Ordering Principles: The Adjudication of Criminal Cases in Puritan Massachusetts, 1629–1650

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In this article I review court records from the early period of settlement in Puritan Massachusetts (1629–50). The study avoids the great controversies of the day, focusing instead on the patterns that appear in the adjudication of a great number of cases over time. In the first part of the study, a quantitative analysis is performed on a data set comprising crimes (the independent variable) and punishments, evaluated according to an ordinally ranked scale of severity. In the second part, I review the records in detail and suggest conclusions concerning the purposes of punishment and the organizing concepts that are shown to have governed the adjudication of cases in the early Massachusetts courts. The study finds that over a period of decades and a large number of cases (N=793), the actions perceived to be necessary for the restoration of communal order dictated the severity of punishment imposed. I argue that this pattern demonstrates impressive fidelity to the doctrinal principles that served as the public legitimating principles for these courts. These findings, in turn, encourage us to question accounts that purport to show that these principles were merely veils for religious, economic, or social aggrandizement, particularly when such accounts are based on interpretations of individual cases or events.

On March 6, 1638, Thomas Starr was ordered to apologize to the court in Boston for saying that "the law was against Gods law, and hee would not obey it" (Quarter Court). Five years earlier, the same point had been made in more colorful terms; Thomas Dexter was ordered fined, put into stocks, and disenfranchised for saying, "this captious government will bring all to naught . . . the best of them is but an Atturney" (3/4/33 Court of Assistants).[1] Starr's and Dexter's accusations were familiar ones.

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[1] Case references in this article are dated according to the modern calendar. The list of cases follows the References. The case reports reviewed for this article are found in Dow 1975; Noble 1904; Shurtleff 1853; Smith 1961.

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A common refrain in attacks against the authority of the magistrates was that their laws were not accurate reflections of the divine will. These challenges contained the ruling presumption of Puritan civil order in Massachusetts, that the governance of a godly society was an attempt to create ideal secular as well as ideal religious institutions.[2]

This dual emphasis on civil and religious reform located the Massachusetts Way on a continuum of Puritan political philosophy. In New Haven, the followers of Rev. John Davenport subordinated the project of civil reform to the dictates of theological orthodoxy.[3] In Rhode Island, Anne Hutchinson declared her disdain for civil order, while Roger Williams accepted the need for political authority but divorced it completely from the community's collective covenantal obligations.[4] Each of these figures left or was driven out of Massachusetts as a result of their challenge to the doctrine holding that the courts and churches were twin pillars of divinely ordained social order, "for Order is as the soul of the Universe, the life and health of things natural, the beauty of things Artificial" (Hubbard 1676:8).

Social life, in the Massachusetts view, was divided into the "three societies, of family, church and commonwealth,"[5] and each had its proper authorities.

The jurisdictional boundaries of the various courts are complicated, and changed somewhat over the period of study. Basically, however, capital cases, divorce cases, appeals, and civil cases involving more than 20 pounds in damages would be heard by quarterly courts held at Boston or Newton, which the governor, deputy governor, and varying numbers of assistants would attend. Quarterly courts for less serious cases were held in the other counties. These courts were empowered to hear matters both in law and in equity, although the latter cases would be tried without a jury (Noble 1904:vi). The General Court was primarily a lawmaking rather than an adjudicatory body; in extreme situations, cases might be heard there as well. (See generally Black 1975.) The nomenclature of the courts in the records is irregular, as when a court at Boston is called "A Court of Assistants, or Quarter Court," or simply "a Court at Boston." In the text, courts are identified as they appear in the records. City names are modernized (e.g., "Newton" rather than "New Towne") except where such names appear in quotations.

[2] The focus on the creation of ideal civil institutions points to the radical political reformism that characterized the Puritan movement in England (Collinson 1983; Breen 1970). For a discussion of the strong and ongoing connections between the leaders of the Massachusetts colony and Puritans in East Anglia, including participation in the Revolution of 1640, see Adair 1982. For a discussion of reformism in New England and contemporaneous English developments, see Warden 1978.

[3] As Perry Miller (1935:584) put it, "New Haven was the essence of Puritanism, distilled and undefiled; the Bible Commonwealth and nothing else." This view has led some writers to treat New Haven as the exemplar case for Puritan ideology (Dayton 1995; Marcus 1984). The difficulty with this argument is its logical circularity: one begins by assuming that biblical literalism is the meaning of Puritanism, then concludes that a social system grounded in biblical literalism represents "the essence of Puritanism." At a minimum, making this identification blurs sharp differences within the movement (Foster 1984b).

[4] For a discussion of differences among Roger Williams, Anne Hutchinson, and Samuel Coddington on the necessity and efficacy of civil authority, see Warden 1984.

[5] The quotation is from Ralph Cudworth's proposal for a work "on questions of Conscience in all areas of life" (Thomas 1993:37). William Gouge, in 1622, identified the array of separate spheres of "government" beginning with a well-ordered household, "a little Church, and a little commonwealth . . . a schoole wherein the first principles and

> [I]f it be in matters of Religion, there is the Priest; if in matters civil, there is the Magistrate, and he that stands not, or submits not to the sentence of these, let him be cast out from Israel; so requisite a thing is order. (Norton 1664, quoted in Foster 1971:21)

The courts governed relations in the political and social relations of society. In addition, the magistrates were entrusted with the all-important duty of maintaining the separation and balance between the spheres of authority that the Puritans' society comprised.

This meant that the courts were responsible for the resolution of intercommunal issues; disputes between towns, attempts by the members of one congregation to influence another. The same principle also meant that a problem that arose in an area outside the scope of civil authority—an argument over theology within a congregation, a family quarrel—could *become* a proper matter for the attention of the magistrates if the controversy spilled over into the public life of the community. "Public," in this conception, means little more than properly the business of communal order-keeping institutions; in other words, the courts, whose authority uniquely crossed over lines of separate congregations and households. Cases of this type are here called "spill-over" cases, and they are among the most illuminating examples in the study, demonstrating both the conditions for legitimate court intervention and the limitations of those interventions.

The conception of the duties of the civil authority described above can be tested against records of criminal proceedings. Responses to crime—deviations deemed sufficiently serious to warrant punishment—reveal the norms that dominate social life in practice, as opposed to the merely aspirational language of speech and sermon (Zeman 1981). The regular patterns that emerge from a careful analysis of criminal records enhance our understanding of Puritan political doctrines, confirming or challenging the connection between justifying theory and authoritative action.[6] Contrary accounts can be tested in the same way. The most notable examples of these alternative theses in the historiographic literature are variations on a few broad explanatory claims: a longstanding tradition that describes the conduct of early Massachusetts courts as the enforcement of religious ortho-

grounds of government and subjection are learned: whereby men are fitted to greater matters in Church or commonwealth" (quoted at Demos 1970:frontespiece).

[6] The interpretation offered here supplements rather than contradicts social historical discussions such as David T. Konig's (1979) observations about the increasing importance of secular courts and the concomitant decline in church authority or studies of the ways courts figured in women's lives (Dayton 1995; Hull 1987). Taken alone, the experiences of women provide only a narrow window on the norms that govern the adjudication of criminal cases; as Natalie Hull (1987:61) notes, for example, between 1673 and 1774, women in Massachusetts were defendants in only 10% of cases involving serious crimes.

doxy;[7] an argument that the same courts' actions are explained as an effort to further the interests of an empowered socioeconomic elite (McManus 1993; Rutman 1965);[8] and, more recently, arguments that explain Puritan jurisprudence as an exercise in the enforcement of gender roles and the dominance of a patriarchal conception of family order, with or without a powerful element of misogyny (Koehler 1980; Norton 1996).[9]

The research summarized in this article provides scant support for any of these theses. Instead, the evidence demonstrates that the declared legitimating doctrines of the political system were the significant explanatory variables for the punishment of crimes in practice. The business of the secular courts was most fundamentally about the preservation of civil order, not the enforcement of religious orthodoxy or the subordination of disfavored classes. This appears most clearly in the consideration of cases involving speech. Deviations in matters of political doctrine were consistently more severely treated than deviations from religious orthodoxy. Indeed, ideological challenges to the governing political order were generally more severely punished than were crimes against property or social standing. Hidden agendas based on religion, economic interest, or social prejudices can be found in close readings of individual cases, and undoubtedly played crucial roles in motivating the conduct of individuals.

[7] As Harry S. Stout (1986:20–21) has put it, "government . . . represented, in effect, the coercive arm of the churches." Some more recent studies that put scriptural doctrine in the role of the interpretive key to explaining the order of Puritan society are Crawford 1991; Cohen 1986; Gura 1984. For treatments challenging the idea that religious orthodoxy was the rule in social practice, see Butler 1990; Hall 1989.

[8] Among legal historians, Peter Charles Hoffer (1992:42–43) adopts a similar tone, describing economic regulations as "impelled by . . . the desire of an elite to control the supposedly wayward behavior of the laboring classes." In part, this approach derives from a tendency to impose an instrumentalist explanation on legal doctrine. Hoffer (p. 42), for instance, cites Richard Posner on the functions of the law: "It defines the power of government and the rights of citizens; it keeps order; and it provides the framework for the resolution of disputes."

[9] Norton's assertion that Puritan society was built around a "Filmerian worldview," "an intellectual scheme based on the Fifth Commandment and designed to enhance the power of 'fathers'" is particularly anachronistic, overlooking the antiauthoritarian political elements of Puritan doctrine—which provided the fundamental organizing principle of Congregationalism—and the complex web of mutual obligation that defined the Puritan model of an orderly household. Some of these anachronisms are pointed out by Edmund Morgan (1997) in his review essay, "Subject Women." Other recent work in women's history has recognized the relative protection and empowerment of women in New England as compared with their counterparts in the old country. Elizabeth Pleck (1987:17–23), for example, observes that there were greater legal protections for women against domestic violence in Massachusetts and Plymouth than "anywhere in the Western World." D. Kelly Weisberg (1982:117–32) notes that divorce was more freely available in Massachusetts than in England, and was granted more often to women than to men. Contrary to some accounts, wives inherited outright ownership of their husband's estate (as opposed to merely a life interest), as in the case of the intestate death of John Oliver in 1642; the court ordered that his wife, Joan, "her heirs & assignes, shall enjoy and possess forever the intire & whole estate of lands and goods left by her husband" (6/14/42 General Court). For careful treatments of the varied roles played by women in colonial Massachusetts, see Ulrich 1982; Salmon 1986).

Nonetheless, the consistent trends across the range of case records demonstrate that the Puritan courts of early Massachusetts primarily practiced what they preached. Civil magistrates' primary concern was with the preservation of good civil order as that concept was defined in political rather than religious, instrumental, or patriarchal terms.[10]

A crucial caveat must be added to the claims set forth above. It is by no means the claim of this article that political doctrine exists separately from concepts of gender roles, class relations, and ontological presumptions, nor that courts' actions can be reduced to a monocausal, totalizing explanatory function. Clearly, if courts intervene to preserve civil order, they invoke conceptions which include both religious doctrine and presumptions about gender and class. One may still inquire, however, which element in the stew of sometimes overdetermining explanations is *primary*. That is, do we best understand the Puritan courts to have imposed gender roles or limited heterodoxy in order to preserve a governing concept of civil order? Or do we understand the courts to have used claims of civil order in the service of something else? The analysis of this article argues strongly that the conduct of the Puritan courts was driven by consistent and coherent political doctrines.

The findings presented here similarly argue for a reevaluation of the conception of punishment that was operating in the Puritan courts. It is well recognized that, despite what sounds to modern ears like a draconian regime, the Puritan courts of Massachusetts were far more lenient than their English counterparts. Leniency was reflected both in statutes (especially the relative rarity of capital crimes) and in the courts' adjudication of cases. The Puritan courts were always ready to permit a criminal to disavow his speech, repent his conduct, or make good his damage and thus be relieved of the onus of the crime.

In part, no doubt, this was a reaction of revulsion against the excessive bloodiness of contemporaneous English codes. More specifically, the record suggests that the Puritan magistrates attempted to impose only as much punishment as was required to expunge the corruption of the crime from their community. This principle appears most clearly in the special role that obstinacy played in the determination of a sentence. Obstinacy, in fact, can be seen as a form of a spillover case, this time between categories of criminality rather than between social spheres. When a criminal repeatedly declined opportunities to remedy his ways, then

[10] It is important to recognize the limitations as well as the strength of these claims. This article does not include a full-fledged multivariate regression analysis informed by detailed biographical information about each criminal defendant. Such a study is devoutly to be wished, although the task is not a small one. In the meantime, the data in this study demonstrate strong correlations between the severity of punishment and the significance of the crime as a challenge to political order.

the fact of his obstinacy itself became the crime most crucially in need of punishment. The political explanation is simple. An incurably obstinate will would be an intolerable presence in the community; those who would not rejoin the ordered life of civil society would have to be expelled. What appears in these cases is the efforts of magistrates to restore the healthy balance of the body politic in terms directly analogous to contemporaneous conceptions of physical health.[11] This represented a collective conception of remediation quite different from individual retributive or rehabilitative models of adjudication.

I. Method

A crucial working premise in this discussion is that the adjudication of cases reflected some internal logic and consistency. If it appears to us that like cases are treated differently, the initial hypothesis is that this is because our definition of "like" cases is different from that of the Puritan magistrates. In a study of Puritan criminal jurisprudence, in particular, the search for systemic informing values is encouraged by the prominent articulation of a norm of consistency per se in the adjudication of criminal matters. The question was addressed explicitly in 1644, when the General Court posed one of its periodic series of Questions to the Elders of the plantation's churches. The magistrates wanted to know whether penalties could be ascribed to offenses "which may probably admit variable degrees of guilt," and whether a judge had liberty to depart from positive law in prescribing a penalty. The Elders responded that magistrates did not have the liberty to depart from the penalties prescribed in the law, and further that a given offense could carry only one penalty regardless of differences in the circumstances of the crime. Instead, variation in the degree of an offender's culpability could be recognized only by declaring that the difference in circumstances caused the act to constitute a different crime.

> Ye striking of a neighbor may be punished wth some pecuniary mulct, wn ye strking of a fathr may be punished wth death; so any sinn comitted wth an high hand, as ye gathering of sticks on ye Sabbath day, may be punished wth death, wn a lesser punishmt might serve for gathring sticks privily, & in some neede.[12] (11/13/44 General Court, "Answers of the Reverend

[11] The predominant Galenic ideas of bodily health emphasized the need to maintain balance among the various humors. Illness was taken to indicate an imbalance, and treatment consisted of efforts to reduce or enhance the activity of appropriate humors (Duffy 1993:7). The modern medical term "infection" found its uses here, as in a law forbidding the entry of Anabaptists, who were alleged to join Roger Williams in denying "ye ordinance of magistracy . . . & their inspection into any breach of ye first table . . . wch opinions . . . must necessarily bring guilt upon us, infection & trouble to ye churches, & hazard to ye whole commonwealth" (11/13/44 General Court).

[12] The reference to the idea that "private" acts did not warrant punishment as severe as that accorded to "public" misconduct is noteworthy.

Elders to certeine Questions propounded to them"; 2 Shurtleff 1853:95)

Thus the emphasis on classification, characteristic of positivistic legal systems, was built into the requirement of consistent treatment.

Therefore, in the first part of this article I attempt to construct an historically meaningful system of classification for crimes and punishments. One constant source of potential error in interpreting early records is the imposition of anachronistic categories that are incommensurable with the understandings of the actors. Conversely, to the extent that such a system of classification reveals internal consistency in patterns of conduct, its utility as an interpretive mechanism is confirmed. Building on earlier efforts by Kai Erikson (1966), Eli Faber (1978), and Edwin Powers (1966),[13] I have attempted to fashion conceptual bases for identifying cases as "like," based on their descriptions, even where the particular words used by the presiding magistrates may have varied. Thus, for example, despite the fact that "forcible ravishing" was eventually defined by statute as the equivalent of rape, based on the way it appears in the actual record, simple "ravishing" is treated as a nonviolent sexual assault.[14]

In the second part of the article, I employ the proposed classificatory scheme to perform quantitative analyses on the records of case adjudication, identifying patterns of variation in treatment of offenses and testing the explanatory hypotheses described at the outset against those results. As a data base for this study I employed published records from the Springfield Court

[13] Erikson (1966:171) proposed the following classificatory scheme for his study of crime as an expression of deviancy: (1) crimes against the church; (2) contempt of authority (criticism of the government, contempt of court, abusing public officials); (3) fornication; (4) disturbing the peace; (5) crimes against property; (6) crimes against persons; and (7) other (including convictions for unknown offenses and convictions for crimes that took place too infrequently to be listed in separate categories). In the course of his treatment of Puritan criminals, focusing primarily on socioeconomic background, Eli Faber (1978) identified six categories of crime: theft, sex crimes, drunkenness, religious crimes, contempt for authority, and disorderliness in the family. In a third example, Edwin Powers's detailed 1966 study of crime in early Massachusetts employs up to 17 quite specific categories. For a less formal treatment of the topic, see Fischer 1989:189–96. Fischer, interestingly, fails to mention exile in his list of punishments.

[14] Jonathan Thing was convicted for "ravishing" Mary Greenfield and sentenced to be whipped and to pay a fine to the girl's father (6/1/41 General Court). Thereafter, "forcible ravishing" was made a capital crime, along with sexual relations with a girl under the age of 10 "whether it were with or without the girles consent." At the same time, a law was enacted making simple fornication punishable "either by enjoyning to marriage, or fine, or corporall punishment" (6/14/42 General Court). These laws were apparently a response to the horrendous case of Dorcas Humphreye, decided the same day, who had been abused by three men over an extended period of time while she was between seven and nine years old. Where the facts did not indicate coercion, however, the General Court was unwilling to impose the death sentence, as evidence in the cases of Robert Wyar and John Garland, charged with "ravishing" Sarah Wythes and Ursula Odle, a crime "confessed by boys and girls both." The jury found the defendants not guilty "with reference to the Capital Law"; the boys were ordered whipped and to pay fines, and the girls were ordered whipped as well (3/7/43 General Court). Clearly, in this case "ravishing" was not the equivalent of rape.

for Small Cases, 1639–50; the Essex County Quarter Courts, 1636–50; and the Court of Assistants and General Court, 1629–45. The third part of this article discusses points suggested by the data.

As noted earlier, the broad normative principles identified in Puritan civil doctrine emphasized the maintenance of order maintained within disparate spheres of authority, described as "the three societies." Building on this notion, the following scheme is organized around concepts of crimes as breaches in the order of the various spheres of social life.

A. **Violence and Deceit:** Includes murder, rape, theft, fraud, assault, arson.

B. **Order in the Court:** Includes failure to appear (as juror, witness, party), vexatious suits, penalty adjustments, appeals, abuse of process, nonreturn of warrants.[15]

C. **Breach of the Calendar:** Includes breach of Sabbath, failure to attend meeting, failure to attend services, and the declaration of days of thanksgiving and humiliation.[16]

D. **Order in the Public Square:** Includes drunkenness, sumptuary laws, railing, cursing, swearing, light carriage.[17]

E. **Breach of Regulation:** Includes wage and price regulation; sale of liquor; weights and measures; commerce with Indians; commerce with servants; commerce with foreigners; extortion and usury; neglect of watch or training; pound breach; breach of safety rules; restrictions on travel, building, and other areas in which the

[15] The importance of an orderly court system need hardly be emphasized in a system dependent on virtue for its legitimacy and mass participation for its power. The magistracy was the designated priesthood of Puritan civil dogma; disobedience to or disrespect of the court authorities struck directly at both the efficacy and the legitimacy of the civil order (Breen 1970).

[16] Individual churches could declare days of humiliation and thanksgiving for their congregations, but only the General Court could, and regularly did, declare such holy days for the entire community. The calendar of Puritan life was experienced in response to the same kinds of cycles—agricultural, climactic, and celebrational—that have dictated the pacing of life in agrarian societies since prehistory. Calvinist doctrine, however, held that the natural world was itself bound in a normative order and therefore stood as a "second book of revelation." The calendar thus became a nexus connecting social practice with the dictates of Creation. That the courts were given authority over the relationship between sacred and secular time demonstrates the direct connection between ontology and authority.

[17] Railing, swearing, and cursing are included under disorder rather than speech. The reasoning behind this categorization is that speech which disrupts order by the fact or manner of its utterance is different from speech which threatens the civil order by its content. In this regard, it is significant that the acts of speech contained in this category are punished by fine or lashes (usually imposed in the alternative) or time in the stocks; i.e., the same penalties that are applied for other acts of public disorder. By contrast, speech acts that are proscribed by virtue of their content are handled in a markedly different fashion, discussed below.

courts sought to ensure that the public business of society would function in a smooth and equitable manner.[18]

F. **Speech:** This is one of the key categories of offense and is detailed in the next section. Speech could be punishable because it offended on religious or political grounds, because it was personally offensive or slanderous, or because it was disorderly (swearing, cursing, etc.). Where the offense in question involved speaking loudly at night while drunk, railing, scolding, or singing profane songs, the cases are treated as examples of general disorder (category D) rather than speech offenses.

G. **Sexual Misconduct:** Includes cases of premarital sex, fornication, lewd and lascivious conduct, bestiality, homosexuality, "ravishing."[19]

H. **Order in the Household:** Includes offenses that related to matters of marriage, family relations, and relations between servant and master.[20]

Two categories of cases were excluded from consideration in this study. Cases in which the defendants were Indians demonstrate distinct patterns and ideological points. Although Indians who violated rules of conduct in the colonists' community were severely punished, as were colonists who abused Indians,[21] the specifics of these cases require separate treatment on their own.

[18] The Massachusetts Puritans lived in a highly regulated economy, to which the court was constantly making adjustments. The rhetoric of the orders makes it very clear that the courts felt a keen connection between economic practice and values of public order. Following English practice, the courts acted to maintain a stable economy with wage and price controls, to discourage immoderate behavior with anti-usury and occasional sumptuary laws, and to preserve the order of social relationships in the commercial sphere by imposing restrictions on the business dealings of servants with masters, Indians with settlers, and employers with workers.

[19] Cases involving sexual misconduct can properly be thought of as a special subset of household cases. For purposes of this typology, however, fornication cases are treated separately, because punishment of cases involving sex, like those involving violence, are drastically overdetermined. Concerns of household order interacted with norms of ritual purity, exemplified by the provision in the Body of Liberties of 1641 that in cases of bestiality, the animal involved was to be put to death "and not eaten"; Body of Liberties, § 94 (listing capital crimes) (Whitmore 1889:55). Old Testament principles, themselves arguably dictated by concerns of property rights and tribal identity, weighed heavily and in complex ways on the reasoning of the magistrates and divines in matters involving sexuality.

[20] The term "household" is used, rather than "family," because the social order of the home extended to apprentices and anyone else residing within the house. This was a topic that held special importance due to the conditions of life in Massachusetts (Fischer 1989:68–75).

[21] Thomas Morton, found guilty of stealing an Indian's canoe and of having shot two Indians in an earlier encounter, was ordered put in bilboes, and then sent prisoner to England, all his goods to be seized to defray the cost of the village, and his house to be "burnt downe to the ground in the sight of the Indians for their satisfaccon, for many wrongs hee hath done them from tyme to tyme" (9/7/30 Court of Assistants) (Morton, of course, was unpopular for many reasons); John Dawe was whipped for "intiseing an Indian woman to lye with him" (11/6/31 Court of Assistants); Nicholas Frost for theft from Indians, drunkenness, and fornication was whipped, fined, branded on his hand, and banished (10/3/32 Court of Assistants); Frances Ball was ordered to pay two hands of

Similarly, cases involving servants as defendants have been excluded when the offense was one peculiar to the conditions of servitude (e.g., running away or disobedience). Where servants were charged with crimes that might have been committed by anyone, however, their cases were included in the data.

In addition, some individual cases defied reasonable classification, such as those in which the court intervened in a matter that might otherwise be considered a civil suit (itself arguably an illustration of the spillover principle in action). Others provide tantalizing but inadequate information. An example of these latter cases involves Mr. Thomas Makepeace who, in 1639, was informed that "because of his novile disposition, . . . wee were weary of him unless hee reforme" (3/13/39 General Court). What was citizen Makepeace's offense? The record is silent, and his case does not appear in the data set for this study.

A different example of an unclassifiable case is provided by that of the midwife of Boston, Jane Hawkins, who was ordered in March 1638 to be gone by May and meantime "not to meddle in surgery, or phisick, drinks, plaisters, or oyles, nor to question matters of religion, except with the elders" (3/12/38 General Court). It seems clear that Goody Hawkins was found guilty of some kind of unauthorized practice of medicine as well as religious unorthodoxy and suspicion of witchcraft,[22] but the details of this particular accusation are too vague to be of use in the construction of a data set. Additional examples of this category of offense include cases in which the "criminal" was an entity other than an individual, such as a town.

The range of available punishments on which the courts could draw was limited only by the imagination of the magistrates and the resources available to the towns. A town that lacked a jail might order a criminal to wear chains, and the absence of stocks did not prevent magistrates from ordering a defendant to stand in the public square wearing a sign attesting to bad conduct, or with his or her tongue in the cleft of a green stick to demonstrate bad speech habits. The ordinal ranking[23] of severity implied in

wampum in compensation for hitting an Indian woman with a stick (5/4/48, Court for Small Causes).

[22] Nicholas Knopp was ordered to pay a hefty fine or suffer a whipping for selling a false cure for scurvey, "a water of noe worth nor value, which he solde att a ver deare rate" (5/1/31 Court of Assistants). Goody Hawkins was considered a suspicious person, as she had earlier attended the monstrous birth of Mary Dyer's stillborn child and was a close associate of Anne Hutchinson.

[23] The use of ordinally ranked categories involves two robust claims: first, that criminal punishments are alike in the sense that they can be thought of as occupying points along a single scale (unlike the variables in a nominal scale); and, second, that all punishments in one category are more severe than all punishments in the preceeding category and less severe than those in the following category. The dependent variables in this study, however, are discrete rather than continuous. That is, there is no claim that the "distance" between categories is a consistent mathematically defined interval, as in an interval scale. See King, Keohane, & Verba 1994:153–55.

the following categories holds true despite variations in specifics, and encompasses nearly all the punishments that appear in the data set.

1. **Minor punishments:** This category comprises admonitions, orders that a defendant provide a bond to ensure subsequent good behavior, the imposition of token fines (less than 10s.), orders that defendants seek private correction (usually from ministers) to learn better ways, orders that defendants rejoin their spouses, orders that defendants give an accounting of their time, etc.
2. **Fines:** This category includes significant fines (10s. or more), orders to pay restitution, or extensions of servants' period of service, which was recognized to have a quantifiable monetary value.
3. **Humiliation:** This category includes orders that defendants publicly acknowledge fault, being banned from office, disenfranchisement, orders that defendants stand in the marketplace wearing a sign indicating their fault, or spending time in the stocks.[24]
4. **Physical punishments:** Whipping, imprisonment, and binding a free man into service for term of years are included in this category in which defendants are to learn their lessons by punishments imposed on their bodies.
5. **Capital punishment:** Not only the death penalty, but brandings, mutilation, and exile are included in this category of irreversible punishments. Exile is treated as a permanent state despite the fact that on occasion a person who had been previously banished was readmitted to the colony. Furthermore, as a form of punishment exile was treated as among the most extreme available remedies.

To test the correlations between crimes and punishments, it was necessary to identify cases in the records for which a single offense could be reliably associated with a single punishment. The records provided information concerning more than 2,000 cases, but a single punishment imposed for a single crime could

[24] Edwin Powers (1966:195) challenges the distinction between punishments of humiliation and physical punishments, asserting that "there was no clear distinction between these two general methods of dealing with the public offender." John Winthrop himself, however, appeared to treat the two categories as separable, if not always entirely separate, when he declared that "[a] Reproofe entereth more into a wise man, then 100 stripes into a foole" (quoted in Powers 1966:195). If physical punishments contained elements of humiliation, however, it is at least as true that being put into the stocks or standing in the public square with a sign on one's head had elements of physical discomfort. The records support the conclusion that the magistrates in practice treated whipping as a separate and more serious category of punishment than being put into stocks. For example, principals in criminal enterprises might be whipped, whereas their accomplices would be sent to sit in the stocks. For instance, the Court of Assistants sentenced John Goulworth and Henry Lyn to be whipped and sit in stocks for stealing; by contrast their accessories in the crime, John Boggust and John Pickyrn, were sentenced only to sit in stocks (11/28/30 Court of Assistants).

not always be ascertained from the information provided. Cases were often compound—they involved multiple offenses so that it was not possible to ascribe a given penalty to a specific wrongful act.[25]

Two incidents of mass punishment were also excluded from consideration. In 1637, 75 followers of Anne Hutchinson were required to turn in their arms and were deprived of their franchise until they foreswore allegiance to the Antinomian cause.[26] Similarly, in 1645, 83 residents of Hingham involved in a dispute with Governor Winthrop over the qualifications for deputies were admonished to refrain from such affairs in the future, and fines were assessed against 9 of the complainants.[27] These cases were excluded on the grounds that they represent overdetermined moments of crisis—*sui generis* instances of criminal adjudication—that cannot be disaggregated into component individual adjudications. By contrast, the crimes and punishments of individual leaders of the Antinomian movement are included in the data set, since these represented discrete occurrences subject to adjudication as "cases."

The final data set totaled 793 cases for which a single offense could be correlated with a single punishment (the "general data set"). A separate detailed treatment of speech cases was also performed. Analysis of particular kinds of speech offenses permits a focus on specific elements of Puritan civil ideology. Discovering whether political or religious speech offenses were punished more severely by the civil courts provides considerable insight

[25] John Lee was whipped for saying the governor "was but a Lawe's clerke" and for "makeing laws to picke mens purses" and also for pretending an intent to marry the governor's maid and enticing her into a cornfield (12/6/34 Court of Assistants). This conviction, however, cannot be included in the data set because from study of the court's assessment of an appropriate penalty there is no way to distinguish the role of Lee's ill-advised speech from his philandering. Another example is provided by the 1641 case of John Guppi, sentenced by the court in Essex to be whipped for running away while his wife was pregnant, stealing and blaspheming, and swearing. In addition, William Vincent complained that Guppi had stolen his axe, and other witnesses testified to seeing a hen in Guppi's breeches; Sam and Robert Fuller testified that Guppi said "he did not go to meeting and that the parings of his nails and a chip were as acceptable to God as the day of thanksgiving" (3/30/41 Court of Assistants). In Guppi's case, surely, the court had a plethora of grounds from which to choose in imposing sentence.

[26] Had these cases been included in the sample, they would have been classified as "F.3" (as the equivalent of a public renunciation of bad doctrine). This would have reinforced the peak at punishment level 3 for speech offenses (discussed below); thus inclusion of the data would have made the conclusions in this argument appear stronger rather than weaker. On the Antinomian cause, see note 51 below.

[27] In addition, all the complainants were ordered to pay court costs, pursuant to a statute designed to discourage vexatious litigation passed in 1642, ordering that in any case where the court found that either plaintiff or defendant "hath no just cause of any such proceeding," that party was to pay court costs and, at the judge's discretion, an additional fine (Whitmore 1889:xiv). These 83 cases would be coded "B.2" in the sample. As was true for the other group of punishments excluded from consideration, including these in the sample would only strengthen the peak patterns that emerge in the data. Nonetheless, I concluded that exclusion of this information was appropriate to ensure the integrity of the data set.

into the ideological basis for civil order. Conversely, how slander compared with political speech illuminates the relative importance of safeguarding the dignity and privileges of the upper classes and the preservation of ideological orthodoxy. A second set of data was developed for speech cases only, with a data base of 139 cases constituting the "speech data set," discussed below. Treatment of these data, in terms of the dependent variable and mode of regression analysis, was the same as for the general sample.

II. Results of Data Treatment

A. The General Data Set

The results shown in Table 1 make it clear that acts of violence and deceit were usually punished either with a fine or by corporal punishment, accounting for the sentences in more than 79% of the cases in category A. Disruption of the order of the courts almost always warranted a fine or admonition; over 95% of the cases in category B incurred one of these two responses. Although disorderly conduct covered a broader range of penalties, over 78% of cases in category D were punished by either admonitions or fines. Small but not insignificant (> 5%) numbers of cases in this category received either humiliation or corporal punishments (18 and 19 cases, respectively, out of 171 total). Breaches of regulation (category E) also incurred either an admonition or a fine; 98% (144 of 147) of cases received one of these penalties, with fines being most often applied (86% of cases).

Speech cases show a more diffuse pattern of response. It is the only case category for which the penalties peak at humiliation penalties (36%). In addition, about a quarter were punished by fine and another sixth by admonition. Sex cases warranted severe penalties. Of 68 recorded cases, 42 resulted in either corporal or capital punishment (61%). The rest were evenly divided among the other three categories of punishment. Finally, cases involving breaches of household order show a double-peak pattern like that found for crimes of violence and deceit, with 58% of cases receiving sentences in penalty categories 1 or 2, and 32% receiving sentences in category 4, accounting for 45 of the 50 recorded cases.

Table 1. Penalties for Criminal Cases by Type, Massachusetts, 1629–1650

	1. Minor Punishments		2. Fines		3. Humiliation		4. Physical Punishments		5. Capital Punishment	
Case Type	%	No.	%	No.	%	No.	%	No.	%	No.
A. Violence & deceit:										
98 cases	2.0	2	32.6	32	9.2	9	46.9	46	9.2	9
B. Order in the court:										
87 cases	2.3	2	93.1	81	3.5	3	1.2	1	0.0	0
C. Breach of the calendar:										
10 cases	50.0	5	10.0	1	0.0	0	40.0	4	0.0	0
D. Order in the public square:										
171 cases	12.9	22	65.5	112	10.5	18	11.1	19	0.0	0
E. Breach of regulation:										
147 cases	11.6	17	86.4	127	0.7	1	1.4	2	0.0	0
F. Speech:										
161 cases	14.9	24	24.8	40	36.0	58	13.7	22	10.6	17
G. Sexual misconduct:										
69 cases	13.0	9	13.0	9	13.0	9	39.1	27	21.7	15
H. Order in the household:										
50 cases	38.0	19	20.0	10	8.0	4	32.0	16	2.0	1
		81		412		102		137		42

B. General Patterns in the Adjudication of Criminal Cases

These observations enable us to draw some conclusions about patterns of criminal adjudication. The dual peak in category A, for instance, appears to reflect a division between violent crimes, such as assault, and nonviolent crimes such as fraud. When theft involved conversion (misappropriation of goods) rather than burglary, double or triple restitution was frequently ordered in lieu of corporal punishment. This was particularly true when the thief was a woman: in 7 cases of women stealing, 5 were punished by payment of restitution, one was ordered to be whipped only if she failed to maintain good behavior, and only one was actually whipped. For male defendants who were not gentlemen, the consequences were considerably more dire: 28 out of 38 convicted defendants were whipped. Another 8 defendants were ordered fined, of whom 4 were given additional punishments.

As the reference to gentlemen indicates, status affected the likelihood of a particular punishment being ordered. In the first place, it is perhaps unsurprising that members of high social standing were accorded special privileges. Although they early on rejected the importation of titles of nobility, the Massachusetts Puritans were anything but Levellers. It was a matter of statute that no "gentleman" should be subjected to the humiliation of

public whipping. In one case, however, a thief was deprived of the title "Mister," indicating loss of his status as a gentleman: the consequence of recidivism would be a whipping.[28]

Conversely, however, certain crimes were *more* severely punished when they were committed by members of the elite than when the offenders came from among the hoi polloi. This was particularly true of speech cases. In addition, the incidence of conviction by class varied with the crime. Eli Faber (1978) finds, for instance, that nonservant criminal defendants were preponderantly drawn from the upper or middle social/economic ranks. Criminals convicted of theft and fornication were predominantly drawn from the middle and lower economic strata, while convictions for religious offenses and contempt of authority occurred far more often among members of the upper socioeconomic class (Faber 1978:115–18).

The data in this study bear out Faber's findings. Given a reluctance to impose corporal punishment on members of the upper classes, one would expect to find corporal punishments concentrated in those categories of offense in which members of the lower classes were most heavily represented. Categories for violence, sex, and household offenses are disproportionately populated by members of the lower classes. The household category, in particular, is composed in large part of servants. These three categories account for 73% of all corporal punishments ordered in the sample. Punishment categories 1 (minor punishments) and 4 (physical punishments) account for 70% of the cases in this offense category. Thus it appears that household offenses, like crimes of violence and deceit, were sharply divided between severe and innocuous cases.

At first glance, the findings mentioned in the preceding paragraph might seem to support an argument that Puritan jurisprudence was a simple exercise of punishing the "uppity" lower classes and protecting the interests of the upper class. The picture changes dramatically, however, when we include consideration of capital punishments, particularly exile. This change is particularly acute if we recognize a sharp division between punishment categories 1, 2, and 3 (minor punishments, fines, and humiliation) versus categories 4 and 5 (corporal and capital punishments). In this division, sexual misconduct emerges as the most severely punished category, with 60% of cases in category G receiving the more severe penalties. The emphasis in cases involving sex offenses is on corporal rather than capital punishment. Physical punishments were imposed in about 40% of this category compared with about 21% of cases that received punishments in the most severe category. Of the remainder, 16% of

[28] Josias Plastowe was ordered fined and to lose the title "Mr." for theft of baskets of corn from Indians and to pay double restitution (11/27/31 Court of Assistants).

convicted defendants received admonitions and 10% received fines and punishments of humiliation, respectively.

Of all the cases, only sexual misconduct emerges as significantly weighted toward the severe end of punishment. Conviction of a sexual offense carried with it a higher risk of severe punishment than conviction of any other category of offense except violence.[29] On the other hand, more capital punishments (death, mutilation, branding, or exile) were ordered in the context of speech cases than any other category (17/42, or 40%; 36% (15/42) of capital sentences involved sexual misconduct). Together, categories F and G (speech and sex offenses) account for 76% of all capital punishments administered, with only 21% imposed for crimes of violence and 2% for household-related offenses. Thus, when one focuses specifically on the imposition of the most severe punishments, the data reflect that improper speech was potentially at least as severe a form of offense as improper sexual activity.

That speech and sex were the two categories of misconduct warranting the most severe punishment is consistent with a popular idea of Puritan society as a repressively doctrinaire environment. On the other hand, this finding challenges accounts that supposed that Puritan ideology was honored more in the breach than the observance, that Massachusetts in practice merely reproduced the privileges of English class divisions. In order to focus more clearly on the ideological content of criminal adjudication, I now turn to a more detailed treatment of criminal prosecutions for disruptions of household order and offensive speech.

C. Household Cases: Ordered Houses and Mannered Relations

Whatever the conception of "private" matters that was at work in the Puritan social conception, it was not defined in terms of the physical boundaries of the home. Household affairs were manifestly a matter of public interest and concern, a fact demonstrated in the tradition of neighborly watchfulness and the courts' regular interventions into household arrangements. Marriage, remarriage, "divorce" (see discussion, below), probate, support, and apprenticeship arrangements were all adjudicated by the civil courts. The tradition of neighborly watchfulness was a natural outgrowth of the idea that the maintenance of civil order was a collective responsibility. Church members, especially, were responsible not only "for our owne parts, but in the behalfe of every soule that belongs to us . . . our wives, and children, and

[29] Fornication was often punished by whipping. In contrast, married couples convicted of having had premarital sex (on the basis of a birth early with regard to the marriage date) were either fined, as in the cases of Edward Gyles and John Galley (12/6/35 Court of Assistants), or ordered to publicly acknowledge their fault, as in the case of Henry Leakes and his wife (6/10/43 Court of Assistants).

servants, and kindred, and acquaintance, and all that are under our reach, either by way of subordination, or coordination" (Cotton 1651:2).

The courts' intercession in household relations occurred in a variety of contexts, all of which displayed a commitment to maintaining the order of the "little commonwealth." The duties of members of the household flowed both up and down, and deviations from the duties of masters to servants or parents to children were punished in the same manner as the more common instances of insubordinate speech. A review of the records of the punishments meted out in household cases confirms that the severity of the offense correlated with the gravity of the threat that it posed to the order of the household rather than with the moral blameworthiness of the conduct at issue.

The court regulated both the formation and the conduct of marital relations, emphasizing the conception of marriage as a form of civil contract (Weisberg 1982:120). A marriage could only be performed by a duly appointed civil authority. On March 1, 1631, Thomas Stoughton, the constable for Dorchester, was fined for undertaking to perform a marriage without authority (3/1/31 Quarter Court). To enter into an improper betrothal could also carry criminal consequences, as when Joyce Bradwicke was ordered to pay Alex Becke for promising marriage "without her friends consent" and now refusing to wed (6/1/33 Quarter Court). On September 9, 1639 the General Court moved to formalize the process of betrothal, with an order that no marriage was permitted unless it was first published three times, to prevent unlawful marriages. On March 28, 1648, Thomas Rowlinson and Edward Gillman were fined for marrying without publication (3/28/48 Quarter Court).

The issue of marriage without consent of the maid's guardian arose again on September 1, 1640, when Thomas Baguely was censured "for seeking to get a mayde without her friends consent" (Quarter Court). Nicholas and Katherine Pacie gave an elaborate public acknowledgment of their fault in engaging in marriage at a time when she was engaged to another man.

> I do hereby desire that this my hearty acknowledgment may be accepted of all men and that it may be a warning to all whom it may concerne, not to deale rashly in matters of such weight to the griving of the harts not only of my wife and the party abovesayd, whom I have wronged, but also to other godly christians.

Both the form and content of the remedy—a public apology for "griving of the harts" of the community—demonstrate that the grief of the offense was shared by the whole community. Goody Pacie also confessed that she had sinned in denying conjugal rights to her new husband because of her disturbed conscience, a

powerful indication of the depth of her distress (12/29/40 Quarter Court).

Massachusetts practice in the area of divorce was entirely different from that which prevailed in England. English practice did not allow divorce "*a vinculo matrimonii*" (i.e., a true divorce, permitting remarriage) until 1857 and then only on grounds of adultery. Instead, divorce "*a mensa et thoro*" (a form of separation "from bed and board" that did not end the formal marital relationship) was granted by ecclesiastical courts in cases of gross misconduct such as adultery or cruelty. In Massachusetts, divorce was treated as the termination of a contractual relationship created by the civil courts in the first instance, and remarriage was therefore permitted. Divorces, granted by the civil court, were absolute terminations of marital status rather than orders of separation (Weisberg 1982:117–21). Announcements of remarriage or divorce were often accompanied by exhaustive and detailed descriptions of financial obligations and property divisions and often orders of support, as in the following 1635 decree:

> With the consent and att the desir of Henry Seawall & Ellen his wife the Court hath ordered that his saide wife shalbe att her owne disposeall, for the place of her habitacon & that her saide husband shall allowe her, her weareing appell & xx p ann to be paide quarterly, as also a bedd with furniture to it. (10/6/35 Quarter Court; see generally Salmon 1986)

Unless a divorce were granted, spouses were expected to live together. Thus men who "lived apart from" their wives were ordered to return to where they belonged.[30] The admonition to return to their spouses was the only penalty recorded in these cases, with the exception of "Auld Churchman" of Lynn, presented for living apart from his wife and for having the wife of Hugh Burt locked with him alone in house. The gentleman was discharged, but was required to bring a certificate showing he had the means to bring his wife over from England (12/26/43 Quarter Court). On February 22, 1648, John Luffe and his wife were presented for living apart. The selectmen of Salem were ordered to find work for Luffe and to maintain his wife; if Luffe refused the work that was offered, he would go to jail. Thomas Rowell, whose wife was ill, and John Bayly, whose wife had refused to make the Atlantic crossing, were only required to use "reasonable means" to reunite with their spouses (4/24/42 Quarter Court).

In other cases, spouses were permitted to remain separated on a showing of adequate grounds. William Flint, presented for

[30] Isaac Davies was sent home to his wife in England (6/6/37 Assistants); William Wake was "councelled to go home to his wife" (12/1/40 Quarter Court); Edward Adams was "enjoined to returne to his wife" (6/1/41 Assistants). A number of these cases involved no significant punishment. Peter Simes, for instance, was presented three times for living without his wife without recorded punishment (2/28/43 Quarter Court, 12/28/43 Quarter Court, and 2/23/49 Quarter Court).

not living with his wife, answered that his mother was not willing to let his wife come over and was quit of the presentment, as were three other men presented on the same grounds on the same day (for unspecified reasons) (2/28/43 Quarter Court). On March 1, 1648, Sara Ellis was presented for living apart from her husband in England for the previous eight years (Quarter Court). In her defense she stated that he had abused her and had consented to her coming over, and she was acquitted. On February 23, 1649, William Wake was discharged from a presentment on explaining that the marriage had been against the wishes of his wife's guardian; the same day John Leech Sr. was discharged when he informed the court that his wife was unwilling to come "and he was not able to live in Old England" (Quarter Court).

Cases involving spouses far off in England also gave rise to bigamy charges when the spouse located in Massachusetts married again. Bigamous marriages were void; they were not, however, treated as cases of adultery, which would warrant severe punishment.[31] Since the consummation of a bigamous marriage was necessarily an adulterous act, the fact that bigamists were not punished as adulterers strongly demonstrates that the courts' concern was not adjudicating moral blameworthiness according to biblical standards.

Adultery within the community threatened the stability of at least two households. By contrast, bigamists whose previous spouses were far away in England occupied a position that, while unacceptable, was not immediately disruptive. Thus in 1644 the marriage of John Richardson and Elisabeth Frier was declared void on proof that Richardson's wife was alive in England, but no additional penalty was imposed (11/13/44 General Court). Ear-

[31] Adultery was punished variously with whipping, public humiliation, and, in principle, death. The death sentence was imposed only once: Mary Latham and James Brittaine were both put to death (3/5/44 Court of Assistants). Apparently the aggravating factor in the case was Latham's open boasting of her adulterous relationship (Hull 1987:31). In an earlier case, John Hathaway, Robert Allen, and Margaret Seale were all convicted of adultery in a trial that included the impaneling of a "Jury of Life and Death" (9/19/37 Quarter Court), but they were ultimately ordered whipped and banished (3/12/38 General Court). Natalie Hull (1987:30-32) notes that the existence of a death penalty for adultery marks a sharp deviation in the usual pattern of accommodation of English laws. Hull arguably errs, however, in that she overstates the differences in the treatment of men and women adulterers in early cases and ascribes the first capital law against adultery to increasing pressures on conservative social values in the late 1640s. In fact, the death penalty was first enacted in 1631: "if any man shall have carnall copulation with another mans wife they both shallbe punished by death" (12/18/31 Court of Assistants), a law that was later confirmed by the General Court (10/7/40 General Court). This rule grew out of a case involving John Dawe's seduction of an Indian woman, for which he was ordered "severely whipped" (9/6/31 Court of Assistants). In practice, as Dawe's case indicates, men as well as women suffered corporal punishment for adultery. It is also the case that the famous scarlet "A" was not a punishment unique to this crime: John Davies, for "attempting lewdness with divers women" was ordered to wear a "V" (3/5/39 Quarter Court); Robert Coles, for drunkenness, was ordered to wear a red-on-white "D" for one year whenever he was "among company" (3/4/34 Quarter Court); Robert Wilson was ordered to wear a "T" for theft (9/3/39 Quarter Court).

lier, in 1639, John Luxford's goods were forfeit and he was sent back to England (12/3/39 Quarter Court). On the other hand, Robert Cocker's offense, like the Pacies', struck closer to home: he became engaged to one woman in the colony while betrothed to another. Cocker was whipped and paid 5 pounds to Thomas Kinge, who married Cocker's first fiancee (7/12/42 Essex Court). The severity of Cocker's punishment accords with the treatment of Gervase Garford, who was sent to the stocks for soliciting a bigamous marriage, manifestly a socially disruptive act.[32]

The behavior of spouses toward one another was also a cause for concern. There are several cases recorded of men admonished for wife beating, including Henry Sewall (6/5/38 Court of Assistants),[33] and one case of a man whipped for spousal abuse.[34] In other cases the punishments were less severe, involving time spent in stocks, fines, admonitions, or restrictions on the disposal of property.[35]

There were fewer recorded cases involving wives' mistreatment of their husbands, and those tended to be lurid and severe. Dorothy Talbie "was ordered chained to a post, being allowed only to ''come to the place of gods worships' until she repents" for "frequent laying hands on her husband to the danger of his life, and contemning authority of the court (6/27/37 Quarter Court). A year later Goody Talbie was back, this time whipped for "misdemeanors" against her husband (9/25/38 Quarter Court). One month after that, she was sentenced to be hanged for the murder of her daughter, Difficult (10/4/38 Court of Assistants).

Other cases were nearly as extreme. Hugh Browne's wife was ordered whipped for breaking his head and threatening him,

[32] Garford was sent to the stocks for one hour for soliciting marriage with Elizabeth Simonds while his own wife was alive ("and her husband also, for aught he knew") and idleness (2/23/49 Quarter Court). Interestingly Simonds, presented for keeping Garford's company, was discharged on her statement that it was due to "weakness" rather than "ill intent."

[33] The case was referred to the Ipswich Court for resolution. Other cases are Guido Baly and William Barber, each admonished (12/27/42 Quarter Court).

[34] John Russell (12/28/43 Quarter Court). Russell and his wife were also both ordered whipped for fighting with one another, see below. In 1648 Richard Praye was ordered to pay a fine or be whipped for swearing, cursing, beating his wife, and contempt (3/1/48 Quarter Court).

[35] John Perrye was sentenced to one hour in the stocks for "abusive carriages" to his wife and child (3/29/50 Quarter Court); Henry Renolds was sentenced to spend time in the stocks for beating his wife; the sentence was reduced to a fine at her request (2/22/49 Quarter Court). On April 22, 1638, John Blackleech agreed not to dispose of any property without the consent of his wife, reflecting the fact of a wife's independent ownership of property that she brought into the marital estate. In 1647 Phillip Cromwell was presented for not supporting his distant wife and child, keeping company with four married women and "giving grounds for jealousy and of overmuch familiarity," as well as suspicion of drinking. Cromwell was admonished and bound to behave himself in future (7/6/47 Quarter Court). Cromwell later satisfied the court as to failure to rejoin his wife and the matter was dismissed (3/2/48 Quarter Court).

throwing stones at him, and other similar conduct (3/30/41 Quarter Court). Mary Osborne was whipped for attempting to poison her husband with quicksilver (7/29/41 Court of Assistants). Lesser cases of misconduct by a wife warranted lesser measures. In 1639 Katherine Finch promised "to go to the ordinances, and to carry herselfe dutifully to her husband" (6/4/39 Quarter Court).

The cases involving spouses demonstrate the nature of the courts' concerns. The courts' interventions were consistently kept to the lowest level that would remedy the disruption of social order. Separated spouses were simply ordered to reunite, and even that remedy was waived on a proper showing that reuniting the family would not be beneficial. Bigamous marriages required intercession by the civil authorities but not severe punishment, despite their adulterous overtones. In cases of spousal abuse, the court's response often consisted of removing the cause of the disquiet. Everywhere there is consistent evidence of an attempt to restore the peace of the household instead of, and even at the expense of, the adjudication and punishment of moral fault.

If the courts were frequent arbiters of marital affairs, they intervened only rarely in the relations between parent and child. Young John Pease was whipped and bound to good behavior "for strikeing his mother Mrs. Weston, & deryding of her & for dyvers other misdemeanrs & other evill carriages" (1/3/36 Quarter Court); John Cooper Jr. was committed to his father for correction for an unnamed misdeed (12/4/38 Quarter Court); and James Smith Jr. was severely whipped for filching, stealing, and stubbornness and disobeying his parents (8/30/40 Quarter Court). In 1646 the General Court enacted a law providing the death penalty for a child over the age of 16 "& of sufficient understanding" who "shall curse or smite their naturall fathr or mother . . . unless it can be sufficiently testified yt ye parents have bene very unchristianly negligent in their education of such children, or so pvoked them, by extreme & cruell correction, yt they have bene forced thereunto to pserve themselves from death or mayming" (11/4/46 General Court; 2 Shurtleff 1853:179). Needless to say, the qualifying defenses and the very high age requirement differentiate this statute sharply from Old Testament precedents. (The statute was never applied during the period studied here.)

The consequences of improper marriage proposals have been discussed already. When such conduct was combined with disobedience to parents, the level of punishment meted out increased in severity. On January 11, 1640, Magistrate Pynchon ordered John Hobell and Abigail to be "well whipt" for making promises of matrimony against the wishes of her father, and he for "offeringe and attemptinge to doe the act of fornication with

her as they both confessed though as far as we can discerne by any proofe of Justice the act was not don." Similarly, in 1649 Matthew Stanly was fined for drawing away the affections of Ruth Andrewes without parental permission.[36]

The courts were also concerned to prevent the mistreatment of children. In 1642 the General Court, observing neglect of parents and masters in training, ordered that fines might be imposed by towns as required to ensure training properly carried out. In 1650 John and Mary Rowden were presented for allegedly not caring for a child entrusted to them; no fault was found, but the child was returned to his family (2/27/50 Quarter Court). Ann Haggett was presented for beating her child and calf and profaning the Sabbath, although no punishment is recorded (9/11/49 Quarter Court). The same day William Flint was presented for beating his bull, his cow, and his son in a cruel manner.[37]

Along with children, from the very beginning the authorities sought to regulate the master-servant relationship as an element of household relations generally. On April 21, 1629, while still in Gravesend, England, the company decreed that in the new colony servants would be distributed to families, "as wee desire and intend they should live togeather." Special care was to be taken that the head of a family entertaining a servant should be well grounded in religion; "as wee intend not to bee wanting on or parts to provyde all things needfull for the maintenance and sustenance of our servants, soe may wee justly, by the lawes of god & man, require obedyance and honest carriage from them" (1 Shurtleff 1853:397).

Specific regulations soon followed the establishment of the colony. No servant was permitted to deal in any commodity except by license from his master (9/28/30 Court of Assistants); no one was permitted to keep an Indian as a servant without a license (3/1/31 Court of Assistants); no servant could be hired for a term of less than a year (6/14/31 Court of Assistants); no servant was to receive land except by special petition (9/3/34 General Court); and no servant to be set free until all time served (10/7/36 General Court). A servant's work could not be sold (8/5/34 Quarter Court), nor could liquor be sold to servants (9/28/30 Court of Assistants). Punishments were ordered for masters who sold their servants' time or took money for their work con-

[36] Stanly and Andrewes were also ordered whipped or fined for fornication, but the punishment was to be remitted if they married, in accordance with the 1642 statute cited earlier (11/13/49 Quarter Court).

[37] The casual way in which the beating of a child is listed among—and after—the enumeration of beatings given to animals in the Flint and Haggett cases may be taken to support the thesis that filial relations in the 17th century were not what we would hope them to be today. Some historians have argued that high rates of infant mortality "made it folly to invest too much emotional capital in such ephemeral beings. As a result, in the sixteenth and early seventeenth [centuries] many fathers seem to have looked on their infant children with much the same degree of affection which men today bestow on domestic pets" (Stone 1979:82).

trary to the orders of the General Court.[38] The creation of the master-servant relationship was often by court order, accompanied by specific conditions.[39]

Outside the commercial sphere, servants were treated as a special subset of household cases. Servants who struck their masters[40] or who verbally abused their masters[41] were commonly punished with whippings and extensions of the period of service. No case is found in which a servant was whipped for simple disobedience, although an attitude of disrespect to one's master could be cited as evidence of bad character in a case involving another crime, as happened in the case of John Pope, ordered "severely whipped" for an "unchaste attempt upon a girl, dalliance with maydes, [and] rebellios or stubborne carriage against his master" (4/30/40 Quarter Court). As discussed above, simple dalliance and an unchaste attempt might not have resulted in whipping for a nonservant, but when combined with a rebellious carriage the conduct rose to the level of that requiring a severe response.

Masters had responsibility and authority over the sexual lives of female servants as they had over that of other female members of the household. (The sexual conduct of male servants was regulated in the same manner as that of a free man.) Thus in 1639 Thomas Sams was sentenced to sit in the stocks for one hour for speaking with a maid servant without consent of her master, "for coming unseasonably on Lord's day and at night, contracted without [her] master's consent" (12/31/39 Quarter Court). Where female servants' conduct was at issue, the punishment usually did not involve whipping, as in the simple fornication case of William Pilsberry and Dorothy Crosbie (6/1/41 Quarter

[38] Isaac Stoughton and Ralfe Allen were each fined for early release of a servant (6/4/39 Quarter Court); Thomas Baguely was fined for selling servant time against court's order (4/29/40 Quarter Court), as were Abraham Morrell and Samuel Sherman (6/1/41 Quarter Court); John Beamis was fined for freeing his servant against order (12/5/43 Quarter Court).

[39] In 1633 John Sayle and his daughter were both bound into service with Mr. Coxeshall (Coggeshall) for 3 and 14 years, respectively, as a punishment for Sayle's stealing. Each was to receive 4 pounds per year, with the father's pay to be garnished for restitution; in addition, Coxeshall was "to have a sowe wth" Sayle's daughter, and at the end of her service she was to receive a "cowe calfe" (6/1/33 Quarter Court).

[40] John Legge was ordered whipped for striking Wright "when hee came to give him correccon" (it appears that Wright was the town Constable) (7/3/31 Court of Assistants); George Ropps, a servant, was whipped for striking his master (6/5/36 Quarter Court); William Androws, servant, presented for assault on his master (the phrase used is "insolent carriage," but the description is of a physical attack), was whipped and made a slave (12/4/38 Quarter Court); Androws was later released from slavery (9/3/39 Quarter Court).

[41] John Cooke, a servant, was whipped and shackled for resisting his master's authority and making "desperate speeches." The master and his sister, who lived in the house, testified that they were in fear for their safety "and fearful of their children in point of lust" (9/29/40 Essex court). Richard Wilson was whipped for "grosse abuse of his master . . . revileing speaches, & refusing to obey his lawfull commands" (4/29/41 Quarter Court).

Court),[42] or the case of Katherine, a Negro servant of Daniel Rumball, twice fined for bearing illegitimate children (9/17/50 Quarter Court; 11/29/53 Quarter Court).

The defendants in the former case were later married, a fact we know because they reappear in the record two months later as William and Dorothy Pilsberry, this time ordered whipped for "defiling their master's house" (7/29/41 Quarter Court).[43] As we have seen, the simple act of even unlawful sexual relations did not ordinarily warrant corporal punishment. The Pilsberrys' union in the second case, moreover, was perfectly lawful. What was not acceptable, however, was the performance of the conjugal act in their master's house, combined with an obvious failure to learn their lesson after the first trial. The severity of the punishment makes sense when both the earlier act of unmarried fornication and the latter act of married relations in an inappropriate setting are viewed as one and the same crime, disruption of the household. On the other hand, in numerous cases where servants committed acts not relating to their service, they were punished no more harshly than free men.[44] Disruption of the master's household appears quite evidently at work in cases involving servants spying on their masters, such as the case of John England, whipped for eavesdropping as well as lying and running away (3/27/38 Quarter Court), or that of William Clark, whipped for spying into the chamber of his master and mistress "and reporting what he saw" (12/27/43 Quarter Court).[45]

Masters who mistreated or failed to care for their servants were subject to penalties and court orders, although the punishments were generally less severe. Often, masters were simply admonished to reform and to make amends for the harms they had caused. William Swifte was compelled to pay for medical treatment for his servant (Quarter Court, 4/7/35), and the Essex Court required Thomas Pane to restore his servant's "apparell as

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42 Pilsberry and Crosbie were bound to good behavior, and Pilsberry was bound to work with one man two days a week and another one day a week for five years. It is not clear that Pilsberry was already a servant whose time was redistributed to make restitution for his actions or whether he received his sentence for meddling with another man's servant.

43 Interestingly, these are treated in the record as two separate cases, implying perhaps that the two served different masters.

44 Edward Hall, servant (3/27/38 Quarter Court), was fined 10s. for being "overseen in drink." William Wilson, a servant, was fined for being drunk, the fine to be paid by his master (12/26/43 Quarter Court). John Mascoll, a servant, was fined for neglecting watch (6/27/43 Quarter Court). Joseph Duntton, a servant, was ordered to pay double restitution for the theft of some shirts (9/9/45 Quarter Court); Frances Bates, servant, was given option of paying a fine in lieu of being whipped for provoking a fellow servant to disobedience (9/26/48 Quarter Court); William Goodwin, servant of Hathorne, was fined for lying and admonished for rebelliousness (2/21/49 Quarter court); John Buck, for stealing a half bushel of wheat, was ordered to be fined and pay restitution to his mistress (3/29/50 Quarter Court).

45 This case, incidentally, challenges the popular notion that the cramped living conditions of early settlement implied a minimal sense of personal privacy.

good as he found it, & his tyme to begin in England" (3/28/37 Quarter Court). In other cases, masters were fined.[46]

There are only a few cases in the sample in which a master was whipped for mistreating a servant, and in at least one of those the punishment was for mistreatment of a servant belonging to another.[47] There are also several cases in which masters charged with mistreatment were acquitted, and one in which a servant found to have brought a false accusation was sentenced to be whipped.[48] Even masters' speech to their servants could result in sanctions, as in the case of William Vinson, who confessed to saying of his servant Susan Matchett that "she was not virtuous" (9/11/49 Quarter Court), and that of John Hogges, fined for swearing "Gods foote" and cursing his servant "pox of god take you" (3/5/39 Quarter Court). A master who mistreated a servant could also be deprived of the servant's services, either by the servant being freed or having ownership transferred to another owner.[49] The existence of the latter remedy emphasizes the fact that servitude was not simply a contractual arrangement but a publicly ordered relationship.

In addition, masters could be held liable for their servants' actions. This principle had broad application in Massachusetts, although there are only a few cases in the sample record. In 1631 Richard Saltonstall was required to pay compensation to Indians for destruction of two wigwams by his servant (5/8/31 Quarter Court). In 1635 Benjamin Felton was punished for bringing his servant Robert Scarlett, a known thief, into the jurisdiction (12/6/35 Quarter Court). In 1638 John Crosse was warned to appear to answer for a "miscarriage" by his servant Clement Manning (9/4/38 Quarter Court), and John Haule was bound to prevent his servant Burrows "that hee shall not seduce any man, nor move questions to that end, nor question wth any other, except wth the magistrates or teaching elders" (9/6/38 General Court).

The cases involving masters and servants demonstrate the commitment to the principle articulated at Gravesend, that servants should be members of households, and their conduct regulated in accordance with the dictates of the little commonwealth. Neither chattel property nor mere participants in a contract relationship like their indentured fellows elsewhere in the colonies, in Massachusetts servants were bound in the same balanced or-

[46] Some examples: Christopher Graunt was fined for cruel use of his servant Gilberd (3/2/41 Quarter Court); Samuel Hall was fined 25s. for beating his servant girl, who was 8 or 10 years old at the time (12/27/43 Quarter Court); Hugh Laskin was fined 40s. for failure to provide adequate food and clothing (8/27/44 Quarter Court).

[47] Peter Simes was whipped for beating Perry's servant (1/25/42 Quarter Court).

[48] Arthur Carey complained of cruel usage by George Keasar; Keasar was discharged and Carey ordered to be whipped (12/31/50 Quarter Court).

[49] Samuel Hefford was freed from service to Jonathan Wade and sent to serve John Johnson; in addition, Wade was required to pay Hefford 6 pounds in back wages (12/1/40 Quarter Court).

der as spouses and family members, an order which the courts acted to preserve.

Finally, in addition to regulating specific relationships within the household, the court punished persons whose conduct in private spilled over into the public realm. In 1639 Jane Robinson was whipped for maintaining a disorderly house, drunkenness, and light behavior (12/3/39 Quarter Court).[50] James Davies was ordered to appear before a Court of Assistants to answer for "unquietness with his wife" in 1640 (6/2/40 Quarter Court), and in 1641 Ellinor Peirce and her husband John were admonished to "keep better order" (6/1/41 Quarter Court). In other cases, John Russell and his wife were whipped for fighting between themselves and idleness (12/28/43 Quarter Court), and William Clark was advised by the Essex Court to stop being offensive in permitting a shuffleboard in his house (2/18/45 Quarter Court). In 1649 Charles Glover and his wife were ordered to each spend one half hour in the stocks for fighting at a session in which Goody Glover was also presented on suspicion of adultery (no further action is recorded in connection with the latter accusation) (2/22/49 Quarter Court).

The household was an element of the larger civil society, not a separate sphere of activity. As a result, the courts' mandate of preserving the prescribed civil order extended to regulating and, when necessary, intervening in, household affairs. While the treatment of household cases does not lend itself to regression analysis, the pattern of adjudication of these cases, shown earlier, looked like what is shown in the last row of Table 1 above (p. 380). The two peaks are at punishment categories 1 and 4. It appears that household misconduct was a form of offense from which a defendant could not be disassociated by a public disavowal of his conduct. Instead, in serious cases physical punishment was required. Doubtless, this was in part motivated by the principle that the punishment is tailored to the nature of the crime. Since serious household cases usually involved physical violence, physical punishment was warranted just as public speech was required when public speech was the offense. As we have seen, however, this explanation provides only a partial account of the patterns in punishments associated with crimes.

One alternative way of thinking of the punishment of household offenses might be in terms of the role the courts assumed in these cases. The early Massachusetts courts were not merely juridical institutions, they acted as arenas for social and political conflict, public repositories for recorded obligations, legislatures, and mediators of public disputation. In household cases, the courts intervened in relationships that were themselves the legal creations of the civil authority, in contrast to relationships that

[50] The term "disorderly house" did not appear to bear connotations of prostitution.

existed within the independent church congregations. In addition, the court stood at the head of an unbroken hierarchy of reiterated covenantal relations running from divine compact down to apprenticeships. If the household was truly a little commonwealth, then at times at least the commonwealth acted as a greater household. Since physical punishment was the preferred method of disciplining children ("spare the rod"), it is only appropriate that the court would turn to corporal punishment when a household offense was sufficiently severe to require that court to step into its role as temporary head of household.

Seen in this way, the household cases in this sample are most like the speech cases that arose from conflicts within independent congregations—spillover cases. Of the three societies, "family, church and commonwealth," it was commonwealth that had the responsibility to intervene in the affairs of the other two when conflict threatened to spill over into the society at large. The church had its own realm of primacy in the individual conscience and the promise of salvation, a primacy recognized in numerous ways by the courts including their reference of serious questions to the church Elders for advice and the 1641 Body of Liberties guarantee that no "custome or prescription" would prevail "that can be proved to bee morrallie sinfull by the word of god" (*Body of Liberties,* § 65, in Whitmore 1889:47). Was there a concomitant area reserved to the authority of the household? It is here that one can begin to look for the meaning of "private" in Puritan political culture.

D. Speech Cases: The Primacy of Politics

In the speech data set in particular, the focus is on what might be called the "little cases" rather than an exploration of the well-trodden terrain of the Antinomian Controversy[51] or the

[51] "Antinomianism" was a heretical Protestant doctrine that denied the necessity or efficacy of civil government. Antinomians argued that since the bestowal of divine Grace was arbitrary and unconnected to "works" (i.e., conduct), the idea of a godly civil order reflected the sin of "assurance," the claim to know the unknowable mind of God. In the early 1600s Antinomians in Germany had formed communities that were infamous among Puritan writers for the alleged licentiousness and criminality of their members' conduct. In Massachusetts, Antinomianism became popular among the followers of Anne Hutchinson and John Wheelwright, both of whom were banished in 1637. At her trial, Hutchinson declared that she had received a personal revelation "that shee should bee delivred & the Court ruined, wth their posterity (11/2/37 General Court); the court presumably has this in mind three weeks later when it ordered the disarming of Hutchinson's followers on the grounds that "they, as others in Germany, in former times, may, upon some revelation, make some suddaine irruption upon those that differ from them in judgment (11/20/37 General Court). (See generally Hall 1990.) Earlier, Roger Williams and his followers had made essentially the opposite argument, declaring that civil disorder was the *only* proper concern of the community, so that the first four of the Ten Commandments—"the first table"—were not proper subjects for lawmakers' consideration. Each of these positions challenged the fundamental ordering principle of Massachusett's government by focusing precisely on the point of intersection of the three "commonwealths"—political, religious, and social—that Puritan society comprised.

Roger Williams debate. There is no perfect distinction, of course, as many of the cases involving the punishment of an individual involved persons and issues that at other times were the basis for collective challenges to civil authority. Family relations among defendants in various cases, and social relations within the towns—some of them unknowable to modern-day historians—add further complications to the evaluations of conduct that took place in the trials. Nonetheless, it is the crucial premise of this study that operant norms are displayed most clearly in an examination of patterns of adjudication over time.

The courts' interest in regulating speech stemmed from the need to maintain standards for interactions in a tightly knit, highly communal society. In addition, questions of speech ultimately addressed the fundamental legitimating principles of the civil order. The courts acted to control speech at all these levels, with correspondingly increasingly severe penalties for increasing deviations from societal norms. An interesting suggestion in the pattern of punishments is a scale of severity running upward from defamatory statements about individuals, to disorderly speech, offensive speeches about public figures, offensive speeches about religious and civil institutions, and finally challenges to the legitimacy of the churches and the civil government itself.

The speech data set has been divided into four categories:

Speech A. Defamation or personally offensive speech: Includes not only defamation but also insulting speech.

Speech B. Disorderly speech: Includes cursing, swearing, lying.

Speech C. Religious speech: Includes heresy, blasphemy.

Speech D. Political speech: Includes speaking against the political order, impugning the honesty of magistrates in the performance of their office (as opposed, e.g., to slandering an individual on personal grounds who happened also to be a magistrate), challenging the government, questioning the legitimacy of the law.

The last two categories are central to this analysis. The relative severity with which each was treated will tell us a great deal about what kinds of threats to civil order the Puritan leaders took most seriously.

The correlation of speech cases with associated penalties that emerges from the data set is shown in Table 2. It is clear that very severe penalties were never imposed for speaking ill of one's betters at a personal level. Cases involving personal slander or insult (category Speech A) in this sample never resulted in either corporal or capital punishment. The most common response was to require the defendant to publicly acknowledge his or her fault in

making an untrue accusation or insult.[52] Public apologies combined with admonitions by the court to refrain from untoward speech in the future account for 80% (16/20) cases; in the remaining 4 cases a fine was ordered. Disorderly speech (swearing oaths, etc.) was also only found to warrant corporal punishment rarely, in only 5% of cases (1/20). Either an admonition or a fine was deemed to be sufficient 70% of the time (14/20), while in 20% of cases (5/20) a public acknowledgement of fault was required.

Predictably, in light or earlier findings, the picture changes sharply when one considers ideologically loaded speech cases. It is striking to note that serious penalties for speech were predominantly meted out to members of the upper classes.[53] In 1639 Mary Oliver came before the court because of her objections to the requirement of public confession as a precondition for church membership. Winthrop commented on her extraordinary abilities. "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" (Winthrop 1953:vol. 1, 285–86).[54] The clear point is that seditious speech became a more serious concern as the status of the offender ascended. Sedition from John Wheelright and Anne Hutchinson was more destabilizing—more threatening to the communal order—than the expression of the same attitudes by Mary Oliver because more people would listen to Anne Hutchinson.

[52] See Thompson (1986:172–89; 1983:504–22) for a discussion of the informal functions served by slander and slander suits. For a general study of defamation cases across a broad period, see Speziale (1992). For a treatment of the significance of gender in speech cases in early New England, see Kammensky (1992:286–306; 1993).

[53] See Faber 1978. In Massachusetts, men predominated in defamation cases. These patterns differ from those found by Mary Beth Norton in her study of colonial Maryland, in which Norton (1987:3–39) finds women to be overrepresented in defamation cases. This contrast echoes a general contrast in the rates of crime and punishment between the two colonies (Saloman 1989; Fischer 1989:190–92).

[54] This was the beginning of the extraordinary legal career of Mary Oliver. To cite only the highlights: later in 1639, she was jailed "indefinitely" for her speeches to newcomers (9/24/39 Quarter Court); in 1647 she went to jail after refusing to pay a bond for good behavior, for "divers mutinous speeches" and working on the Sabbath (3/2/47 Quarter Court). During that period, her husband, Thomas Oliver, appeared before the court ten times (eight civil suits, one presentment for speaking against the authorities, and one presentment for sleeping while on watch). By Nov. 15, 1648, Mr. Oliver had left for England, and Mary was ordered to join him there (11/15/48 Quarter Court). In the following year she appeared in four civil suits—including one in which she was awarded 10 pounds damages against a town constable, for wrongfully putting her in stocks (12/26/48 Quarter Court)—was convicted of stealing goats and was sentenced to be whipped for calling the governor unjust because of the verdict in the goat case (12/27/49 Quarter Court). She was ordered to join her husband again on Feb. 23, 1649, and again on July 11, 1649, this time on pain of forfeiture of 20 pounds. Finally, on Feb. 28, 1650, the ordered whipping and fine were both respited on the condition that she leave the colony by the first available boat (2/28/50 Quarter Court). Undoubtedly, Essex County was a quieter and less interesting place after the departure of the Oliver family.

Table 2. Penalties for Speech Cases by Type, Massachusetts, 1629–1650

Speech	1. Minor Punishments		2. Fines		3. Humiliation		4. Physical Punishments		5. Capital Punishment	
Case Type	%	No.	%	No.	%	No.	%	No.	%	No.
A. Defamation or personally offensive speech:										
20 cases	15.0	3	20.0	4	65.0	13	0.0	0	0.0	0
B. Disorderly Speech:										
20 cases	10.0	2	60.0	12	25.0	5	5.0	1	0.0	0
C. Religious speech:										
36 cases	38.9	14	22.2	8	13.9	5	13.9	5	11.1	4
D. Political speech:										
63 cases	3.2	2	19.1	12	46.0	29	14.3	9	17.5	11
		21		36		52		15		15

A second interesting finding is that political speech was treated in the civil courts as a much more severe event than religious speech. Again when we compare punishments in categories 1–3 with those in categories 4 and 5, it appears that political speech cases warranted the most severe penalties in 32% of cases as compared with 25% of cases involving religious speech. If one accepts the argument that public humiliation was a more severe penalty than monetary payment, a comparison of penalties in categories 1 and 2 with those in categories 3–5 shows an even more marked contrast: 78% (49/63) of political speech cases fall into the more severe punishment categories, contrasted with 39% of religious speech cases (14/36). Finally, the political speech subcategory shows the same peak at punishment level 3 (humiliation) that was observed for speech cases in the general data set, but even more strongly. The justification is obvious. When the injury was harmful speech, it could be healed by remediative speech.

Applying an ordinary least squares regression analysis of variance,[55] one sees that political speech was indeed more severely punished than any other category including religious speech (Table 3). Subcategory Speech A (defamation or personally offensive speech) is the baseline, appearing as the "intercept"; the other three subcategories' degree of variation is measured against the level of punishment associated with subcategory Speech A. While there was no statistically significant likelihood

[55] Regression coefficients are not provided in the analysis of the data for all categories of crime because such a figure unduly "collapses" the account where data demonstrates multiple peaks and because of the lack of any clear way to interpret the significance of deviation from a baseline of category A (violence and deceit). More sophisticated mechanisms of analysis than OLS regression provide an answer to the latter problem, but do not resolve the issue of oversimplification of complex patterns in outcome distributions. In the case of the speech cases data set, however, OLS regression analysis can be meaningfully applied because of sufficiently discrete categories of crime and an appropriate baseline for comparison in category Speech A (defamation cases).

that religious speech offenses or disorderly speech would be punished more severely than defamation cases (as the standard error in each case exceeds the degree of observed variance), there was a very significantly increased chance of more severe punishment when the comparison is drawn between political and slanderous speech (variance of 0.74 vs. a standard error of 0.28). No other subcategory shows a significantly significant degree of variation. These last findings argue strongly that the ideological deviations the Puritan magistrates considered most important during the period of early settlement were deviations from political, not religious, doctrine.

Table 3. Ordinary Least Squares Regression Analysis of Speech Case Data

	Parameter Estimate	Standard Error	T for H0: Parameter = 0	Prob. > (*T*)
Intercept	2.5000	0.2438	10.254	.0001
Disorderly speech	–0.2500	0.3448	–0.725	.4697
Religious speech	–0.1389	0.3041	–0.457	.6486
Political speech	0.7381	0.2798	2.638	.0093

It should not surprise us to find that political speech was more severely punished than offensive religious speech. In November 1646, alarmed by declines in church attendance, the General Court enacted a series of laws punishing heresy and requiring church attendance (2 Shurtleff 1853:176–79). In doing so, however, they took great pains to justify their actions as essential to "ye prosperity of ye *civill* state." "[N]o humane powr be Lord ovr ye faith & consciences of men," declared the Court, "& therefore may not constraine ym to beleeve or profes against their conscience."[56] Heresy would be punished by imposition of a 20-shilling monthly fine; only if the offender remained obstinate after six months would the amount increase to 40 shillings a month, with a 5-pound fine to be paid in the event that the obstinate heretic "shall endeavr to seduce others to ye like heresy & apostacy."[57]

In fact, the 1646 statute represented a reduction in severity from earlier practice; Hugh Buets, found by a jury to be "gilty of heresy, & that his person & errors are dangeros for infection of others," had been exiled in 1640 (General Court 12/1/40).

[56] Wrote the General Court (11/4/46):

> [T]herefore, though we do not judge it meete to compell any to enter into ye fellowship of ye church, nor force ym to partake in ye ordinances peculiar to ye church, (wch do require volentary subjection thereunto,) yet, seeing yt ye word is of generall & common behoofe to all sorts of people, as being ye ordinary meanes to subdue ye harts of hearers not onely to ye faith, & obedience to ye Lord Jesus, *but also to civill obedience, & allegiance unto magistracy, & to just & honest conversation towards all men.* (Emphasis added)

[57] Interestingly, one of the punishably heretical opinions was the assertion that "any evill done by ye outward man to be accounted sinn." Ibid.

When John Norton was later called upon by the General Court to write a justification for the harsh punishment of Quakers, he distinguished between "quiet heresy" and "Heresy Turbulent." The latter, "which was held publicly and tended to seduce others or disturb the commonwealth, the magistrate could prohibit as 'not matter of judgment, but matter of fact'" (Curry 1986:22).

Similarly, a law making blasphemy a capital crime was carefully prefaced by an explanatory paragraph grounding the enactment in the need to preserve political authority, not theological orthodoxy. "Albeit faith be not wrought by ye sword, but by ye word . . . common reason requireth every state & society of men to be more carefull of preventing ye dishonor & contempt of ye most high God (in whom we all consist) yn of any mortall princes & magistrates" (11/4/46 General Court). Preventing dishonor to God was necessary as a parallel case to preventing dishonor to political authority.

It may be argued that these justifications ring somewhat hollow, and indeed by 1647 the courts were intervening more and more to support the weakening authority of the churches.[58] This intervention had more to do with the civil government's concern that the churches were an essential part of their society, however, than with any tendency toward a power grab by the ministers. The laws of 1646 and 1647, for example, stand in sharp contrast to the fate of a 1638 law that had provided that anyone excommunicated from a church for six months "without laboring what in him or her lyeth to bee restored" would be subject to banishment (9/6/38 General Court). This law, almost certainly requested by the clergy,[59] was repealed after one year (9/9/39 General Court).

In general, the patterns of punishment confirm the basic principle that civil authority would intervene in religious affairs when and to the extent that was required to protect the order of civil society, never for the sake of strengthening the authority of the clergy or enforcing orthodoxy per se. No less a divine than John Cotton, himself nearly tarred with the Antinomian brush, recognized the value in encouraging church attendance even in the absence of genuine faith. "Hypocrites give God part of his due, the outward man, but the prophane person [that is, one who did not attend church services] giveth God neither outward nor inward man" (quoted in Powers 1966:109–10). The "civil man" had no reason to expect his own salvation, but his public conduct could be of benefit to the community and so was a proper concern of the magistrates.

[58] The enactments of 1646 included a call for a synod of the church Elders to establish a "right forme of church govrmnt & discipline" (General Court, 5/22/46). The synod was held and resulted in the Cambridge Platform of 1648.

[59] A version of the same law appears in Cotton's draft code that the Court rejected—and New Haven later adopted in large part—in 1641 (Warden 1984).

Like sedition, breach of religious orthodoxy mattered more when it occurred among members of the social elite. This outcome would make no sense if the purity of doctrine was at issue, but it makes perfect sense if the stability of social institutions was the main issue in these criminal prosecutions. To take a telling example, in response to the Antinomian crisis of 1637 the General Court exiled prominent members of the community but required 75 middle-class freemen only to surrender their weapons until they had taken a renewed oath of loyalty (General Court, 11/20/37).[60]

Less severe categories of speech offense were often punished by humiliation. Ordering defendants to make public acknowledgments of their fault was a particularly direct refutation of the offensive content of their speech. While this was occasionally ordered in cases of disrespectful speech,[61] it was much more commonly imposed in cases involving defamation. Some sentences were quite specific. Ralfe Fogge was ordered to make a public acknowledgment of fault using a text provided by the court, or else to stand before the whipping post with a sign reading, "For slandering of the Church and for abusinge of the Governor" (2/28/50 Quarter Court).

By contrast, as shown in the general data set, humiliation penalties were used only very rarely in crimes of violence and deceit. The distinction is that in speech cases the crucial concern in the choice of punishment was to preserve normative rather than behavioral boundaries against transgression. This also explains the very special role of obstinacy in the evaluation of speech offenses. When the most severe penalties were ordered, one almost always finds a previous pattern of failed attempts to secure renunciation of bad opinion, followed by imposition of increasingly severe penalties. Effectively, *people* were only exiled after their *ideas* had proved resistant to exorcism; when the ideas could be renounced, serious punishment was not required, regardless of the extremity of the ideological deviation.

[60] Any of the named men could be freed from the burden of the order if they would "acknowledg their sinn in subscribing the seditious libell." Ibid. In that same session the court enacted new laws against willful defamation of the court or its proceedings; significantly, however, the Court in that session did *not* enact new laws against religious heterodoxy or challenges to church discipline. For the treatment of the Antinomian cases in the data set, see comments above.

[61] Public acknowledgments of fault were ordered in three cases of disrespectful speech in the sample: Thomas Dexter was ordered to publicly confess fault for speaking insolently to Simon Bradstreete (7/3/32 Quarter Court); Henry Sewall was ordered to do the same for contemptuous speech to Richard Saltonstall (3/3/40 Quarter Court); Joseph Fowlar was ordered to make public acknowledgment to "the Major" (9/26/48 Essex Court).

III. Preserving Godly Order: The Purpose of Punishment

The observations presented above argue for the conclusion that the function of punishment was to benefit the collective rather than to reform the individual. This orientation toward the collective contrasts with arguments to the effect that the legal records from early Massachusetts demonstrate a society based on shame rather than guilt, or that the courts' adjudication of criminal cases demonstrated their function as mechanisms for the social reintegration for individual defendants (Konig 1979). There is no doubt that shame is a crucial affective mechanism to compel social conformity, or that the courts' treatment of defendants worked to reintegrate criminals (when possible) into the social order. It is arguably the case, however, that neither of these accounts captures the working conception of the purpose of legal sanctions in the Puritan courts.

In the first place, both the shame and the reintegration explanations depend on presumptions about the effect of criminal punishment on the psyche of the individual defender. The argument that collective action was a means to individual redemption depends on a notion that group pressure can produce rehabilitation in the offender. Authors who support this idea point to published confessions, which invariably began with the criminal's account of the failures in his upbringing (e.g., Faber 1978:93).

This hypothesis, however, presupposes an explanatory vocabulary for which there is no clear analogue in the theories of reason and mind prevalent among Puritan thinkers. "Reintegration" and "shame" are both concepts that focus on notions of psychological development, in accordance with which personalities develop over time, respond to the social environment, and are subject to intervention. This is not to argue that there no working notion of human psychology in this period. William Bradford, governor of Plymouth Plantation, offered three explanations for the high crime rate in his colony. The first was God's punishment for "declension," another was that the increase was illusory, resulting from better record keeping and enforcement. Bradford's third explanation was less orthodox.

> Another reason may be, that it may be in this case as it is with the waters when their streams are stopped or damned up. When they get passage they flow with more violence and make more noise and disturbance than when they are suffered to run quietly in their channels; so wickedness being here more stopped by strict laws, and the same more nearly looked unto so as it cannot run in a common road of liberty as it would and is inclined, it searches everywhere and at last breaks out where it gets vent. (Bradford 1952:316–17)

Bradford's attitude may have been exceptionally progressive, consistent with Plymouth's general toleration for heterodoxy

(Nelson 1981:10–11). There is no question, however, that similar progressive attitudes—including extensive resistance to the harsh treatment of Quakers—were represented among the residents of Massachusetts (Stavely 1987:114–15; Fischer 1989:195). There is also no doubt that the dominant vocabulary of civil authority was grounded in ontological orthodoxy. Humans occupied fixed positions in the order of creation, including a predisposition toward sinfulness which could be altered only by a divine intervention. No action by the civil authorities could change the nature of the offender. The perfection of the society depended on all its members banding together and warding off their own impulses toward evil at all times. This was the significance of the obligation to regulate not only one's own conduct but also that of other members of the community.

Since human nature was immutably corrupt, there could be no meaningful conception of "rehabilitation." Instead, the records can be read as an attempt to draw a sharp disassociation between criminal and crime. Sentencing in this reading appears as an act of remediation rather than punishment, and it is significant that the courts attempted to restrict themselves to the steps necessary to accomplish this goal. This is the rationalizable basis for the distinction in the treatment of household cases, which otherwise must appear as arbitrary. The point would be made even more clearly in later years (beginning in the 1670s), when a common form of sentence in fornication cases would be to leave the issue of parentage "unproved" but nonetheless order the "reputed father" to pay child support, solving the thorny social problem of avoiding pauperism without making any explicit moral judgments.[62]

The progression is equally clear in the context of speech crimes. If an erroneous opinion could be disavowed, a slander retracted, then those actions would suffice, sometimes with a fine thrown in for good measure. If and only if the criminal were unwilling to disavow his dangerous words would he face the possibility of exile. Even thereafter, repentance would be grounds for readmission. The banishment of John Wheelright was revoked, after "a perticuler, solemne, & serious acknowledgment & confes-

[62] For instance, Robert Prise (Quarter Court, 4/28/74) and Joseph Cowell (Quarter Court, 1/27/74) were each declared reputed fathers and ordered to pay support. In both cases, the actions arose when the women involved brought accusations of fornication against the men. Since bringing the accusations necessarily involved admitting their own illicit sexual conduct, for which both were whipped, one can surmise both that the plaintiffs were desperately concerned to provide for their illegitimate offspring and that the court was unwilling to disbelieve an accusation brought at such grave personal cost. In cases where the man's participation in fornication was admitted or proved, both parties were whipped in addition to the man being ordered to support the child. This, in fact, had been the outcome of an earlier case involving Cowell, convicted of fornication (with a different woman) on April 29, 1673.

sion by letters of his evill carriages, & of ye Corts justice upon him for them" (5/29/44 General Court).[63]

Like a physician restoring the balance of bodily humors, civil authorities would take the actions that the symptoms required. In this understanding, the relation between disorder in the family and personal criminality was the same reiteration of nested covenantal relationships that was reflected in the doctrine of "the little commonwealth." On this reading, the argument was not that a bad upbringing caused a turn toward criminality but rather that disorder in the family was additional evidence of a deviation from the prescribed order. Confessions that began with accounts of faulty upbringing provided confirmatory evidence that intervention by the civil authorities had been warranted in the first place rather than acknowledgments that these criminals "deserved" their punishments—since, after all, everyone "deserved" punishment by definition.

Recognizing the role of the civil magistrates in maintaining a godly civil order provides an ideological lens through which the correlation between severity of offense and severity of penalty becomes eminently sensible. Puritan culpability standards were based on an evaluation of threat to community principles, not moral blameworthiness. This is the fundamental legitimating proposition behind the data showing that the most severe punishments (aside from drastically overdetermined cases such as murder or bestiality) were reserved for challenges to the political order, as opposed to social or religious deviation. This is also the principle that makes sense of the multiple contexts in which obstinacy, the refusal to take the necessary ameliorative actions for the good of the community, could transform a minor offense into a grave crime. Capital offenses were reserved for two categories of crimes: those that by their nature could not be remedied, such as murder; and those that combined a challenge to civil order with an obstinate refusal to restore the smooth course of social life. The pattern of punishments discerned here demonstrates that this civility in society was not only valued by the Puritan magistrates but was in fact the crucial informing value for the entire system of criminal justice in early Massachusetts.

[63] An interesting case was that of John Greene, who in 1638 wrote a letter to the General Court from Providence Plantation, in which he retracted an earlier confession of fault. Outraged by this double dealing, the court barred Greene from its jurisdiction, and further that "if any other of the inhabitants of the said plantation of Prvidence shall come wthin this jurisdiction, they shalbee apprehended & brought before some of the magistrates" (3/12/38 General Court).

IV. Concluding Comments

Laws, political philosophies, and social norms are mutually constitutive elements of integrated state-society systems. The relationships between these informing principles are more or less mediated depending on the extent to which institutional structures dictate the formation of distinct or even incommensurable forms of discourse. In Puritan Massachusetts, however, the institutional barriers to communication between different aspects of society were almost nonexistent. Rather than legal institutions per se, the courts were better described as arenas for all forms of public interaction. Apart from an ill-defined category of "private" matters, essentially all issues confronting early Massachusetts society could and usually did appear in the courts.

In this study, I have attempted to combine quantitative analysis of simple correlations with interpretation of archival materials. It is predictable that the ordering principles that are demonstrated in the record are quite different from those familiar to us today. The past, after all, really is another country, in which modern categories of understanding are a foreign language. We may be assured, however, that the territory is not so foreign that with rigorous analysis and an open mind we cannot learn to engage in conversation with those who live there.

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