be rich, some poore, some high and eminent in power and dignitie; others mean and in submission."[8] The final part of this line speaks most directly to women. Everyone would have their place in society that might put them above or below others. Massachusetts Bay was engaged in a covenant with God that would hold them to a higher standard of order and morality. For the community to function, and to hold up under the scrutiny of God, women would have to submit to men, and that applied to matters of religion and speech just like anything else.

Quakers

In 1651, the town of Sandwich in Plymouth Colony brought charges against 12 men and women for being absent from their weekly public meeting. The records do not indicate why the men and women had missed the meeting, nor do they include a resolution. Nine

[8] John Winthrop, "A Modell of Christian Charity."

years later, Plymouth called another group into court for the same offense. The eleven offenders, including four married couples, a married woman, and two women whose marital status was unspecified, were charged with having attended Quaker meetings and were fined. By the end of the decade, both Plymouth and Massachusetts Bay were becoming increasingly aggressive in their responses to the activities of Quakers as the group, in the eyes of the magistrates, became a greater threat to their society.

Legislation proposed and approved during the 1650s, particularly in Massachusetts Bay, illustrates such concern. In 1657, Massachusetts Bay passed a law seeking to purge Quakers from its jurisdiction. Anyone who brought a Quaker into the colony would be fined 100 pounds. Colony leaders sought to bar the arrival of Quaker preachers seeking converts. The lesser offense of entertaining a Quaker would land the guilty party a fine of 40 shillings per hour. Structuring the punishment on an hourly basis would suggest some monitoring of the host to establish just how long the Quaker had been entertained, but the court did not indicate who would do that monitoring or how. The Quakers themselves were to be exiled. If a male Quaker returned after this banishment, he would lose an ear and be sent to prison until he could pay to leave. A second return would cost him his other ear. A female Quaker who returned after banishment would be severely whipped and imprisoned for her first and second offense. Any Quaker who returned for a third time, be they male or female, would have their tongued bored through with a hot iron.[9]

The maiming of a repeat offender's tongue was more than just an especially painful punishment. It carried a symbolic weight in that a Quaker's tongue represented a major threat to the religious precepts that guided life in Massachusetts Bay. Quakers believed that it was possible for anyone to have direct communication with God. Whatever a person's Inner Light

[9] Blue Laws, 14-15.

revealed to them was just as valid as what was revealed to their neighbors. Individuals could hold contradictory views and still all be considered Quakers. Quakerism did not give men any greater credence than women in their meetinghouses. The revelations of the Inner Light were equally valid from person to person, and that equality was translated to the thoughts and words of both men and women.[10]

Puritans took issue with these beliefs and practices for a number of reasons, the biggest of which being that Quakers thought every individual's interpretation of their communion with God was equally valid. Most forms of Protestantism were founded on individuals reading the Bible and making their own interpretations of God's will and how to act upon it, but each denomination set boundaries, explicitly or implicitly, within which those interpretations had to fall. Further, Puritans based their interpretations on the Bible, a concrete record of God's will and word, but Quakers deemphasized Scripture. Instead, they believed that what the Inner Light revealed to them was truer and held greater weight than what was written in the Bible. Puritans were particularly fixed in their understanding of what beliefs individuals could hold, and anything that was contradictory to the accepted doctrine or threatened the stability of a community could qualify as heresy, though those understandings varied across the spectrum of Puritanism itself.[11]

Additionally, Quakerism did not require the presence of a minister to participate in worship, whereas ministers held a position of great authority in Puritan societies. Placing a man with theological training at the head of each congregation could provide legitimized guidance in how to interpret Scripture and so how best to act in accord with God's will. Without a minister to guide it, who would ensure the community stayed on the right path? If

[10] Pestana, *English Atlantic,* 155.

[11] Quakerism was a strain of Puritanism, but for simplicity's sake, I use 'Quakers' to mean Quakers, and 'Puritans' to mean the Congregationalists of Massachusetts Bay, Separatists of Plymouth, etc.

ministers were defunct, then what did that say about other officials that towns and colonies gave power to? Quakers were living in such a way that went against the societal structures put in place by the leaders of Massachusetts Bay and Plymouth. It also did not help the case of the Quakers that they often sought opportunities to defy local secular authorities and social customs as well.[12] If more people adopted Quaker beliefs and abandoned Puritan codes of living, then those structures could collapse, and government and religious officials could lose their influence. Failing to punish the sins committed and embodied by the Quakers would constitute a failure of colony leadership to uphold their Covenant with God, providing an opportunity to invite his wrath upon them.

Colony leaders were also alarmed by the element of greater gender equity in Quaker practices. Officials were worried about Quakers preaching to other members of the community about their beliefs and gaining new members. If the speaker was a woman, then the threat was even more significant. Unlike Quakers, Puritans did not assign women an equal status to men in the church. Women held an important, distinct role in religious life, but they were in no way considered to be on the same plane as men. When Protestants broke from the Catholic tradition, they did away with convents and nuns, eliminating the clear institutional roles for women within church structures. In their place, the emphasis for women was placed on being good wives and mothers, upholding community values and helping to ensure their homes were godly places. Quakers, on the other hand, gave some of that institutional power back to women. They did not allow for absolute equality between women and men, but Quakers did give women the opportunity to assume positions of greater power. Allowing changes to the dynamics of the gender hierarchy could call other status

[1212] C. Dallett Hemphill explains that how Quakers refused to remove their hats to social betters and adopted a familiar pronoun regardless of rank in *Bowing to Necessities*: *A History of Manners in America, 1620-1860*. New York: Oxford University Press, 1999), 6

relationships into question, such as those between men and women in church institutional roles and between men and women in the realm of marriage, and that, in orthodox Puritan eyes, could cause the collapse of society as it was as well.

The late 1650s witnessed the passage of stricter laws to combat Quakerism in both Massachusetts Bay and Plymouth Colony, though Plymouth's approach differed from that taken in Massachusetts Bay. In 1658, Plymouth leadership ruled that Quakers could not be freemen of the corporation, meaning they could not vote or hold leadership positions.[13] Their social and economic status in the community would be denied them so long as they clung to their unorthodox beliefs. In the same year, Massachusetts Bay magistrates added to their Quaker policy to say that anyone who attended a Quaker meeting would be fined 10 shillings a week for doing so. If they chose to speak at a meeting, the fine would jump to 5 pounds. However, unless the magistrates or an orthodox representative were also present at the meeting, the court would have to rely on reports from those who were to enforce this law. The laws created to deal with Quakers did not provide any information about the distinctions between being a Quaker and being someone who attended Quaker meetings, but whatever that distinction may have been it likely would not have mattered to magistrates and other colony leaders. Considering that someone could face a significant fine for inviting a Quaker into the colony, attending a meeting could not have been viewed lightly.

In 1659, Plymouth began taking action to remove Quakers from the colony. In comparison to the rulings of Massachusetts Bay, Plymouth's policies allowed its magistrates to show more patience and leniency. Quakers were given notice that if they left the colony within six months, they would not face any fines.[14] This allowed plenty of time to settle their

[13] Blue Laws, 16.
[14] Blue Laws, 20.

affairs, make arrangements to go somewhere else, and leave the colony. Plymouth officials also decided to try reasoning with the Quakers in their communities. A select number of non-Quakers would be allowed to attend Quaker meetings without facing punishment in order to disrupt the meeting and show the Quakers the error of their ways. These non-Quakers could then also act as witnesses against Quakers when they were brought to court. Almost exactly a year later, Plymouth officials passed another law, empowering anyone in the colony to apprehend Quakers and bring them to a constable. The law also noted that inhabitants were not allowed to give Quakers horses.[15] Restricting the Quakers' access to horses represented an attempt to hamper their movements. It would be much more difficult to preach to new people and communities if the only method of transportation for doing so was to go on foot.

When discussing Massachusetts Bay's and Plymouth's differing approaches to the Quaker problem, it is important to do so within the cross-Atlantic political context of the time. From the time of its founding, Massachusetts Bay colonists took pride in the unprecedented amount of power its charter allowed them.[16] Massachusetts Bay's leaders believed they were the ultimate authority within the colony for both colonists and natives—not even an appeal to England could, in theory, change their final word. In the wake of the Restoration, royal officials sent a commission in 1665 to investigate the affairs of all colonial governments. Although Plymouth also persecuted Quakers, the colony did not execute them as Massachusetts Bay did, and leaders were cooperative with the commission and its suggestions. Massachusetts Bay, on the other hand, pushed back, reluctant to give up its authority. The refusal to cooperate with royal officials, and taking controversial actions like executing Quakers in the wake of the execution of Charles I by who England's current

[15] Blue Laws, 33.
[16] Pestana, *English Atlantic*, 31.

government saw as religious fanatics, made a poor combination for Massachusetts Bay's case for maintaining power. The colony lost its charter and was put under royal governance twice, once briefly after the 1665 commission visits, and again from 1686 to 1691 under the Dominion of New England, after which colony leaders lost their status as the ultimate authority.[17].

Before this occurred, though, court records show that Massachusetts Bay, especially Essex County, did not hesitate to put their anti-Quaker policies into practice. Carla Gardina Pestana explains how in the 1650s "Massachusetts raised the revolutionary commitment to godly reformation and policing belief to an art form, shunning the opposite impulse to allow conscience the freedom to decide."[18] After reading the laws and court records of Massachusetts Bay pertaining to Quakers, I found that my research corroborates Pestana's statement. Beginning in May 1658, Essex court records tracked the prosecution of groups of individuals for failing to attend Puritan services. Often, these absences were attributed in the court record to the defendants attending Quaker meetings instead. Essex County magistrates had particular reason to worry—that county hosted the colony's three largest Quaker communities: Salem, Gloucester, and Lynn.[19] Repeat offenders were common, and the same sets of people were frequently brought to court together. It was not unusual for multiple members of the same family to be grouped in the same court cases, suggesting parents and children, siblings, and spouses joined the Quaker faith together. Occasionally, defendants were described as "being at a disorderly Quaker meeting." Whether the records meant that the people at the meeting were behaving in a disorderly way or the existence of the meeting

[17] Jenny Hale Pulsipher, *Subjects unto the Same King: Indian, English, and the Contest for Authority in Colonial New England, (*Philadelphia: University of Pennsylvania Press, 2005), 240.
[18] Pestana, *English Atlantic,* 156.
[19] Christine Heyrman, *Commerce and Culture: The Maritime Communities of Colonial Massachusetts, 1690-1750,* (New York: W. W. Norton & Company, 1986), 98.

itself was disorderly to society is unclear, but judging by the magistrates' opinions of the Quakers, I am inclined to think the latter.

Resolutions of repeat-offender Quaker cases in Massachusetts Bay typically followed the same pattern of escalation. First would come admonishment, though sometimes the punishment would skip right to the first 10 shilling fine. There would be more individual fines, and then multiple individuals who skipped Congregationalist meetings in order to attend Quaker ones would be grouped together two or three times a year. Someone who refused to pay a fine could face corporal punishment, as Ann Needham did in June 1660.[20] If a whipping was not enough of a deterrent, the next step was to send the offender to prison, usually for one month or until security for release could be paid. Finally, unrepentant Quakers could be asked to leave the colony.

One group from Essex County who went through the entire anti-Quaker process was comprised of Samuel Shattock, Lawrence Southwick and his wife, Nicholas Phelps, Joshua Buffam, and Josiah Southwick. Phelps' wife and other members of the Buffam and Southwick clans appeared from time to time in the court records as well. The first call for them to leave the town of Ipswich came in October 1658.[21] During the following May, the son and daughter of Lawrence and Cassandra Southwick, Daniel and Provided, claimed that they could not pay their fines. The court records did not indicate the ages of Daniel and Provided, but in order for them to be prosecuted as they were they would have been considered adults by community standards. Believing that they were lying about being unable to pay or lacking in effort to achieve the means to do so, court magistrates decided that they should be sold to someone in Virginia or Barbados to pay their debts, making the

[20] Essex II, 229.
[21] Blue Laws, 16.

two in effect convict servants. On the same day, due to their inexorable Quaker activities, Lawrence and Cassandra, Samuel Shattock, Josiah Southwick, Nicholas Phelps, and Joshua Buffam were ordered to leave the district again, this time under the penalty of death.[22] Whether the order was allowed to lapse or these families did something to change the court's mind, they did not in fact leave Essex County. They continued to appear in local court records for similar offenses for years to come, up until 1670 in the cases of Josiah Southwick and Samuel Shattock.[23]

Not all repeat offenders were as lucky as the Buffams, Shattocks, Phelpses, and Southwicks. In October 1659, exactly one year after this group was first told to leave, another set of Quakers was sentenced to death. William Robinson, Marmaduke Stevenson, and Mary Dyer had returned to Massachusetts Bay from banishment one time too many. Their desire to become martyrs for their faith was to be fulfilled, as the court decided the three were to be hanged. Shortly before the execution was to take place, Dyer's son convinced the court to grant his mother a reprieve by promising that she would be out of the colony for good within two days. The hanging of Robinson and Stevenson went on as planned. Dyer was brought to the gallows with the two men and made to stand with a rope around her neck while the sentence was carried out. Her son succeeded in getting the authorities to grant her a reprieve, but he could not persuade her to stay away. Dyer was convinced that she was meant to die a Quaker martyr and defiantly returned to the colony in late May 1660. She was executed on June 1. [24]

Dyer's sex initially saved her life. She was equally as guilty of violating Massachusetts Bay's anti-Quaker laws as were Stevenson and Robinson and accordingly she

[22] Blue Laws, 19.
[23] Essex IV, 270.
[24] Blue Laws, 21.

received an equal sentence. However, in combination with the same political pressures that saved the men and women from Essex County, the appeal of Dyer's son because of her sex, and the bad press that would have resulted from executing a woman, Dyer was allowed to come down off the gallows alive. Her return to the colony in 1660 could not result in the same outcome if the magistrates wanted to maintain control in society. On the surface, Dyer had been allowed to live under a set of specific terms. She had broken that agreement, and so the court had no choice but to follow through with the lawful sentence. On a deeper level, in choosing to return, Dyer asserted a degree of personal agency that women were not allowed to exercise. She rejected what the magistrates viewed as a tremendously generous offer, and so she represented a defiance of authority that was more than just failing to follow the correct religion.

The lack of follow-through in the Essex cases involving Shattock, Buffam, and company could have been due at least in part to the regional and Anglo-Atlantic political contexts in which they took place. In 1660, the English Civil War finally ended with the Restoration of the Stuart line to the throne. England was now ruled by Charles II, the heir to Charles I, who had lost his head to Puritan rebels during the war. Massachusetts Bay would have been under close watch by the English government. This scrutiny was heightened by reports that some of the men responsible for beheading Charles I had fled to Boston and then headed elsewhere in New England for refuge. It would not have looked good for the colony to begin signing off on a high number of executions because of religious differences. The magistrates may have thought it best to let the Essex Quakers escape death, no matter how much that decision would have irked them. At the time, Massachusetts Bay was still in

possession of its highly valued but deeply threatened charter, and colony leaders may well have made decisions based on what would allow them to retain their power.

Prosecutions of Quakers continued through the 1660s as Massachusetts Bay authorities remained officially committed to having a colony free of Quakers. Although court cases dealing with Quakers continued to appear throughout the remaining years of the 1660s, the next piece of Massachusetts Bay anti-Quaker legislation I was able to locate following the 1658 decision about fines per meeting was a 1672 law addressing Quakers travelling through the colony who were not residents. Under this law, they could be imprisoned until the next meeting of the Court of Assistants. They would be given a legal trial and if convicted would be banished and face the penalty of death should they return. Quakers who were residents of Massachusetts Bay could also be imprisoned for up to one month unless they chose to depart from the colony.[25]

Essex County heard another six court cases involving women who missed or disturbed public meetings that would be tried under the 1672 law. Almost all of Suffolk County's cases involving Quakers were recorded on July 28, 1674. Of the six cases, four defendants were women. Three of the women were admonished, and one faced a ten shilling fine. Each man presented on that day was fined twenty shillings. These six people were listed as meeting with Quakers one or two times. No other entries were made in Suffolk records about missing public meetings or Quaker activities before or after July 1674. Whether Suffolk County had somehow managed to avoid a Quaker presence for the previous two decades, which was highly unlikely, or the courts had not sought legal action against them, is nonetheless unclear.

[25] Blue Laws, 18.

The final and far and away most intriguing case of Quaker activity in Suffolk County came in the form of a disturbance at a public meeting. In July 1677, Margaret Brewster of Barbados (a key trading partner for Massachusetts Bay with a strong Quaker community), entered the South Meetinghouse in Boston just in time for services to begin "in a disguised manner with her face blackt her hair disheveled about her Shoulders, ashes on her head and sackcloth on her shoulders". For profaning the Sabbath in such a way, by dressing in an unacceptable manner that mortified the congregation and distracted from services, Brewster was sentenced to be tied to a cart's tail, stripped to the waist, and whipped 20 lashes as she was brought out of town. Additionally, Lidia Wight of Long Island, Mary Mills of Black Point, Maine, and Barbery Bower of Charlestowne were all cited for accompanying Brewster into the meetinghouse, though they were not dressed in the same outrageous manner. As such, they were sentenced to be tied to the cart with Brewster when she received her punishment, though they were not to be whipped with her.[26]

The limited amount of information about this incident on the court records raises a number of questions. Why had these women from outside the community come to Suffolk County? How did they know one another? What had prompted their demonstration? Luckily, additional primary sources and historiography can help provide some answers of these questions. Though the women were from different locations, they likely came in contact with one another through the Quaker networks that existed throughout the English-speaking world. George Fox, the founder of the Quaker faith, had travelled to Barbados to expand the Society of Friends in 1671.[27] Brewster joined the faith there, and after she learned of the laws persecuting Quakers in Massachusetts Bay, she moved to Boston some time before her

[26] Suffolk, 843.
[27] Pulsipher, *Subjects unto the Same King,* 53

meeting demonstration. She believed God chose her to warn the people of New England against their legal oppression of Quakers.[28] As far as what had caused the women's demonstration and why they chose Suffolk County, both can likely be explained by King Philip's War. Colonists who believed that the war may have been a manifestation of God's wrath called for a renewed crackdown on Quakers after the 1660s' lapse in response to the royal commission visits.[29] Quakers, on the other hand, used the time after King Philip's War to fight back, both against the treatment of their people and to further undermine the authority of Massachusetts Bay. Brewster's demonstration was a part of this protest, which involved, according to the historian Jenny Hale Pulsipher, "burst[ing] into worship services naked and smeared with ashes to testify against the 'nakedness' of Puritan doctrine." [30] Boston, the center of Massachusetts Bay's government, was the best stage for Brewster to enact her demonstration.

Quaker women had caused a ruckus at a Puritan meeting before. In 1662, Deborah Wilson ran naked through the Salem meetinghouse. Like Brewster later would be, she was brought through town at cart's tail and whipped.[31] Wilson made five appearances in the Essex court records for public meeting absences and attending Quaker services, the first of which occurred in 1661.[32] Lidia Wardell went naked through the town the following year.[33] The severe, public way in which these women were to be punished spoke to the seriousness of their offenses. Brewster had made a spectacle of herself and interrupted the Puritan service, and that was enough to warrant a hefty punishment.

[28] May 21, 1922 Boston Globe http://www.celebrateboston.com/intolerance/margaret-brewster-quaker-protest.htm
[29] Pulsipher, *Subjects,* 185.
[30] Pulsipher *Subjects,* 186; quote from 43
[31] Essex III, 17
[32] Essex II, 341.
[33] Essex II, 64.

Punishments for experimenting with Quakerism were consistently harsher in Massachusetts Bay than they were in Plymouth. Both colonies were founded with the intention of practicing their respective takes on Christianity, specifically of Congregationalism. Plymouth was led by separating Congregationalists who wanted to remove themselves from the Church of England entirely. Massachusetts Bay was led by non-separating Congregationalists who wanted to reform the Anglican Church from within. Plymouth also had a binding economic tie. Many of the men who took the first trip on the Mayflower did so as a business venture, as a way to make a living when England could afford them no such opportunities. It is true that Massachusetts Bay Colony was also a company, and a substantial portion of the population, particularly as the years went on, had no interest in its Puritan mission, but the leaders of the colony were still staunchly dedicated to keeping Massachusetts Bay a model to English Christians everywhere. Tolerating the presence of Quakers or allowing them to speak of their beliefs to and potentially convert others would make maintaining model status impossible. Plymouth reacted firmly against Quakers as well, but its reputation as a colony did not depend on how its leaders chose to handle the situation as it did with Massachusetts Bay.

Part of Massachusetts Bay's dedication to eliminating the Quaker presence came from the beliefs of Governor John Endecott. Endecott was generally religiously intolerant, but he held a special hatred for Quakers. After the controversy that arose from executing Dyer and even Robinson and Stevenson, Endecott "argued that the colony's punishment and, more seriously, their executions of Quakers had not been for religious but for political reasons. Quakers had rejected the colony's authority and actively incited others to do

likewise."[34] His arguments sound reasonable, but it is important to note that they were coming from someone looking to preserve the autonomy of his colony. Whether or not he truly believed the colony's actions against Quakers were politically based cannot be discerned.

Besides the 1657 Massachusetts Bay law assigning different punishments to male and female Quakers who had been banished and returned to the colony a first or second time, the letter of the legislation against Quakers that came out of Plymouth and Massachusetts Bay was not gendered. The official stance of the court and lawmakers was that a Quaker represented the same negative effect on society whether they were a man or a woman. At least, the phrasing of the legislation was not directed at women any more than men or vice versa, but the application of those laws often was not gender-neutral. Other laws governing the colony that did not deal with Quakers seldom designated different rules for men and women, but the difference of note comes in the enforcing of those two types of laws—criminal laws in general and laws concerning heterodox beliefs and practices. Women in Plymouth and Massachusetts Bay who found themselves in court typically faced sentences that were less severe than those given to their male counterparts who had committed the same offenses (though this of course depended on the type of crime in question). When it came to enforcing anti-Quaker legislation, a Quaker was a Quaker. There were instances for which women received lighter or suspended punishments, like women in Suffolk being admonished for their first attendance of a Quaker meeting instead of the standard 10 shilling fine, or Mary Dyer having her first death sentence lifted. Eventually though, these women faced the same consequences as male Quakers. Ultimately, the equity that the Quakers assigned to their members was replicated in the actions of constables and magistrates.

[34] Pulsipher, *Subjects,* 168.

Other Meeting Disturbances and Absences

For some of the cases discussed above, the association to Quakerism was explicitly stated in the court records. For others, I drew the connection because the individuals in question had proven to be with Quakers in the past or were included in the same court record entry as people who were known Quakers. Other times, though, the records did not indicate why the defendants had missed a meeting and violated public ordinances, and so it cannot be determined whether they were at a Quaker meeting or somewhere else. There were still yet more occasions when court records did provide non-Quaker reasons for a defendant's absence that were not based in religious dissent.

Sometimes women who had been brought to court for missing a meeting explained that they had been sick, like in the August 1665 case of Ruth Moore in New Haven. Despite her illness, the court warned Ruth to do better in the future.[35] Other times, women landed themselves in trouble for doing non-essential housework, like Elizabeth Eedy of Plymouth who was found to be hanging clothes out to dry during a church meeting in 1651, or Goodwife Brabook of Ipswich who breached the Sabbath in 1672 by carrying a bushel of peas or corn to the meeting with her.[36] The resolution to Eedy's case was not included in the court record entry, and Goodwife Brabook's fate was to be determined at a later date.

Ann Savory of Plymouth committed a more scandalous failure to perform her public religious duty. Although married to Thomas Savory, in May of 1661, Ann appeared in court for being at home on a Sunday with Thomas Lucas. The two were found together, drunk under a bush. As a result of her case, Ann was ordered to spend time in the stocks and pay a

[35] *Ancient Town Records: New Haven Town Records: Volume 1: 1649-1662,* (New Haven: New Haven Colony Historical Society, 1917), 152.
[36] Plymouth II, 178; Essex V, 38.

fine of 15 shillings: 5 for being drunk, 10 for profaning the Lord's Day.[37] Ann's behavior constituted religious and social offenses. Missing a meeting would have been bad enough, but she worsened her situation by getting drunk, something that was frowned upon in general but particularly for women. Her suspicious behavior with Thomas Lucas was also an insult to her husband and an affront to the contract of marriage. Lucas had been punished for drunkenness five other times before the incident with Ann, but this time his sentence was pushed off for the next court. Ann received a lofty punishment the day she was brought to court. Lucas' case, though he was a repeat offender, was deemed able to wait for another day. The disparity in process is a prime example of the different standards men and women were held to. Because Ann broke a number of societal contracts that were particularly strict for women, she was dealt with immediately.

Sometimes, women who did attend Sunday meetings drew the court's attention for what they did there. The courts in Plymouth, Suffolk, and Essex all prosecuted women for quarreling or outright fighting in the meetinghouse.[38] In some cases women fought with their husbands while in church, going against accepted behaviors for both the religious service and the ideal marriage, and in others they fought with other women. These offenses typically warranted a fine of around 10 to 40 shillings depending on the nature and severity of the altercation, though occasionally a public acknowledgement of the poor behavior would suffice. Other court record entries described women causing a commotion at a public meeting but did not record a resolution, suggesting the court was satisfied by the appearance of the guilty party and a promise to refrain from such behavior in the future.

[37] Plymouth III, 212.
[38] Plymouth V, 15, 254; Suffolk, 940; Essex II, 11.

Though Quakers were the largest, most organized threat to religious orthodoxy in New England in the seventeenth century, they were not the only menace. Dissenting individuals could be just as disruptive to societal structures, as John Winthrop's journal entries on Mary Oliver and other troublesome women exhibit. The offenses of these individuals could often be categorized by more than one type of crime, most often cross-listing with crimes of speech.

Chapter Two: Crimes of Expression

In exploring the actions, impacts, and outcomes of unorthodox women in colonial New England Courts, the previous chapter sometimes dealt with matters of speech. With the exception of Anne Hutchinson's sermon interpretations, Mary Oliver's spouting her ideas to anyone in earshot, and the potential of Quaker women preaching their beliefs to orthodox community members, most of that speech took place within church walls, or at least in a similar context. Similarly, this chapter, while it sometimes addresses religious matters, focuses on speech outside of the meeting house. What follows looks at the role that women's speech played in society and culture, as well as in the regulation of political and sexual behavior, and how magistrates sought to control that speech to maintain the greater order.

Speech.

Even when women were not making claims about sainthood and the place of direct revelations from God like Mary Oliver and Anne Hutchinson, their tongues could still get them into trouble. Multiple offenses fell under the umbrella of speech crimes in early New England. Officials sought to hold both men and women to the same general expectations surrounding speech, but in practice women endured greater restrictions. Some speech offenses hinged on the type of language being used, like cursing or some forms of name calling. Others dealt with the way the defendant spoke or the content of the speech itself, like railing[1] or lying. Even these lesser transgressions had degrees of severity. For a woman to yell at her husband, for instance, was worse than her yelling at a female neighbor. In the precarious social hierarchy established in New England, a great deal of emphasis was put on

[1] The Oxford English Dictionary defines railing as 'uttering abusive language.'

showing deference to betters. Within that hierarchy, women generally ranked below men and therefore needed to show modesty and respect in what they did and what they said. Women were expected to show their submission to men outlined by Winthrop through their demeanors.[2]

The more serious crimes were those that involved speech targeting another person. Slander, defamation, and pernicious lies were damaging to not only the reputation of the speaker, but also by definition to the reputation of those who were spoken against. The more people involved, or the more prominent the slandered person was in the community, the more serious the offense. The worst type of speech crime, at least in most colonies, was speaking against God or the church. In 1641, blasphemy was made a capital offense in Massachusetts Bay as a part of the Body of Liberties.[3] Blasphemy could also result in death in Plymouth and Connecticut.

Jane Kamensky's *Governing the Tongue: The Politics of Speech in Early New England* deals at length with the prevalence of and reactions to these speech crimes for both men and women, trying to tease out the relationship between speech and communities in seventeenth-century New England. Kamensky argues that speech held a particular power in New England due to the relative isolation and unfamiliarity of the colonies and the Puritan value system guiding them. For New England to survive in their strange land, speech would have to be controlled. Kamensky explains how after the Anne Hutchinson debacle, New England cracked down on women who employed improper means of speech and began

[2] C. Dallett Hemphill, *Bowing to Necessities: A History of Manners in America, 1620-1860*, (New York: Oxford University Press, 1999), 49-51.
[3] Body of Liberties 1641.

"classifying the words of disorderly women as an archetype of social danger." [4] If a woman was unscrupulous with her tongue, the belief was that she was likely to exhibit immoral behavior in other aspects of life as well. Since she was banished in 1637 and excommunicated in 1638, virtually all of the cases in my analysis take place within the post-Hutchinson context.

Regulating women's speech was important in the English Atlantic world beyond New England as well. Terri Snyder's *Brabbling Women* examined the "political, social, and legal contexts that shaped" women's speech in seventeenth-century Virginia.[5] Women who had loose tongues, gossiped, or otherwise spoke disorderedly became such a problem in Virginia that the colony passed a series of laws in 1662, 1677, and 1699 to further restrict women's public and private voices.[6] Regulating speech was essential to maintaining societal control in any English community, even those without a religious mission on par with New England's.

Besides the Oliver and Hutchinson cases, I found records of only four speech crimes with female defendants that reached the Massachusetts Bay Court of Assistants, and all of those were in the first twelve years of the colony. This small number is surprising considering Massachusetts Bay's dedication to regulating the use of language. It may be that individual communities were so vigilant about policing ill speech on their own that local courts were able to sufficiently handle the crime without turning to the higher court for help, though this also could have been the result of an official protocol.

The first speech case featuring a female defendant heard by the Court of Assistants occurred in July 1636. Elizabeth Applegate, the wife of Thomas, was charged with

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[4] Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England, (*Oxford: Oxford University Press, 1997), 10.
[5] Terri Snyder, *Brabbling Women: Disorderly Speech and the Law in Early Virginia,* (Ithaca: Cornell University Press, 2003), 5.
[6] Snyder, *Brabbling Women.*

"swearing, railing, and reviling," a three-fold speech offense.[7] As a result, Applegate was to stand in a public place with her tongue in a cleft stick for an unspecified amount of time. The Court hoped that by preventing Applegate from being able to use her tongue and causing it pain, drawing on the symbolism of the fork-tongued serpent of the Bible, and humiliating her in public, she would think more carefully about how she spoke in the future.

In April 1639, the Court of Assistants resolved two separate speech cases in ways that did not emphasize causing physical discomfort. Ellen Pierce was pronounced to be guilty of cursing and "wicked imprecations," whereas Hugh Brown's wife was guilty of the less salacious cursing and swearing. Each received a fine of 40 shillings.[8] Three years later, Anne Keayne was called to court for a different kind of speech crime. Keayne had acted as a witness in a previous court proceeding. Apparently, it had been revealed that Keayne lied, and she was now facing charges of a "gross failing in not testifying the truth," what we would call perjury.[9] However, because she admitted to her error, the court released her on her confession.

New Haven courts witnessed just a handful of speech crimes with female defendants, but all of these had a different set of circumstances and outcomes. New Haven heard three cases involving slander from 1651 to 1665. One of these cases was pushed off to a future court session for want of evidence and never came up again, the second lacked a resolution in the court record, and the third ended in an admonishment.[10] The two remaining New Haven speech cases involved lying. In 1653, Ralph Line's wife was found guilty of stealing and

[7] Mass Bay I, 64.
[8] Mass Bay I, 83.
[9] Mass Bay I, 124.
[10] New Haven I, 86; New Haven II, 6; New Haven II, 132.

lying. The record did not state what she had stolen. Line was ordered to be 'severely corrected," but she was pregnant at the time of her case so her sentence was postponed.[11]

In Line's case, it is likely that her appearance in court and subsequent punishment were due more to her stealing than her lying, but her lack of honesty would have acted as an aggravating factor to the theft. Knowing what she lied about and to whom would also be of use in understanding her punishment. Seven years after Line's case, Ann Small, a servant to a Mr. Yale, had her time in court. Small was charged with lying and what was only described as other miscarriages, which is to say she was in some way not behaving as she was expected to. The court fined Small 2 shillings and 12 pence, a cost that would extend her service to Mr. Yale because she could not pay it. Looking at the court records, it does not appear that speech infractions were a regular occurrence in New Haven, or that the colony had any established protocol for dealing with them as they cropped up. Each case was dealt with as it came along, taking all factors, potentially condemning or mitigating, into consideration when determining a sentence.

Five of the seven speech crimes committed by women in Providence dealt with lying in court, with the remaining two addressing slander. Of these, Margret Smith was the only defendant to be charged with perjury. At her court appearance in March 1664, Smith admitted her guilt. Her husband, John, was ordered to pay the court 5 pounds for her offense.[12] Later in the decade, three women would be charged with contempt. Two of these women were mother and daughter, Elizabeth and Sarah Hernden, the wife and daughter respectively of Benjamin Hernden. Both women referred themselves to trial.[13] The court

[11] New Haven I, 246.
[12] Providence, 28.
[13] Providence II, 62. Court records often used the phrasing of a woman putting herself on or referring herself to trial to mean that she did not plead guilty to the charges and wished to have her case heard by a jury.

record never disclosed the outcome of those trials, nor did it explain how the women earned their contempt charges to begin with. The third woman to answer for contempt was Ursula Cole, the wife of John of Charlestown.[14] Cole did not appear at her September 1668 court case, so the circumstances and outcomes of her charges are also unclear.

Providence and Rhode Island operated under laws and social behavioral expectations that were far less strict than those that governed Massachusetts Bay, New Haven, or Plymouth. With the exception of major crimes like murder, Rhode Island court records usually showed evidence that authorities there treated certain offenses more casually or at least handed down lighter sentences. Speech was one of these areas. Rhode Island was founded by people who had been kicked out of Massachusetts Bay for violating restrictions on speech, most notably Roger Williams and Anne Hutchinson, so it only makes sense that the colony would allow for more freedom in this regard. Additionally, Rhode Island started as four towns—Providence, Portsmouth, Newport, and Warwick—and it took time for the colony to receive an official charter.[15] Under these circumstances, the would-be colony's institutions had a looser base. Whereas speech crimes were often linked back to religious roots in other New England colonies, I found that in Rhode Island, the concern around speech was more about adhering to secular laws and being truthful in legal settings.

Plymouth's speech cases were spread out from 1635 to 1685. Most of these entailed slander or telling lies about a neighbor, though there was one instance of a woman spouting "railing expressions on a Sunday," speaking in a rousing manner on the Lord 's Day.[16] These cases were resolved with a combination of admonishments, acknowledgements, small fines, and varying degrees of whippings. There was just one case in which the defendant was

[14] Providence II, 75.
[15] Sydney V. James, *Colonial Rhode Island: A History*, (New York : Scribner, 1975), 56.
[16] Plymouth IV, 152.

cleared. In October 1662, the wife of George Crisp was presented to the court for telling an undisclosed lie. The court found that "shee spake a falsehood, but judg it not to come under the notion of a pernicious lye," and she was not required to pay any fine.[17] Crisp's lie was bad enough to get her in front of the magistrates, but Plymouth evidently distinguished between what may now be considered white lies about trivial matters and lies that were meant to cause harm.

Ann Hoskins was Plymouth's only repeat speech offender. In March 1664, William Hoskin's wife was accused of using "most lascivious and filthy language" to Hester Rickard and was charged 20 shillings.[18] 'Lascivious' was used to mean anything "inclined to lust, lewd, wanton," or that encouraged those feelings and behaviors.[19] Over the next year and a half, Hoskin and Rickard's relationship did not improve. In December 1665, Rickard raised slander charges against Hoskins. This time, Hoskins had called Rickard "drunk as a bitch" and alleged she had inappropriate private company with a man named John Ellis. When pressed on these accusations, Hoskins admitted both that she had said what Rickard outlined and that the statements had no truth to them. Rickard was satisfied by Hoskins' acknowledgement, and the court took no further action.[20]

Plymouth's only case of a woman bringing speech related charges against a man was also the colony's earliest instance of a speech charge involving a woman. Elizabeth Warren's husband Richard died in 1628. Instead of remarrying, she spent the next few years securing her control of her household and growing her assets. Warren was held in high esteem in the

[17] Plymouth IV, 29.
[18] Plymouth IV, 50.
[19] Oxford English Dictionary
[20] Plymouth IV, 111.

colony, high enough to be given her husband's share in the Plymouth Company in 1637.[21] She was the only woman to hold that position. Two years earlier, in July 1635, Warren brought one of her servants, Thomas Williams, into court after he spoke defiantly towards her. Warren confronted Williams about not performing his duties and he continued to be insubordinate. Warren "exhorted him to fear God & doe his duty," to which Williams responded by claiming "he neither feared God; nor the divell." Though witnesses confirmed Warren's account and Williams confessed to the blasphemous speeches, the court decided to give him a break. Despite Governor William Bradford advocating that Williams be whipped, the court reasoned that his words had been spoken in the heat of the moment and that he had not meant them. Because he acknowledged that he was in the wrong, Williams was let go without further actions being taken against him. [22]

Warren's case is significant among those discussed in this chapter because instead of breaking social conventions surrounding the proper use of speech, she was actively enforcing them. Other women, like Hester Rickard, brought forward speech charges, but they were typically against another woman, or a woman and her husband. Warren was one of the few women in any of the colonies to bring a speech-related accusation against a man. Furthermore, Warren had the moral and social high ground in her case. She was being a responsible mistress who sought to ensure her servant's obedient behavior, and the emphasis of her case was on Williams' words against God, rather than on his words against her. Warren was reinforcing rank rather than breaking it, becoming the foil to many of the women who were on the other side of speech cases.

[21] Plymouth I, 54.
[22] Plymouth I, 35.

In Suffolk County, speech cases involving women were evenly split between slander or defamation and cursing or railing. Of the four slander and defamation cases, there was only one in which the defendant prevailed. In April 1676, Edward Smith and his wife brought slander charges in the amount of 100 pounds against the widow Ann Broomhall. The court record did not indicate what the Smiths alleged Broomhall had said or how the jury evaluated the truthfulness of their claim, but ultimately the case was called in favor of Broomhall, with the Smiths ordered to pay her 5 shillings in court costs.[23] As a widow, Broomhall had the potential to become a marginalized member of her community, depending on what status she and her husband occupied before his death, her age, and how many children she had, among other factors. For the Smiths to ask for 100 pounds in damages, they would have been confident that whatever allegations they brought forward would be deemed to be well-founded. By the end of the case, it was evident that their confidence was misplaced. Broomhall's reputation must have been such that the Smiths' allegations were able to be fully discounted.

Plaintiffs won the other three Suffolk slander and defamation cases with female defendants. Mary Hale, like Broomhall, was also a widow. However, when she was accused of slander by Dennis MackDaniel and his wife in July 1677, she was ordered to pay the couple 10 pounds.[24] Hale had called MackDaniel's wife a whore and accused her of having several children by other men in addition to calling MackDaniel an old rogue. Based on their name, the MackDaniels could have been Scots or Ulsterites, so there may have been an ethnic component to this case as well. These were serious claims, as reflected by the heavy penalty Hale received. In the other two defamation cases, the women were sued alongside

[23] Suffolk, 692.
[24] Suffolk, 818.

their husbands. Both cases resulted in the defendants having to choose between paying the plaintiff 3 or 5 pounds, and making a public acknowledgement of their false speeches.[25]

In *Governing the Tongue,* Kamensky discusses Puritan's belief that good speech had the power to correct bad speech. An act of slander or defamation was "public property, held in common by all who heard them," and thus the only way to undo the damage to the victim's reputation was to make an equally public apology.[26] Sometimes acknowledging the falseness of a previous statement in court would be enough to give the magistrates and the victim satisfaction, while in other cases, a full apology had to be made on lecture day or in the meetinghouse on market day. Men were more often called upon to make public apologies than women, so when a woman was required to do so, it held a particular purpose in either mending the reputation of the tarnished or in punishing the offender. I found in my research that apologies were used throughout New England, but they were most prevalent in Massachusetts Bay.

Between 1639 and 1682, Essex County courts heard around 140 cases of speech offenses involving women as either complainants or defendants. Women were on the complainant side in only sixteen cases, and of those they were almost always named along with their husbands. Sometime women were charged or brought charges alongside their husbands, and other times they stood alone in court. Regardless of who presented the case or who it was against, when magistrates issued a ruling, they usually found for the plaintiff. There were sporadic cases across the forty-three year span that did not include case resolutions, but that happened for a number of different crimes in all colonies. What was unique about the lack of resolutions in Essex speech cases is that from November 1639 until

[25] Suffolk 43, 1122.
[26] Kamensky, *Governing the Tongue,* 128.

May 1645, there was a strong of ten consecutive cases that did not include information on who won the case or what the outcome may have been otherwise.

When punishments were handed down to defendants found guilty in Essex County, the sentences were consistently inconsistent. Magistrates set variable fines, doled out whippings of different degrees of intensity, at some times the stocks were involved, and at others making a public acknowledgement was offered as an alternative to another repercussion. Since controlling speech, especially among the female population, was so important to Massachusetts Bay, it would be appropriate for its courts would have an established, uniform response when offenses arose. However, I believe that it was more in line with Massachusetts Bay's values to have the abundance of responses than it would have been for all punishments to be the same. Sentences were different because they were individualized. Civil speech crimes were heard on the local level, so they took place within particular communities with their own particular dynamics. Magistrates in Essex selected punishments based on the circumstances of the case that would have the strongest impact on the defendant. Because speech crimes were taken so seriously, magistrates wanted to prevent offenders from repeating their folly in the future. The best deterrent was to hit these women where it would hurt them the most, whether that took the form of an actual physical punishment, a financial burden, or feeling the direct judgment of neighbors.

Even when cases were dismissed, the defendants' presence in court could be enough of a punishment. In September 1650, the wife of Christopher Collins was brought to court in Salem for ranting at her husband and calling him a "burley gutted divill."[27] Collins was discharged and no further action was taken, but there is a difference between being dismissed and being cleared. Collins' wife did call him a derisive name, and a lack of punishment did

[27] Essex I, 274.

not change what happened or erase it from existence. Typically, Massachusetts Bay Puritans placed particular emphasis on keeping women from speaking poorly within their marriages.[28] As discussed above, women needed to submit to men to maintain the social hierarchy that formed the base of Winthrop's ideal model community. In the Collins case, the magistrates might have decided not to take further action because they believed that coming to court to face this charge would be enough of a public display to embarrass Collins's wife into staying clear of using this kind of language in the future.

In other cases, the magistrates took the punishing without punishment approach a bit more directly. Occasionally, speech cases ended in admonishment from the court. As applied to a number of crimes across the New England colonies, an admonishment was an official finger wagging, a warning not to repeat the action or behavior in a way that would cause suspicion in the future. Magistrates typically admonished defendants when they did not deem the offense to be serious or if the defendant had a clean record up until that point. Alexander Melligan's wife, for instance, received an admonishment in October 1661. Like Christopher Collins's wife, Melligan was brought to court for wicked speeches and carriages against her husband.[29] The court record does not go into further detail on what Melligan said to her husband or what actions she took, but something about the circumstances of her case warranted the magistrates to issue her an official scolding instead of just sending her on her way.

Across New England, cases involving slander or defamation resulted in a verdict for the complainant the majority of the time. It very well could be that the people who brought these charges were able to prove their accusations or there were witnesses to the statements.

[28] Kamensky, *Governing the Tongue,* 40.
26 Essex II, 344.

It is also probable, and arguably more likely, that New England courts were more inclined to err on the side of the complainant. The emphasis was put on controlling the speech of all members of the community, of encouraging everyone not to even put themselves in the position of being able to be accused of committing a speech crime, rather than simply punishing those who actually crossed the line.

Apparel

Improper speech meant different things for men and women. It could represent an offense directly against religion, individual colonists, the larger community, or a combination thereof. Ultimately, speech is an act of expression, something projected to an outside audience that often indicates compliance with or rebellion against social norms and legal codes. A similar act of expression comes in deciding what to wear. When apparel cases appeared in the court records, the problem was typically not the item someone was wearing in itself, but rather who the person wearing it was. There were certain materials and accessories reserved only for individuals occupying a certain rank. When someone of a lower status wore those items, they challenged the hierarchy that formed the basis of their society. Court records from Massachusetts Bay had clear spikes and drop-offs in the prosecution of apparel cases, with the spikes coinciding with periods of generally heightened legal vigilance, first during Oliver Cromwell's control of the English government during the English Civil War and, later, during King Philip's War.

Massachusetts Bay had issued declarations against wearing apparel that exceeded one's rank since its inception, but in 1651, the colony's leaders found it necessary to enact a formal sumptuary law. No one whose estate did not amount to at least two-hundred pounds

would be allowed to wear "gold or silver lace, or gold and silver buttons, or any bone lace above 2s. per yard, or silk hoods, or scarves."[30] No language in this law referred specifically to women, but some of the items it prohibited, like lace and silk hoods, were more likely to have been worn by women. Offenders proven guilty would be charged ten shillings. Connecticut had passed a similar, though less specific law, in 1640, establishing that constables were responsible for keeping an eye out for people who appeared to be dressed above their rank and presenting them to the court.[31]

In the course of my investigation, I found that the prosecution of apparel offenses was limited to Massachusetts Bay, with the majority of cases stemming from Essex County, though Suffolk County had its share of offenses as well. Massachusetts Bay had the thickest and most direct commercial ties to England, which would have been the source of these wearable fineries, so that helps explain why Essex and Suffolk Counties had so many cases. It is likely that women in other colonies wore clothing and accessories deemed inappropriate for their rank as well. After all, if Connecticut found it necessary to make a declaration against status-inappropriate dress, there must have been a reason. Without more information, though, it is difficult to discern what that reason might have been. Sumptuary laws could have been made in response to an increase in apparel offenses or as an attempt to prevent them. Economic factors could have been responsible as well. If fewer colonists were consuming expensive apparel goods, then that could help lower the trade deficit with England that had worsened since the English Civil War broke out.

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[30] *Colonial Laws of Massachusetts, 1651*: "Sumptuary Laws (Laws Regarding What One May or May Not Wear)," Francis E. Baldwin, *Sumptuary Legislations and Personal Regulation in England*, (Baltimore: John Hopkins University, 1926).
Bone lace was a type of handmade lace made by twisting and braiding thread on bobbins made of bone.

[31] Blue Laws, 100.

It is possible that Massachusetts Bay's magistrates' motivation for focusing on addressing sumptuary violations was closely tied to their dedication to embodying the ideal Puritan community. John Winthrop's opening line of "A Modell of Christian Charity" said that society by necessity included the haves and the have-nots, and that that was the way God intended it to be. To upset social hierarchies and overstep rank was an offense to God's will. In a broader Christian context, the Tenth Commandment forbids coveting a neighbor's goods. Someone of a lower rank wearing apparel reserved for someone of a higher status would translate to dissatisfaction with their own circumstances and coveting those of another.

In the fall of 1652, Essex County began to prosecute more women wearing apparel deemed to be above their rank. At this time, John Endecott was Governor of Massachusetts Bay. Endecott had a reputation for being religiously intolerant, and he was also known to be picky about appearance. In 1649, for example, he made a decree denouncing men with long hair, essentially complaining that they looked unkempt.[32] It would make sense, then, that he could also be bothered by excessive displays of status through apparel, whether or not that status was deserved. Endecott might have directed his magistrates to raise their awareness of apparel offenses.

The first apparel defendant of 1652 was Sarah, the daughter-in-law of a Francis Perrie. The court found Sarah guilty of wearing a silk hood, and she was fined. Alice, the daughter of William Flint of Wenham, was also charged with wearing a silk hood a month later. However, the record noted that her father was found to be worth over two hundred pounds, and Alice was discharged. Two other women faced charges in September and October for wearing either silk or broad boned lace. One received a fine like Sarah, but the resolution of the other case was not recorded. The first few months of 1653 saw three more

[32] Lawrence Shaw Mayo, *John Endecott*, (Cambridge, MA: Harvard University Press, 1936), 201.

sumptuary cases heard, one in Ipswich and two in Salem. The outcomes of these cases mimicked those of the previous year. The Salem case was discharged because the defendant, Ruth Halifield, came from a family worth over 200 pounds, and the Ipswich women were fined for wearing silk hoods.

Having an estate worth 200 pounds was set as the standard for being able to wear silk and appears multiple times in the court records, but the records do no indicate how that worth was measured. Did the court look at tax records or an itemized inventory of the family's estate? Was a character witness enough to settle the matter? Whatever method was used, the process of determining a person's financial worth would have required a degree of intrusion on the part of the magistrates. By the time of the first silk hood case, the Puritan-sympathizing Parliament had won the English Civil War a few years earlier. English Puritans were having a moment of glory—there was a real shot that they would emerge victorious and Puritanism would blanket all of England. Massachusetts Bay colonists had been waiting for this day to come. If Massachusetts Bay wanted to remain a City Upon a Hill and stay ahead of England, they needed to raise their bar. When Oliver Cromwell became Lord Protector in 1653, he aimed to model his England after the system in Massachusetts Bay, creating a closer link between religion and government.[33] The vigilance Massachusetts Bay records display regarding apparel offenses at this time could be one of the ways the colony sought to remain worthy of Cromwell's admiration and secure their model status.

In July of 1653, twelve women were called to court in Ipswich for wearing silk, most often in the form of a hood, but once as a scarf. All of the women accused were presented in the court records solely in their relation to a man, as somebody's wife or household maid.

[33] Carla Gardina Pestana, *The English Atlantic in the Age of Revolution 1640-1661*, (Cambridge: Harvard University Press, 2004), 63.

Their individual names were not recorded. Sometimes, husbands stood in for their wives in court. A fine of ten shillings was levied in just a quarter of the July 1653 cases. The rest were discharged, in one case because the charges were not proved, but otherwise because the women under fire were found to belong to the proper social stratum, including all the cases in which husbands appeared for their wives.[34] So long as the charge was settled and it was determined that no offense had been committed, it was not necessary for the woman in question to interrupt her day to come to court. Being accused of not deserving the social rank she rightfully occupied was enough of an indignity to her and the male head of her household.

For the names of these women of high rank to have reached the court, someone in the community had to have seen them wearing silk, questioned their financial status, and informed the proper authorities. It seems strange that these affluent individuals, who would have qualified to occupy a high rank in society, were not better known by their neighbors. For the charges against a woman to be dismissed, she, or a male representative, had to prove that her husband's or father's estate was worth at least 200 pounds, as per the 1651 law. Essex's economy was growing at this time as the county became more involved in the fishing industry, but 200 pounds was still a lot of money, translating to a sizable estate. 200 pounds in 1650 translated to 15,112 pounds in 2005's currency value.[35] Because New England's labor system was based on indentures, apprenticeships, and other long-term contracts, hiring day laborers was uncommon.[36] Tracking down pay information is difficult, but the

[34]Richard Brabookes Essex II, 304; Anthony Potter Essex II, 304; Thomas Harris, Thomas Wayte, and Edward Browne Essex II, 304.

[35] National Archives, "Currency Converter," http://www.nationalarchives.gov.uk/currency/results.asp#mid, accessed April 17, 2015.

[36] Daniel Vickers, *Farmers and Fishermen: Two Centuries of Work in Essex County, Massachusetts, 1630-1830,* (Chapel Hill, University of North Carolina Press, 1994), 55, 61.

percentage of individuals possessing this kind of worth would not have been high. In a society that was so closely structured around hierarchy and deference to your betters, it seems unlikely that so many people occupying this higher rank were not more recognizable to those below them. A possible explanation for this is that these women and their families were new to the community and so had not had time to establish their presence and reputation as people of wealth. There also might have been local political conflicts at the time, in addition to the greater Atlantic political crisis, that might have led someone to call into question the worth of these women and their families.

A second clump of cases was recorded in both Essex and Suffolk counties in 1675 and 1676, the same time as King Philip's War. What is different about the apparel cases in 1675 and 1676 as compared to those of the 1650s is that six of the seven women in the later set were found guilty to some extent of wearing silk, receiving a fine, admonishment, or both. The remaining charge was not proved. In five of these cases, the women were referred to by name, rather than solely through their relationship to a man. It seems that in this crop of cases members of the community were cracking down on offenders they knew were in fact guilty, rather than operating out of a state of paranoia, pointing out anyone who could potentially be guilty. It is curious, though, that there were as few accusations in this time as there were. The destruction of King Philip's war caused the displacement of communities, and Essex and Suffolk Counties would have seen an increase in refugees. There would have been more strangers with unknown financial backgrounds coming into the community. Based on the court records, it does not seem that established residents questioned the rank of their new neighbors on a wide scale.

The English Civil War, while it did have direct effects on New England, was fought on the other side of the Atlantic. The conflict with King Philip, on the other hand, took place much closer to home. There were more pressing matters, bigger problems that needed tending to than whether a woman who was not of high rank was wearing silk. Even so, Massachusetts Bay leaders naturally felt threatened by the war and looked to their Puritan roots for a sense of direction. Hoping to regain the favor of God and bring King Philip's War to an end, it was time to tighten the religious belt and crack down once again on what had been allowed to lapse. Making these women answer for their offenses may have been a part of the colony's appeal to God for divine intervention. It was not that colonists believed God was offended by women wearing silk—there was nothing sinful about the material itself. Rather, the problem was that women of a lower rank felt comfortable enough to visibly ignore social distinctions, signaling a breakdown in the community hierarchy. If Massachusetts Bay was unable to enforce its social structure, then that was a sign that its attempt at being the model Christian society had failed.

It is possible that no women violated sumptuary laws in Massachusetts Bay before the 1650s and from 1660-1674, but it is not probable. There was something about the years when apparel cases were recorded that caused magistrates to care about rank-appropriate dress. The political crises of the 1650s both in Massachusetts Bay and in England, and the panic caused by King Philip's War, prompted courts to take a closer look at these types of smaller offenses that went unprosecuted in calmer social climates.

Chapter Three: Tavern Keepers, Common Drunkards, and Thieves

Thus far, I have looked at the position of women in the church and demands on them posed by their family and neighbor relationships. The expectations placed on women in those contexts were entangled with all other factors shaping women's lives, and will continue to be discussed throughout what follows. Keeping those influences in mind, this chapter primarily explores women's economic activity in an environment that was not created for their participation. More specifically, it looks at how magistrates sought to reestablish control when women's attempts to navigate the restrictions placed upon them went awry and ended with an appearance in court.

Liquor

Alcohol was an integral part of daily life in early New England. Men, women, and children drank beer or cider with their meals because water was thought to be unclean and was a last resort beverage. Puritan sensibilities sanctioned social drinking at important events such as weddings, funerals, and court days. As historian David Conroy explains in *In Public Houses*, there were very few taverns, at least licensed ones, in the first few decades of the New England Colonies. Anyone who wanted to patronize a tavern, be they of high rank or low, would have to gather in the same place. This familiarity threatened New England's emphasis on its social hierarchy. The position of the elite was precarious enough—they would have been considered of a more middling rank in England—so for people of a lower rank to be in such close proximity weakened the illusion of the elite being a higher caliber

people.[1] Leaders of New England were also concerned with taverns because they provided venues for immoral behavior. To maintain the ideals of colonial leaders, tavern keepers needed to be moral individuals with the power to check the behavior of their patrons. In 1676, Massachusetts Bay started appointing tavern keepers for this purpose.[2]

Before the appointments began, tavern keepers were typically poor. Running a public house was a relatively easy way to make a living—all one needed was a building and to brew or purchase alcohol. When Massachusetts Bay started appointing keepers, the people they chose did not come from this place in society. People who were poor were thought to be unable to uphold the moral standards leaders thought were necessary for public houses, and they did not have the authority to enforce the proper behavior. It was for this same reason that women were not usually granted licenses either. Women did not hold the social rank to police the actions of their typically male patrons. As such, women who ran taverns without licenses were disruptive to society, both by not following proper protocols and because their houses had a higher chance of facilitating immoral behavior.

My findings regarding women and liquor, particularly regarding the business aspect, were consistent with Conroy's arguments. Though I did not keep track of cases involving men running taverns, cases in which women were charged with the illegal keeping of a public house were more numerous. Some of the punishments these women faced hewed to what the applicable laws dictated, but there was often an added element to their sentences that was not present in the cases involving men that I sampled. Looking at these cases, I

[1] C. Dallett Hemphill, *Bowing to Necessities: A History of Manners in America, 1620-1860*, (New York: Oxford University Press, 1999), 15.
[2] David Conroy, *In Public Houses: Drink and the Revolution of Authority in Colonial Massachusetts,* (Chapel Hill: University of North Carolina Press, 1995), 76.

argue that these additional penalties were assigned, at least in part, because the defendants were women, and magistrates felt their actions were more threatening to the community.

Women generally had a complex relationship with economic activity. Women in port towns outnumbered men and so had fewer opportunities to marry. If they did find a husband, they risked him being away for long stretches of time as a sailor without any support. Under coverture laws, married women turned their economic rights over to their husbands. Married women could not legally enter into contracts, which made taking part in business activities extremely difficult.[3] Under these rules, in Massachusetts Bay, only women who were widowed could legally hold liquor licenses.[4] Accordingly, women who needed to support themselves economically "sought opportunities to circumvent a system that was stacked against them," such as conducting sales and agreements through verbal arrangements rather than written ones.[5] These activities only became a problem when they attracted the attention of the magistrates, usually when an element of immorality was involved.

Suffolk County had the worst track record when it came to women breaking the rules around liquor. Given that the district contained Boston, the largest town and port in Massachusetts Bay that hosted a large transient mariner population, this is not surprising. The large, unstable nature of the population allowed for a greater degree of anonymity. The court records contained twenty-five such cases between October 1671 and April 1679. However, women found themselves in trouble for drinking in just five of these cases. The rest were for allowing disorderly gatherings in their homes or, most often, selling alcohol without a license. For women who had little to no economic support, setting up a tavern or house of

[3] Elaine Forman Crane, *Ebb Tide in New England: Women, Seaports, and Social Change, 1630-1800, (*Boston: Northeastern University Press, 1998), 166.
[4] Conroy*, In Public Houses,* 104.
[5] Crane, *Ebb Tide,* 151.

entertainment did not take much skill or startup funds and would be a relatively easy way to make some money.

The most common punishment for selling alcohol without a license was a fine of 5 pounds. Sometimes, cases involved aggravating circumstances that elevated the defendant's sanctions. Alice Thomas, for example, proved to be Suffolk's worst offender. In January 1672, Thomas appeared in court to face a number of charges, including abetting accessory to burglary, selling wine without a license, entertaining servants and children without their master's or parents' permission, profaning the Lord's day, allowing lewd entertainment in her house, and creating the opportunity for carnal wickedness. Elaine Forman Crane addressed Alice Thomas in *Ebb Tide in New England,* and she interpreted these last two charges to mean that Thomas was running a brothel.[6] Thomas' punishment for her slew of offenses was equally complex, involving multiple fines, being sent to stand at the gallows with a rope around her neck, and being whipped at cart's tail with 39 stripes, the maximum amount allowed by law for any individual, man or woman. She was then to be returned to prison.[7] Any of Thomas' crimes would have been viewed as a threat to Massachusetts Bay's mission to be a model community and merited a harsh punishment, but the almost excessive nature of her sentence was almost certainly due to her running a brothel. Even without this scandalous offense, magistrates would have wanted to shut Thomas' business down.

In April, Thomas was allowed to leave the prison every day at eight in the morning so long as she returned by six at night.[8] Despite the extensive repercussions for her actions and the restrictions on her freedom, Thomas did not alter her behavior. One year later, she returned to court, this time for selling wine to an Indian. It seems Thomas' relationship with

[6] Crane, *Ebb Tide,* 180-181.
[7] Suffolk, 82.
[8] Suffolk, 126.

her community had worsened since she had been allowed to move about town again, as the court record noted that as of October she was no longer supposed to even being living in the jurisdiction. Thomas was sent back to prison until she could pay 100 pounds for her release.[9] She was called to court once more in October 1673, but she was ill and the court waived her appearance to the next session.[10] Thomas's ultimate fate is unclear, because her trail in the court record goes cold at this point. Without the full details of Thomas's actions, it is hard to take on the perspective of the magistrates or judge whether their actions were appropriate, but it seems that they were particularly hard on her. From the perspective of the court, Thomas was a woman out of control, and her extreme misbehavior required extreme measures to try to rein her in.

Alice Thomas' set of cases were the most extreme in Suffolk County's group of women's liquor and entertainment charges, but she was not the jurisdiction's only repeat offender in these matters. Elizabeth Smith committed her first offense of selling strong liquor without a license in October 1671. She was originally let off with the payment of a bond for her good behavior, but when she was caught doing the same thing in April 1673, the court gave her a 5 pound fine.[11] A year later, a woman identified as the wife of Christopher Smith, who may or may not have been Elizabeth, was suspected of selling wine without a license, but the case was dismissed for want of evidence.[12] Elizabeth George also made two appearances in Suffolk County court for selling strong drink without a license and received a 5 pound fine for both offenses.[13]

[9] Suffolk, 266.
[10] Suffolk, 339.
[11] Suffolk, 22, 267.
[12] Suffolk, 434.
[13] Suffolk, 957, 1014.

In her second case, Elizabeth George was identified as a widow. Of the women brought to court for selling alcohol without a license, six were described as someone's wife, one was a widow, and for the rest, their marital status is unknown. For unmarried or widowed women, selling alcohol "contrary to the law" or turning their homes into disorderly places of entertainment was a way to earn income and support themselves in a society that provided few other options besides finding someone to wed. Even women who were married looked to keeping a tavern as a source of revenue. Elizabeth Eggen, for example, earned herself the scrutiny of the court for entertaining strangers in her husband's absence, for which she was admonished.[14] The duration of his absence was not divulged, but if her husband had been gone for a while, Eggen may have been running low on funds needed to support herself. The courts may have been expecting these women to pay their fines with money they did not have in the first place.

Suffolk County courts took a different approach when women misused alcohol themselves as opposed to giving or selling it to others for that purpose. A 1648 set of laws in Massachusetts Bay determined that an offense of drunkenness would be given a 10 shilling fine, while the lesser offense of excessive drinking could cost up to 3 shillings and 4 pence, though the distinction would likely be a matter of opinion.[15] Magistrates at all levels of Massachusetts Bay courts used this law as more of a guideline than a rule, adjusting punishments to fit the circumstances of a case. Dorcas Smith was the first Suffolk woman to be labeled a "common drunkard." In her April 1675 case, the court record indicated that her intoxication had merited greater punishment because she was known to curse frequently. The magistrates were a bit harder on Smith than they would be on others guilty of misusing

[14] Suffolk, 943.
[15] Body of Liberties 1648.

strong drink, though their punishments never reached the consistency provided by the 1648 General Laws and Liberties. Smith was given the choice between paying a 20 shilling fine or 15 stripes from a whip.

On the same day as Smith's case, Elizabeth Langberry was fined just 10 shillings for her drunkenness. [16] Because Langberry's intoxication was not "common," she was given more leniency. Mary Barber had also been found drunk only once, but she had been suspiciously spending time with George Pike, so she received a 10 shilling fine for each offense.[17] Suffolk's final case with a drunkenness conviction involved still yet another set of circumstances. Abigail Hall was ordered to be whipped 15 stripes for being drunk and using obscene language on the ship that carried her to Massachusetts Bay.[18] Hall paid the court a fine of 40 shillings, and the magistrates remitted the physical punishment.

Essex County boasted the next most numerous set of liquor-related charges involving women. Whereas Suffolk County dealt mainly with women selling alcohol illegally instead of drinking it, Essex County faced the opposite problem. The Essex offenses were also less frequent than those in Suffolk, totaling eleven cases between 1648 and 1678. Typically, Essex had a greater number of offenses than Suffolk in most other crimes, so the inversion of that pattern with alcohol offenses is surprising, especially since Essex was home to multiple port communities. Only two of the Essex women were called to court for the production or distribution of alcohol. On January 1, 1648, Elizabeth Lambert appeared before the magistrates for brewing on a Sunday.[19] In this instance, it was not the alcohol itself that constituted the crime, but what day she produced it, since any kind of work that was not a

[16] Suffolk, 603, 605.
[17] Suffolk, 785.
[18] Suffolk, 913.
[19] Essex I, 135.

daily necessity, like cooking meals, was not allowed on Sundays. Lambert's case ended with a warning not to repeat her actions in the future.

The other case applying to the production and distribution category came in 1675. Elizabeth Poe stood accused of selling liquor to Indians on an unspecified number of occasions. The court found her guilty of these charges, and gave her the choice between paying a fine or being whipped.[20] Selling alcohol to Indians was prohibited regardless of whether or not the seller had a liquor license.[21] Poe's court date was held just one month after the beginning of King Philip's War. There was nothing in her case that indicated whether she had been selling to a member of a tribe that had aligned with the colonists or were fighting against them. The court record indicated that Poe had sold alcohol to Indians on "several occasions," but this was her first court appearance for the offense. It may be that the war made her activities particularly unacceptable in the eyes of the magistrates, prompting the court to take action against her.

Being around people who were drinking or could be drinking could also land a woman in trouble. In 1657, for instance, Lidia Norman, who was classified in the court records as a servant, was brought to court for "being out at night where there was feasting and drinking."[22] The court records did not say that Lidia was participating, but that she was there was enough to earn her an official admonishment. This may have been influenced by the fact that Lidia was a servant. Attending the feast may have represented a behavior that her master did not condone for her, and so she was sent for a formal reprimand. Susana Worcester received a fine in 1672 for not only being present at a rowdy social gathering, but for hosting it too. The record stated she "suffered inconvenient meetings of young persons at

[20] Essex VI, 54.
[21] Crane, *Ebb Tide*, 161.
[22] Essex II, 48.

unseasonable times."[23] The court fined Worcester for her unruly hosting. Providing a space for inappropriate behavior was just as bad as engaging in it.

The women who went through the Essex court system on charges of intoxication came out with a fine. Usually, one visit to the magistrates was enough to keep women from being drunk in public again. Only one woman made a repeat appearance. Ann Linsford, who was married to a man named Frances, was first charged with being drunk in 1648, and she was given the usual fine of 10 shillings. In 1655, she was back for the same offense, which the court record noted, and given the same sentence.[24] Linsford did not suffer any additional repercussions for having more than one count of the same crime.

Only one woman received corporal punishment for misuse of alcohol in Essex County. In July 1676, Isabel Pudeater was ordered to be whipped with 15 stripes for drinking, unruly carriages, and abusing her husband, Jacob, which likely referred to scolding him and stepping outside the expectations of a model wife.[25] Other women had been drunk and unruly in public and escaped physical punishment, but because Pudeater elevated her offense against the community by mistreating her husband, her sentence was more severe. Pudeater's failure to conform to the proper wifely comportment was a problem on its own, but Jacob's failure to keep her in check was more alarming to colony leaders. Stable marriages and stable households were the foundation of social, political, and moral order. A breakdown in household order was a threat to the greater order of society. Magistrates gave Pudeater the sentence they did to get both her and her husband back in line and to try to restore order to the community.

[23] Essex V, 104.
[24] Essex I, 135, 414.
[25] Essex VI,193.

New Haven and Plymouth dealt more with disorderly entertainment charges than they did with production or consumption of alcohol. In Plymouth, most of the court records regarding entertainment charges dealt with mixed-gender dancing or playing cards.[26] Even so, three women were called to court for charges related to selling alcohol. The wife of Richard Knowles was accused of "selling strong waters" and overcharging for them in October 1651.[27] No punishment was indicated, and the court record did not explain whether she was in trouble for selling the strong waters (a term often used in place of 'liquor') in the first place or for selling them at too high a price. On June 5, 1678, two women were charged separately with selling alcohol to Indians. Jane Barlow, the wife of George, was facing her first offense. The court allowed her to leave with the promise that she would never repeat her actions again, and the understanding that she would be fined double if she broke her promise. Unlike Barlow, the wife of Nathaniel Fitzrandall committed this same offense "frequently." The court took her actions so seriously that is was Nathaniel whom they called to court to answer for his wife's actions. He was ordered to pay a 20 pound fine.[28]

In New Haven, there were two married couples who were brought up on unlawful entertainment charges. John Brown and his wife first came before the court for hosting gatherings in their home at inappropriate times of night in February 1663. The court record does not indicate a resolution for this case, but whatever it was, the Browns did not change their behavior. The two were back in court that May for hosting other people's servants

[26] There is a perception that Puritans were against all forms of leisure or entertainment, but certain activities were perfectly acceptable. Games and activities that required skill and intellect, like Nine Men's Morris and Fox and Geese, were allowed at the appropriate times. Games that relied on chance or gambling, like playing cards, were seen as a low and sometimes immoral form of entertainment. ("17th Century Games Program Memo," Plimoth Plantation, 1995.)
[27] Plymouth II, 174.
[28] Plymouth V, 261, 265.

without permission. This time, they were fined 10 shillings.[29] New England courts generally did not convict women of crimes they committed under the direction of their husbands. In this case, though, John Brown's wife was charged alongside her husband. Perhaps her behavior indicated she was more directly involved with the gatherings than just doing what her husband told her, and so the magistrates decided she needed to come to court as well. However, the fact that her first name was not included in either entry of the court record suggests that the court saw her as a secondary offender. In 1670, William Collins and his wife found themselves in a similar situation. The pair was charged with entertaining sailors without the captain's consent. They were ordered to pay a fine of 20 shillings.[30] Just as servants were the responsibility and, to varying degrees, the property of their masters, ship captains held the same kind of control over their crew. Providing sailors with alcohol violated the captain's rights to govern his men and undermining his authority over them.

The only woman to draw the attention of the court for consuming alcohol in New Haven was Rebeckah Meekes, the wife of Thomas. In February 1650, Meekes faced the magistrates for "entertaining and drinking with men's servants in the night." At the end of the case, it was Thomas, not Rebeckah, who had to pay a fine of 20 pounds.[31] This may have been simply because Rebeckah did not personally have the funds to pay the fine, or it could have been a message to Thomas to get his wife under control, as happened with the Pudeaters in Essex County. Because of the practice of coverture, Thomas had absorbed the legal rights of his wife and so assumed the legal and cultural responsibility for her actions. Rebeckah, a married woman, was holding after-hours gatherings with single men, men who were under contract to more established members of the community. In addition, she provided these men

[29] New Haven II, 26, 42.
[30] New Haven II, 273.
[31] New Haven I, 11.

with alcohol and drank along with them. None of these behaviors were acceptable for a woman in Puritan New England.[32]. Meekes' actions broke several components of the New Haven's social contract, so she was given a heavy penalty in response.

Often in New England, court records show that the concern about alcohol was less about policing private consumption that led to public drunkenness and more about monitoring the individuals who distributed it. Magistrates wanted to ensure that anyone who sold strong drink to colonists had secured the proper license for doing so, but later in the century their biggest priority was keeping alcohol out of the hands of Indians. Peter Mancall has contended that "most colonists believed [Indians] should not drink because they could not control themselves when they did."[33] In navigating their trade relationship with natives, colonists determined that alcohol could not be included. Otherwise, there was the potential for Indians to become drunk and subsequently destructive, and in so doing pose a threat to New England's English communities.[34] All of the cases of women selling liquor to Indians occurred during or after King Philip's War. Any interaction with the natives would have been scrutinized during this sensitive time, but providing them with access to alcohol, which was widely understood to be distasteful and off-limits, was especially damaging. The women who ignored the taboo and sold alcohol to Indians anyways, like Elizabeth Poe, were seen as embodying a threat against their own people.

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[32] Christopher L. Tomlins and Bruce H. Mann, edit. *The Many Legalities of Early America,* Cornelia Hughes Dayton, "Was There as Calvinist Type pf Patriarchy?" (Chapel Hill: University of North Carolina Press, 2001), 343.

[33] Peter C. Mancall, *Deadly Medicine: Indians and Alcohol in Early America*,(Ithaca: Cornell University Press, 1995), 21.

[34] Mancall, *Deadly Medicine*, 25.

Theft

Alice Berry of Yarmouth made her first of four appearances in court in Plymouth Colony in May 1653. She was accused of stealing a neck cloth from William Pierce's wife.[35] One month later, Berry was back before the magistrates. This time, she had gone into the home of Samuel Arnold when no one was looking and lifted some eggs and bacon. For this deed, and "other doings of the like nature," the court ordered her to sit in the stocks for one hour, but she was cleared from doing so by paying a fine.[36] In the two years following this incident, Berry either abstained from taking what did not belong to her or managed to avoid detection. In March 1655, though, she faced her third presentment for theft. She had entered an empty home again, this time that of Benjamin Hammond, and "feloniously" walked away with a sleeveless, unfinished woman's shift and a piece of pork. At this time, 'felonious' was used to mean an action was evil or unlawful, rather than its more specific modern connotation. The description of this case, while it did not include an outcome, revealed that Berry was married to a man named Richard.[37] Come summer time, she made one last court appearance. She had been caught "thievishly milking the cow of Thomas Phelps" and keeping the milk without his permission. Berry was given the choice of sitting in the stocks for one hour or paying a fine of 10 shillings.[38] The court did not record her decision.

The first two cases involving Alice made no mention of Richard, but the last two did. Since Berry was the surname of her husband, the two were already married by the time of the first theft. For whatever reason, the court recorder did not consider this important information for the 1653 cases but did for the 1655 cases. It may have been the case that Alice's

[35] Plymouth III, 28.
[36] Plymouth III, 34.
[37] Plymouth III, 75.
[38] Plymouth III, 82.

persistent bad behavior had begun to reflect so poorly on Richard, such that his identity was introduced to the court records to raise the level of accountability for his wife.

Berry was able to pay her fine for stealing from Samuel Arnold, suggesting that she and her husband were not in such dire financial straits that taking food and clothing had become a necessity. As a whole, the court of Plymouth did not seem to be too concerned with Berry's repeated acts of thievery. Two of her cases lacked an indication of a punishment, and even after her fourth offense, the worst she faced was an hour of public humiliation, though that punishment was not without its power. The court records did not indicate whether the items of clothing were returned to their owners or if any restitution was paid to the victims in addition to the 10 shilling fine in the Arnold case and the optional fine in the Phelps case. Though she was a repeat offender, Berry was viewed by the legal system as hardly more than a nuisance. Plymouth court records did not include any other cases of theft committed by women, so it is difficult to determine whether the treatment Alice received was anything unusual.

Had Berry lived in another colony instead of Plymouth, her trail through the court records may have produced different results. Connecticut's only recorded instance of a woman committing a theft, for example, resulted in the defendant, Mary Johnson, being whipped on two separate occasions in 1646.[39] Such a response was clearly far harsher than the punishments Berry faced. New Haven, on the other hand, took an even looser approach than that of Plymouth. New Haven recorded two cases of theft by women, one in 1653 and the other in 1661. The latter case failed to include a resolution, and in the former the sentence that she be "severely corrected" was suspended because the guilty woman was pregnant.[40]

[39] Connecticut, 143.
[40] New Haven I, 246, 498.

These three lacked details, and because they were so few in number, it is difficult to get a grasp on the attitudes New Haven and Connecticut magistrates held towards women who stole.

The most comparable case to Alice Berry's was that of Elizabeth Chaulky of Charlestown, who the Massachusetts Bay Court of Assistants charged in 1639 with stealing eggs, among other items. Chaulky was ordered to pay double restitution.[41] Most of the other cases of theft in the Court of Assistants ended in the guilty party returning the stolen goods if possible, and paying double restitution. Massachusetts Bay passed a law in 1648 declaring that thieves must pay victims three times the value of the stolen goods. The courts could assign additional punishments as they wished. If the culprit was a child or a servant and the parents or master did not want to pay their fines, then the guilty individual would be publically whipped.[42] If the fine was paid, the courts would forgo the whipping and hope the culprit learned their lesson.

The only time the Court of Assistants mandated corporal punishment for theft was in a case against Elizabeth Sedgwicke in 1641 that ended in an even more significant sentence. The court record on that November day stated that Sedgewicke, "for hir many theftes, & lyes, was censured to bee severely whipt & and condemned to slavery, till shee have recompenced double for all hir thefts."[43] Sedewicke's case was heard in 1641, the same year the Massachusetts Bay Body of Liberties was passed. Article 91 of the Liberties stated "There shall never be any bond slavery, villeinage, or captivity amongst us unless it be lawful captives taken in just wars, and such strangers as willingly sell themselves or are sold to

[41] Mass Bay I, 83.
[42] Body of Liberties 1648
[43] Mass Bay I, 118.

us…This exempts none from servitude who shall be judged thereto by authority."[44] This is the first time that an Anglo American law explicitly includes slavery as a legal category. The final sentence of the article indicates that anyone could be subject to slavery if the proper authorities, such as magistrates, decided they were deserving of it. Sedgewicke's sentence showed the Court of Assistants magistrates testing out their new power, though she would be free once she paid the value of her crime. This policy was confirmed eight years later in the 1648 Body of Liberties, which said that if a defendant could not pay their bond, they would be entered into debt servitude until the amount was paid.[45]

In the local courts in Massachusetts Bay, cases of theft committed by women followed a similar pattern of ending in the stolen goods being returned to the owner in addition to the paying of a fine to the court or damages to the victim. Essex County provided more cases of female thieves than any other county I looked at. The Essex records were also the most prolific, so this does not necessarily equate to theft being a larger problem there, but it could suggest that Essex was the most vigilant county when it came to monitoring theft, or that there was the greatest amount of social inequality that encouraged women to steal. About a third of Essex's theft cases centered around individuals who received or concealed stolen goods and who were not necessarily the same people or person who had committed the actual theft. The punishments for these accomplices were on par with those of the primary thief and usually consisted of paying a fine. An exception to this pattern came in the form of Mary Bishop, a married woman who received stolen goods from Sarah Roper. Sarah was a servant, and Mary encouraged Sarah to continue stealing from her master so that she could reap the benefits. For repeatedly urging Sarah to break the law and defy her master's anuthority,

[44] Body of Liberties 1641.
[45] Body of Liberties 1648

Mary's court appearance ended with her being required to pay damages to Sarah's master and the choice between paying the court 5 pounds or being whipped.[46]

Suffolk County produced cases with the largest fines, usually in the amount of triple damages or greater in accord with the minimum set by the 1648 Body of Liberties law. All of Suffolk's cases were recorded in 1671 and later, so this law had been firmly in place by that time. Physical punishments were also administered in a quarter of Suffolk's cases, but only when the guilty party was of a lower social status. In January 1680, a defendant identified as "Hannah a negro woman" was charged with stealing a box of silver instruments from Mr. Daniel Stone, which had originally been purchased for seven pounds. According to Hannah, an unidentified man had given her the box, which she passed along to Mary Pittum.[47] Though Hannah insisted she did not knowingly participate in the theft, she was sentenced to be whipped ten times and pay a fine of 10 pounds. Hannah appealed her sentence to the Court of Assistants, but ultimately the judgment would stand. By contrast, Mary Pittum, the woman who received the box from Hannah and was unable to produce all the original contents, was instructed to pay 20 shillings to the court and another 20 shillings to Daniel Stone. Hannah receiving a harsher punishment than Mary may have been the result of racial or status discrimination on the part of the magistrates, but without more similar cases to compare this one against, that possibility cannot be confirmed.

Women who were indentured servants were punished more harshly in Suffolk County than their counterparts in other counties. One case in 1676 contained elements similar to that of Hannah's. Alice Wright confessed to stealing money and goods from her master Daniel

[46] Essex III, 243.
[47] Suffolk, 1153.

Turill.[48] Wright used the money to buy clothing inappropriate for her rank in society and was also found to be in possession of forged letters, though the records do not indicate what the letters were for. Wright was sentenced to be severely whipped with thirty stripes and ordered to pay Turill triple damages, which would amount to around 45 pounds. Buying extravagant clothing was not the only way Wright disposed of her master's property. On the same day that Alice was brought to court, Dorman Morrice's wife, Ellin, was charged with receiving stolen goods from her. Morrice admitted to holding on to linen that belonged to Turrill and also volunteered that Wright had given her bread and meat on multiple occasions.[49] Court magistrates did not take her secondhand stealing lightly and sentenced her to be whipped with ten stripes. Morrice had been complicit in Wright's actions on more than one occasion, but because she was not the person doing the actual stealing, or perhaps because she was a married woman and not a servant, her punishment was less harsh. However, Morrice's marital status may not have been the protecting factor after all, as married women were sentenced to corporal punishments on several occasions across time and colonies.

Sarah Phillips was another servant who stole money from her master. Phillips, who worked for William Green of Boston, confessed to committing theft against him. Court records used the term 'servant' to mean a number of conditions of servitude, often without distinguishing which type of service the defendant was engaged in. 'Servant' was used to mean a slave, an indentured servant, or a household employee. Sarah likely belonged one of the latter two categories. It seems she was looking to fund a flight out of the community, as her list of offenses in the court records included "rideing away in mans Apparrel and having a bastard Childe," though whether she was pregnant or had already delivered her baby was

[48] Suffolk, 751.
[49] Suffolk, 753.

not indicated.[50] Phillips' out of wedlock pregnancy was likely her motive for trying to run away. What's more, after being discovered and brought to court, Phillips did not name the child's father, maintaining that she did not know who he was. Phillips was guilty of violating social, sexual, and legal codes. Stealing was, of course, against the law, and sexual activity outside of a marriage was unacceptable in the eyes of both the church and the courts.

If Phillips was in Green's employ under an indenture, a pregnancy would have prevented her from working at full capacity, and thus she would be cheating Green of the value of the contract. In Virginia, when female indentured servants became pregnant, they would have to pay their masters a sizable fine or extend their time under contract to make up for the time they could not work before and after labor.[51] I did not find any official documentation on New England's policy in this matter, but it is likely the northern region would have taken a similar approach. As such, Phillips may have tried running away to avoid serving Green for a longer span of time.

All of these represent offenses against the order of the community, but Phillips took her disorderly activities one step further by attempting to present herself as a man. Men and women occupied different ranks in Puritan communities and trying to transverse hierarchical positions was a threat to the greater social order. Alice Wright had made an attempt to do this as well by purchasing clothing unsuited to someone of her rank. But whereas Wright tried to jump the socioeconomic divide, Phillips tried to assume a different gender. The distinction between men and women remained consistent across all other social rankings, making Phillips' transgression take place on a more fundamental level and therefore made it more dangerous. Accordingly, court magistrates ordered that Phillips be whipped with fifteen

[50] Suffolk, 1063.
[51] John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia*, (New York Oxford University Press 2003), 6.

stripes on two separate occasions and that she be confined to prison in the interim. She also had to pay Green triple damages.

Thefts committed by women were relatively uncommon in New England. There were fewer than fifty cases included in the sources available to me. I found very little discussion of theft in the previous works by historians on women and crime in colonial New England. When theft was discussed, the rarity of the crime was corroborated. When Cornelia Hughes Dayton covered theft in *Women before the Bar*, it was in the context of slander cases.[52] Women were accused and accused others of theft, but it was these accusations themselves that the courts were called upon to judge, not any acts of stealing they suggested. The magistrates in these cases looked into the charges of slander, rather than investigating theft. Similarly, Mary Beth Norton mentioned women committing theft in *Founding Mothers and Fathers* when she talked about the tendency of courts to distrust midwives because of the power they held.[53] In her research for *Female Felons*, which profiled serious crimes by women in Massachusetts Bay and Plymouth, N.E.H. Hull also found that "less than 15 percent of all women's cases were related to stealing, grand larceny, robbery, and burglary."[54]

Theft required an economic climate with a certain combination of anonymity and opportunity to be a viable option. In larger commercial towns like Boston or Salem, the increased population made the monitoring of neighbors' activities more difficult. There was a bigger contrast between the rich and the poor, providing more of a motive to steal in the first

[52] Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1679*, (North Carolina: University of North Carolina Press, 1995), 316-325.
[53] Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society,* (New York: Alfred A. Knopf, Inc, 1996), 225.
[54] N.E.H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts*, (Chicago: University of Illinois Press, 1987), 52.

place. There was a larger servant and slave population who had access to elites' goods. Rural communities like those that made up Plymouth and Connecticut, on the other hand, exhibited flatter socioeconomic structures, with smaller gaps between the rich and poor. Not surprisingly, all but five of the theft cases I studied came from Essex County, Suffolk County, or the Court of Assistants based in Boston.

Several of the cases discussed in this section dealt more with the courts taking actions to uphold the master-servant relationship, particularly as it pertained to female servants, than with the thefts themselves. The relationship between a master and their servants was one of the many hierarchies governing New England society. Servants who broke the law, broke the behavioral restrictions, or both threatened the order communities relied on to function. A household with disorderly relationships was a threat to society' stability. Accordingly, courts intervened in cases with unruly servants to restore the social balance of their communities. When a female servant was the source of disorder, two hierarchies (gender and master-servant) were being challenged, so magistrates' need to take action was even greater.

Chapter Four: Taking Lives and Making Covenants with the Devil

Punishing and trying to prevent all manners of crimes were essential to New England's leaders' attempts at regulating female behavior to maintain the order of the overall community, but some crimes were considered more serious than others and were dealt with accordingly. The 1641 Massachusetts Bay Body of Liberties listed twelve crimes that could qualify for capital punishment. Only a fraction were typically associated with women. This chapter explores two of these crimes that that most jeopardized life and core social values: murder and witchcraft. Murder broke both religious and legal codes forming the structure of society and as such received a great deal of attention from both the court and the community at large. Though accusations of witchcraft were recorded far less often than popular conceptions would suggest, magistrates viewed each case as a possible significant danger to their community and so fully investigated allegations.

Murder

Murder was as serious a crime in seventeenth-century New England as it is today. It was included on the list of capital offenses in Massachusetts Bay, Plymouth, Rhode Island, and Connecticut. Colonial courts did not categorize killings in terms of first or second degree as modern courts do, but law books did make distinctions between types of murder. The 1641 Body of Liberties of Massachusetts Bay included three types of killings under its capital offenses—"willful murder," required an element of premeditation by definition, "slaying in

anger or cruelty of passion," and "slaying through poison or other such devilish practice."[1] Regardless of the circumstances of the killing, all three could result in death.

When women killed in the seventeenth-century Anglo-Atlantic world, it was typically an act of infanticide. In English laws, an infant was defined as a child of eight years or younger, so cases sparse in detail involving infanticide could have been about the death of a child far past what is currently considered infancy.[2] In English America, infanticide usually happened as a result of unwed mothers trying to get rid of evidence that they had been pregnant so they would not have to face punishment. In New England, this act was viewed particularly harshly, because it represented a serious threat to the 'city on a hill' goals of Massachusetts Bay and a dangerous break from the colony's covenant with God, in addition to going against the general religious values of all the colonies.[3]

Murder was one of three crimes, along with burglary and treason, for which a woman could be convicted even if she was acting under the direction of her husband.[4] Part of colonists' understanding of marriage required that a woman submit herself to her husband to maintain an orderly household.[5] When a wife committed a lesser crime under the direction of her husband, she was upholding societal values, not breaking them. The three exceptions were thought to be so serious that a woman would be not only allowed but expected to refuse to submit to her husband. Burglary (breaking into a home in the night with intent to commit a

[1] Body of Liberties 1641.
[2] Peter C. Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England 1558-1803, (*New York: New York University Press, 1984).
[3] Hoffer and Hull, *Murdering Mothers*, 33.
[4] N.E.H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts*, (Chicago: University of Illinois Press, 1987), 24.
[5] Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society,* (New York: Alfred A. Knopf, Inc, 1996), 4.

felony[6]) could result in death in Massachusetts Bay and Rhode Island if the offense was repeated.

Luckily for New England colonists and their societal goals, the northern English colonies saw few instances of women who killed or were suspected of doing so prior to 1690. The cases that did make it to the court records involved women who occupied an array of social positions. Of the ten women charged with murder or infanticide in Plymouth and Massachusetts Bay, half were not married, white women. Two were labeled as being Indian, one was black and also a servant, and two were identified as spinsters. Backgrounds aside, the resolution of these cases fell along a spectrum from acquittal to being sentenced to death.

The amount of attention given to a case in the court records did not always reflect its importance in the community. Court records address Anne Hett's case with a single sentence. On July 6, 1642, Hett was brought to the Massachusetts Bay Court of Assistants for "attempting to drowne hir child" and was ordered to be whipped and "kept to hard labor & spare diet."[7] There was no period of time included over which the labor and spare diet were to last or explanation of what those terms would mean in practice. The entry also does not reveal how old her child was or why she tried to drown him or her. Was this an illegitimate infant she tried to dispose of before the church and courts could find out? Was the child from a proper marriage, maybe a little older, who Hett just wanted dead? The court records offer no answers.

The relative severity of the sentence the court handed down shows how seriously they regarded Hett's crime, but that was somewhat tempered by the brevity with which the court record addressed it (though there is always the possibility that they thought the matter was

[6] Oxford English Dictionary
[7] Essex IV, 126.

self-evident and did not require much explanation). As a comparison, just four entries above Hett's case, an equal amount of space was dedicated to describing a servant running away from and being returned to his master. Hett's sentence was steeper than that of the male servant's, but the court record did not deem her actions as worthy of any more attention. John Winthrop addressed Anne Hett in his journal, but his brief description was not much fodder for enlightenment either. Winthrop said that the church of Boston shunned Hett for her crimes, but after a time she realized the wrongfulness of her actions, repented, and "the church received her in again."[8]

Two Indian women faced charges of infanticide in English courts. The first was in Massachusetts Bay in 1678, and the second in Plymouth Colony in 1683. In the Massachusetts Bay case, the defendant was named as a Spanish Indian named Maria who was a servant to Stephen French of Weymouth. Maria was charged with succumbing to the temptations of the devil in the previous October or November and murdering her child.[9] Maria was given a jury trial, and was found not guilty. As with Anne Hett, Maria may have had an illegitimate child who died and it was left to the jury to determine whether or not that death was natural. No matter what the specifics of the case were, Maria came out of her court case in the clear.

The Plymouth case involving an Indian woman shared similar elements, but there were also marked differences. Instead of just one defendant, there were three. This case occurred in 1683, not very long after the end of King Philip's war. Part of the colonists' success in the conflict came from having support from some Native communities, like that led by a woman named Awashunkes, who was the sachem of the Sakonnet. The Sakonnet

[8] *Winthrop's Journal: "History of New England" 1630-1649 Volume II,* Edited by James Kendall Hosmer, (New York: Charles Scribner's Sons, 1908), 132-133.
[9] Mass Bay IV, 115.

lived in what technically was Rhode Island, along the border with Plymouth. On July 9, 1683, Awashunkes, her daughter Betty, and her son Peter, were all brought into Plymouth court under the suspicion of having killed Betty's child. The court record stated that there was no evidence that the child had not been stillborn, and all three defendants were dismissed.[10]

Maria and Betty ranked below white women in the eyes of the Plymouth court, though Betty was somewhat respected because of her mother's political relationship to the colony. Despite their racial disadvantage, both were found not guilty in the absence of evidence to the contrary. These cases represent the greater power dynamics of the society and demonstrate what the courts viewed their role to be. Maria was the servant of a colonist, so her appearance in court is not as surprising, but Betty was not a member of the colony of Plymouth, even if her band was considered to be within its jurisdiction. The courts viewed it as their responsibility to police her actions and possibly punish her for what they considered to be a crime. Maria and Betty's races may have contributed to their cases being brought to court in the first place, but ultimately, there was no direct evidence that race influenced the verdicts.

Another case dealing with a female defendant occupying a lower rank in the social hierarchy was that of a woman named Anna, or as the Massachusetts Bay Court of Assistants introduced her, "Anna Negro"[11]. Anna was a servant to a widow, Mrs. Rebeckah Lynde, and was suspected of having had an illegitimate child and killing and hiding it to avoid punishment. Anna swore her innocence before a jury. Despite her oath, the court found Anna

[10]Jenny Pulsipher discusses Awashunkes' alliance with Plymouth in King Philips's War in *Subjects unto the Same King: Indians, English, and the Contest for Authority in Colonial New England,* (Philadelphia: University of Pennsylvania Press, 2005). Betty's case is from *Records of Plymouth Colony: Court Orders: Volume 6: 1678-91,* Edited by Nathaniel B. Shurtleff, (New York: AMS Press, 1968), 113.

[11] Mass Bay IV, 29.

"Guilty of having a Bastard child & privately conveyed it away." The language of her conviction is important. The court deciding that Anna "privately conveyed" her child to hide it is not the same as deciding she killed it in order to do so. It is also a possibility that Anna's child was stillborn and she tried to dispose of the body without Lynde finding out.

The language of the charge and ensuing sentence spared Anna's life, though her punishment was not a light one. Since it was still possible that Anna did kill her child, she was made to stand at the gallows for one hour with a rope around her neck in a symbolic hanging and then whipped at cart's tail with thirty stripes. From there, she would be imprisoned for one month, after which time she would be brought back home to Charlestown and whipped with another thirty stripes on lecture day. These kinds of punishments, whippings and the occasional prison sentences were not unusual for sex crimes, but the repetition and scene at the gallows was likely due to the aggravating factor of possibly killing her child. After the last of her sentence was completed, Anna would then resume her service to Mrs. Lynde. [12] The court record did not include any provision compensating Mrs. Lynde for the loss of service during Anna's stay in prison. She likely would have received something, probably in the form of an extension of Anna's service, as outlined in Sarah Phillip's theft case from the previous chapter. However, it is also possible that the court record used 'servant' to mean Anna was a slave, and in that case extending the term of service would not be an option for compensation.

Three years after Anna's case in Watertown, Cardin Drabston, who the Court of Assistants described as a spinster, was charged with fornication with Christopher Grant, killing the resulting child, and concealing her crime for five days. Drabston pleaded not

[12]Mass Bay IV, 29.

guilty and stood trial. The jury found her not guilty of murder.[13] There was no note as to if Drabston or Grant faced punishment for fornication. In 1683, Elizabeth Payne, another court-proclaimed spinster, was accused of murdering her child as well. This time, the jury decided that because Payne did not call for help while in labor to save the life of her child, she was guilty not of murder, but of neglect. No punishment was given for this conviction, but Payne was ordered to be whipped with twenty stripes for the earlier crime of fornication, which was in line with other Court of Assistants fornication cases at this time. [14]

The cases of Drabston and Payne resulted in somewhat favorable situations for the two women, at least in terms of not facing execution or prison time, which was not the same situation that confronted Anna Negro. However, the circumstances of the spinster cases differ too greatly from Anna's to draw any conclusions about the different treatments the three women were given. More glaringly, three cases is not a large enough sample size to confidently draw a conclusion on any matter. Without more cases of a woman possibly killing her illegitimate infant, it cannot be determined whether Anna received the punishment she did because it was standard for the crime or because of her race or status as a servant. I came across 47 cases involving female servants committing crimes during the course of my investigation, two-thirds of which dealt with fornication. Regardless of the type of crime servants were found guilty of, their punishments largely aligned with those assigned to free women for like offenses. Based on that pattern, I would conjecture that the trend was applied to murder cases as well, and that Anna's case would have ended the same if she had been white.

[13] Mass Bay IV, 125.
[14] Mass Bay IV, 228.

The only case I came across that resulted in a guilty murder conviction was also Plymouth's earliest on record. In the summer of 1648, Plymouth Colony magistrates investigated Alice Bishop for murdering her young daughter. After the child was first discovered, Governor William Bradford ordered a team of witnesses to investigate. On July 22, 1648, a representative of the witnesses described the scene they found upon entering Richard and Alice Bishop's house:

> wee saw at the foot of the ladder which leadeth into an upper chamber, much blood; and going up all of us into the chamber, wee found a woman child, of about foure yeares of ages; lying in her shifte upon her left cheeke, with her throat cut with divers gashes crose ways, the windpipe cut and stuke into the throat downward, and a bloody knife lying by the side of the child.

In the same account, the representative of the twelve male investigators said that Alice had confessed to killing her daughter at that time.[15] Unlike with charges of drowning where the death could have been accidental, or suspicion of infanticide where it is possible that the child was stillborn, the death of Alice Bishop's daughter was undoubtedly the direct result of the actions of another person. The girl's throat had been cut multiple times. Also unlike the other cases discussed thus far, Alice never disputed her guilt.

There is a third difference separating the Alice Bishop case from the cases of murder and infanticide committed by women, and that is in the way the Plymouth court record documented it. Bishop's case spans multiple court entries which include a degree of detail rare for any type of crime committed by a man or a woman. There were thirteen witnesses to the crime (they either were initial witnesses to the scene or were sent by the governor to investigate after the discovery), seventeen members of the grand inquest, and twelve petty jurors. The amount of ink and number of community members dedicated to this case is a clear indication of its importance.

[15] Plymouth II, 132.

Bishop's case is also unique in the order in which it presents pieces of the story. The first mention of the murder in the court records is the official account ordered by the Governor. The story of how the child was first discovered was revealed immediately after. On the day of the murder, twenty-three-year-old Rachel Ramsden, wife of Joseph, went to visit Alice Bishop. Bishop appeared to be in good spirits, and her daughter, who later in the records is named as Martha Clarke, was sleeping in bed. Alice asked Rachel to get buttermilk from Goodwife Winslow, and when Rachel returned, there was blood at the foot of the ladder and Bishop's demeanor had changed significantly.

At this point in telling Rachel's story, the court record becomes ambiguous with its pronoun use, lending its description to two different interpretations. After Rachel noticed the blood, "she pointed unto the chamber and bid her looke, but shee persieved shee had kiled her child…the reason that moved her to think shee had kiled her child was that when shee saw the blood she looked on the bed and the child was not there." One interpretation is that Rachel was doing the perceiving and thinking. At this point, Rachel ran to her parents' home to report on the crime, so it could be that the court record's statement was describing her realization that something horrible had happened. The other interpretation is that Alice was doing the perceiving and thinking, that Alice was not aware of her actions when she killed Martha and only understood that that was what she had done after the fact. This second interpretation may not be the simpler of the two, but it does provide a possible explanation for Bishop's behavior.

Rachel stated that Alice was "as well as shee hath knowne her att any time" upon entering the Bishop's home. Rachel did not notice anything in Alice's behavior that indicated she was about to take the life of her daughter. Alice also knew that Rachel would be

returning in a short period of time. It could be argued that Alice requested the buttermilk to get Rachel out of the house so she could commit the murder, but this scenario does not make much sense. If Alice was aware of her actions enough to premediate the murder and ensure there were no witnesses around, then she would have been aware enough to hide her actions in other ways. She would have waited until she knew no one was coming around for a while or made an attempt to hide the evidence of her crime. But, if Alice was suffering from some sort of mental episode and unaware of her actions, which her poor timing and extreme shift in mood make a possibility, then that would support her being the one to "perceive" that she killed her daughter. It is likely that, for whatever reason, Alice snapped.

Alice continued admitting her guilt throughout her trial process. She reiterated that she was at fault in front of Governor Bradford in court on August 1, adding that she was sorry. It could be that Bishop accepted that she killed her daughter, even if she had not intended to, and hoped that her forthrightness and remorse would win her favor with the magistrates. It is also worth noting, though, that Bishop's expressions of remorse may have been just that. She could have accepted her punishment and expressed regret for her actions with no intention of altering her fate. On October 4, Bishop was "indited for felonius murther". The jury found her guilty, and she was immediately brought to the gallows and hanged.[16]

Martha was likely Alice's daughter from a previous marriage, as the two have different surnames. This idea is also supported in that the first mention of Martha describes her as "the daughter of Allis Bishop, wife of Richard Bishope." Martha was directly said to be Alice's daughter, but that same connection was not made for her being Richard's daughter as well. Richard is only mentioned to clarify Alice's identity. When Alice was indicted, it

[16] Plymouth II, 134.

was for killing the "fruit of her own body." The court record did not mention if Alice had other children, with Richard or otherwise. Either way, Alice could have seen Martha as detrimental to her relationship with Richard, a remnant of a previous life. Alice deciding to kill Martha under this perspective could have happened whether or not she was in her right mind. However, records never provide a motive for Alice's actions, so trying to assign one can never be more than speculation.

It is not very surprising that Alice Bishop was the only woman in any New England colony to receive a guilty verdict for the crime of murder. In some of the cases discussed above, the women facing charges were entirely cleared, and in others they were found guilty of a lesser crime, one which did not require the sentence of death. New England magistrates were generally hesitant to give a woman the death penalty. Such sentences were occasionally handed down, but they were usually commuted to lesser sentences, like initially happened with the persistent Quaker Mary Dyer. As N.E.H. Hull explained in *Female Felons,* "Juries were less likely to convict a woman of a capital offense. And this result is not random. Juries in colonial Massachusetts simply did not feel that the social control of deviance was worth an easy application of the death penalty."[17] Even for crimes for which a man would receive a death sentence, it did not sit well with court officials execute a woman when they could avoid doing so. However, there was no getting around the call for execution in Bishop's case. There was a body, so there was clearly a crime and an obvious victim to begin with, the circumstances pointed to Alice having committed it, and she herself never denied having done so. Failing to bring a guilty conviction and see the appropriate sentence carried out would send the message that the men on Bishop's jury and Governor Bradford would allow

[17] Hull, *Female Felons*, 105.

murder to occur in the colony. Bishop's case necessitated persecution to the fullest extent of the law to ensure respect for the courts.

Bishop's case is also significant for what it meant to the greater community. The household was the foundation of an orderly society, so what took place in the home was highly important. By murdering her own child, who she was charged to raise and prepare for community life, Bishop's actions struck at the core of society's values. Little is more destabilizing to the household unit than a mother murdering her child. This kind of household disorder exhibited a serious danger to her community's ideals of morality and social order. When women became mothers, they gained a small degree of power within their families, which translated to an even smaller degree in the greater community due to the close relationship between the two.[18] A woman abusing that power, stepping outside of the expectations for the position she occupied in the greater hierarchy in such a violent way as killing her child, tore apart the fabric of her community's stability.

Witchcraft

It is difficult to think of female criminals in seventeenth century New England without also thinking of witchcraft. Referring to the explosion of cases in Salem in 1692, N.E.H. Hull explained that the women who were tried "faced a virulent antifeminine hysteria whose root was not misogyny per se, but a complex case of religious anxiety."[19] Based on the seven cases I came across in the court records, I would apply Hull's statement to earlier in the seventeenth century as well. Accusations were rare enough to hold weight, and some of the cases took place during sensitive social and political contexts—one during the time

[18] Norton, *Founding Mothers*, 10.
[19] Hull, *Female Felons*, 14.

Massachusetts Bay sought to be a model for Cromwell's England, another during King Philip's War, and yet another in the wake of the creation of the Dominion of New England. Accusations of witchcraft were aimed at women far more often than at men. Carol Karlsen found in *The Devil in the Shape of a Woman* that of the 344 witchcraft accusations in New England from 1620 to 1725, 267, or about 78% were against women. Of the 150 accusations during non-outbreaks, 124, or 83%, were against women.[20] No matter who accusations were directed at, witchcraft was a religious crime. Practicing witchcraft was an offense against God and was strictly forbidden by the various Puritan communities in New England. Witchcraft was one of the three crimes for which women were specifically mentioned in the language of the Massachusetts Bay laws against them.[21]

Although the Salem trials are by far the most famous, accusations of witchcraft were made in New England in the years prior, though they were not very frequent. When allegations did come, convictions were rare. Four women were executed for witchcraft before 1691.[22] However, a guilty verdict did not always lead to death. If a woman confessed to being a witch, her life would be spared. Hangings occurred only when the courts determined that the defendant was in fact a witch but she refused to acknowledge her guilt. In looking at the cases discussed below, it is clear that magistrates took accusations of witchcraft seriously. They often delayed making a decision or continued a case until the next court session in order to gather more information and witnesses. If the court was going to make a conviction, they wanted to be sure about it. Being guilty of witchcraft meant that the defendant had made a covenant with Satan, the exact opposite arrangement as Massachusetts Bay's covenant with

[20] Carol F. Karlsen, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England*, (New York: W.W. Norton & Company, 1987), 47-48.
[21] Hull, *Female Felons*, 29. The other two crimes were murder and manslaughter.
[22] Hull, *Female Felons*, 49.

God. Covenants, giving consent to be ruled by another, were essential to New England's political and social structure, and inverting one could have residual effects on the others.[23] There was a breakdown in the colony's mission for its residents to reject the undertaking Winthrop articulated so intensely. Witchcraft accusations were localized religious and social crises in and of themselves.

Women who faced accusations of witchcraft usually fell into one of two categories. On the one hand, they could already occupy marginalized positions in society. Women who never married, were poor, or had gotten into trouble with the law in the past could find themselves saddled with witchcraft accusations simply for being a nuisance to their community. Jane Kamensky has discussed the ways past speech offenses could influence witchcraft cases. If an accused woman had slandered a neighbor or otherwise spoke in a way that was unacceptable by community standards, neighbors thought it more likely that she could also be capable of witchcraft.[24] The second way women usually found themselves accused of being a witch was by becoming a thorn in the side of a neighbor, likely someone with a degree of power in the community. Naming a woman as a witch in the hopes of stripping her of any respect in the community was a particularly potent way to exact revenge without risking any significant repercussions in return. If a woman spoke negatively about or toward someone, the victim could attempt to recover their reputation and dignity and deflect attention by having her denounced as a witch.

Despite the culture around accusations of witchcraft and the power they held in New England, the court records I used to conduct my research did not contain any sensational cases of witchcraft. In New Haven, Elizabeth Goodman was in court on charges of

[23] Norton, *Founding Mothers*, 12.
[24] Jane Kamensky, *Governing the Tongue*: *The Politics of Speech in Early New England,* (Oxford: Oxford University Press, 1997), 156-158.

witchcraft in August 1655. Court magistrates took the allegations against her seriously, and they had Goodman imprisoned until the next court session to allow for an investigation into her case. However, when the next session rolled around the following month, the court record indicated that Goodman had been released from prison due to weakness.[25] She was to return to court in October to continue her case, but no further information was ever recorded on Goodman's witchcraft case. It is possible that she died.

Essex County, the home of the 1692 Salem witchcraft epidemic, tried just two cases prior to the eruption. In 1669, Susannah Martin of Salisbury was ordered to be kept in prison under suspicion of witchcraft unless she paid a bond of 100 pounds. Her husband, George, paid the bond.[26] If the Martins had a spare 100 pounds at the ready, they would have been one of the more well-off families in their town and therefore highly visible. The court record does not name the source of the witchcraft accusation, but it may have stemmed from someone who felt they had been wronged by the Martins or was looking to mar the reputation of the prominent woman. The court must have decided to drop Susannah's case, as her name was absent from the remainder of the Essex records. The second Essex case came eleven years later in Salem. Margaret Giffords was ordered to appear at the next court session, at which time Mr. Philip Read would give evidence of her guilt of witchcraft.[27] However, just as with Susannah Martin, the charges against Giffords were allowed to lapse, and there was no mention of her case at the next court session. This is not terribly surprising, though, as only 15 women were convicted of witchcraft outside of outbreaks from 1620 to 1725.[28] In both Martin's and Giffords' cases, though no convictions or confessions were

[25] New Haven I, 249, 256.
[26] Essex IV, 133.
[27] Essex VII, 405.
[28] Karlsen, *The Devil in the Shape of a Woman,* 48.

made, their accusers may have gotten what they wanted. The women were not declared to be guilty of witchcraft, but their names had become associated with the charge, and that may have been enough to irreparably damage their reputations.

From 1674 to 1683, the Massachusetts Bay Court of Assistants heard the cases of four women accused of witchcraft. Samuel Benet and his wife accused Anna Edmunds of being a witch in March 1674, possibly in retaliation for some offense she committed against them. The court found Edmunds not guilty, and Samuel Benet was ordered to pay 30 shillings in court fees.[29] One year later, Mary Parsons, wife of Joseph of New Hampton, was also accused of witchcraft. She was sent to prison in Boston to await trial, and two months later, a jury found her not guilty and she was fully discharged.[30] Just as with Martin and Giffords, Edmunds and Parsons were found to have no association with witchcraft, but the damage to their reputation may have already been done.

In August 1681, Mary Hale found herself facing the magistrates for a like reason, but the language of the charges she faced was more inflammatory. Hale, who was from Boston, was widowed. She was accused of "the abhorred sin & art of witchcraft" and of bewitching someone with the last name Smith to death.[31] The court record did not say who asserted Hale was responsible for Smith's death, nor does it say what her connection, if there was any, to the victim was. The accusation apparently did not hold much weight, because on the same day Hale was indicted, a jury declared her not guilty.

The Court of Assistants' last accusation came in 1683. This time, the defendant was Mary Webster of Hadley, who was married to William Webster. The court decided her case required further consideration, as several unnamed individuals had agreed to act as witnesses,

[29] Mass Bay IV, 11.
[30] Mass Bay IV, 31,33.
[31] Mass Bay IV, 188.

and they delayed making a decision to a later date. The original indictment did not include any details for what these witnesses may have had to say or what the exact nature of Webster's alleged crime was. Her case was resumed five months later.[32] After listening to the evidence against her, the jury ultimately found Webster not guilty.

At the start of my investigation, I expected witchcraft to play a much larger role in women's experiences in court than turned out to be the case. New England was not the paranoid, witch-hunting state it has been made out to be. One interpretation of the 1692 Salem epidemic that has cast this reputation on the entire region and century is that the accusations were allowed to escalate as they did because Massachusetts Bay was without a clear legal system at the time. The colony was transitioning between the system it had operated under for the last six decades and the formalized royal system being imposed by the English government. In the cases from earlier in the century, though, there was a clear legal procedure to follow. Magistrates even postponed court appearances or trials to ensure that procedure was followed to the fullest extent.

[32] Mass Bay IV, 229, 233.

Chapter Five: The Regulation of Marriage

In seventeenth century New England, colonists assigned a great degree of importance to the relationship between a husband and wife. Husbands became legally responsible for their wives, taking on the legal roles the woman's father had previously held, and absorbed their property rights. It was within a proper marriage that lawful sexual activity could occur. The husband would provide for his wife, and in return she owed him sexual loyalty. A husband owed his wife sexual loyalty as well, but extra emphasis was placed on the fidelity of the woman. Under this system, a husband would never have to question if he was the father of his wife's child, and the community would not have to bear the burden of supporting an illegitimate child. Or at least, that was the ideal.[1] Despite the rigid morals of the New England colonies, sexual acts outside of marriage occurred far more often than magistrates and ministers alike cared for.

In the following chapter, a number of different terms will be used to describe acts of sexual immorality in reflection of the case descriptions in the court records. With the exception of adultery and perhaps fornication, these terms, such as uncleanness, incontinency, and wicked, wanton, or lascivious carriages, were not given any legal distinctions in the laws I examined. Overall, the court records themselves seemed to use these terms interchangeably, though sometimes colonies favored one term over the others for a number of years at a time. No matter what phrasing the court records chose to use, the

[1] Sexual fidelity was not the only element required for a successful Puritan marriage. Domestic violence was a matter of immense concern to New England Colonists, but it will not be discussed at length in this analysis. I did not track most cases of husbands abusing their wives in the course of my research because men were the defendants in those cases, and I came across very few cases of wives being violent towards their husbands.

message was the same—there had been sexual activity outside the bounds of what was legally and socially acceptable.

Fornication

Part of upholding marriage as a foundation of New England Puritan society involved the regulation of sexuality. From a community standpoint, mothers needed to know with certainty who the fathers of their children were, and illegitimate children cast that knowledge into doubt. If an unmarried mother had no man in her life who would support her and her child, that responsibility would fall to the community. The Bible clearly communicated that there was to be no sex before marriage. The last of the Ten Commandments instructs that "You shall not covet your neighbor's house. You shall not covet your neighbor's wife, or his manservant or maidservant, his ox or donkey, or anything that belongs to your neighbor." Often, this is seen as a warning against adultery, but there is more to it than that. The Commandment also deals with regulating sexual activity. In an interview for NPR's TED Radio Hour, Christopher Ryan explained the relationship between the Tenth Commandment and sexual regulation, stating that, "That's what sexual monogamy is—an institution designed to protect the property of the father or the husband."[2] Women were property, and to 'damage' another man's property or for women to assert agency and reject that status was to challenge the most basic guidelines of not only the community, but also of Christianity itself.

The idea of predestination and being a member of God's elite was important throughout New England, but particularly in New Haven and Massachusetts Bay. Individuals and communities alike could prove their membership in the elect by living and doing well, meaning they were both moral and successful. Immoral actions reflected badly on those

[2] Christopher Ryan, "Seven Deadly Sins," TED Radio Hour, NPR, February 5, 2015.

engaging in the behavior as well as the society they lived in. Because women were placed below men in the social hierarchy, it was seen as a symptom of an even greater community problem for women to act out, particularly when the source of their misbehavior was sexually based. If men could not control their women, the stability of the community was threatened.

The language authorities used to convey a charge was important. Fornication had a clear definition, but uncleanness, incontinency, dalliances, and lascivious carriages could either be interchangeable or each have set meanings depending on the colony. It is important to note that Puritans enjoyed sex, but only within the bounds of a lawful marriage.[3] Sexual acts outside of a marriage violated the privilege that only matrimony was meant to unlock. Accordingly, when court records used terms like 'uncleanness' and 'incontinency' in place of fornication or for similar behaviors, those labels were applied not because colonists thought sex itself was dirty, but because the disregard for the proper protocol polluted the act.

When women did find themselves pregnant after premarital sex, the court was equally interested, if not more so, in discerning the father of the child as in punishing the wayward woman. Without a father to take financial responsibility for the child, that burden would fall on the community. When women refused to reveal who the father was, their sentence could increase. Debra Corlis experienced this in Salisbury, Essex County, in 1676. Corlis originally lied about the father of her child and then refused to name who the actual father was. The court record noted that for her lack of cooperation, she would receive both corporal punishment and a fine.[4]

[3] Gloria L. Main, *Peoples of a Spacious Land: Families and Cultures in Early New England*, (Cambridge: Harvard University Press, 2001*),* 64.
[4] Essex VI, 213.

In Massachusetts Bay, fornication cases with female defendants were heard both in county courts and in the Court of Assistants. Women who committed sex crimes in Essex and Suffolk counties threatened their colony's vision of becoming a city on a hill. Sex before marriage was a religious offense to begin with, but further, as N.E.H. Hull explained in *Female Felons,* magistrates and ministers drew on examples of wayward women from the Bible like Eve and Bathsheba to make it "clear that women's fornication led to more serious crimes and a general breakdown of social order" and that "such crimes were as threatening as treason had been to the Norman and Angevin kings of England."[5] A female fornicator, then, was a sort of gateway criminal that could lead to the breakdown of the entire community structure, and that would certainly take Massachusetts Bay out of the running for being a model Christian community.

The Massachusetts Bay Court of Assistants employed humiliation-based punishments with the greatest frequency of any of the courts I studied. For a case to have made it to the Court of Assistants, either something about it made it too big or difficult for a local court to handle, or the defendant had appealed her conviction. In Massachusetts Bay, the 1641 Body of Liberties stated that "It shall be the liberty of any man, cast condemned or sentenced in any cause in any inferior Court, to make their appeal to the Court of Assistants."[6] This provision did not contain any language including women in the policy, but it did not contain any language excluding them either, and women appealed to the Court of Assistants on several occasions for a variety of convictions. When it came to fornication cases with female defendants being heard by the Assistants, either something about her behavior was so egregious that her local court was appalled or baffled, or the defendant was asserting her

[5] N.E.H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts*, (Chicago: University of Illinois Press, 1987), 32.
[6] Body of Liberties 1648.

right to an appeal, exercising a degree of personal agency that a court magistrate would not have been comfortable with.

In England, laws around marriage and sex lacked the regimented nature of those enacted in the colonies. It was generally acceptable for unmarried couples to be sexually intimate as long as they were engaged, whether or not the contract had been signed.[7] New England was home to people who were dedicated to religious reform and living in a moral community, but it was also home to plenty of individuals who had no interest in these matters. Many people went to New England, especially to marine communities in Massachusetts Bay, for economic motives. For them, the transition from the comparatively loose sexual attitude of England to the strict environment of New England may not have been much of a transition at all. The high number of cases related to premarital sex in what was branded as a godly community may have partially stemmed from a segment of the population choosing to continue to follow the customs of England rather than adopting the ways of their new neighbors.

Over a span of eleven years, the Providence court heard eighteen fornication cases. The majority of entries ended with defendants having to choose between being whipped, usually with 15 stripes, or paying a fine of 40 shillings. This practice mostly followed the colony's official approach to fornication cases. In the 1663 Acts and Laws of Rhode Island and Providence Plantations, fornication was listed as being punished with a 40 shilling fine and/or a public whipping of no more than 10 stripes.[8] Fourteen of Providence's 18 fornication cases were heard after this law had been published, so it is curious that Providence consistently assigned whippings that were fifty percent more intense than the law

[7] Peter C. Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England 1558-1803,* (New York: New York University Press, 1984).
[8] *Acts and Laws of His Majesties Colony of Rhode Island and Providence Plantations 1663-1711),* 7.

allowed for. Laws aside though, the punishments in Providence's fornication cases were less severe than those doled out in Massachusetts Bay or Plymouth.

The 1648 Body of Liberties in Massachusetts indicated that fornicators could be fined or whipped, but no amount was specified for either.[9] During the first few decades of the colony, convicted fornicators faced fines that averaged around 40 shillings, but in the mid-1660s, the fine jumped to about 5 pounds. A Plymouth law from 1671 set the penalty for fornication at 10 pounds per person, though if a couple agreed to get married, the fine would be 10 pounds in total.[10] In the decade prior to this law, fornication cases typically ended with a fine of 5 pounds per person, and before then sentences were more likely to involve physical punishment. Clearly, Providence officials did not take fornication as seriously as their neighbors did.

Lack of intensity notwithstanding, why was Providence concerned with this offense at all, and why were so many cases restricted to 1658 to 1669? Rhode Island separated church and state, choosing to forgo an official colony religion that would hold a high degree of political influence. This would earn Rhode Island the reputation of being tolerant by seventeenth-century standards, but it is also important to understand that Rhode Island was not a godless society. People in Providence were more permissive with different interpretations of Christianity and individual beliefs, but they did not comprise an 'anything goes' community. They were still English, and so shared a background of cultural beliefs with the men and women of other New England colonies. It may be that Providence officials were interested in policing premarital sex to avoid absorbing the burden of illegitimate

[9] Body of Liberties, 1648.
[10] Blue Laws, "Plymouth Criminals," 54.

children, or else they were interested in limiting the sexual activity of women to maintain control in their society just as the leaders of Massachusetts Bay did.

Throughout New England, when cases of sex crimes involved a defendant who was a servant, the outcome was no harsher than it would have been for a free person. There was no evidence of a defendant's race having a negative impact on their sentencing. This seems to suggest that in the eyes of court magistrates, the existence of a sex crime itself and the need to punish it were more important than who committed it. No matter who someone was or what station in life they occupied, the same regulations of sexuality still applied to them. Out of the twenty-two cases in which a servant was deemed to be at fault for a fornication charge, there were just three cases with heightened punishments. The earliest of these exceptions came out of Connecticut. In 1639, Mary Holt, who was a servant, was found guilty of unclean practices with a man named John Bennet. Not only was Holt to be whipped, but her master was instructed to send her away the following month.[11] Something about Holt's case was so unacceptable to her community that she was made to live somewhere else. This decision may not have been made because she was a servant, but the power to 'send her away,' something different than banishment, was linked to her status as a non-free person. Holt's punishment also had a detrimental effect on her master, who found himself down a servant. The magistrates' decision indicated that the community interest of removing a fornicator from their midst outweighed Holt's master's right to her services.

Seven years later, Connecticut saw a second sex crime case involving a female servant. Eleanor Watts committed a misdemeanor with John Reynolds in August 1646 and the court ordered that she be fined 5 pounds and whipped with 15 stripes.[12] Hers was the only

[11] Connecticut I, 29.
[12] Connecticut I, 142.

Connecticut fornication case in which a fine was administered, and no other case in that colony involved a two-step punishment. The fine was steep, and Watts likely would have had to extend her time of service to pay it off. Similarly, in March 1659, an Ipswich court in Essex County heard a fornication case involving a female servant. Elizabeth Pressye was accused of fornication with William Bingly. The court found the two guilty. Elizabeth was ordered to be whipped, and she was to stay with her master until the court decided enough time had passed and released her.[13] Like Watts, Pressye was given a two part punishment that resulted in the extension of her time in servitude.

In May 1652, Robert Meeker and his wife were presented for having fornicated before marriage in New Haven. When questioned by the court, the two confessed, but the court record included a detail separating the Meeker case from other entries of couples having sex before saying their vows. Robert revealed that he had caused his wife (who at the time was not yet his wife) to become drunk and acted without her consent. By modern standards, his admission amounted to a confession of rape, but the New Haven court saw no such connection. Both Meeker and his wife were to be fined 10 shillings and whipped for lying.[14] New Haven courts strove to treat men and women equally in cases involving illicit sexual activity, following the standard set by the courts in Geneva, their model of a Calvinist community.[15] Meeker's wife was not a willing participant in the crime, but she was treated as if she had been. Typically, women could not be convicted of crimes they committed under the influence of their husbands. Meeker's wife had no agency in this situation, and so it seems logical that she would not receive a punishment, or at least one that was less intense

[13] Essex II, 151.
[14] New Haven I, 124
[15] Christopher L. Tomlins and Bruce H. Mann edit. *The Many Legalities of Early America,* (Chapel Hill: University of North Carolina Press, 2001), 346.

than Robert's. But, because they were not yet husband and wife, the court did see Meeker as possessing the agency of a single woman, and so this rule was not applied. In the court's view, she had no business being alone with Robert, let alone drinking with him, and because she chose to take these actions, the court held her criminally liable.

There were other fornication cases involving women who were taken advantage of, though the manifestation of the exploitation was different. Jane Powell, who was a servant of William Swift, was found guilty of fornication with David Ogillor in 1655. Powell admitted to her actions, explaining that she had been "in a sad place" and Ogillor had promised to marry her. Despite this explanation, Powell was ordered to be publically whipped and pay court costs.[16] She had been willing to participate, but only under a certain set of circumstances. Whatever Powell's understanding of the arrangement may have been, the court only saw that she had engaged in sex before marriage, and she needed to face the consequences just as any other woman would.

In Ipswich in 1671, Hannah Johnson was fined for "suffering a young man to lie with her."[17] This charge does not describe Johnson as being an active participant. It does not say that she sought out the young man or expressed a willingness to comply with his desires. It also does not say that she did anything to stop the young man—there was no attempt to get away, no crying out, no immediately running to someone and disclosing what happened. Johnson allowed the act to occur, and to the court, the absence of a no did indicate a presence of a yes, and her case was resolved accordingly. However, there is also the possibility that 'suffering' in the charge was meant as 'consenting to,' which would make her guilt in the situation far less murky.

[16] Essex III, 91.
[17] Essex IV, 367.

Massachusetts Bay had a long history of expecting women to report any assaults immediately. In 1638, the Court of Assistants heard the case of Alice Burwoode. Burwoode was charged with "yielding" to the sexual advances of John Bickerstaffe, not crying out for help at any point, and for concealing what happened for nine or ten days. Because she did not immediately reveal Bickerstaffe's actions, both Burwoode and Bickerstaffe were whipped.[18]

New England colonies took different approaches to premarital couplings. Sometimes men and women found guilty of fornication were pushed to get married, and other times they were made to be kept apart. An example of this latter outcome stemmed from a surprising source. In November 1666, William Long and Ann Brownell drew the attention of the Providence courts. The record stated that the two were "owning one another as man and wife," living together and behaving as a married couple would, often called a 'common law' marriage. New England had no legal category for this type of relationship, but it is likely that many couples, particularly in port cities, lived under these circumstances. Long and Brownell were fined 40 shillings, and instead of requiring that they get married and resume their living arrangements honestly, the court ruled that Long and Brownell should no longer live with one another.[19]

Massachusetts Bay was the colony most likely to encourage couples to marry after they had been intimate. The colony's 1648 Body of Liberties contained a provision stating that in cases of fornication, the couples would be pushed to marry or else face a fine or corporal punishment.[20] In Salem in 1669, William Sanders and Mary Vocah were deemed guilty of fornication, and the court gave them a choice between being fined and being whipped. This choice was not terribly uncommon, but the court added a third option that was

[18] Essex I, 79.
[19] Providence, 48.
[20] Body of Liberties 1648.

not afforded to everyone. If Sanders and Vocah decided to get married, their fines would be cut in half.[21] They would still be fined, so they would not escape all punishment, but the court hoped to entice Sanders and Vocah into becoming an honest couple by sweetening the deal a bit. Similarly, in 1682 in Ipswich, William Chapman and Elizabeth Smith were found guilty of fornication, but Chapman provided security on the promise to marry Smith.[22] Unlike with Sanders and Vocah, though, the court record did not mention any punishment taking place once Chapman made his promise.

A couple was not necessarily safe from facing the court on fornication charges just because they had married. If a child was born before a couple had been married for nine months, then charges of 'carnal copulation before marriage' were difficult to beat. At the time, people believed that only women who were full term would go into labor. The idea of a premature birth was not something that was considered. William and Naomi Sargeant of Salem, for example were fined 7 pounds in 1682 for fornication before marriage.[23] No other Essex County cases resulted in a fine of this amount. When an encounter resulted in a child, fines rose from 20 or 40 shillings to 3 to 5 pounds, so the Sargeants may have had a child. 7 pounds remains a curious number, though, and how the magistrates arrived at this amount is unclear.

Usually, it would take the intervention of a midwife for a married couple to be cleared of fornication charges, as happened with Humphrey and Elizabeth Devorix in 1681 in Salem. The case was dismissed only after a midwife testified that Elizabeth had been kicked by a horse, and that was what triggered her labor.[24] This is an example of the sort of in-

[21] Essex IV, 200.
[22] Essex VIII, 279.
[23] Essex VIII, 368.
[24] Essex VIII, 145.

between position midwives held in society. On the one hand they were women, but on the other, they were provided a vital service to society and were considered to be expert witnesses in court.[25] Women who were not involved in fornication cases could be consulted to testify before the court under other circumstances as well. Nine years before the Devorix case, Sarah Carpenter was suspected of being with child in Suffolk. After Carpenter had been examined by three women, the court was satisfied that she was not in fact pregnant.[26]

Married couples did not always come out of court with equal punishments after facing fornication charges. John and Esther Gravener of Roxbury, Suffolk County, for instance, were charged with fornication before marriage in 1673. When the court handed down its sentence, John was given the choice between paying a fine of 3 pounds or being whipped with 15 stripes, while Esther was given the less intense options of paying just 40 shillings or being whipped with 10 stripes.[27] Suffolk sporadically handed down different punishments for men and women in fornication cases, but the court records never included any explanation for why they did so. The court may have considered women to be weaker than men and therefore unable to stand as much physical punishment or unable to produce enough money to pay the same fine, or they may have thought the women in these cases were somehow less guilty than the men. This latter explanation does not make as much sense given the context of Massachusetts Bay's attitude towards illicit sex. Women who engaged in premarital sex were typically viewed with just as much disdain, if not more, than men were.

Suffolk was not the only county to adjust punishments for men and women in fornication cases. In Hampton, Essex County in 1677, Mary Runlett, the wife of Charles, was

[25] Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society,* (New York: Alfred A. Knopf, Inc, 1996), 236.
[26] Suffolk, 92.
[27] Suffolk, 234.

charged with fornication before marriage for a second time. She was sentenced to be severely whipped or fined.[28] Runlett's maiden name was not included in the court entry so I was unable to determine if her earlier case was in the court records or who she may have been involved with. It is worth noting that the 1677 entry did not specify if the second offense had been with her future husband, and Charles was not charged at this time, so Runlett's partner in this instance is unknown as well.

Plymouth magistrates took fornication cases more seriously at some times than at others. The 1630s and 1640s included some of the most serious physical punishments the colony ever handed out. During the 1650s sentences became less harsh and drew from a variety of punishments. This contrasts with the increase in punishments in Massachusetts Bay during this time that resulted from trying to remain a model religious community during the English Civil War. After 1663, however, punishments for convictions in Plymouth became more consistent and uniform with a 5 pound fine per person. This amount was substantially higher than past sentences called for. In 1671, magistrates raised the fine even more to 10 pounds per person if there was no marriage contract in place. If there was a contract, though, the fine would be 10 pounds total.[29]Across all of these decades, Plymouth did not share New Haven's and Massachusetts Bay's commitment to treating men and women equally in sex crimes. In her analysis for *Female Felons*, N.E.H. Hull found that the ratio of women to men prosecuted for fornication cases was 3:1.[30] Perhaps colony leaders were prioritizing the regulation of the sexuality of women over that of men to ward off the greater threat to their community.

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[28] Essex VI, 342.
[29] Blue Laws, "Plymouth Criminals," 54.
[30] N.E.H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts*, (Chicago: University of Illinois Press, 1987), 53.

In June 1639, Dorothy Temple had an illegitimate son and was charged in court with uncleanness. She was ordered to be whipped on two separate occasions. However, the court record noted that Temple fainted during the first set, and so the court decided to forgo the second.[31] Further description of Temple's punishment was not included, so the reason for her loss of consciousness is unknown. It could have just been the case that Temple had a particularly low pain tolerance and her body shut down. It is also possible that the person administering the flogging was especially zealous, and the pain they caused was so intense that any woman on the receiving end would have found it unbearable.

There was nothing in the description of Temple's case that made it stand out from any of the others, so it is curious that she was assigned two whippings in the first place. Without the inclusion of an aggravating detail, the severity of Temple's sentence seems to be the result of magistrates attempting to warn other women from taking her same path. It is also possible that the magistrates using Temple's case to display their power. Assigning a heavy penalty would show colonists the extent of what the court was capable of, and then choosing to show mercy after Temple had such a difficult time with the first whipping showed that the court's actions and decisions were just and legitimize its position in the community.

Three months later, Plymouth heard another case that resulted in a harsh response. Mary Mendame, who was married to Robert, was charged with uncleanness with an Indian named Tinsin. Mendame had been the one to proposition Tinsin, and they had multiple encounters. [32]The court ordered Mendame to be whipped at cart's tail through the street and wear a badge on her left sleeve indicating her offense. If she was found without the badge,

[31] Plymouth I, 127.
[32] Norton, *Founding Mothers*, 264.

which consisted of the letters AD, at any point, she would be branded on her face.[33] Everything about the description of Mendame's actions and sentence points to adultery. The record clearly states that Mendame was married, but she was charged with uncleanness instead of adultery. (As will be discussed later in this chapter, adultery was defined by the marital status of the woman). Adultery was not a capital offense in Plymouth, so a heavy public whipping and wearable reminder was as severe as Plymouth would go.

So why then was Mendame charged with uncleanness instead of adultery? It could be that because adultery was not a capital offense, the court was not concerned with the preciseness of the charge, or that Mendame and Tinsin's activities did not include intercourse, and so the charge of adultery would be inaccurate. Alternatively, Tinsin's race could have disqualified Mendame's actions from falling under the banner of adultery. But, the badge she was ordered to wear on her arm indicated that she was an adulteress. The court may have refrained from reflecting her badge in her conviction to maintain a position of superiority over neighboring native communities. Indians were similar enough to the English that the colonists recognized their humanity and that they had an organized societal system, but Indians were still 'other' enough to worry colonists and to be kept at a safe distance. New England leaders wanted to 'civilize' Indian populations, to mold their communities to mimic that of the English, but they did not want the two overlapping.[34] If Mendame had been convicted of adultery, meaning she consented to sex with an Indian man, then that would suggest that Tinsin was on a somewhat equal plane as a white male colonist.

Decades later, Plymouth courts heard another case involving a white woman and a minority man. In October 1685, Hannah Bony was convicted of fornication with both John

[33] Plymouth I, 132.
[34] Ann Marie Plane, *Colonial Intimacies: Indian Marriage in Early New England,* (Ithaca: Cornell University Press, 2000), 8, 16.

Mitchell and a man identified as "Nimrod, a negro." [35] Mitchell was ordered to be severely whipped and give bond for his future good behavior. Bony's encounter with Nimrod resulted in a child, for which she was to be "well whipped."[36] Nimrod was also to be severely whipped, in addition to paying 18 pence a week for a year to support the child. If he or his master were unable to afford these payments, the Deputy Governor of the colony could hire Nimrod out to cover the expense. Bony had sex outside of marriage with two different men, but having multiple partners, one of whom was of a different race, did not increase her sentence.

Sometimes, court records described cases in a way that set them apart from similar offenses. There was a 1665 Plymouth case, for example, that included the charge of "whoredom aggravated with diverse circumstances."[37] The Oxford English Dictionary defines 'whoredom' as a number of illicit behaviors all relating back to "acts of sexual immorality."[38] Sarah Ensigne, the defendant in this case, was sentenced to be whipped at cart's tail for her actions. Disappointingly, the court record did not elaborate on what the aggravating circumstances entailed. Ten years later, Suffolk courts heard a case in which the defendant, Mary Hawkins, was charged with "Bold, whorish carriages" and "pernicious and impudent lying."[39] Suffolk magistrates took her actions very seriously, and Hawkins was ordered to be whipped with 25 stripes that day and to have the same punishment administered again one month later.

[35] Plymouth VI, 177.
[36] Lisa M. Lauria "Sexual Misconduct in Plymouth Colony, Appendices I and I," The Plymouth Colony Archive Project, University of Virginia, 1998.
[37] Plymouth IV, 106.
[38] Oxford English Dictionary.
[39] Suffolk, 558.

In 1679, the Massachusetts Bay Court of Assistants charged Eleanor May with whoredom, but May's case contained circumstances that distinguished hers from those of Ensigne and Hawkins. The second half of May's charge was "having a bastard child in her husband's absence."[40] Not only did May have sex with another man while her husband was away, but the encounter resulted in a child. May's actions amounted to adultery. According to the laws of Massachusetts Bay, she was at risk for being put to death. Instead, the court ordered her to be whipped with the maximum allowed 39 stripes at cart's tail on her naked body. This was in no way a lenient punishment, especially considering the element of sexuality in requiring that May be naked when she was whipped. For one reason or another, though, the court decided that May's whoredom would not result in the loss of her life.

Adultery

In addition to premarital sexual activity, extramarital intimate experiences between men and women were illegal, and their punishments varied depending on the severity of the offense. One of the most abhorrent sex crimes, along with buggery and sodomy, was adultery. Of these three, adultery was the only one that typically involved women and, in fact, relied on their involvement.[41] Adultery was determined based on the marital status of the woman. If the female participant was married, then that was adultery, but if she was unmarried, it was fornication, whether or not the man had a wife.[42] Married women in particular were held to a higher standard when it came to their sexual activity. Since adultery broke the covenant between man and wife, the covenant on which household, social, and

[40] Mass Bay IV, 138
[41] Gloria L. Main explains in *Peoples of a Spacious Land* that sodomy was defined as occurring between two males (64), which is verified by the language in the 1648 Body of Liberties.
[42] "Plymouth Criminals," 54

moral order rested in New England, it was listed as a capital offense in the laws of Massachusetts Bay and Connecticut.[43]

Mary Beth Norton discussed the reasoning behind Massachusetts Bay determining adultery to be a capital offense in *Founding Mothers and Fathers.* She explained that "[a]dultery was considered a more serious crime than fornication because it violated a husband's exclusive sexual access to his wife and directly challenged his supremacy in the household."[44] A wife having sex with a man who was not her husband was the most unacceptable breakdown in household structure, and, because households represented the greater community in model form, that could undermine the entire order of society. The need for magistrates to maintain control of the community, combined with the religious violation adultery represented, earned the crime a place on the list of capital offenses in Massachusetts Bay. I found instances of adultery being prosecuted in Rhode Island, Plymouth, and twelve from Massachusetts Bay, but only one woman convicted of adultery would face the gallows.

In September 1668, Providence prosecuted a case of adultery, the outcome of which greatly differed from those tried by Plymouth and Massachusetts Bay. Hannah Foster, the wife of William, was charged with both fornication and adultery.[45] The court record did not elaborate on these charges, so deciphering them is a difficult task. Was Hannah being charged for two separate encounters, possibly with different men, one before her marriage to William, and one after? This would be the most likely explanation. The punishment for fornication in Rhode Island was listed as a fine of 40 shillings and a whipping of no more than 10 stripes, but I was unable to find the colony's legal definition for fornication or

[43] Body of Liberties 1641; Body of Liberties 1648; Capital Laws of Connecticut December 1 ,1642
[44] Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society,* (New York: Alfred A. Knopf, Inc, 1996), 74-75.
[45] Providence II, 71.

adultery.[46] Perhaps Providence did not put as much weight on the distinction between a woman being married or not. Without more information from the court record, the situation remains unclear. The specifics of her offense (or perhaps offenses) aside, Hannah was evidently unconcerned with the repercussions of her actions, as she failed to appear in court on the day she was summoned. In her absence, she was ordered to pay 40 shillings and be whipped 15 stripes. Hannah's physical punishment amounted to one and a half times what was on the law books as the upper limit for fornication. The increased severity may have been due to her skipping her hearing, or it even could have had something to do with her ambiguous alleged adulterous activity, but the former is more likely.

Religious beliefs of Rhode Island diverged substantially from those of other New England colonies. Generally, Rhode Islanders did not believe in infant baptism or giving exclusive political rights to church members, and put less weight in the authority of ministers and magistrates. Some even denied the existence of predestination.[47] Mostly, though, people just wanted the government to stay out of their religious business. Rhode Island was the first English-speaking government to adopt an official policy of religious toleration, creating a heterogeneous culture and fractious politics as a result. Adultery may not have been viewed as large of a threat to the community structure to the tolerant Rhode Island as it was to their far less accepting neighbors. As discussed in the previous section of this chapter, Rhode Island was more lax in prosecuting less serious sex crimes, particularly when compared to Massachusetts Bay. It is possible Hannah Foster had sex with another man while married to William and faced only the relatively meager punishment she did.

[46] Acts and Laws of Rhode Island and Providence Plantation, 7.
[47] Sydney V. James, *Colonial Rhode Island: A History,* (New York: Scribner, 1975), 37.

Like Providence, the Plymouth court records contained only one case relating to adultery. In 1662, Hannah Bumpas was charged with "not resisting the adulterous attempts of Thomas Bird."[48] Bumpas was not described as being a willing participant in the encounter, but because she had not called out for help or otherwise tried to stop him, actions that were required to avoid charges of sexual misconduct, she was still in trouble with the court. Something did stop Bird though, as his actions were labeled as "attempts." Because no full act of adultery was carried through, neither Bumpas nor Bird were at risk of losing their lives. As a result of her role in the Bird encounter, Bumpas was ordered to be publicly whipped. Even though no adultery had actually taken place, Plymouth courts still saw an opportunity to make an example of Bumpas. Sending the message to other women of the community that the court would identify them and hold them responsible for behavior that was even tangentially related to adultery would hopefully deter them from repeating Bumpas' mistakes. The purpose of creating such an example was a part of magistrates' ongoing efforts to control women's sexuality and maintain order in the colony as a whole.

In Massachusetts Bay, charges of adultery that were contested or required further investigation were sent to the Court of Assistants in Boston, but they were heard first in local courts. Essex County witnessed such a case in Salem in 1648. Charles Glover's wife, whose name was not included in the court record entry, was suspected of committing adultery with Phillip Udall.[49] Glover himself may have been the one to bring the charges. After his wife was found to be not guilty, Glover was ordered to pay court fees, and both he and his wife were sent to sit in the stocks for a half hour for fighting with one another.

[48] Plymouth IV, 22.
[49] Essex I, 158.

Suffolk County also tried a case centering on the suspicion of adultery in 1676. However, the past behavior of the defendant in this case gave the charges more credibility. In October 1675, Maurice Brett and Mary Gibbs were presented at the Massachusetts Bay Court of Assistants for adultery. Gibbs' husband was not mentioned in the court records, but given the timing of the case, he may have been fighting in King Philips' War. After reviewing the facts of the case, the jury found them "not legally guilty [of adultery] but guilty of very filthy carriage".[50] In other words, Brett and Gibbs did not actually have intercourse, but they were still acting in a way that was inappropriate for a man and woman who were not married to one another. Gibbs and Brett were ordered to stand at the gallows for a half hour with rope around their necks and then to be whipped at cart's tail with 39 stripes. Brett was banished from the district, but Gibbs was spared that part of the punishment. Despite the lenience she was granted, it seems that Gibbs did not learn her lesson. Just three months later in January 1676, she was in court in Suffolk for lascivious carriages and suspicion of adultery.[51] Gibbs once again escaped an adultery conviction, but she did not escape punishment altogether. Gibbs was ordered to be whipped at cart's tail with 20 stripes alongside Mary Wharton, who earlier that day had been convicted of unclean carriages with one Ezekiel Gardner.[52] This time, Gibbs was punished for having put herself in the position to be suspected.

It was not uncommon for women to be charged with adultery only to be convicted of lesser charges. In addition to the cases discussed thus far, the Massachusetts Bay Court of Assistants found four sets of men and married women guilty of "suspicious acts leading to

[50] Mass Bay IV, 56-7.
[51] Suffolk, 677.
[52] Suffolk, 674.

adultery," "lascivious, gross, and foul acts tending to adultery," and similar offenses.[53] According to the laws of Massachusetts Bay, conviction is adultery cases should result in the death of both parties. For an offense to be capital, the behavior behind it had to be especially abhorrent to the community. Even when charges proved to be false, the possibility of adultery was enough to warrant an examination by the magistrates. The Court of Assistants presented three different women in the 1670s for adultery only to clear the accused of all charges.[54] Though these women were found to be innocent, something about their behavior had been concerning enough to their neighbors to result in a court appearance.

Sometimes, though, a guilty verdict was handed down by the Court of Assistants in adultery cases. In April 1637, John Hathaway confessed to committing adultery with Margaret Seale, and Seale admitted to doing the same with Robert Allen. The court record includes a list of names of men who served on a "jury of life and death," but there is no inclusion of which option they decided on.[55] The fates of Hathaway, Seale, and Allen are unknown, something uncharacteristic of the records for such a serious offense. In March 1678, Abigail Johnson was found in bed at night with Darby Bryan. The two were found guilty after putting themselves on trial. The court record does not provide an explanation for their actions, but for some reason the magistrates decided to forgo the penalty of death. Instead, Johnson and Bryan were to stand at the gallows with a rope around their necks and then be whipped at cart's tail.[56] As with any case that involved public shaming, magistrates

[53] Thomas Davis and Elizabeth Browne, Peter Cole and Sarah Bucknaw Mass Bay IV, 73; Joshua Rice and Elizabeth Crocket Mass Bay IV, 234; Phillip Darland and Mary Knight Mass Bay IV, 252.
[54] Amy Wellen and John Glanfield Mass Bay IV, 14; Mary Hare Mass Bay IV, 126; Bethiah Gatchell Mass Bay IV, 138.
[55] Mass Bay I, 66, 70.
[56] Mass Bay IV, 115.

sought to embarrass the guilty parties into never repeating their behavior again, as well as turn them into an example of what not to do for everyone else

The most serious adultery charge tried by the Massachusetts Bay Court of Assistant occurred in 1644. The high-profile case centered on a woman named Mary Latham. In his journal, John Winthrop describes Latham as "a proper young woman of about 18 years of age, whose father was a godly man and had brought her up well."[57] Latham came from a respectable background and had spent most of her life living according to Massachusetts Bay's ideals. Her status as a proper young woman began to change when she had her heart broken. Mary was denied by a young man she wanted to marry, and her response to this rejection was to declare that she would marry whichever man asked her next. She soon found herself with a suitor, who Winthrop categorized as "an ancient man who had neither honesty nor ability, and one who she had no affection to." This man was nothing like the one she had wanted to marry, and from Winthrop's description he was highly unsuited for the young girl. Even Mary could find nothing to like about him, but he was the first to ask after her heartbreak. Despite the wishes of her friends and family, Latham stubbornly decided to stay true to her dramatic declaration and married the man who had little to offer her.

Evidently, she quickly came to regret her choice. Young men began visiting the unhappily espoused Mary at what Winthrop categorized as 'unseasonable' times of night. They brought her presents and wine, and in return, she entertained them in ways that Puritan rules and Massachusetts Bay laws dictated were reserved only for her husband. One of the men who "easily prevailed" was James Britton.[58] Back in England, Britton had been a professor. After arriving in Massachusetts Bay, he made his opposition of the church

[57] *Winthrop's Journal: "History of New England" 1630-1649 Volume II,* Edited by James Kendall Hosmer, (New York: Charles Scribner's Sons, 1908), 161.
[58] Winthrop II, 162

government public, openly disagreeing with the amount of control the church had in political matters, and he lost his power in the community. Unlike the other young men who visited Mary, Britton was unable to keep their encounters a secret.

On January 5, 1644, Mary Latham and James Britton were brought before the Massachusetts Bay Court of Assistants to face charges of adultery. They admitted their guilt and were both condemned to death.[59] Having sex outside her marriage just once would have been enough to send her to the gallows, but becoming involved with several men on multiple occasions represented a significant insult to both her husband and the religious precepts her community was built on. Additionally, members of the community came forward and stated that Mary was abusive to her husband, further bucking the expectations of a model wife. She was a woman out of control, and egregious offenses to social standards such as hers could not be tolerated.

None of the other men whom Latham had relations with were brought to justice, but the court was satisfied with Britton. Ordering him to die next to Latham was an example to other men of what would happen if they went against the church. Latham and Britton's sentence was carried out on March 21. According to Winthrop, they both died very penitently, particularly Mary. She made a speech warning young girls to follow church teachings and listen to their families, and to steer clear of the poor decisions she had made. By Winthrop's account, Mary said she accepted her fate, and died believing that it was what she deserved.[60]

[59] Mass Bay I, 139.
[60] Winthrop II, 162

Divorce

The structure of marriage was essential to the stability and functionality of New England communities. Marriage was not meant to be a temporary arrangement. Once vows had been made, divorce was an option of last resort. In Massachusetts Bay, Connecticut, and New Haven, there were three legal conditions, at least one of which needed to be cited in a divorce petition, which determined whether or not it could be granted: adultery, desertion, or impotence.[61] Both men and women could cite adultery, but the latter two were reserved for women, by practice if not by explicit law. Sexual competency was required for a valid marriage, and it was much easier to prove that a man had difficulty in this regard than it was the other way around.[62] A wife could leave her husband's house and live elsewhere, but when this happened the courts would simply order the woman to return home. Because women were not responsible for providing economic support, the formal charge of desertion did not apply to them.

Cruelty was notably missing from this list, though some colonies began to include it as a criterion later in the century. When Connecticut absorbed New Haven, for example, the joint legal system that emerged was increasingly interested in equity and morality. As a result, magistrates became more sympathetic to the plight of women who had been abused.[63] Forcing a woman to remain married to a man who was not upholding his responsibilities to provide safety for his wife fell under the banner of an immoral decision. Until then, husbands and wives who brought forward tales of abuse were typically counseled to return home and reconcile their differences. This same sentiment usually shaped court magistrates' approaches to requests for divorce or tales of spouses not living at home in the local courts of

[61] Dayton, "Was There a Calvinist Type of Patriarchy?", 348.
[62] Main, *Peoples of a Spacious Land,* 66.
[63] Dayton, "Was There a Calvinist Type of Patriarchy?", 348-49.

Massachusetts Bay. Once those cases reached the Court of Assistants, court officials were more likely to grant dissolution of the marriage so long as the correct criteria were met. Connecticut and Plymouth were usually more open to these requests at an earlier stage in the legal process.

Connecticut had by far the most liberal divorce policy of any of the colonies I studied, and a strong case could be made that it had the most liberal policy in all of seventeenth-century English North America. Over a span of thirty-three years, Connecticut granted twelve women a divorce, eight of which happened between 1674 and 1678. Essex County and the Court of Assistants saw a rise in divorce petitions at this time as well, a span immediately before, during, and after King Philip's War. New England was experiencing a general atmosphere of social upheaval that could have taken hold in the smallest unit of society, the family. The husbands of the women who petitioned for divorce during these years, especially the ones who moved elsewhere and took up other wives, might have seen an opportunity to start over somewhere different, whether or not they had been involved in the conflict.

When New Haven became a part of Connecticut, it entered into a legal system with values similar to its own. Connecticut courts were also dedicated to promoting equity and morality, and tried to apply the law equally to both sexes.[64] Though men and women did not occupy equal ranks in the social hierarchy, from a religious standpoint, they were all held to the same set of standards. As a result, a woman's petition for a divorce was just as valid as a man's, so long as she had an appropriate justification. When considering New Haven and Connecticut's legal and moral philosophy towards divorce, the increase in petitions granted

[64] Dayton, "Was there a Calvinist Type of Patriarchy?" 348-49.

to women was consistent with magistrates' guiding principles. That Connecticut approved all twelve petitions for divorce serves as evidence of the court's dedication to its ideals.

In two-thirds of Connecticut's divorce cases, the women had been abandoned by their husbands for at least three and as many as eight years. In the case of Experience Shepherd, her husband, William, had not only left her, but also "vowed never to return."[65] Similarly, Joanna Pember's husband, Henry, had "willfully deserted" her three years before, leaving her nothing with which to support herself.[66] Mary Dowe, on the other hand, was still holding out hope that her husband would return to her. She said it had been two years since her husband had left for the sea, but she was not yet asking for a divorce. Instead, she asked the court for permission to sell her home in order to support her children.[67] Due to the coverture laws that subsumed a wife's legal rights to her husband upon her marriage, Dowe needed the permission of the court to regain some of those rights long enough to find a source of support for herself and her children. If Dowe believed her husband to be dead or thought he may have found somewhere better to live on his travels, it would have made more sense for her to ask for a divorce so she could remarry and secure stability for herself and her children. Taking an alternative step to look for a temporary source of funds supports the idea that she thought her husband would one day come back.

There was only one petition for divorce in Connecticut that did cite abandonment as a cause. In October 1676, Elizabeth Rogers went to court to ask for a permanent separation from her husband John. The court record stated that her reason for asking was well-founded, but did not indicate what that reason was.[68] However, one year later, Elizabeth returned to

[65] Connecticut II, 327.
[66] Connecticut III, 23.
[67] Connecticut II, 239.
[68] Connecticut II, 292.

court, this time identified as Elizabeth Griswould, formerly Rogers.[69] After her divorce, she reassumed the name of her father. Elizabeth asked that her children be brought up by herself and not by their father, because John held unorthodox religious beliefs, specifically that he did not believe in infant baptism and rejected the community's congregation as a whole. John Rogers confirmed as much in court. The magistrates gave Elizabeth and her father Matthew custody of her children, and John was ordered to give Elizabeth monetary support for their upbringing.

Generally, when a divorce occurred, any children that had come from the marriage would remain with their father since they were considered his property, sons until they came of age, daughters until they married. However, women were expected to be the religious role models in their households. In the Rogers case, John's unorthodoxy was considered threatening enough that Elizabeth was able to supersede his paternal rights and take custody of their children. By requesting a divorce she fulfilled her obligation as moral guardian to her children and to society. The fact that Elizabeth had returned to living with her father and he was willing to care for the children likely helped her case. The children would have a male influence in their lives and, more importantly from the court's perspective, there would be a man to provide financial means for their upbringing.

Only four of the divorce cases in Connecticut occurred before the colony absorbed New Haven in 1664. The other eight took place in a legal culture that was influenced by both original colonies. When New Haven was still a separate colony, it was run by Governor Thomas Eaton and minister John Davenport. Both men were staunch Geneva Calvinists and governed the colony under those ideals. In the early 1650s, New Haven enacted legal reforms that aimed to keep men and women equally accountable for their actions, while also giving

[69] Connecticut II, 326.

them equal footing in court. One area of the law these changes addressed was divorce. Under the new rules, if a woman asked for a divorce and her husband was at fault, she would be given one-third of his estate just as she would if he had died. If the woman was at fault in the separation, she would not be given anything.[70] In this way, both men and women would be held accountable if their actions caused the end of their marriage.

As was the case with Connecticut, desertion provided the grounds for many of the divorces granted by the Massachusetts Bay Court of Assistants. Of the six petitions for divorce for which the records specified the reason from 1675 to 1684, all involved the husband being absent for anywhere from four to seventeen years. In four, the husband had become involved with another woman in his new life. Mary Sande's husband had married another woman in London.[71] Mr. Samuel Ambrose and Robert Street left their wives in Massachusetts Bay and took up with other women in Jamaica.[72] Job Bishop, who had been absent for almost two decades, married someone else in Barbados.[73] All of these petitions were granted. In fact, only one of the ten cases heard from 1675 to 1684 was turned down. Anne Perry requested a divorce from her husband in April 1683, but the magistrates decided that there was no reason to grant her request.[74] Unlike the women who filed successful petitions, her husband had abandoned her for just two years rather than several.

The leaders of Massachusetts Bay took marriage and the structure it provided very seriously because these played such a crucial role in maintaining the religious ideals of their community that they would have avoided divorce whenever they could. However, marriage

[70] Cornelia Hughes Dayton, *Women before the Bar: Gender, Law, and Society in Connecticut, 1639-1679*, (North Carolina: University of North Carolina Press, 1995), 130.
[71] Mass Bay IV, 29.
[72] Mass Bay IV, 127, 227.
[73] Mass Bay IV, 144.
[74] Mass Bay IV, 229.

could only perform this public function when both parties met their responsibilities. For a husband to abandon his wife and give her no support was to break his responsibilities as a man on more than one front. To deny a woman a divorce in this kind of situation and prevent her from being able to remarry someone else to ensure the security of herself and her children would go against the morals of the community. Magistrates were far more likely to free a woman of her marital bonds if she found herself in such a position.

At the local level, Massachusetts Bay was even more discerning when it came to divorce. I found no cases of divorce petition in Suffolk County. Between 1677 and 1678, Essex County magistrates heard three petitions for divorce brought forward by women, and these were the only mentioned of the process in all the Essex records. Two cases involved the same woman. Mary Heard, identified as the daughter of Zacheus Curtis, who first petitioned for divorce from her husband, John, in April 1677. Heard cited grounds of insufficiency, meaning John was not doing enough to support her, but the court denied her request and ordered the two to keep living together.[75] Fifteen months later, she tried again. This time, she must have had better evidence for the insufficiency charges, as her request was granted.[76] The other divorce petition in the Essex records involved Rachel Clenton, who also cited grounds of insufficiency. Her husband, Lawrence, had recently been convicted of a fornication charge, and they had been living separately from one another ever since. The Ipswich magistrates did not grant her request, but they did order Lawrence to pay her 50 shillings.[77] Rachel would eventually be given her divorce, but it would take her another five years and a trip to the Court of Assistants to do so.[78]

[75] Essex VI, 295.
[76] Essex VII, 78.
[77] Essex VI, 344.
[78] Mass Bay IV, 208.

Essex County was very hesitant to dissolve a marriage. Only two women filed for divorce in the local courts, and the one the Salem courts granted had to come back a second time. The lack of divorces and even cases seeking them may have been due to the culture around divorce Massachusetts Bay had instilled in its communities. Women may have known better than to ask to be divorced from their husbands if they knew their case could not be categorized by the legal conditions and only attempted to do so when they were confident in the legality of their request. Or, cases that did not meet the proper criteria may not have been consistently included in court records or could have been barred from reaching the ears of the magistrates in the first place. Whatever the situation may have been, keeping marriages together was one area in which Massachusetts Bay lived up to its religious ideals.

Plymouth also heard few divorce cases, but it was less reserved in granting them than Essex County. Four petitions of divorce were heard, and all four were granted. Unlike any of the cases discussed thus far, in two of the Plymouth divorces, the wife was named as being at fault. In 1669, Christopher Winter asked for a divorce from his wife, Mary, saying that she had committed incest with her father.[79] The court approved his request and launched an investigation. The court record is unclear on what the inquiry uncovered, but neither Mary nor her father were ever convicted of incest. By that point, Christopher and Mary had their marriage terminated. The second case for which the woman was found to be the guilty party also involved infidelity. Sarah Williams had a baby with a man who was not her husband John.[80] However, the child had been conceived before the two were wed, so she was not guilty of adultery. Because Sarah had misrepresented her sexual history to John, he was free to marry another woman.

[79] Plymouth V, 21.
[80] Plymouth V, 127.

Plymouth granted women divorces when their husbands were unfaithful as well. In 1661, Thomas Burge was charged with committing uncleanness with Lydia Gaunt, though the particulars of this uncleanness were not divulged. Even without specific details, the use of 'uncleanness' indicates that some level of sexual activity took place between Gaunt and Burge. Burge's wife Elizabeth asked to be cleared of her marriage, and the court obliged.[81] Adding injury to the insult of losing his wife, the court ordered Burge to be severely whipped for violating the laws governing sexual activity. In 1680, Elizabeth Stevens was also looking to be cut free of her disloyal husband. Stevens' unnamed spouse was found to have two other wives, one in Boston and one in Barbados.[82] The courts also granted her request. Plymouth did not follow the same guidelines for divorce as Massachusetts Bay and Connecticut, but like Connecticut, the colony made it a priority for dissolving a marriage to be an equal opportunity prospect for both men and women.

The women who petitioned for divorce with few exceptions were participating in the narrative of the righteous wife, a woman who held high expectations of social convention not only for herself but for those around her as well. The women discussed above fulfilled the expectations placed upon them when they took their vows, but the same could not be said of their husbands. In asking for a divorce, these women presented themselves to magistrates as being compelled by their dedication to their social responsibilities to the point where they sought to sunder their ties to their husbands who did not reciprocate in that devotion. In divorce petitions, women were not playing the role of the defendant or criminal as was so often the case elsewhere in court records. They were virtuous and moral, and provided a foil to the women who committed adultery.

[81] Plymouth III, 221.
[82] Plymouth VI, 44.

Conclusion

When women in seventeenth-century New England were called before court magistrates, their cases were heard in a framework of mixed and sometimes rapidly shifting social, cultural, religious, and political contexts. The particulars of each case aside, verdicts were ultimately the result of magistrates attempting to use the power of the courts to ensure the stability of the hierarchical social structures that governed the colonies. That power was particularly important and influential when the social, political, and religious climates of the colonies were in crisis.

This analysis has contributed to the ongoing dialogue about the place of women in colonial society through the context of the court, but there is still more to explore in this line of investigation. If I had the opportunity to further develop this project, there are a couple of avenues through which I would expand my research. First, there is the option of growing my collection of court records from the colonies I have already studied. I was often limited to those sources that were available online. There undoubtedly are records that have not been digitized that are available in a physical form in libraries or archives, and there may even be more records that are online that require a bit more digging than what I uncovered in my initial search. Collecting more cases from Essex County, Suffolk County, the Massachusetts Bay Court of Assistants, Plymouth, Providence, New Haven, and Connecticut would create a fuller picture of the experiences of women in court in their communities. With more cases to pull from, there would be more evidence to support or disprove the patterns that have emerged thus far. Additionally, there is always the option of widening my research to other

counties, especially for Rhode Island, and colonies, like New Hampshire, to create a larger base of comparison to again test the merit of the social crises patterns.

The second option for continuing my research, though this option and the first are not mutually exclusive, is to dig into the lives of the people who have been discussed above to find out more about who they actually were as individuals. Genealogical records, town records, and church records can all help give identities to the subjects of this study. These types of sources can help reveal who married who and when, who had which children, and what people did for a living. Wills and tax records would also indicate how wealthy they were. It is improbable that many personal journals have survived, but some from prominent officials, like magistrates and governors, are likely still around. Having a deeper understanding of the motivations of the people who created legislation or handed down sentences when women were accused of breaking those laws would clarify the context of individual cases. Understanding the mindsets of rule makers and rule interpreters would also shed more light on which outcomes were due to the circumstances of a case and which were due to the biases of the men on the bench.

Expanding to other genres of primary sources would provide more insight into the dynamics of particular communities. Exploring political climates on a more local level might identify smaller scale patterns resulting from individual communities' crises. Similarly, understanding more of the minutiae of local contexts would clarify how much of the larger patterns I identified were related to the macro panics caused by the English Civil War, the changing political contexts that followed the Restoration, and King Philip's War, and how much were due to other, more localized, factors. Another factor that merits further investigation is demography. New England was populated by women and children from its

inception, setting the region apart from other North American colonies. This may have played a role in women's experiences in courtrooms and before magistrates, and accordingly looking into demography would be a beneficial addition to my research.

What lies at the crux of analyzing the experiences of women in court is an attempt to understand women's voices from seventeenth-century New England, voices that were long suppressed and are difficult to recover. At its core, history is made of stories of people from the past. The more detailed or complete an account is, the better story it makes for and the more likely good history will result from it. In understanding the lives of New England women who raised criminal complaints or committed crimes, an additional understanding is gained about those who did not find themselves in court, whose lives went by largely unnoticed. With few exceptions, early colonial women were not in a position where they were able to leave anything of their voices behind. It is now up to us as historians to use the sources available to us to give these women the power to speak once again.

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