At the Magistrate's Discretion: Sexual Crime and New England Law, 1636-1718

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AT THE MAGISTRATE'S DISCRETION: SEXUAL CRIME
AND NEW ENGLAND LAW, 1636-1718

By

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This dissertation is a comparative study of sexual crime trials in four New England jurisdictions: Essex County, Massachusetts, Plymouth Colony, The Province of Maine, and Rhode Island Colony. It argued that sexual crime trials could be used as a tool for studying the diverse and changing legal cultures of different regions within New England.

Whether morality or child support was under discussion, sexual intercourse outside of marriage threatened to disrupt the social and economic bounds of early modern society. Nevertheless, methods for addressing the issue varied widely in New England, depending on the jurisdiction in question. As a result, examining the particular legal decisions made during sexual misconduct trials contributes greatly to our knowledge of regional identity and legal autonomy in colonial New England.
Trials from all four jurisdictions were cataloged and analyzed, then placed in their larger social and economic contexts, thus allowing for both quantitative and qualitative study of the data.

Many of the Essex County trials were driven by issues of paternity and child support. Unlike the other three jurisdictions, Essex County residents had the time and money necessary for prolonged court battles. Plymouth Colony, on the other hand, utilized sexual crime trials to reinforce their tenuous control over colonists with differing cultural and religious backgrounds. As a frontier colony, the Province of Maine used its trials to demonstrate that life in the "wilderness" did not preclude a lawful society. Rhode Island's trials indicate a growing emphasis on legal procedure, one linked to the colony's close ties with English law and the mercantile world at the turn of the eighteenth century.

While colonial New England is usually considered as a homogeneous region, shaped by the dominant Puritan culture found in Massachusetts Bay and Connecticut, close analysis of these sexual crime trials reveals instead that the region's colonies were shaped by the divergent experiences of their own environments. Verdicts directly reflected the needs of the individual societies and court justices making them, rather than a region wide dominant culture.
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Chapter One

INTRODUCTION

The opening scene of Nathaniel Hawthorne’s novel *The Scarlet Letter* remains vivid in classic New England imagery. Daughter Pearl in her arms and the embroidered “A” on her bodice, adulterer Hester Prynne stands forever outlined in the doorway of a seventeenth-century Boston prison. While Prynne stepped down from the threshold and set the novel’s events in motion, elements of Hawthorne’s tale remain frozen in the amber of New England mythology.

Hester Prynne had arrived in Boston some months earlier, promising that her husband would eventually follow. In time, it became apparent that Prynne’s husband was still missing and that she was with child. As her husband may have been lost at sea, the Boston magistrates chose not to sentence her to death, described by the novel as the customary punishment for her crime. Instead, she was ordered to wear an “A” for adultery. Prynne also felt “the innumerable throbs of anguish ... so cunningly contrived for her by the undying, the ever-active sentence of the Puritan tribunal.”1 For years afterward, clergymen pointed out her sins to their parishioners, whether in church or on the street. No other character commits her crime throughout the seven year time span of *The Scarlet Letter*. As always, Hester Prynne stands alone.

Most popular knowledge of sexual crime in colonial New England revolves around these fixed details. Adulterers were punished by death. Sinners wore letters on their sleeves, identifying their misdeeds for all to see. In any event, it rarely happened. Hester Prynne was a novel heroine, the rare exception who fell prey to the rigidity of

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Puritan society. The reality behind the fictional tale, like most histories, was far more complex.

Scholars have made great strides in the last thirty years towards unraveling the tangled relationship between sexuality and the law in colonial New England. Capital punishment was almost never used for such crimes, a point made by historian Richard Godbeer in *Sexual Revolution in Early America* (2002). A few colonists in the 1630s and 1640s were ordered to wear initials describing their sexual misconduct, but most jurisdictions preferred whippings or fines. Perhaps most importantly, Hester Prynne had company. While historians Cornelia Dayton’s *Women Before the Bar* (1995) and Jane Kamensky’s *Governing the Tongue* (1997) explored a range of issues in colonial New England legal culture, both used sexual crime trials from Massachusetts and Connecticut as key sources. Furthermore, Laurel Thatcher Ulrich, Elaine Forman Crane and Else Hambleton have each examined the women behind the trials, broadening their stories beyond gravestone epitaphs and court room convictions. Nevertheless, a deeper, and more focused, exploration remains necessary for understanding sexual crime trials in colonial New England. For all the painstaking work of this group and others, no scholar has placed New England’s sexual crime trials fully in context of the region’s evolving, and divergent, legal cultures.

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2 I use the term Puritan to refer to the groups who settled Massachusetts Bay and Connecticut Colonies. While not the most accurate term from a religious standpoint, it carries the necessary political implications.


The Scarlet Letter renders Hester Prynne a victim of Puritan morality, rather than any created by the larger early modern world. Aside from Ulrich’s discussion of Maine and New Hampshire in Good Wives (1980) and Crane’s discussion of New Hampshire and Rhode Island in Ebb Tide in New England (1998), most studies of New England sexual crime trials address the Puritan bastions of Massachusetts Bay and Connecticut. Current scholarship makes it difficult to tell whether the desire to regulate sexual misconduct stemmed solely from Puritan moral codes, particularly as Crane and Ulrich focused on chronological change rather than regional distinction. The Puritans were the dominant political and legal power in colonial New England, but they were not the only cultural group to settle the region. The remaining colonies of Plymouth, Rhode Island, the Province of Maine and New Hampshire were founded by settlers with a wide variety of backgrounds. Both Plymouth and the Province of Maine were eventually absorbed into Massachusetts Bay Colony, but their legal systems remained largely independent.

Hundreds, even thousands, of sexual crime trials lie buried within the colonial court records of Essex County, Massachusetts, Plymouth Colony, the Province of Maine, Rhode Island Colony and the Province of New Hampshire, the jurisdictions studied in this dissertation. The first year to have records simultaneously from Essex, Plymouth and Maine was 1636, while Rhode Island’s earliest court session was recorded in 1641. New Hampshire, in contrast, did not begin court sessions until 1659. Eighty odd years later in 1718, all five jurisdictions still regulated sexual misconduct, albeit with a growing sense of urgency and unease. Beginning with the Essex County trials and finishing with Rhode Island, this study poses numerous questions. What did it mean to be tried for sexual

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5 While the New Hampshire records did not generate enough information to warrant a separate chapter, the colony’s 66 sexual crime trials are discussed in the conclusion.
misconduct in Essex County? In Maine? What does that experience say about the local society, legal culture and history of the jurisdiction conducting the trial? How were New England sexual crime trials shaped by the influence of the Puritans and other authorities, the context of colonization and larger trans-Atlantic forces? However hard some colonists may have tried, no colony existed in a vacuum. Whether responding or corresponding to English law and moral codes, all colonial legal systems were products of their makers’ backgrounds. By highlighting these issues, this interjurisdictional study of sexual crime provides a new opportunity for understanding of regional variation in colonial New England.

A total number of 1,505 charges were located in the jurisdiction under study from 1636-1718.\(^6\) Analyzing *charges*, rather than colonists or trials, allowed for a more accurate representation of the colonial court room. Couples in all jurisdictions charged with fornication before marriage were treated as a single entity rather than two separate charges. This decision reflects the consistent numbers of married couples who received the same charge and punishment as well as the lack of a separate legal identity for married Anglo-American women in the early modern period.\(^7\) In contrast, couples charged with conceiving bastard children were treated as separate charges as the punishments for bastardy and paternity were different. Women found to be rape victims were noted, but not counted, while women who failed in their rape claims and were convicted for fornication were included in the numbers of fornication charges.

One central distinction between contemporary law and colonial law must be made clear. Sexual crime today is usually defined as the act of forcing someone to have sex

\(^6\) See Chart One, “Total Charges by Jurisdiction, 1636-1718” in Appendix A.
\(^7\) See Laurel Thatcher Ulrich, *Good Wives*. 
without consent. In contrast, all sexual acts outside the marriage bed were considered crimes in the seventeenth and eighteenth centuries. The overwhelmingly most common charge in all five jurisdictions was for sexual intercourse outside of marriage, usually defined as fornication. In total, there were 891 fornication trials conducted in the five jurisdictions between 1636 and 1718. Individual breakdowns between jurisdictions, including which courts had the most fornication charges, will be discussed in later chapters.

The second most common offense, with a total of 486 charges, was bastardy or paternity, namely the conception of a child entirely outside of marriage. The third most common charge, with 298 trials, was for sexual misconduct labeled as something other than fornication, whether “incontinency,” “lascivious carriage” or “uncleanness,” to give a few examples. These crimes are referred to collectively as “Alternate Sexual Crime Charges.” Again, individual discussions of these trials will be discussed in later chapters. In short, most colonial sexual crime trials were rather mundane in nature, resulting in punishments expensive or painful but not life threatening.

The remaining categories of rape, incest, adultery, bestiality and sodomy (defined as intercourse between two men) all carried severe penalties, including the possibility of capital punishment, although it was rarely applied. This was common in the New England colonies, due to the simultaneous desire to reform English custom, which resorted more frequently to the death penalty, and the scarcity of colonial labor. Courts

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8 See Chart Two, “Individual Charges by Jurisdiction, 1636-1718” in Appendix A.
9 See “Alternate Sexual Crime Charges” in Appendix B for complete list of charges other than fornication found.
10 It should be taken into consideration that these are the total number of charges, rather than total number of trials. Some colonists were charged with two crimes simultaneously, such as fornication and bastardy, unclean behavior and paternity.
refused to hang suspects who fell short of their definition of absolute proof, requiring testimonies from two outside witnesses, a confession from the accused party or both for conviction.\(^\text{11}\) The first two severe charges, rape and incest, are the only crimes studied that would still be considered as a sexual crime in a contemporary court. There was a total of 12 rape charges and 11 incest charges in the five jurisdictions. Most, but not all, of the men involved these trials were acquitted, though usually through a lack of outside witnesses.\(^\text{12}\) None of them received capital punishment, although it was mentioned as a possibility in the trial records.

Unlike rape and incest, adultery, bestiality and sodomy are not tried as sexual crimes in contemporary courts, although adultery or bestiality could lead to civil charges. There were a total of 30 colonists placed on trial for adultery, with 13 of these trials coming from Rhode Island. Essex County, the Province of Maine and Plymouth Colony tried married women for adultery but placed married men on trial for fornication. Rhode Island, in contrast, placed both married men and women on trial for adultery, thus leading to the higher rate of adultery trials in Rhode Island than the other jurisdictions. None of the colonists accused of adultery received capital punishment.

Finally, five colonists were placed on trial for bestiality and five for sodomy. All of these trials came from Essex County and Plymouth Colony. One of the ten men accused of these crimes was hung, the others were all severely whipped.\(^\text{13}\) While these trials make up a very small fraction of the overall court records, it should also be remembered that unreported crimes were a part of life in the colonial period, particularly in the outlying settlements. Women raped by family members were often wary about

\(^\text{11}\) See Godbeer, _Sexual Revolution in Colonial America_.
\(^\text{12}\) See Essex County, Province of Maine and Plymouth Colony chapters for discussion of these trials.
\(^\text{13}\) See Essex County and Plymouth Colony chapters.
naming their attackers in court, recognizing there could be repercussions within family structures and households.\textsuperscript{14}

The household, the most important institution in the New England colonies, plays a central element in understanding all of these trials.\textsuperscript{15} Unlike modern society, most seventeenth and eighteenth century families functioned as complete households. While the nuclear family of father, mother and children formed the core of these households, they also included other family members, servants and, in some cases, slaves. The creation of a household, with a family core, was a carefully sought goal for many people. Families were relatively easy to achieve before reliable birth control but the financial security of private property and dwelling space was not. In addition to providing shelter, clothing and food, the household also provided its members with a legal, financial and political identity, via the household head or master.

Early modern European society was also organized around the household unit, particularly in Protestant influenced northern Europe.\textsuperscript{16} Even so, the household played a more central role in New England than the southern colonies, in part due to the higher ratio of intact families who moved to the region and its subsequent demographic stability. Southern families faced major challenges from disease, high mortality and severe gender

\textsuperscript{14}See Crane, \textit{Ebb Tide in New England.}
imbalance for much of the seventeenth century. Families in the northern and mid-Atlantic colonies, by contrast, enjoyed far greater stability.17

Over and over, the role of the household echoes throughout colonial New England’s sexual crime trials. Concerned about household finances and morality, fathers of pregnant daughters actively advocated for their daughter’s partners to be convicted. Masters of pregnant servants fumed about the time and labor lost to the household. The handful of incest cases provided colonial magistrates with a particular challenge if the woman’s father was accused. The punishment for incest was death. Yet the death of a household head potentially left the man’s wife and children without financial support, which may explain why none of the incest cases studied led to capital punishment. While these elements were consistent in sexual crime trials across all the jurisdictions, the particular steps necessary to achieve an orderly household through the regulation of sexual misconduct varied significantly from place to place.

For the New England Puritans, the family and household provided a metaphor for their own society. As they had covenanted with God, so did the individual members of a household covenant with each other, creating a “complex web of mutual obligations between husbands and wives, parents and children, masters and servants,” one intended to bring order and Godliness alike to colonial New England society.18 This covenant also played a role in sexual crime trials in the Puritan colonies. Initially, leaders in both colonies hoped that the act of colonization, the sundering of geographic and societal ties, would forge a newly transformed English people. Sexuality and sexual behavior would

17See David Hackett Fischer, Albion’s Seed: Four British Folkways in America (New York: Oxford University Press, 1989) for a comparative discussion of households in the southern, mid-Atlantic and northern colonies.
18Fischer, Albion’s Seed, p. 70.
serve as the emotional heart of the Puritan marriage, linking together husband and wife and producing still more Puritans to settle the new land. As their hopes for a New England faded, they fought to keep sexuality tied within marriage and the household. Nevertheless, the household also maintained its central importance in the non-Puritan colonies of Rhode Island, New Hampshire and the Province of Maine. Whether for religious, political or societal reasons, unruly households were a source of concern throughout colonial New England.

Sexual crime and household studies are not the only scholarship to emphasize the Puritan colonies. Much of the scholarship on colonial New England has utilized sources in Massachusetts Bay and Connecticut, while simultaneously making arguments about New England as a whole. These studies have made important contributions to the overall study of British North America, but they leave gaps in the overall knowledge of New England. Historians Charles Clark, Edwin Churchill, John G. Reid and Laurel Thatcher Ulrich have successfully pioneered the study of northern New England as an area culturally separate from southern New England. Rhode Island, whose emphasis on religious toleration gave the colony a more culturally diverse population than its Puritan

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neighbors, has also received specialized scholarly attention. Groundbreaking as all these studies were in their day, they did little to make direct comparisons across the region.

Historian Toby Ditz's *Property and Kinship: Inheritance in Early Connecticut* (1986) provided an early nod towards writing intra-regional history in New England by drawing distinctions between the prosperous river towns and the subsistence based hill towns of Connecticut. More recently, historian Mary Beth Norton's *In the Devil’s Snare: the Salem Witchcraft Crisis of 1692* (2002) successfully combined southern and northern New England by arguing that the Salem witch trials could only be understood in light of conflicts occurring on the Maine frontier. Many of the afflicted girls who made the first accusations were refugees from the Maine settlements, left penniless and orphaned after Native American attacks had killed their parents and destroyed their homes. Norton argues that their initial fits were the result of post-traumatic stress disorder, largely unnoticed as they were absorbed into new households as servants or unwanted extra family members. Studies such as Norton’s demonstrate the need for more comparative New England histories, particularly as the method led Norton to an innovative interpretation of the much researched Salem witch trials.

In addition to providing new insight into colonial New England, this comparative study of New England’s law and legal practice helps to broaden discussion of the place and role played by colonial court records in the study of American history. Historians

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once believed that colonists lived in a legal vacuum from the landing of the *Susan Constant*, the *Discovery* and the *Godspeed* at Jamestown in 1607 to the closing of the American Revolution a few miles away at Yorktown in 1783. Whatever law and order existed in the colonies was supposedly transplanted directly from Europe and remained unchanged until the United States was founded as a separate nation. Historian Daniel Friedman infamously dismissed the period as “the dark ages of American law” in his *A History of American Law* (1973).\(^2^3\) The combined influences of the rise of social history in the 1960s and the celebration of the American bicentennial in 1976 led to a scholarly challenge to such assertions, such as the first conferences on colonial legal history in the 1980s and the publication of a special issue of the *William and Mary Quarterly* devoted to the topic in 1993.

Historian Cornelia Dayton’s “Turning Points and the Relevance of Colonial Legal History” argued in that collection that legal history could enhance social history by providing scholars with direct evidence about colonists ignored in traditional narratives of American history.\(^2^4\) For Dayton, this especially meant the lives of early American women. Her advocacy of legal records to illuminate the lives of colonial women has proved fruitful, with several studies published in the past fifteen years.\(^2^5\) These works have included Dayton’s influential *Women Before the Bar: Gender, Law, & Society in Connecticut, 1639-1789* (1995) which addressed shifting roles for women in the Puritan colony of New Haven. She found that Puritan use of the seventeenth-century courtroom


as an open forum for regulating community behavior provided women with an unexpected space to comment on, if not always control, social norms. By the eighteenth century, however, courts were increasingly used to regulate financial actions rather than personal matters. Women were placed on the sidelines, their issues handled out of sight in the judge’s chambers. Dayton argued that these changes arose as a direct result of the growing commercial economy of the eighteenth century Atlantic world.

The presence of sexual crime trials among the court documents used in studies like Dayton’s *Women Before the Bar* is almost a given. They are a natural fit for such histories as almost all sexual crime trials required the presence of women. Else Hambleton’s *Eve’s Daughters: Pregnant Brides and Unwed Mothers in Seventeenth-Century Massachusetts* (2004) is a compelling example of the benefits of such a study. Written in response to historian Roger Thompson’s view of seventeenth-century Massachusetts as a culture tolerant of adolescent sexual misadventures, Hambleton argued instead for a world in which adolescent girls lived in fear of societal strictures.26 Sex outside marriage that appears in the records largely took place between men and women of different societal and economic status, not between consenting teenagers. By addressing this social and economic gap between the trial defendants, Hambleton portrayed women calculating the odds that pregnancy would win them husbands farther up the societal ladder, as well as the harsh reality faced by many: Puritan men rarely married their lower class lovers.27

Crucial as such studies are towards expanding knowledge of colonial women’s lives, they also have the potential to diminish their source material. Yes, the handful of

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27 See Essex County chapter for further discussion of this point.
surviving depositions provide details about women’s lives difficult to find elsewhere. However, sexual crime trials also provide equally crucial details about the men involved and together these records importantly reveal the evolving nature of legal culture in colonial New England. None of these trials took place in a static environment. Instead, they were products of negotiations over dynamic values and social expectations that varied geographically and temporally. Integrating sexual crime records into studies beyond gender histories gives scholars a new lens with which to view the colonial period. As all New England colonies placed settlers on trial for sexual crimes, the court records provide a point of commonality between jurisdictions. Where the jurisdictions’ goals and needs varied, the records highlight where the New England colonies differed from one another. In turn, placing these records in context with the individual colonies’ histories illuminates how legal traditions in New England diverged from each other and from English law.

This emphasis on indigenous influences on court decisions reflects a charge made by historian Christopher Tomlins in his essay, “A Manifesto of Destiny for Early American Legal History.” Tomlins’ essay was written as an introduction to the collection of articles titled The Many Legalities of Early America (2001) edited by both Tomlins and Bruce Mann. Tomlins believed that colonial scholars had definitively documented the presence of legal change in the American colonies. Nevertheless, he was uneasy with their general interpretive tone. Most scholars believed that legal change in the colonies

28Some of the more vivid include Widow Deborah Proctor who took on the Essex County court system by accusing neighbor Thomas Choate of raping her daughter. After Mary Atkinson was abandoned by her husband, the Plymouth court had to decide whether to convict her on adultery or fornication charges when she became pregnant by her lover. Lucretia Hitchcooke was accused and convicted for sexual misconduct more times than any other woman in the Province of Maine. Adulterer Ann Tallman told the Rhode Island court that she would do almost anything rather than return to her husband’s bed.
arose from forces in the larger Atlantic world, as opposed to the experience of colonization itself. If the New Haven women of Cornelia Dayton’s study were unique in living in a Puritan society, rising commercialization occurred everywhere. These works were, therefore, studies of the colonial period but not necessarily of colonization itself.

Tomlins argues instead that the future vitality of the field would depend on scholars’ ability to examine how colonization shaped law and vice versa. To accomplish this task, Tomlins suggested that “as a theme for legal history, colonization has two primary aspects, one aspect centered on the interaction and transformation of peoples, the other on the occupation and transformation of places.”29 Legal histories framed in such a way would emphasize colonial law as shaped by the experience of colonization.

Just as the initial impetus towards household government stemmed from the colonists’ English heritage, so did the desire to regulate sexual crime in New England. Ecclesiastical courts in Europe had grappled with the issue of sexual misconduct for centuries, while secular courts stressed the social and economic ramifications of uncontrolled sexual behavior. Rising population levels and shrinking need for agricultural labor in England led to rising concerns about illegitimate children.30 Town and church officials worried about financial support for bastard children, who previously would have been readily absorbed as farm labor. Parents were equally concerned about their children marrying financially viable partners. As a result, England saw an unprecedented

explosion of bastardy and paternity trials at the turn of the seventeenth century.\(^3\)\(^{31}\)

Yet the regulation of sexual misconduct in New England was also driven by the distinct experience and conditions of settlement in a strange new world. Colonial leaders everywhere worried that their settlers’ morals would be undermined by the influence of North America and its inhabitants. Historian Karen Kupperman writes that “Europeans in this period believed that people’s natures were shaped by the environment in which they lived and by the way they chose to present themselves to the world.”\(^3\)\(^{32}\) Artist Jan van der Straet portrayed the Americas in 1575 as a woman dressed in feathers waiting for Europe to discover and claim her, an image substantiated by longstanding European beliefs regarding the male and female genders.\(^3\)\(^{33}\) Women were seen as naturally lustful, capable of producing children, and thus in need of male guidance and restraint, a portrayal that played easily into the rhetoric of colonization (and conquest).\(^3\)\(^{34}\) The Americas had much to offer in the way of raw goods and open spaces but needed to be shaped by European order, including legal systems, in order to prosper. While most colonists appeared content to live in English settlements, under variations of English law, fears that settlers could be corrupted by America’s wildness lingered throughout the colonial period.

The Elisha Ingersoll trial from the Province of Maine in 1695 provides a pointed example of these concerns. Ingersoll was in his mid-twenties and had just returned to English settlements in southern Maine after years of Native American captivity. Within a few weeks of his return, he was accused of committing adultery with a married woman.

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named Dorothy Saterly. The trial evidence was largely circumstantial, and he was eventually acquitted on lack of documentation. Nevertheless, where there was smoke, there was assumed to be fire, especially for a young man believed to have been corrupted by his experiences.  

Whether as part of their common English heritage or their particular North American experiences, regulating sexual misconduct was a crucial goal for all colonial leaders. Nevertheless, the actual trials and punishments for sexual crime varied widely from court system to court system in colonial New England. The realities of life in North America posed challenges for even the most determined believer in the English model for court room procedure. Settlements like the Provinces of Maine and New Hampshire on the edges of New England struggled with the challenges posed by life on the colonial frontier. Communication was difficult, particularly in areas prone to raids from Native Americans. Likewise, those colonists who had come to North America to escape the confined world of overpopulated Britain did not always welcome legal attention.

In contrast, the relative stability of the southern New England colonies of Massachusetts Bay, Plymouth and Rhode Island allowed their sexual crime trials to focus on particular aspects of their societies. The high rate of paternity trials in Essex County suggests that, like the British Isles, Massachusetts Bay was responding to burgeoning city centers and rising population levels. Plymouth used their trials to address the colony’s cultural imbalances while Rhode Island’s drive towards a mercantile economy encouraged legal professionalization sooner than in the other New England colonies. By exploring all of these distinctions, this examination of distinctions between colonial New

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England's sexual crime trials contributes directly to the study of colonial law as an entity both evolving and divergent.

The hardships initially faced by English colonists are familiar ones: high death rates, cold winters, uncertain relations with Native Americans. Less familiar are their immediate attempts to create order for themselves in a strange new world. Organizing a legal system requires time, personnel, resources and will power, all items in short supply for fledgling colonies. Nevertheless, creating some form of legal order was an early piece of business for most New England settlements. Courts gave leaders an important institutional venue to assert their authority and moral values. Colonial law provided an opportunity to comment on English law by introducing carefully constructed variations on English legal codes. In turn, court sessions gave ordinary colonists forums to air grievances about their neighbors. They also served as constant reminders of England and their former lives there. Although a highly contested process, these needs intersected as charges were made, evidence presented and sentences dispensed.

The English legal system provided colonists with blue prints for judicial procedure. The first stage of trying sexual crime defendants began in the community. Political and religious leaders and ordinary inhabitants alike kept a watchful eye on their neighbors' sexual misconduct, whether an out-of-wedlock pregnancy or an overlong dalliance between an unmarried couple. Women threatened by a potential rapist were required to defend themselves by drawing attention to their plight. Community support increased the likelihood of preventing the rape, although it was later used during the trial to decide whether to treat the woman as victim or willing participant. Women who could
not adequately demonstrate they had tried to obtain assistance were often charged with fornication, particularly if a child had been conceived.

Once misconduct was identified, a complaint was made to a local justice who dispatched the appropriate town sheriff with warrants for defendants and subpoenas for witnesses. Defendants were required to make their first statements before justices, while further information was gathered from witnesses. If there was not enough time to build a case before the next quarterly court session, a "presentment" was read in court, ordering the defendants to appear at the next session. During the court session, charges against the defendant were read out, testimony from applicable witnesses was given, and the decision was made, though whether a judge or jury was used depended on the circumstances at hand. Defendants were allowed to appeal court rulings, but high costs prevented most who felt they were wrongly charged from carrying out an appeal. 36

While Massachusetts Bay was not the first colony to be established in New England, it was the first to establish a formal legal system, a decision highlighted by placing Essex County as the subject of the next chapter. Following the terms of the charter obtained from King Charles I in 1629, Massachusetts Bay created its "Greate and Generall Court" at Boston within weeks of arriving in North America. Five years later the colony was divided into three counties, Suffolk, Middlesex and Essex, each with its own court system. County courts were authorized to address most charges, the most frequent of which were sexual misconduct, public drunkenness, avoiding church on Sunday and

36 This composite view of English sexual crime procedure is drawn from Ingram, Church Courts, Sex and Marriage in England, Jenny Kermode and Gartine Walker, Women, Crime and the Courts in Early Modern England (Chapel Hill: University of North Carolina Press, 1994) and Laura Gowing, Domestic Dangers, Women, Words, and Sex in Early Modern London (Oxford: Oxford University Press, 1996). Like New England, legal systems in Britain were also subject to regional distinctions, particularly between urban and rural court systems.
theft. Appeals and crimes with the possibility of capital punishment, such as murder, treason, rape, incest and adultery, were sent to the Court of Assistants in Boston until 1692. After this date, the Court of Assistants was changed to the Superior Court of Judicature, although it served much the same purpose.\textsuperscript{37}

Laws in Massachusetts Bay were based on a combination of Mosaic law and traditional English common law, eventually resulting in a 1648 legal code titled \textit{The Laws and Liberties of Massachusetts}. Historian Bradley Chapin estimates that approximately 38.8\% of all Massachusetts laws came from the Bible, while 41.2\% came from English law and the remaining 20\% were created in Massachusetts itself.\textsuperscript{38} While the Massachusetts Bay Puritans wanted to reform English law, they were not allowed to directly contradict English law, which may have resulted in the nearly even divide between English and biblical law. Historian Else Hambleton argued that in cases such as rape, neither the original biblical code nor English law was particularly appealing to Massachusetts Bay authorities.\textsuperscript{39} Under Mosaic law, the penalty for rape was decided according to the woman's marital status. Men who raped married women were to be stoned to death, men who raped single women were expected to marry their victims. Michael Dalton's \textit{The Countrey Justice}, the English law handbook consulted by most justices, declared capital punishment to be an option, regardless of whether the victim was married, as long as it could be proven that she had not consented to intercourse.\textsuperscript{40} A rape law passed in Massachusetts Bay in 1642 declared that intercourse with children

\begin{footnotesize}
\textsuperscript{38} See Chapin, \textit{Criminal Justice in Colonial America}, p. 5.
\end{footnotesize}
under the age of ten would be punished by capital punishment. Otherwise, punishment was left to the jurisdiction of the judges involved. The commitment to avoiding capital punishment in the New England colonies discussed earlier is borne out by the fact that capital punishment was never used for rape in Massachusetts Bay, despite the five rape convictions found in Essex County.

The Essex County court system first met in Salem in 1636, with additional sessions added five years later in Ipswich. The colony's northern expansion was marked in 1692 by the addition of court sessions in Newbury, near the Massachusetts and New Hampshire border. At this time, the court system was divided in two, with a General Sessions of the Peace for criminal cases and the Court of Common Pleas for civil cases in all three locations. Courts in Salem and Ipswich met four times a year, the Newbury court only twice. All three kept their own record books, although justices and defendants often traveled between the courts. Magistrates oversaw the early stages of a trial, issuing warrants and subpoenas, collecting information and notifying participants when their presence was required. During the trials themselves, justices made decisions based on the evidence, circumstantial or otherwise, although these decisions were also shaped by community relations and family connections.41

The Province of Maine brought very different elements to the table when founding its court system. Massachusetts Bay Colony's origins are easily traced. The Arabella and the other ships carrying the Puritan colonists arrived on a given day in 1630. In contrast, no fixed starting point exists for the Province of Maine. Seasonal fishing camps dotted the Maine coast in the late-sixteenth and early-seventeenth centuries. Over

time, some of the men working in the camps began wintering over in Maine, but few records survive to document their experiences. Likewise, with no organized colony, there could be no organized legal system. Crimes were addressed as they occurred, usually by a rough form of justice meted out by camp leaders or the group as a whole. 

The early stages of a formal legal system took shape in the 1630s when wealthy English nobleman Ferdinando Gorges gained the rights to the region from Charles I. The first court held in Maine was the New Somersetshire Province Court, which met for one session in 1636. Three years later, Gorges sent the colony his first Commission, which named Thomas Josselin, Richard Vynes, Francis Champernone, Henry Josselin, Richard Bonithton, William Hooke and Edward Godfree as “Counselors for the due execution of Justice in such manner & forme as by my ordinaunces herunto subscribed is directed.”

In addition, the Commission outlined Gorges’ laws for the colony, including a clear emphasis on sexual crimes. Gorges’ Counselors were ordered to try colonists for “rapes . . . adulteries, incests [and] fornications.” Finally, the Commission ordered the Counselors to create a General Court for the Province of Maine, with a clerk to keep record of the court’s decisions. These courts were administered until 1653 by local governors and continued to be modeled on Gorges’ guidelines. As Gorges never actually set foot in the colony, these rulings initiated a tradition of absentee landlords and local

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justices for Maine's judicial system which remained in place even beyond the colonial period.\textsuperscript{45}

Tension between the two groups grew especially strong when Massachusetts Bay's expansion into Maine led to the creation of the York County court system in 1658. Following Charles II's Restoration, the first York County court was dissolved and a new autonomous Province of Maine court was established under the guidance of Justices of the Peace appointed by royal commission. Unlike the previous York County court, the new court's boundaries extended east to the Kennebec River. It was divided into two parts, with a Western division named York County and an Eastern division for the lands along the Kennebec.

Although Massachusetts Bay regained control in Maine in the 1670s, the court system was not regularized until 1680. Following English custom, two courts were created, the Court of General Quarter Sessions and the Court of Common Pleas. These courts shared a clerk and met in York, Wells or Kittery four times annually. Unlike the old system, clear distinctions were drawn between these courts. The Court of Common Pleas took only civil cases, usually connected to debt, inheritance and other financial matters. This court was overseen by four judges, any three of whom created a quorum. From that point on, sexual crimes were only tried in the Court of General Sessions, whose number of judges varied from session to session. Colonists on trial in both courts had the option of requesting a jury trial but most verdicts were made by the justices. Severe cases could be sent to Massachusetts Bay for trial but the two courts remained mostly independent of Massachusetts.

While Maine had a reputation for wildness dating back to the seasonal fishing camps, the active efforts of Maine’s justices suggest a vibrant, if homespun, legal culture and a serious bid to establish proper order in difficult conditions. Although Maine could not afford the luxury of permanent courts scattered across the colony, court sessions did alternate between the larger towns of York and Wells. As Bradley Chapin considered Maine’s legal system to be part of Massachusetts, data is not available regarding the origins of Maine’s legal code. As the colony’s founders were largely Anglican, it is likely that most Maine laws stemmed from English common law rather than biblical law. The one rape case from Maine makes clear that capital punishment was considered, although the defendant was given a reduced sentence of thirty-nine whippings based on a legal technicality.

Like the Province of Maine, Plymouth Colony began as an independent colony and was later absorbed by Massachusetts Bay. While Plymouth had a clear beginning point with the arrival of the *Mayflower* in 1620, the colony did not immediately organize a formal court. Instead, the Governor and his Assistants were authorized to address legal issues as they arose during the 1620s. Whether witnessing the settling of an estate or punishing a crime, their authority was rarely questioned as they knew the players involved. This *ad hoc* method also allowed Plymouth leaders to skirt the issue of whether their authority extended to punishing criminal actions as Plymouth Colony never obtained a royal charter during its seventy-one year history.

A core distinction between Plymouth and its powerful neighbor to the north was the very different cultural and religious identities of their populations. Massachusetts Bay

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47 See Maine chapter for further discussion of this case.
largely consisted of converts to the Puritan faith. In contrast, Plymouth Colony was home to a wider range of religious interests, although its leaders were all Separatist Calvinists. Unlike the Puritans who believed the Anglican church could be reformed within itself, the Separatists left the Church of England altogether, a decision that left them poor and potentially liable to treason charges. While they agreed to the presence of non-Separatists in their North American colony for practical reasons, tensions between the two groups were a constant presence throughout the seventeenth century.⁴⁸

Plymouth colony’s informal legal arrangements became increasingly problematic in the 1630s when the colony expanded to include towns located twenty and thirty miles away from its initial urban center. The first colony court, the Plymouth Court of Assistants, was organized in 1633. It met four times a year, always in the town of Plymouth. After three years of trying cases, the Assistants created the colony’s first legal code in 1636. Known as The General Fundamentals, these codes outlined the responsibilities of different colony officials, all punishable crimes, including those carrying capital punishment, and various other colony business ranging from bounties on wolves to inheritance law. Historian Bradley Chapin estimates that Plymouth Colony based 59% its laws on English law, reflecting Plymouth’s leaders dual need to appeal to their Anglican colonists and financial backers home in England. Only 4% of Plymouth’s laws came from Biblical codes, with the remaining 36.7% created on the ground in Plymouth.⁴⁹ Like English common law, they also were concerned with the issue of consent when dealing with rape cases. The one instance in which Plymouth justices

⁴⁹See Chapin, *Criminal Justice in Colonial America*, p. 5.
ordered capital punishment for the rape of a young woman was clearly decided by indigenous influence: the sentence was reduced to a whipping as the Native American defendant was deemed unable to comprehend his actions.\(^5\)

Not surprisingly, Massachusetts Bay justices found it easier to assert control than their Plymouth counterparts. There was an organized court in Boston from the time of the colony's founding in 1630. More importantly, the Massachusetts Bay county courts expanded as the colony did, rather than after the fact. In contrast, Plymouth did not create a colony-wide court when the colony expanded. Even then, court sessions remained in Plymouth, removed from the far flung towns of Sandwich, Barnstable, Yarmouth and others. Perhaps reflecting a growing need for more local control, town courts were instituted in 1665. These courts had three to five officials who were authorized to address civil suits up to forty shillings. Criminal acts and civil suits over forty shillings were addressed by the General Court in Plymouth town, whose justices remained the colony's leaders. As sexual misconduct was always treated as a criminal act, this system provided little in the way of local control on this particular issue. Plymouth began using a Court of General Sessions to handle criminal charges and a Court of Common Pleas for civil cases in 1685. After the colony was absorbed by Massachusetts Bay in 1691, these courts continued to function as Plymouth County courts.\(^5\) Like the Essex County court, the Plymouth courts addressed most issues, while sending appeals and capital cases to the Superior Court in Boston after 1691.

Rhode Island Colony began in the 1630s as four disparate towns, Providence, Portsmouth, Newport and Warwick, in the unclaimed land between Massachusetts Bay

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\(^5\)See Plymouth chapter for further discussion of this case.

and Connecticut. Criminal acts were addressed by the individual towns until a colony-wide legal system was established in 1641. As none of the four towns could claim precedence over the others, Rhode Island's court sessions alternated among them until they were moved to Newport, the largest and most financially stable town in the colony, in 1663. Political and judicial leaders in Rhode Island were forced to maintain a careful balance throughout the colonial period. Individual towns periodically threatened to secede from the colony, leaving the remaining three vulnerable to the geographic ambitions of Massachusetts Bay and Connecticut. Unlike Plymouth Colony, Rhode Island successfully obtained a patent from England's Parliament in 1644 and a charter from Charles II in 1663. In an effort to maintain English support and unite the four towns, Rhode Island's legal code more closely followed English law than in other New England colonies.\(^{52}\) In an effort to maintain English support and unite the four towns, Rhode Island's legal code more closely followed English law than in other New England colonies.\(^{53}\) Historian Bradley Chapin estimates that approximately 86.2% of all Rhode Island laws were based on English law, the highest ratio in New England. Another 12.9% were created in Rhode Island and only .9% came from Biblical codes.\(^{54}\) Like Plymouth Colony, Rhode Island justices made the decision to whip a Native American accused of rape, based on his perceived inability to understand his actions.\(^{55}\) Again, the decision


\(^{54}\) See Chapin, *Criminal Justice in Colonial America*, p. 5.

suggests indigenous legal influences, rather than English. The remaining defendants accused of rape in Rhode Island were whipped.

An immediate similarity between English and Rhode Island law was the active presence of lawyers in the Rhode Island system, whereas legal counsel was almost nonexistent in the other jurisdictions. The presence of lawyers in Rhode Island led to an emphasis on legal procedure, with some colonists receiving acquittals on legal technicalities, an element not found in the other colonies. The Essex County records indicate that defendants endeavored to make their confessions to justices with whom some personal connection was shared, hoping this would provide them with some advocacy at court. While less proof of this practice can be found in Plymouth and Maine, it seems likely that similar practices occurred in these colonies. Another contrast between Rhode Island and the other New England colonies was the right to trial by jury for most crimes, unlike Essex, Maine and Plymouth where juries were only used for serious charges such as rape or adultery.⁵⁶

Constructing a methodology for this research project took into consideration the need for both quantitative and qualitative information. While the overall numbers paint a broad picture of colonial New England’s sexual crime trials, contextualization is equally necessary for a study of individual divergence. Information from the jurisdictions was entered into spread sheets which tracked numbers of court sessions, names and towns (if listed), types of charges and punishments, acquittals, defaults, repeat offenders and whether depositions or further documentation was used to describe the trials. Within jurisdictions, charts were organized according to the individual courts. For example, Essex County had five spread sheets, covering the Salem Quarterly Court (1636-1692),

⁵⁶ Also see “Preservation and Publication of the Legal Sources” in Appendix C.
the Salem General Sessions of the Peace (1692-1718), the Ipswich Quarterly Court (1641-1692), the Ipswich General Sessions of the Peace (1692-1718) and the Newbury General Sessions of the Peace (1692-1718). In addition, the charts also tracked "presentments," the public announcement of sexual misconduct charges prior to the actual hearing. These appeared more frequently in rural regions like the Province of Maine and New Hampshire where greater preparation was required to attend court sessions.

The categories used in the spread sheets were fornication, bastardy, paternity, alternate sexual crime charges, rape, incest, sodomy and bestiality. Numbers of charges for sexual misconduct before marriage were also counted. The categories for punishment included whipping, fine or a choice between the two. In addition, there was a category for alternate punishments which again ranged from having to wear a white sheet in public to hanging and banishment. Individual alternate charge and punishment categories were numbered in a master list for all jurisdictions. While the jurisdictions studied demonstrated very different concerns in the sexual crimes commonly prosecuted, all five increasingly whipped or fined sexual crime defendants by the late seventeenth century. Fines helped to fund the individual jurisdictions' infrastructures while whippings were both painful and humiliating.

Any study of colonial court records must take into consideration their limitations as well as their benefits. Crowded, dense with vivid pictures of colonial life as they are, they remain incomplete, slightly blurred periscopes to the colonial period with half the lens blacked out. For every conviction, the question always remains: how many other colonists were equally guilty, just more fortunate? Then there is the matter of surviving

See "New England Court Systems" in Appendix D.
information. While a total number of 1,505 charges were located, only 159 of them had legal documentation beyond a bare listing of conviction and punishment. Furthermore, these better documented cases were also inconsistent, some having separate depositions, others descriptions in the court record books. Not surprisingly, most of these charges came from Essex County, the jurisdiction with the most legal infrastructure present in the seventeenth and early eighteenth centuries.

Survival rates for three hundred year old documents are never good, particularly when they typically exist on small, crumbling pieces of paper. In addition to the normal wear and tear of absentminded stewardship, there is no telling how much selective editing occurred. Some editing may have been for political reasons, some for more personal ones, be it protecting an ancestor’s good name or treasuring a document with a family member’s signature. Regardless of circumstances, there is no way of tracking these alterations from a distance of three hundred years.

It seems more likely, however, that detailed documentation never existed since producing formal legal documentation on paper was an expensive business. As it was also a business paid for by defendants, most colonists on trial preferred the equivalent of a modern day guilty plea. Even acquitted defendants had to pay trial costs. If conviction was certain, there was no need to add to the court fees by paying for deponents to further prove the point. Instead, defendants arrived, stated their crime and left with their punishments and reduced costs. Colonists who paid for fully documented trials gambled that either truth or someone willing to perjure would save their honor.

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58 See Chart Three, “Total Charges With Documentation by Jurisdiction, 1636-1718” in Appendix A.
The example of a colonist paying for a fully documented trial demonstrates the need for understanding the communities in which the individual trials occurred. A criminal accusation was traditionally followed by a confession before the local justice of the peace. Whenever possible, this was done before a justice with whom the defendant shared some familial or social connection. Defendants capable of paying for multiple depositions often encouraged their family members and friends to step forward. In turn, trials for the major crimes of rape, incest, adultery and sodomy were often decided by juries. Colonial wisdom held that juries should be fully involved in the trial process as they were the only ones capable of understanding the circumstances leading to the trial itself.  

Trial records rarely note these familial connections, suggesting that they were composed similarly to cookery books in the early modern period, governed by the assumption that cooks were so familiar with the method under discussion that there was no reason to write it down. Likewise, justices deciding trials and the clerks documenting them saw no reason to record information familiar to all concerned. It was a world where local experience, oral and written legal traditions flowed freely from one to the other and intertwined without comment. Nevertheless, this information is crucial for understanding the workings of colonial court decisions. An acquitted defendant whose family and friends provided the depositions suggests a defendant who was not wholly innocent. In turn, cases like these contribute to our knowledge of contemporary perceptions of colonial court rooms.

As this information was so rarely documented, modern historians fill in the gaps with the traditional sources for social history: probates, tax lists, vital records, town

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59 See Crane, *Killed Strangely.*
histories and surviving family papers. Local historical societies were the best resource for this work, particularly since few trial participants had family papers in the larger archives with the exception of the Philipps Library in Salem, Massachusetts. Genealogies and family histories proved invaluable for deciphering colonial New England’s tangled interfamilial relationships. Like all court trials, the sexual crime trials did not take place in a vacuum. They were shaped by their participants, justices, litigants, witnesses and juries alike.

Using genealogies took place after careful consideration of the many counts against them. They are rarely acknowledged by scholars, often with legitimate cause. Usually written by family members, many generations later, most were created in the midst of the colonial revival of the late nineteenth and early twentieth centuries. In the effort to glorify their families, their authors range from coy hints to sweeping deletions to downright ignorance of unpleasant facts. The only genealogists to mention their ancestors’ presence in sexual misconduct trials were published relatively recently Byron Bucke’s *Isaac Bucke of Scituate* (1991) and John Harding Peach’s *From The Peach Tree Handbook* (2000). Despite evidence readily available in regularly consulted court records, none of the early family histories ever mention the possible existence of a sexual crime trial despite discussion of other criminal acts. Nevertheless, the same impulse to recover the experience of long-past ancestors also played a substantial role in the preservation of colonial court records and the writing of colonial history in New England. In many respects, the genealogies and the court records are closely linked: the

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60 This rule applies to my own family as well. The 1691 Joseph Chandler/Elizabeth Sessions trial was one of the best documented sexual crime trials in Essex County but George Chandler’s *The Chandler Family* (Worcester: Press of Charles Hamilton, 1883) never breathes a word about it. See the Essex County chapter for further discussion of this trial. My apologies are now tethered to my ancestors.
one informs the other. The genealogists mined the court records for information about their ancestors but their writing now fills the gaps between the court transcripts.

The social and economic information provided by the genealogical research further reinforced the points of comparison between the jurisdictions themselves. While sexual crime trials were used to regulate the behavior of lower class or rowdy residents in all jurisdictions, they were also used by the upper classes to restore damaged family reputations in Essex County and Rhode Island Colony, the most prosperous areas under discussion. The Province of Maine was notable for the high rate of repeat offenders in its sexual crime trials. Tracing the family backgrounds of these defendants demonstrated that sexual misconduct was not the only offense repeatedly committed by these families. Plymouth Colony posed particular challenges as its surviving records tend to deal exclusively with the families of Mayflower passengers who were rarely charged with sexual misconduct. In contrast, records from Essex, Maine and Rhode Island provided information about colonists with a wider range of social and economic backgrounds.

Buttressed with the family histories, the handful of well documented cases provide the framework for understanding the true distinctions between the individual colonies. While fornication, bastardy, paternity, adultery, rape and alternate charge trials were consistently present in all places, levels of documentation for these trials varied between jurisdictions. This varying emphasis highlights the matters most important to the colonies involved.

Fornication may have been the most common charge in Essex County but most well documented cases were for bastardy or paternity. Intercourse which led to marriage
or no children was relatively undisruptive but child support for bastard children was a vital issue in a colony with a growing population and little available land.

The Maine trials often have a tense, wary quality to them. Over and over, the same defendants appear in court, often for the same charges: fornication, drunkenness, absenting church on Sunday. The records rarely note the judges’ frustration but it hovers around the pages, even three hundred years later.

Unlike Essex County, alternate sexual crime charges were most commonly tried and documented in Plymouth Colony. Unlike fornication, pondering whether a colonist had committed “uncleanness” or “lascivious carriage,” allowed a court the space to comment on the individual actions of the defendant involved, an ability clearly valued by Plymouth’s justices.

Finally, Rhode Island’s attorneys and juries allowed its court rooms to play out differences between colonial law and English common law, thus providing the colony with a consistent argument to the English crown for independence from Massachusetts Bay and Connecticut.

Thus far, the records of colonial New England’s sexual crime trials have largely been used to write the tale of Hester Prynne and Arthur Dimmesdale’s historical cousins. While these histories have broadened our knowledge of sexuality and society alike in colonial New England, they have not used their sources to their fullest extent. In these trials can be read the history of New England itself: small, cantankerous, driven by ideology, economic gain, and, above all, the need to create something apart.
Chapter Two

"HIS RELATIONS BEING GREAT MEN:"
CLASS, COMMUNITY AND SEXUAL CRIME IN ESSEX COUNTY

Several Andover, Massachusetts residents gathered at the Christopher Osgood household on October 9, 1690. The best room of the house was ready with a flat table, paper and ink for taking depositions. At stake was the condition of the young woman standing before the table. Elizabeth Sessions was twenty four years old, half orphaned since the death of her father the previous winter. Now she was five or six months pregnant. With her story told to the assistant clerk, the seventeenth-century ritual of filing a fornication and bastardy trial was begun. Difficult as Elizabeth Sessions may have found the experience, hers was a familiar tale for the justices of Essex County.

Trials for sexual misconduct were a frequent occurrence in the Essex County court system. Some 818 charges were filed in its court rooms during the years between 1636 and 1718.1 Approximately two thirds of these charges were for fornication, a term indicating sexual intercourse outside of marriage. Over a quarter of the charges were for fornication before marriage. Essex County fornication trials appear fairly routine affairs, rarely documented beyond conviction and punishment. Instead, the real energy of the Essex County court rooms revolved around women like Elizabeth Sessions, pregnant out of wedlock with no means of supporting their bastard children. Bastardy and paternity charges were a fraction of the overall Essex County sexual crime charges. Some 162 women were charged with conceiving illegitimate children in this period while 142 men were charged with fathering those same children. In contrast, however, bastardy and

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1 See Chart Four, "Essex County Charges, 1636-1718" in Appendix A.
paternity charges comprised approximately three quarters of the total charges with documentation beyond conviction and punishment.\(^2\)

As historian Else Hambleton once observed, colonial court documents can "rise to the level of great literature, compact novels in three, four, or five sentences."\(^3\) Whether depositions, warrants, subpoenas or other forms of legal paperwork, their terse outlines hold the stories of 57 men and women who conceived children out of wedlock in Essex County in the seventeenth and early eighteenth centuries. They also tell the story of Essex County itself. While the Province of Maine, Plymouth Colony and Rhode Island Colony cared about illegitimate children, none of them placed the same emphasis on this issue in their court rooms. Exploring the motivations behind Essex County's high rate of bastardy and paternity trials provides insight into the shifting legal concerns and growing population of Massachusetts Bay Colony, the largest and most powerful of the New England colonies.

This emphasis on contested paternity points to an important aspect of Puritan colonial life. In coming to Massachusetts, the Puritans sought a reformed society, a New England. They gave as much attention to transforming legal codes as they did to preaching religion. English law, in their minds, was caught between church and civil courts, quick to judge and generally corrupt. Crime in Massachusetts Bay was tried only in civil courts, overseen by elected officials. Convictions were made only where guilt

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\(^2\) See Chart Five, "Essex County Charges with Depositions, 1636-1718" in Appendix A.

could be proven. Clear-eyed as they saw themselves to be, there were still blind spots resting at the corner of their faces.  

The question of proof haunted most sexual crime trials. Doubt was difficult to weigh in the woman’s favor. Regardless of how she had become pregnant, the fact was displayed in her swelling body. The early modern belief that conception came about as a direct result of willingness on both parties rendered women even more vulnerable, particularly in rape cases. In contrast, a trial for a man who believed himself wrongfully accused of fathering a child raised all kinds of doubt. Lacking the certainty of DNA testing, justices relied instead on a complicated intersection of witnesses, circumstantial evidence, birth testimonies and their own instincts to convict potential fathers. The actions of cousins Benjamin Abbot and Joseph Chandler highlight the ways in which acknowledging or denying paternity shaped their trial experiences. They also comment on the important roles played by family, status and gender in colonial New England.

Essex County began as a settlement on the point of land called Naumkeag by explorer John Smith. Under the newly installed command of John Endicott in 1630, Naumkeag grew swiftly and was soon renamed Salem. The deep harbor made fishing a natural choice for most settlers, though it may have hinted to some of the trade networks that would later connect the town with the rest of the world. The first villages beyond Salem followed the shore line north to Newbury. As the coastal towns burst at the seams,
they were followed by inland settlements whose inhabitants cleared trees and planted fields while pushing ever westward.

Andover was one of the first inland towns, initially settled in the 1640s. Throughout most of the seventeenth-century, it remained on the county outskirts, seen as a buffer between English land and Native American wildness. Whether they traveled to Salem or Ipswich, its residents always found court sessions a burden, a fact not lost on Naomi Lovejoy. On June 26, 1683, she traveled to Salem to attend court where she confessed to conceiving an illegitimate child and named Benjamin Abbot as the father. Lovejoy was ordered to pay court fees and an unspecified fine and dismissed. Abbot, in contrast, was conspicuous by his absence in the court room.

Some nine months after Naomi Lovejoy’s court appearance, local magistrate Nathaniel Saltonstall noted in his journal that Thomas Chandler, Benjamin Abbot’s maternal uncle, had acknowledged Abbot’s paternity by paying his forty shilling fine. The sentence was then dropped, leaving Abbot free to resume his customary life. If child support entered the equation, it was not mentioned in the court records. Occasionally, under specific circumstances, New Englanders were allowed to conduct court business at the home of local magistrates. As Abbot was not contesting the charges, his uncle was able to use his position as a respectable member of the Andover community to make it possible for his nephew to avoid both public humiliation and court costs. In contrast, Naomi Lovejoy was a poor widow living on the outskirts of Andover society. She had to
travel the approximately twenty miles to Salem for sentencing and pay her fine as best she could.⁷

Few records of transactions like this one survive, making it difficult to tell how common they were. Nathaniel Saltonstall’s journal documents the years 1682 to 1685.⁸ During those four years, a total of fifty-six colonists were arraigned on sexual crime charges in the Ipswich court where Saltonstall was a magistrate. The Salem court had slightly fewer, with forty-one colonists listed in the court records. In contrast, Saltonstall’s journal mentions only four names.⁹ It was likely that court magistrates discouraged colonists from addressing misdemeanors out of court, given that a fully disclosed personal life lay at the heart of colonial New England society. By taking part in the community ritual of the sexual crime trial, defendants were punished while serving as an example to other transgressors.

Eight years later, Elizabeth Sessions accused Thomas Chandler’s youngest son, Joseph, of raping her and fathering a bastard child. This time, the Chandler family advocated for a full trial. Benjamin Abbot had acknowledged fathering Naomi Lovejoy’s child. In contrast, Joseph flatly denied paternity. Regardless of whether they believed his denials, his family fully supported his legal fight to defend his innocence.

Like Naomi Lovejoy, Elizabeth Sessions was a poor woman on the outskirts of Andover society. After the death of her father in 1689 and the dissolution of the family estate, she was reduced to working as a servant in any household that would take her,

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⁸ Nathaniel Saltonstall, Records of the Magistrate’s Court at Haverhill, Massachusetts. Edited by Robert Moody (Boston: Massachusetts Historical Society, 1979), Proceedings of the Massachusetts Historical Society, Volume 79. The original journal is held at the Massachusetts Historical Society in Boston.
⁹ Naomi Lovejoy, Benjamin Abbot, Stephen Barber and Mary Post are the four names mentioned.
with little in the way of respectability or family name to serve as protection. By the spring of 1690, she was working in the Christopher Osgood household. On the evening of May 8, she went to Sergeant John Chandler’s house where several other young Andover residents were gathered. As she was walking home, she was “by violence abused by Joseph Chandler” in the “open highway near to John Chandler’s.” Some time afterward, she realized that she was pregnant. She was certain that Joseph Chandler was the father as he “had nothing to [do] with her in that kind but only that one time.” Even then, she had not wanted to draw attention to the incident as “his relations [were] great men.” She was only speaking now because the law required an unwed pregnant woman to name a father.

After Nathaniel Saltonstall recorded Elizabeth Sessions’ story, he issued a warrant to Ephraim Foster, the Andover constable, to bring Joseph Chandler and Sessions in for further questioning. Two days later, Sessions repeated her story and Chandler denied all charges. Both parties were ordered to pay bonds to the court guaranteeing their presence before a judge after the birth of Sessions’ child. The early stages of the trial investigation suggest that proving Joseph Chandler’s innocence may well have been possible. As the depositions emerged in the next several months, nearly every aspect of Sessions’ confession was placed in doubt.

Perhaps the only point agreed on by all parties was that Chandler’s “relations [were] great men.” The Chandlers were among the first settlers in Andover when the town was founded in the early 1640s. While never as influential in Massachusetts Bay politics as their neighbor Stephen Bradstreet, they played an active role in Andover. In

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10 Statements from Elizabeth Sessions’ deposition, sworn before Nathaniel Saltonstall, October 9, 1690. All quotes from the Essex County Quarterly Quart at Ipswich Trial for Elizabeth Sessions and Joseph Chandler. Trial transcripts from the Works Project Administration Essex County Trial Transcriptions, Volume 50, Pages 62-63, held at the Philipps Library, Peabody-Essex Museum, Salem, Massachusetts. The original court records are now held at the Massachusetts State Archives in Boston.
contrast, the Sessions moved to Andover later in the seventeenth century when most of the arable land had already been divided among the first settlers.

Comparing the wills left by Joseph Chandler and Elizabeth Sessions' fathers further highlights differences between their families. When Thomas Chandler died in 1703, he left a large estate granting land and shares of his ironworks to each of his six sons. In addition to the customary widow's room in the family house, his wife, Hannah Brewer Chandler, received a yearly allowance in money and food supplies. He also added further household goods to the dowries given his two daughters at the time of their marriages. When Alexander Sessions died in 1689, he owned a house and eighty acres of land. As he left a widow, a daughter and eight underage sons, the house and lands were sold to pay his debts and support the widow and youngest children. The rest of the money was divided among the children, the oldest son receiving five pounds, eight shillings and nine pence. The remaining children, including twenty-three year old Elizabeth, each received two pounds, fourteen shillings and five pence. Placing this sum in further context, Hannah Chandler received two pounds yearly in money, not to mention her shelter, firewood and food.\(^\text{11}\)

Compounding her lack of financial resources was Sessions' lack of personal advocates. Neither her mother nor her brothers emerge anywhere in the trial records. Her employers, the Osgoods, provided her with neither financial nor personal support. Instead, her bond of twenty pounds was paid by Richard Kemballs of Bradford, her maternal uncle. With her brothers still underage, he was the only male relative who could represent her in court. Her vulnerability stands in sharp contrast to the other trial players.

Elizabeth Sessions’ claim that she was “by violence abused” speaks to this vulnerability. Nobody else in the trial process appears particularly concerned about how she became pregnant. Proving rape was extremely difficult in colonial New England, in part because conviction required the death penalty. As historian Richard Godbeer has noted: “New England courts refused to convict individuals . . . unless the evidence satisfied fully the standards of proof . . . either confession or at least two independent witnesses.” With no witnesses, Joseph Chandler denying the charges and no father to push the issue further, Sessions’ rape claim was ignored by the colonial authorities. Regardless, colonial authorities were more interested in paternity charges and child support than pursuing sexual abuse.

A rape case heard in the Ipswich court a year later further highlights Elizabeth Sessions’ fragile position. Peter Harris accused Mordecai Larcom of raping his daughter, Hannah Harris. Like Chandler, Larcom denied the charges. Unlike Sessions, Hannah Harris was neither pregnant nor legally orphaned. The court eventually ruled that Larcom would be sent to Boston to face trial. Most early American families functioned as corporate households rather than as a collection of individuals. The household was represented legally, financially and politically by the male head of the household. In the case of his death, this position could be taken on by his wife in her capacity as a deputy husband or by the oldest son. If the household could not financially survive, it was dissolved, as was Alexander Sessions’ household. Not surprisingly, fatherless/householdless daughters appear throughout the trial records. With neither

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12 Godbeer, *Sexual Revolution in Early America*, p. 102.
13 Verdict for Mordecai Larcom, Essex County Quarterly Court at Ipswich, March 30, 1692, Record book held at Philipps Library, Peabody-Essex Museum, Salem, Massachusetts. Larcom could not be further traced in the Boston records.
secure places to live nor fathers to speak for them, they were doubly vulnerable.\textsuperscript{14} Although they usually became part of other households as domestic servants, their employers came to their defense in the court records.

By the time the Sessions-Chandler trial occurred in March of 1691, Nathaniel Saltonstall had collected statements from ten deponents. The first came from Joseph Chandler’s family and friends. Nathaniel Lovejoy was an unmarried contemporary of Chandler, who lived at home with his parents.\textsuperscript{15} Like Elizabeth Sessions, Lovejoy describes spending the evening at John Chandler’s house and the orchard adjoining it. While he remembers Sessions’ presence in the orchard in the early evening, he states that “after [she was] gone Joseph Chandler and I and some others sat down upon the grass talking awhile and then Joseph and I went to bed together . . . [I] do not remember he was gone from me in the loft that night.”\textsuperscript{16}

The next depositions directly accused Elizabeth Sessions by suggesting another father. According to Thomas and Hannah Austin, “in the beginning of Last Summer John Russ, JR. & Elizabeth Sissions were at our house all night and the greatest part of the night together in our orchard by themselves.”\textsuperscript{17} Born in 1671 to John and Deborah Osgood Russ, Russ was twenty at the time of the trial, making him a likely candidate age wise. This testimony was further supported by statements from Joseph Chandler’s sister and brother-in-law, Daniel and Hannah Chandler Bixby. Sessions had spent the previous winter working for them before departing on April 26, 1690, presumably to join the

\textsuperscript{14} For further discussion of women without fathers, see Carol Karlsen, \textit{The Devil in the Shape of Woman}. (New York: W.W. Norton and Co., 1998) and Hambleton, \textit{Daughters of Eve}.

\textsuperscript{15} He probably also was a distant cousin to Naomi Lovejoy. See Jackson, \textit{Family of John Lovejoy}.

\textsuperscript{16} Statements from Nathaniel Lovejoy’s deposition, sworn before Nathaniel Saltonstall, March 26, 1691.

\textsuperscript{17} Statements from Thomas and Hannah Austin’s deposition, sworn before Nathaniel Saltonstall, March 26, 1691.
Christopher Osgood household. While Sessions lived with the Bixbys, "John Russ, JR. kept her company two or three nights in a week and some times they would be gone out of house a great part of the night." Unspoken in the records but not in the minds of the trial participants was the identity of Sessions' new employer. John Russ, JR. was Christopher Osgood's nephew. However innocent the connection may have been, it added fire to arguments for Russ' guilt.

The Bixbys further added that "from the time that Elizabeth Sessions Charged Joseph Chandler with lying with her to the time of her delivery was but 37 weeks and some odd days," throwing further doubt on Sessions' claim that Joseph Chandler impregnated her in early May. Historian Else Hambleton notes that midwives "disagreed about the length of time that constituted a full-term pregnancy. They knew that a pregnancy customarily lasted 39 weeks but they were accustomed to seeing exceptions in practice." Midwives and courts alike allowed for early births but only when circumstances favored defendants. By reminding the court of the length of Sessions' pregnancy, the Bixbys provided Chandler with another important alibi, at least for early May. If Sessions conceived a child with Russ in April, she could have carried it for the full 39 weeks before giving birth.

The legal process for addressing children conceived out of wedlock followed a gendered formula in colonial New England. The first stage of the process was male dominated, the second female. Heads of household whose sons were accused of fathering bastard children or whose daughters became pregnant out of wedlock provided justices alternately with alibis for their sons or proof of honorable intentions from their daughters'
suitors. Pregnant daughters then waited until birth to name the putative fathers before their midwives: the only testimony nearly guaranteed to carry a court room conviction. Elizabeth Sessions’ childbirth was attended by two official witnesses, midwife Mary Barker and Mr. Phibea Robinson. The presence of a male witness indicated the seriousness of Sessions’ charge against Joseph Chandler. Birthing rooms were predominantly female territory in the late seventeenth century. Barker and Robinson both stated that she had “constantly affirmed that it was Joseph Chandlers of Andover . . . and no mans else.” While Barker has been identified as an Andover resident in the 1690s, Robinson’s identity and possible connections to the trial participants remains a mystery. There were Robinson family members living in Andover at the time but his name does not appear among them. He may have been a visitor, brought in as an impartial birth witness. The title of Mr. in the court records clearly denotes his elevated social status.

The final deposition came from John Russ, Jr. and his first cousin, Abigail Osgood. They described seeing Joseph Chandler and Elizabeth Sessions in “an act of uncleanness . . . lying together on the ground and the said Joseph Chandler said he could do well enough without us.” In addition to supporting Session’s claim, Russ and Osgood’s testimony provided Russ with a much needed alibi.

The ten depositions support three plausible scenarios. The first is the simplest. Elizabeth Sessions was telling the truth, she and Joseph Chandler conceived a child on May 8, 1690, and she did not carry the child the full 39 weeks. This version is supported by testimony from the birth witnesses, Mary Barker and Phibea Robinson as well as Sessions herself.

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21 Statements from John Russ and Abigail Osgood’s deposition, sworn in Essex County Quarterly Court, March 31, 1691.
The second scenario follows depositions from Nathaniel Lovejoy, Lida Deere and Hannah Chandler Bixby. Elizabeth Sessions became pregnant by John Russ, Jr. in late March or early April of 1690. Bixby’s memory of the exact date that Sessions left her household suggests some event precipitated her departure. Shortly after arriving in the Osgood household, Sessions either chose, or was persuaded, to name the well off Joseph Chandler as the father of her child.

The third scenario is implied rather than stated outright. John Russ, JR. was the father of Elizabeth Sessions’ child. Joseph Chandler learned of the pregnancy from his sister, Hannah Chandler Bixby, and decided that Sessions was fair game, already pregnant and without family to defend her. However, for either of the latter scenarios to prevail, the justices would have to disregard unambiguous testimony from the birth witnesses.

Writing without the Ipswich court record book in 1970, historian Philip Greven concluded from the depositions that Chandler was “innocent and that John Russ . . . was the more likely culprit.” Since then, an account book from the Ipswich court has been located with the March 31, 1691 Sessions/Chandler trial verdict which charges Elizabeth Sessions with fornication and Joseph Chandler as the “Reputed father of Elizabeth Sessions her Child.” Sessions was ordered to pay a fine of forty shillings or receive ten lashings. Chandler was ordered to pay a second bond of fifty pounds and two shillings a week in child support. Precisely how the magistrates made their decision remains unclear. Perhaps they thought Chandler was a better candidate for child support payments than Russ. Or they may have placed more faith in the birth testimonies than in depositions.

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from Chandler’s family and friends, especially since Sessions had two compelling supporters who claimed to have seen her and Chandler in an “act of uncleanness.”

In 1691, Joseph Chandler was twenty-two years old, the youngest of eight children. Like most younger sons, he still lived at home although he married Sarah Abbot some eight months after the trial. Most young men in late seventeenth century New England did not marry until their late twenties, usually waiting until their parents died or were willing to relinquish lands and money enough to establish them in marriages and households of their own. Marriage at twenty-two, some four years before his next oldest brother, was unusual.\(^\text{23}\) The Chandlers and Abbots were neighbors, and the families already had a history of intermarrying. Thomas Chandler probably decided it was better to marry off the family black sheep to a cousin than wait until he was financially viable. His will, dated September 13, 1700, some nine years after the marriage commented that “I have formerly given [Joseph] the value of what I intended to bequeath him in Lands.”\(^\text{24}\)

In contrast, John Russ, Jr.. was completely exonerated. Multiple witnesses had described his presence with Elizabeth Sessions. He was of an appropriate age. While lacking the prosperity of the Chandlers, the Russ and Osgood families were comfortably off. All in all, these factors should have made him a prime candidate as a potential father. His total absence in the official verdict is puzzling. Most men named as potential fathers of illegitimate children were listed in the trial records. Even if acquitted of paternity charges, they still paid court fees. His escape from punishment suggests that the colonial officials may have known more than they recorded.


\(^{24}\) Thomas Chandler’s will, *Chandler, The Descendents of William and Annis Chandler*. 
A closer investigation of the players in the Chandler/Sessions trial provides a nod to another tale buried beneath the surface. Andover was on the edge of Essex County and travelers to settlements north and west of the town were common. As a result, many colonists supplemented their incomes by keeping small taverns or inns in their households. These were carefully regulated by both town and county ordinances. Innkeepers had to apply for permission and have their licenses updated on a yearly basis. There were also rules affecting their hours, the amount of liquor they could sell and to whom it could be sold.

On February 2, 1687, William Chandler, Joseph Chandler’s uncle, received permission to open an inn in his household. Uneasy about competition, John Osgood, another Andover inn holder, complained to the town that Chandler was operating without a license. Chandler responded by producing the paperwork giving him permission as well as a petition from his friends and neighbors arguing for the need for Chandler’s inn. Undaunted, Osgood sent a petition signed by his friends and neighbors to the town on March 31, 1690 claiming that Chandler’s inn was a disgrace.25

Careful study of colonists supporting these petitions reinforces the kinship networks found in the Chandler/Sessions’ fornication trial. The first name on William Chandler’s petition was John Lovejoy, father to Nathaniel, who provided Joseph Chandler with an alibi for May 8, 1690. Also on the list were Thomas Chandler and Ralph Farnum whose daughter married into the Chandler family in 1685.

In turn, Christopher Osgood, father to Abigail Osgood and uncle to John Russ, headed the list of names on John Osgood’s petition. His son Thomas also signed the

petition, as did several members of the Fry family, relations of the Osgoods. Word of John Osgood’s circulating petition reached the town selectmen, who included Thomas Chandler and John Abbot, prior to its arrival. The petition was dated March 3 but the selectmen decided on March 21 to allow Chandler to stay in business. John Osgood had been outmaneuvered.

Given the amount of time that John Osgood devoted to his petition, it seems unlikely he would simply have allowed the matter to rest. The Chandlers had the selectmen sewn up but there were other methods to make his point. According to the Osgood petition, William Chandler allowed servants and children to frequent his inn “at all times unseasonable by night and day,” an accusation born out by the extensive descriptions in the trial depositions of Andover residents in their late teens and twenties trysting in orchards and roads near the Chandler households. Elizabeth Sessions accused Joseph Chandler of fathering her child, while living in Christopher Osgood’s household. Did the Osgoods persuade her to accuse one of the Chandler offspring? As an unmarried, youngest son Joseph was vulnerable to the charge. Furthermore, Sessions comments in her deposition that she “had had love for him a long while.” She may have seen the accusation as the first step towards gaining a well-connected husband for whom she had some affection. In turn, as the Chandlers sought a defense, did they retaliate by accusing John Russ, Jr., nephew to the Osgood family? Like Chandler, he also was vulnerable as a young, unmarried man. Regardless of the motivations, Joseph Chandler’s conviction as the father of Elizabeth Sessions’ child no doubt provided a sense of vindication for the collected Osgood clan.
In 1694, Elizabeth Sessions married Richard Carrier. Sessions' choice of spouse suggests she was still on the margin of respectable Andover society. Her new in-laws had a long history of making their neighbors uneasy. Local tradition held that his father Thomas swung the axe that beheaded Charles I. Massachusetts Bay Colony may have been a Puritan colony but that did not necessarily mean its residents condoned regicide. The Carrier family arrived in Andover in the early 1690s, having either left or been forced from neighboring Billerica. Carrier's mother, Martha Allen Carrier, immediately became involved in an extensive dispute about land boundaries with the Benjamin Abbot who opened this chapter. Following the outbreak of the witchcraft hysteria in neighboring Salem Village, Abbot accused Martha Carrier of witchcraft. Abbot's accusation was supported by a claim from William Chandler's eleven year old daughter Phebe that both Martha and Richard had tried to poison her. While Richard was freed after being questioned under torture, Martha Carrier was hung for witchcraft on August 19, 1692.

Richard Carrier and Elizabeth Sessions' marriage marks yet another alliance in Andover, Massachusetts between people wronged by the Chandler/Abbot clan.

Surviving evidence from all three legal encounters tell a story layered in local politics and household loyalties. These elements both underscore and undercut historian Philip Greven's arguments about colonial Andover. In Greven's reading, household tensions were managed by keeping potentially wayward children under control through careful management of family lands. Thomas Chandler's management of the sexual escapades of both his son and nephew provides support for Greven's argument. What

26 Unpublished Carrier family history at the Andover Historical Society, Andover, Massachusetts.
29 See Greven, *Four Generations*. 
Greven does not, however, address is the utter complexity of seventeenth-century familial life in Andover. The real tensions lay between families, rather than within them. These strains comment equally on the economic disparities present in colonial Essex County. Challenges to the familial honor of the landed Chandler/Abbot and Osgood/Russ clans resulted in a dual commitment of financial resources and extended family ties. Challenges to the poorer Sessions and Carrier family resulted in chaos, shame and, occasionally, death.

Seventeenth-century men were encouraged to form households once they had the financial resources to do so. Alexander Sessions and Thomas Carrier's willingness to marry and raise children within their own households suggests they were no less committed to this goal than Thomas Chandler and John Osgood. Nevertheless, both the Sessions and the Carrier households failed to provide the most basic element guaranteed by the household order: protection. Despite his best efforts, Sessions was unable to leave his family enough money to remain in their home after his death. As a result, Elizabeth Sessions was left to earn a living as a servant as best she could. Whether or not Joseph Chandler raped her will never be known. What is more definite is that both Joseph Chandler and John Russ knew she lacked a father to defend her in court. Her father's death left her doubly vulnerable to sexual coercion. For his part, Carrier was unable to protect his family from witchcraft charges, though whether this was due to the family's unsavory reputation or the suggestion that he could not control his wife is unclear. Like many elements of Puritan society, the household order worked well in theory but provided little in the way of a safety net in case of failure.
Further comparison of the influences shaping Essex County households is demonstrated by the Martha Proctor/Thomas Choat paternity trial from the Ipswich court in 1705. Unlike relative latecomer Andover, Ipswich was the second town created in Essex County. If the wide spreading salt marshes of the Ipswich and Essex rivers made immediate access to the ocean difficult, its original residents were undaunted, choosing instead to build the boats needed by their neighbors for fishing and trade. The remaining land was wide and flat, making farming easier than in other parts of the county. As a result, most families had to make difficult decisions when providing for future generations.

Faced with the common dilemma of more children than land in the 1660s, John Choat came up with an original solution. Rather than send younger son Thomas to the uncertainties of the northern frontier, he bought him neighboring Hog Island as a wedding present. The island offered land for houses and fields and relatively easy access to the town of Ipswich by canoe or boat. In fair weather, with a good tide, the journey could be made in fifteen minutes or so.\(^\text{30}\)

John Choat’s approach to establishing his younger son was typical of his approach towards life. No matter the situation, there was always a solution. Throughout the 1650s and 1660s, he was tried for crimes ranging from stealing apples to lying yet always exonerated, a talent prompting descendant E.O. Jameson to observe that “his wits and brains were largely exercised in getting himself out of his law scrapes . . . his personality [appears stamped] upon his descendents [as] large numbers of them [took] to the law as

\(^{30}\) Today, Hog Island has been renamed Choat Island and is owned by the Trustees of the Reservations in Massachusetts. Although the island is now uninhabited, its colonial past was revived in the late 1990s when *The Crucible* was filmed there.
naturally as ducks to water."Ironically, Jameson did not detail the extent to which Thomas Choat would follow in his father's footsteps.

Shortly after their marriage in 1690, Thomas and Mary Varney Choat experienced the nightmare common to many late seventeenth-century Essex County residents. John Proctor, Mary Choat's maternal uncle, was hung for witchcraft in the summer of 1692. Prior to Proctor's execution, Thomas Choat joined a group of Ipswich men who signed a petition vouching for Proctor's moral character and good name. Perhaps uneasy about his inability to save his wife's uncle, Choat later agreed to sell the northern part of Hog Island to another uncle, Benjamin Proctor.

Benjamin Proctor settled on Hog Island in the mid-1690s with his wife, Deborah, and their four children, Samuel, Sarah, John and Martha. Like the Choats, their income was derived from a combination of farming and fishing. At the time of Benjamin Proctor's sudden death in 1704, the oldest three children were unmarried, despite being in their late twenties or early thirties. As Proctor's estate left debts totaling two hundred pounds, it is possible the family was unable to provide the financial resources needed to attract marital partners. They may also have suffered from the social stigma of close family ties with several Salem witch trials suspects, including John Proctor and Deborah's mother, Elizabeth Hart. Regardless, the settling of Benjamin Proctor's estate left just enough money to allow Deborah to remain in her home on the island and one of the sons to rent a mainland farm on Castle Neck in Ipswich.

Deborah Proctor's troubles were further compounded the following year when twenty-eight year old Martha became pregnant out of wedlock. There was no doubt that Martha would face fornication charges in the Essex County Court of General Session. In

addition, a father needed to be named and ordered to pay child support. Proctor’s position as a female head of household since Benjamin Proctor’s death put certain limitations on her legal options. Unlike Joseph Chandler, she could not prosecute potential fathers. Nor did she have the authority to force Martha to name a father during the birth.

Consequently, Proctor devised a third method for addressing the problem. Before her daughter’s trial in September of 1705, she sent a lengthy statement to the Essex County court justices describing her interpretation of the events leading to Martha’s pregnancy.

Deborah Proctor’s extraordinary “declaration of the case,” measuring one foot by two feet in size and containing approximately two thousand words, survives today as the most extensive description of a sexual crime in colonial Essex County. Well documented paternity trials from Essex County usually produced depositions and warrants, subpoenas and bills totaling approximately seven hundred fifty to a thousand words. In addition to detailing the pregnancy, Proctor describes her attempts to address the extensive persecution suffered by her family since Martha’s conception.

A central issue noted by the declaration was Martha’s determination to avoid officially naming her child’s father. Unwed mothers who refused to identify potential fathers faced stricter penalties in the court room while their families footed the bill for their bastard children. Martha traveled to Ipswich to acknowledge her pregnancy before Justice Francis Wainwright in July. As her mother could not represent her, surety guaranteeing Martha’s presence for trial in September was paid by her uncle, Joseph Proctor, who was also Francis Wainwright’s brother-in-law. When Martha was pressed to name a father, Joseph named Thomas Choat. A warrant ordering Choat to answer

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32 See Hambleton, Daughters of Eve.
questions before Wainwright was issued on July 16, 1705. Three days later, Choat denied paternity while his brother, Samuel Choat, signed surety for him.

Paternity cases often centered as much on the involved heads of household as the trial participants themselves. The Proctor/Choat trial was no exception. Deborah Proctor needed to prove she was fully capable of maintaining the moral propriety of her household, particularly if she still wanted her adult children to marry. For his part, the paternity accusation came as a direct challenge to Thomas Choat. Historian Anne Lombard argues that early New Englanders believed “manliness, which implied not only moral qualities but also . . . sexual potency, required that a man be able to . . . maintain control over his dependents.” While sexual potency was a necessary part of being a father, a man unable to control his sexual urges around female neighbors might be seen as equally incapable of controlling his wife, children and servants.

Depositions played a central role in disputed paternity trials by providing justices with the necessary details. Unfortunately for Deborah Proctor, her ability to provide depositions was limited by her finances and her position as a widow. Court trials were an expensive business. Whether acquitted or not, trial defendants were required to pay for all costs, including finding deponents. If conviction was certain, there was no need to add to court fees by paying for deponents to prove the point further. Colonists who paid for fully documented trials gambled that either truth, or someone willing to perjure themselves, would save both honor and their purses. Even if Proctor had the money to pay for deponents, it is doubtful whether she could have exerted much pressure on them. As

Proctor could not generate testimony from others, she provided her own with the declaration.

Thomas Choat entered the legal proceedings on a very different footing. His morality may have been called into question by the paternity accusation, but his legal and financial position as a household head remained intact. While Joseph Proctor did not name Choat as the father of Martha Proctor’s child until July 13, Choat filed a preemptive complaint with Justice Stephen Sewall against Martha Proctor on July 12, 1705. In addition, Choat guaranteed the court fees necessary to provide ten depositions supporting his claim of innocence. Four of these deponents were directly related to Choat and the others may have been linked through no longer traceable social or economic ties.

Reading depositions for early eighteenth century paternity trials usually feels like playing the board game Clue. So and so, in the orchard, at midnight. In contrast, the Proctor/Choat depositions are extremely vague. Rather than describe the details of Martha Proctor’s sexual activities, they document conversations with Martha regarding the father’s identity. Elizabeth Knowlton and Lida Forde testified that Martha Proctor believed “a yung man was the father of her child and that he was a great way off from this place.” Josiah Burnham added that “she never said so in her life nor never thought that he was the father of her child for he was not she would clear him before a hundred men,” a statement suggesting the community of the male dominated court room.

The most crucial, and most cryptic, testimony came from midwife Elizabeth Low who stated that Proctor initially said the father was “the married man that hath fetcht you

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34 Statements from Elizabeth Knowlton and Lida Forde’s deposition, sworn in Newbury on July 25, 1705. All trial documents are from the Essex County Court of General Sessions trial for Martha Proctor and Thomas Choat, File Papers, Box 3, Philipps Library, Peabody-Essex Museum, Salem, Massachusetts.
35 Statements from Josiah Burnham’s deposition, sworn in Ipswich before Samuel Appleton JR., July 13, 1705.
on to the Island severall times before.” As Mary Choat had already had seven children by
this time, it is likely they were attended by Low and that Proctor was hinting that Choat
was the father. However, Proctor did not mention “any mans name and this she held to
before all that were thare present tho I told her often it was her duty to tell yet this she
said to the very last.”36 In order for the mother’s testimony to carry weight at the trial, the
statement had to include a name given at the height of her birth pains.

Another oddity about the Proctor/Choat depositions is the lack of dates. Midwife
Elizabeth Low testified on July 19, 1705 but does not mention when the child was born,
nor did any other deposition mention possible conception dates, unlike the
Sessions/Chandler trial which went so far as to discuss the length of Elizabeth Sessions’
pregnancy. Depositions from the other Essex County paternity/bastardy trials share the
Sessions/Chandler trial’s attention to dates and spans of time. If the first instinct is to
blame the vagueness on the isolation provided by Hog Island, close study of the
depositions suggests this was unlikely. Contact between the island and the mainland
appears to have been frequent. Josiah Burnham mentions being at work on Hog Island.
Thomas Choat’s son Joseph details traveling by boat to the island “in company with Mr.
Harris Martha Proctor here Mother and others.”37

The concrete details provided by Deborah Proctor’s declaration stand in direct
contrast to the vague case depositions, although Proctor’s statement shares their lack of
attention to time. According to Proctor’s version of events, her daughter had gone to visit
one of her brothers on his rented farm. Early in the morning, Thomas Choat arrived with
the warning that a hundred cattle were loose in the corn field. After Martha’s brother had

36 Statements from Elizabeth Low’s deposition, sworn in Newbury before Stephen Sewall on July 19,
1705.
37 Statements from Joseph Choat’s deposition, sworn before Samuel Appleton, JR., July 13, 1705.
gone outside, “the said Choat came to [Martha’s] bed and insinuated as to ly with her and having done his will he rose up [and left.]” Realizing there were no cattle loose, the brother returned to the house just as Choat departed. No doubt hoping she would not become pregnant, Martha did not tell her brother about having intercourse with Choat. At some later point, Martha realized she was with child. Following confirmation of the pregnancy with Choat, a bargain was struck. If she remained silent, he would give her money to pay the fine and support the child. He also would find a midwife “that it might not be Examined at the Travail who the child’s father was.” Finally, Choat threatened retribution if she did not follow his plan. He would make it impossible for her to swear it on him. He also would make both her and her family’s lives miserable.

The next section of Deborah Proctor’s declaration discusses the range of Thomas Choat’s “instruments to ensnare my daughter.” Choat began by complaining against Martha Proctor and instigating the depositions referenced earlier. Proctor comments wryly on the depositions that their speakers would answer for their lies at the Day of General Judgment. While this is a common eighteenth-century reference, it was probably intended as a reminder of the questions put to unwed women at the height of their travail. They also would answer at the Day of Judgment for lying. She did not, however, comment on the direct familial relationship between four of the deponents and Choat. Close ties between deponents and defendants were too frequent in the eighteenth century to warrant discussion by even the most suspicious of commentators. After lining up deponents, Choat paid a call on Joseph Proctor to discuss Martha’s pregnancy and to allege that the father was one of Martha’s brothers. On hearing this rumor, Martha’s brothers demanded that she name Choat as the father at the birth but she continued to
refuse. Shortly afterwards, Choat threatened both Martha and the unborn child’s lives if she named him, a threat reinforced by a visit from Choat’s wife to the Proctor household.

Colonial court records are filled with fatherless daughters who became unwed mothers. Only Martha Proctor had a mother like Deborah. Recognizing that her daughter was afraid to name Thomas Choat, Proctor sought justice for her family. Unfortunately for the Proctors, the trial played entirely into Choat’s hands. Martha Proctor was convicted of fornication and bastardy. Choat was acquitted due to lack of evidence. In spite of its extraordinary detail, Proctor’s declaration did not count as persuasive proof of Choat’s guilt. The standards of the period required a confession during childbirth, which had not occurred.

Martha Proctor’s life was in ruins at the end of the trial. The Proctors remained on Hog Island well into the eighteenth century so she probably remained in her brother’s household as an unpaid servant. There is no further record of her child, making it impossible to tell whether the child lived or died. In contrast, for all the shame brought on her household by her daughter’s pregnancy, Deborah Proctor’s voice remains unbowed. While her declaration failed in its original intent to clear her daughter’s name, it documents one woman’s determination to be heard by the community around her.

Deborah Proctor opens her declaration by setting the scene and the players with an immediacy that would be the envy of many a playwright. They live on Hog Island, “a place surrounded by water and Passable there to and from but at Sometimes.” Thomas Choat is the villain, Martha Proctor his victim. Proctor’s sons and brother-in-law are largely innocent bystanders. Mary Choat, her niece, is misguided but well meaning in her
role as Choat’s wife. All of them pale in contrast with Deborah Proctor, the self cast heroine of the piece.

The most dramatic scene in the declaration involves Deborah and Thomas Choat. One blustery Sunday morning before the trial, Proctor and Choat set out by canoe to attend church on the mainland. En route, he informed her that “if you will be Ingenious to me, I will be Ingenious to you but if I find you otherwise, you will find me worse to you than the very Devil.” By this time, the wind was blowing fiercely and Proctor feared that Choat would capsize the canoe and drown her. Despite her fear, Proctor held her ground and enquired how he could be worse than the devil. The description of the canoe trip is the only paragraph in the entire declaration where the words are unclear. Whether Proctor or someone else was writing, Proctor’s continued unease with the memory of the voyage hovers around those ink blots.

The declaration plays with verbal and written forms of communication, reinforcing historian Jane Kamensky’s argument that “early New Englanders conceived of speech and script as interdependent, overlapping, virtually contiguous.” Proctor quotes both herself and the other players in her tale, particularly Thomas and Mary Choat. The written descriptions of these exchanges suggest that Proctor manipulated them to her own ends. When receiving unwelcome news such as her daughter’s pregnancy, Proctor explains that she was struck silent with shock, a response suggesting the weak female of seventeenth-century rhetoric. She is a widow, a woman without defenses or support since the death of her husband the year before. However, for a

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39 See Main, Peoples of a Spacious Land.
woman much affrighted, she rallies very quickly, particularly when speaking to Thomas and Mary Choat.

Another indication of Deborah Proctor's shaping of her tale is the declaration's sole discussion of time. According to Proctor's testimony, she realized that Martha was with child only ten days before the birth. Following Martha's confession, Proctor witnessed Choat leaving money for her daughter, discussed Choat with her brother-in-law Joseph Proctor, heard Mary Choat tell Martha that Choat would kill her if she named him as father, and traveled to the mainland by canoe with Choat. While it is possible that all of this happened in ten days, it seems unlikely. The range of events suggests instead a longer span of time. Explaining that she was unaware of her daughter's pregnancy until ten days before the birth absolved Proctor from responsibility for not naming her daughter's partner sooner. If Martha concealed her pregnancy from her mother, it was not Proctor's fault. Her role as the head of the household was still above reproach, at least in her own opinion.

Context for Deborah Proctor's ultimate failure is provided by a paternity case from nearby Salisbury, Massachusetts. Like Martha Proctor, Mary Osgood of was fatherless and pregnant out of wedlock. Unlike Martha, she lived with her grandfather, William Osgood. On realizing that Mary was pregnant with a bastard child, Osgood took immediate action. His neighbor and friend Samuel Gatchell brought a formal complaint against Barnard, stating that that "he hath several times scene them two together at all

40 The Osgoods of Newbury were cousins to the Osgood family of Andover. The ever expanding need for land and for marital partners meant that most Essex County families had scattered over the county by the end of the seventeenth century.
tiems in the night.”⁴¹ Birth witnesses were no problem as his wife Elizabeth was a midwife who testified that Mary had named Barnard at the birth. Finally, the Osgood family also arranged for Mary’s son, Joseph, to be recorded in the Salisbury Vital Records on December 2, 1686. Single women often named their illegitimate male children after the father. If Barnard denied the charges, there was no record of it. Nor did his family ever speak for him, probably recognizing that he had no chance against Osgood’s campaign. Unfortunately, the final verdict for the trial is missing along with other Salem records from the same period. It seems unlikely, however, that Joseph Barnard could have escaped conviction, given the range of evidence against him.

At first glance, the effort of a full blown trial for Mary Osgood and Joseph Barnard seems a bit excessive. Osgood’s pregnancy made it impossible for her not to be declared guilty of fornication. The Osgood family probably spent almost as much on the trial as they would receive in a year’s worth of child support. As Barnard did not contest paternity charges, he could have been convicted even without the six depositions, including the birth witnesses. The answer to this quandary returns again to the central role of the household head in colonial New England.

Like Samuel Gatchell, William Osgood stated that Joseph Barnard kept Mary Osgood’s company through the night. When Osgood questioned Barnard about his presence in the Osgood household, he was told “that he was a suitor to her & had bin a great while.”⁴² This point is reiterated in testimony from neighbor Mary Whittier: “as I

⁴¹ Statements from Samuel Gatchel’s deposition, October 30, 1686. All quotes from the Essex County Court Of General Sessions trial for Mary Osgood and Joseph Barnard, File Papers, Box 2 held at the Philipps Library.
⁴² Statements from William Osgood’s deposition, March 31, 1687.
did apprehend he intended to make her his wife." William Osgood was responsible for
the sexual morality of his household. By making it clear that he had asked Barnard to
state his intentions, William Osgood presented himself as an upstanding member of the
community. It was unfortunate that Barnard had gotten his granddaughter pregnant, and
he probably should have been paying closer attention, but he had done his duty as
Osgood’s closest male relative.

William Osgood also had a second motivation for making certain that Joseph
Barnard’s intentions had been clearly stated. He was equally responsible
for helping his fatherless granddaughter remain on the marriage market. By presenting
her as a young woman taken in by an unreliable suitor, he could mitigate the societal
censure traditionally faced by the Osgood family. Memories tend to run long in small
communities and many Salisbury residents would remember that William’s daughter
Elizabeth was whipped for fornication with Barnabas Lamson in 1654. In addition, the
court same court session convicted James George and John Ash of “lascivious carriage
with a young wench.” Both men were employees of William Osgood’s, which suggests
that Elizabeth Osgood may have been the young wench referred to by the trial records.
The Osgood/Barnard trial was the second time that William Osgood may have looked the
other way. Young women in his household were rendered vulnerable in ways normally
experienced by fatherless women. Fortunately for Mary Osgood, her grandfather’s
efforts succeeded. Within two years, she was married to Philip Favor and their first child
was born on March 31, 1690. The marriage appears successful as she resurfaces in the
records only to give birth to children conceived within her marriage bed.

43 Statements from Mary Whittier’s deposition, March 31, 1687.
44 George Francis Dow, ed. Records and Files of the Quarterly Courts of Essex County, Massachusetts
(Salem: Essex Institute, 1911) Vol. 1, p. 347. Also see Hambleton, Daughters of Eve.
Multiple convictions for sexual crimes within one family were not uncommon in colonial Essex County. In 1693, Daniel Merrill of Salisbury and his wife Hester Chase were convicted of fornication before marriage. Eight years later, Merrill’s first cousin, Jonathon, was convicted of fathering Mary Albery’s child. By 1705, Jonathon had fathered another bastard child, this time with Ruth Sawyer of Newbury. Within three years, her sister Sarah would be pregnant with John Merrill’s child, another cousin in the Merrill family. In 1706, Daniel Merrill’s youngest brother Stephen of Salisbury was accused of fathering Dorothy Straw’s child. After conviction, he was ordered to pay child support while she paid her fine of forty shillings.

Jonathon and John Merrill saw no reason to marry the women bearing their children. In turn, the dual unmarried pregnancies of the Sawyer sisters effectively removed them from the respectable marriage market. Dorothy Straw and Mary Albery were orphans, working as domestic servants, again unlikely candidates for marriage. Surprisingly, Stephen Merrill married Straw a few months after the trial. While honorable, Merrill’s decision to marry Straw was unusual. In addition to succumbing to Merrill before marriage, Straw’s background was highly uncertain. Her father can no longer be traced, suggesting a woman with neither property nor a good family name.

Two other examples of multiple convictions/court appearances within families are siblings Mary and John Dole and aunt and niece Experience and Sarah Pillsbury. In 1708, Mary Dole was convicted of fornication before marriage with her husband, Joshua Bornton. The following year, John Dole was convicted of fathering Hannah Brisket’s child. In 1694, Benjamin Richardson was convicted of attempting to rape Experience Pillsbury. Although she successfully resisted him, the attempt would still have reflected negatively on the family. In 1705, Sarah Pillsbury was convicted for having a child out of wedlock. General Sessions of the Peace Record Books at Ipswich and at Newbury, held at the Philipps Library. Straw/Merrill trial in 1706, Court of the General Sessions of the Peace File Papers, Box 3. Chase/Merrill trial in 1693, General Sessions of the Peace at Newbury Record Book. Albery/Merrill trial, Court of the General Sessions of the Peace File Papers, Box 2, all three held at the Philipps Library. Straw and Merrill’s marriage is recorded in the Salisbury Vital Records. As Merrill married Mary Carr in 1710, Straw died within four years of her marriage to Merrill. Perhaps reflecting the nature of Straw and Merrill’s marriage, Carr is listed as Merrill’s first wife in Samuell Merrill, *A Merrill Memorial* (Decorah: Anundsen Publishing CO. 1917), Vol. 1, p. 34.
Straw’s surety was provided by Richard Martin of Amesbury, who was married to Mary Hoyt. Given the usual pattern of uncles providing surety for fatherless women, this suggests that Straw’s mother was probably Mary Hoyt’s sister Dorothy. Straw gained little more from either of these relations. Dorothy Hoyt appears in the records only long enough to be convicted of wearing men’s clothing in 1677 and Martin’s mother, Susannah Martin, was hung for witchcraft in 1692.47

Prior family histories are rarely mentioned in the court records, though they surely existed in the minds of the juries and justices. Defendants coming from questionable families were less likely to receive the benefit of the doubt in cases of contested fatherhood or children born thirty-eight weeks after marriage. This made it all the more important for those same families to reestablish themselves as moral members of their communities. Mary Osgood’s marriage to Philip Favor was the direct result of her grandfather’s maneuvering. Dorothy Straw’s marriage to Stephen Merrill appears due to a rare combination of love, duty and the need for a helpmeet. That her lot was the exception proving the rule is reinforced by the experiences of Susannah Andrews of Ipswich.

At first glance, Susannah Andrews’ trial reads similarly to the Osgood/Barnard trial. On realizing that his twenty year old daughter was pregnant, Joseph Andrews went into action. In June 1707, he swore a formal complaint against his nephew, Ezekiel, before justice Francis Wainwright. In August, Abraham Perkins, the Ipswich constable, went after Ezekiel who “threatened to be the death of any person that should come to lay

47 Straw/Merrill trial in 1706, Court of the General Sessions of the Peace File Papers, Box 3. Dorothy Hoyt’s conviction is in the Norfolk County Court at Hampton Record Book, held at the Philipps Library. Further information on the Hoyt family can be found in David Hoyt, A Genealogical History of the Hoyt, Haight, and Hight Families (Boston: Providence Press Company, 1871, p. 25).
hold of him . . . with a Gun & Sword.” Ezekiel was eventually captured and his father paid surety for his appearance at court in the fall.

On November 25, 1707, Joseph Andrews continued his campaign to have Ezekiel charged. He testified in court that Ezekiel and Susannah were often in each other’s company and that he knew of no other suitors for his daughter. As well, his daughter-in-law Jane testified that “some time in December last past . . . I did see Ezekill Andross gott out of the bed from my Sister Susannah Andross.” Unlike William Osgood’s fairly cavalier attitude towards his granddaughter’s pregnancy, Andrews expressed misgivings regarding his role in the situation. Had he been more aware of Ezekiel’s attentions to his daughter, the pregnancy might not have occurred. Regardless, Ezekiel was declared guilty. He was ordered to pay court costs and thirty shillings to Susannah for the child’s maintenance during its short life of sixteen weeks. Susannah, in turn, was ordered to pay costs and a fee of fifty shillings for bastardy.

William Osgood and Joseph Andrews raise interesting questions about the role played by gender when preserving the family name in the Essex County legal system. Whether he was telling the truth or not, Thomas Chandler stood a viable chance of absolving his son Joseph from paternity charges. In contrast, neither Osgood nor Andrews could absolve their female relations. Mary Osgood and Susannah Andrews’ crime lay in their swelling stomachs and closely witnessed births. Instead, the question of familial honor centered on the heads of household in these trials. Both men needed to document the role they played in interviewing the girls’ suitors. Osgood successfully

48 Statements from Abraham Perkins’ deposition, August, 1707. All quotes from the General Sessions of the Peace trial for Susannah and Ezekiel Andrews, Papers, Box 3, held at the Philipps Library.
49 Statements from Jane Andrews’ deposition, sworn before Stephen Sewall, November 25, 1707.
made clear that neither he nor his granddaughter had entirely flouted social custom and Puritan law. In so doing, he could hope to reintroduce her back to respectable society.

In contrast, the only evidence regarding Ezekiel Andrews’ intentions that Joseph Andrews could offer to the court was the statement that “she shal not trouble you, I will provide for her if she be with child & I will give you a bond under my hand that it shal be no charge to you.” Susannah Andrews remained unmarried, left in her father’s household to serve as unpaid help under the supervision of her mother and sister-in-law. As well, Ezekiel was Andrews’ nephew. In defending his daughter, Andrews brought the community’s attention to the family as a whole.

The Osgood/Barnard and Andrews trials initially appear very different from the Sessions/Chandler and Choat/Proctor trials discussed at the beginning of this chapter. Depositions for the Osgood/ Barnard and Andrews trials were collected to convict the accused fathers, rather than exonerate them. However, unlike Elizabeth Sessions, Mary Osgood and Susannah Andrews almost never appear in these trials. Instead, the strongest voices at trial are their male relations. Like Chandler and Choat before them, William Osgood and Joseph Chandler drew on a close network of family and friends to build their cases. Samuel Gatchell, Mary Whittier and Priscilla Norton, three of the deponents for the Osgood/Barnard trial, were related to the Osgoods. All of the depositions in the Andrews trial came from family members, albeit from Joseph Andrews’ side of the family. The motivation for paying for extra trial expenses was the same as it was for Chandler and Choat: to preserve the good name of the family and the man representing it.

William Osgood and Joseph Andrews’s actions throw further light on Deborah Proctor’s attempt to restore her family’s name and gain financial support for her

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50 Statements from Joseph Andrews’ deposition, sworn before Stephen Sewall, November 25, 1707.
illegitimate grandchild. Her petition places her in the tradition of the “deputy husband” described by historian Laurel Thatcher Ulrich: “under the right conditions any wife not only could double as a husband, she had the responsibility to do so.”\textsuperscript{51} Proctor’s husband was dead, therefore she needed to speak for her daughter. The declaration also serves as a reminder of the caveats placed by Ulrich on the role of the deputy husband, namely that “the value of any activity is determined by its meaning to the participant, not to the observer.”\textsuperscript{52} If Proctor valued her ability to speak for her daughter, the Essex County court system does not appear to have equally valued her voice. Proctor’s experiences suggest that further caveats need to be added when discussing the role of the deputy husband. Women could stand in their husband’s places for economic reasons but not necessarily legal ones.

There was, however, one place in the Essex County sexual crime trials where women’s voices carried an unequivocal weight. Testimony from women in labor and their midwives usually carried the conviction. In total, 143 men were charged with fathering a bastard child in Essex County between 1636 and 1718. Only eight of these charges led to acquittals.\textsuperscript{53} The three trials with surviving documentation came from trials in which a father was not named at the birth. Martha Proctor had refused to name a father. Sarah Pillsbury named John Allen in 1705 but also admitted to having intercourse with Wilshire, a Native American servant. As all of these trials occurred within a thirteen year span, it seems likely the undocumented trials were for similar reasons. This theory is


\textsuperscript{52} Laurel Thatcher Ulrich, \textit{Good Wives}, p. 42.

\textsuperscript{53} These are Thomas Proctor, John Allen and Wilshire in 1705, Nathaniel Voss in 1709, Ebenezer Kimboll in 1710, John Robinson and Eleazer Hubbard in 1712, James Mitchell in 1718.
supported by the thirteen trials with testimony from midwives documenting that the mother had named a father at the birth. All of them resulted in court decisions against the accused men. The contrast between the weight of testimony from a midwife and the failure of Deborah Proctor’s petition suggests the very different powers given to men and women’s voices in colonial Essex County. If men protected the good names of their families, certain women, in turn, were invested with naming the members of those families. Proctor’s declaration was a failed necessity because her daughter would not name her child’s father.

The high rate of well documented paternity cases in Essex County indicates a wealthy society, with colonists willing and able to pay to save their family names. However, it also says much more about the workings of the colonial household order. A close study of underlying interrelations between sexual crime trial participants indicates that while Essex County trials began with policing sexual transgressions, they became part of much larger cycles involving familial feuds, honor and economic status. Householdless defendants like Elizabeth Sessions fared worst in the colonial court system. Nevertheless, being part of a household was not an automatic guarantee of success. Alexander Sessions was unable to leave enough money to hold his family together. Deborah Proctor, despite being a head of household in her own right, was unable to persuade the Essex County court system to convict Thomas Proctor. Like the characters in George Orwell’s *Animal Farm*, some Essex County households were deemed more equal than others, whether through financial status, reputation or gender roles. In turn, this granted them a level of power within the court system that was almost impossible to challenge.
Chapter Three

"I MADE FRESH PURSUIT AFTER HIM:"
LAW AND ORDER ON THE MAINE FRONTIER

Early European descriptions of the Maine coast read like modern day Down East magazine articles. Italian explorer Giovanni Verrazano’s 1524 log depicted the islands of Penobscot Bay as “lying all near the land, being small and pleasant to the view, high, and having many turnings and windings between them, making many fair harbors and channels, as they do in the gulf of Venice in Illyria and Dalmatia.” Accounts like these soon caught the attention of potential colony backers in England. Threatened by Spanish wealth reaped in the Caribbean, Mesoamerica and South America, the English wanted their own chance at colonization in the Americas. The 1585 settlement at Roanoke may have failed but other adventurers soon felt it was time for a second attempt.

The 1602 voyage of the Archangell under captain George Weymouth brought along naturalist James Rosier to describe and track the voyage. Like Giovanni Verrazano, Jacques de Cartier and others before him, Rosier was enchanted with the Maine coast. Plans for settlement in Maine continued, resulting in a 1607 colony at the mouth of the Kennebec River, under the direction of George Popham and Raleigh Gilbert. Unfortunately, settlement in Maine proved more than the English colonists had bargained for. After a frigid winter and Popham’s death, they decided to abandon the colony and sail home to England.

The experiences of the early Maine explorers and the failed Popham settlement set the stage for the primary challenges that would shape Maine colonization for generations. All too often, the reality of Maine belied its image. On paper or from the

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deck of a ship in the summer months, Maine looked ideal for early settlement. It had the deep rivers, thick furs and tall pines necessary for trade, not to mention ample fish stocks. As it was geographically located at the same latitude as Spain, the English assumed the climate would be warmer than England’s, not realizing that the more northerly British Isles were warmed by the Gulf Stream.²

These same gaps between image and reality were heightened in 1621 when Ferdinando Gorges was granted a royal charter for lands in Maine by Charles I. Unlike most charters of the period, Gorges was given almost virtual control in North America, including the right to grant smaller land holdings. Gorges dreamed of a medieval fiefdom, where his family ruled supreme over the colonists farming their lands. Yet the first permanent Maine settlements emerged from the seasonal fishing camps dotting the coast in the early seventeenth century. Men with little to lose in the way of family or faith came to fish through the summers and sail home before the winter gales. Money could be had but so could a swift death from a sudden wave. At unknown points up and down the coast, men decided that wintering over in Maine was safer than the trans-Atlantic passage and a settlement was born, a bit rough on the edges but alive. Not surprisingly, many of these colonists disregarded Gorges’ feudal ambitions.

Perhaps looking for more malleable subjects, Gorges actively recruited new Maine settlers in the 1630s. He gave William Bradford and the Plymouth colony land on both sides of the Kennebec River as well as the exclusive right to trade on the river in 1630. Settlers from Plymouth were an active presence in the Kennebec region by the 1640s, forming the New Plymouth Colony. Lands between Cape Porpoise and the

Kennebec River were given to Alexander Rigby and George Cleeves in 1643 and became a semi-dependent province called Lygonia. More lands around the Saco and York Rivers were given as grants. Gorges was confident enough in 1642 to replace the town of Agamenticus with plans for a city called Georgeana, the first of its kind in English North America. Most of these new settlers came from the West Country of England, the Midlands and the area around London. The region also had a wide range of religions, adding Anglican, Antinomian, Quaker and Separatist beliefs to the more orthodox Puritan faith present in Massachusetts Bay.³

Following Ferdinando Gorges’ death in 1647, the Province of Maine was left without a charter. Maine declared itself an independent region and elected Edward Godfrey as governor. With Gorges dead and Oliver Cromwell on the rise in England, Massachusetts Bay Colony could hope to benefit from the region’s furs, fish and rivers. Massachusetts Bay officials redrew the colonies’ boundaries to include New Hampshire and southern Maine in 1650. The Province of Maine and Lygonia agreed to Puritan control and were renamed York County, while New Plymouth Colony on the Kennebec remained under the leadership of Plymouth Colony.⁴ After Charles II’s restoration to the English throne in 1660, the Province of Maine was returned to Gorges’ grandson, Ferdinando Gorges II, who sold his claim to Massachusetts Bay Colony for twenty pounds in 1677. By 1691, the Province of Maine was officially absorbed into Massachusetts Bay Colony as York County, although it remained very much a world

apart. Political and legal leaders on the ground in Maine continued to find themselves treading difficult ground when it came to questions of authority. They had to prove to their absentee landlords that they were capable of managing a diverse population who expected the freedoms of the frontier. They also had to demonstrate their control to those same populations.

Tensions between local justices and rowdy colonists are apparent throughout the 275 sexual crime trials conducted in the Province of Maine between 1636 and 1718.\(^5\) Maine had the highest rate of repeat offenders for sexual misconduct among the jurisdictions surveyed.\(^6\) One in thirteen of the total sexual crime charges in Maine were for colonists who had previously committed another sexual crime. In contrast, the remaining jurisdictions had far fewer repeat offenders. As the twenty-one repeat charges span from the first trials in the 1640s to the later trials in the early eighteenth century, Maine colonists consistently tested the bounds placed on them. These same colonists were also frequently charged for public drunkenness, absenting church on Sunday and disorderly conduct. Individuals and households alike were placed on trial in Maine court rooms as justices questioned colonists' ability to live within the bounds placed on them by early modern society. This tension was heightened in the late seventeenth century as Maine came under Puritan control, with its even greater emphasis on orderly households.

One aspect of these trials should, however, be made clear. Like the other jurisdictions, most sexual crime charges in Maine were ordinary by seventeenth century standards. Two thirds of these trials were for some form of sexual misconduct, usually fornication, and over a third were for sexual intercourse before marriage. Bastardy and

\(^5\) See Chart Six, “Maine Charges, 1636-1718” in Appendix A.
\(^6\) See Chart Seven, “Repeat Offenders by Jurisdiction, 1636-1718” in Appendix A.
paternity trials occurred but with almost half the regularity of such charges in Essex County, Massachusetts. Unlike Plymouth and Essex County, there were no sodomy or bestiality trials and only one trial each for rape and incest. If there was a Maine equivalent of Plymouth Colony’s Thomas Grainger’s barnyard orgy, it did not make it into the court records.

The characters who populate Maine’s sexual crime trial records were a colorful bunch. Nevertheless, the justices who oversaw the trials provide an equally vivid picture of colonial Maine society. Beginning with the appointment of Abraham Preble as a justice on October 21, 1645, the Preble, Frost, Pepperell, Wheelwright and Hammond families dominated Maine’s judicial system until well into the eighteenth century.7 Joseph Hammond, Jr. became York County clerk in 1700 after his father who had held the position since 1689. Likewise, Hammond’s cousin, Joseph Wheelwright followed his father as a judge. These families provided the human infrastructure to maintain a judicial system in an isolated region, passing law books and local news between themselves as warranted by the court sessions. Powerful as they were in Maine, their survival with their absentee landlords was dependent on their ability to maintain control, even on the difficult edges of the New England frontier.

Unlike the relatively clearly defined relations between the southern New England colonies of Plymouth, Massachusetts Bay and Rhode Island and their Native American neighbors, the exact state of Maine’s Native American relations remained uncertain throughout the seventeenth and early eighteenth centuries. The region was home to an Algonquian speaking group of tribes called the Wabanakiak, or the people of the dawn.

Their lands ran west to the Hudson river, north to the Saint Lawrence and east to Newfoundland. Within Maine, these tribes were known as the Abenaki, Penobscot, Passamaquoddy, Maliseet and Micmac. While they were affected by small pox and other diseases carried by European explorers, it was not to the same extent as the tribes in southern New England. By the early seventeenth century, they were extremely wary of Europeans, having learned that contact usually meant kidnapping or death.\(^8\) Tense interactions between Europeans and Native Americans in Maine dated back to the earliest documented voyage of Giovanni Verrazano’s voyage in the 1520s and, presumably, had begun even earlier.\(^9\) The Popham colonists were unable to open trade negotiations with the Abenaki on the Kennebec River in 1607. Relative calm emerged in the mid-seventeenth century as European settlers began purchasing land from local sagamores.\(^10\) Even so, Maine’s vulnerability to Native American attack and distance from the more established colonies in southern New England gave the region a marginalized frontier status.

King Philip’s War initially began as a conflict between the Wampanoag and their English neighbors in southeastern Massachusetts in 1675. By the summer of 1676, the war was almost over in southern New England but was just breaking out in Maine. An uneasy peace was declared in Maine under the Treaty of Casco in 1678 which lasted until the outbreaks of King William’s War in 1689 and Queen Anne’s War in 1702. Like wars fought in Europe at this period, all three conflicts were battles between the English and the French over imperial control. They were further complicated in North America by

\(^8\) See Baker, *American Beginnings*.
Native American interests. In 1703, French and Micmac forces attacked settlements from Falmouth to Wells. The Abenaki were drawn into the conflict in July of 1703 when Massachusetts Bay Colony declared war on all Native Americans in Maine, regardless of prior alliances. The ensuing conflict spanned the next decade and was finally concluded by the Treaty of Portsmouth in 1713.

Thirty-seven years of conflict was nearly disastrous for the Maine settlements. New Plymouth Colony was nearly completely destroyed, as were the eastern towns in York County, including Scarborough and Falmouth. York, Kittery and Saco remained stable, with only the occasional raid to mark the presence of the wars. Even so, the constant insecurity took its toll all over the region. Like the Connecticut River settlements to the south at the same period, Maine had become New England’s frontier, both physically and emotionally. Traditionally, the counter argument to Maine’s fragile political position was the colony’s legal system. If Maine had a functioning court, then it was an established, potentially independent, colony, if only in the minds of the justices. Consequently, any indication of strain from Native American attack was erased or buried in the court records. Historian Neal Allen notes that an initial “reading of the clerks’ records seems singularly devoid of any reference to these events.” Their presence emerges on a second, closer reading, lying like faults below the surface, despite the apparent calm. In short, Maine’s justices were not above manipulating legal information to bolster their own position as Maine’s legal elite.

The Court of General Sessions began a session on October 1, 1695 by swearing in a new clerk and registrar named John Newman. The records failed, however, to record why the Province of Maine needed a new clerk. Joseph Hammond, Sr., the prior clerk,

had been captured by Native Americans the previous summer while hunting for a lost cow. As Newman had been serving unofficially in the position since July, the justices probably waited until they received word that Hammond had been taken to Quebec before officially replacing him. Likewise, Hammond's return to English society did not warrant discussion in the court records. The only indication of his presence is a change in the handwriting of the court transcripts. Hammond continued to hold his position until 1700 when he was succeeded by his son.

By the early eighteenth century, Maine's court records were inspected on a regular basis as a means of insuring that the judicial system functioned in a manner deemed appropriate by Massachusetts Bay authorities. As King Philip's War had ended by 1676 in southern New England, most colonists around Boston had little concept of the endless warfare present on the Maine frontier. A court system in a region where the clerk could be captured by Native Americans while hunting for a lost cow may not have passed inspection. Joseph Hammond and his judicially-minded family may well have decided that some editing of the court records was necessary to demonstrate their ability to remain in control of the situation.

Another unspoken indication of the strain experienced in Maine at the turn of the eighteenth century was the April 1, 1697 conviction of Mathew and Elizabeth Young for fornication before marriage. The couple were ordered to pay court fees of nine shillings each and to receive nine lashes each or pay twenty-five shillings each in fines. At this point in the trial, most colonists chose their punishment based on their financial circumstances. Instead, the Youngs humbly petitioned the court to reduce their fine by ten shillings each. They could not afford the full fine but they did not want to be
whipped. Between 1697 and 1714, over half of all defendants for sexual crimes paid reduced fines. None of the records indicate why the court agreed to the reduced fines. However, the practice stopped a year after the Treaty of Portsmouth concluded King William’s War, suggesting the decision was linked to the conflict. York County was desperate for money at the turn of the eighteenth century. Even reduced fines were better than nothing to financially support the court system.

Colonial leaders playing with image and reality was not an innovation in the late seventeenth century. Colonization was an expensive process. Had leaders in Jamestown or Plymouth told the complete truth of their early experiences, it is likely that funding for both colonies would have quickly disappeared. By and large, Maine’s justices successfully mitigated reports regarding the extent to which their legal system was affected by Native American attacks between 1676 and 1714. They appear less successful when it came to the question of whether they could manage their own Anglo-American colonists.

The earliest trial for a sexual crime in Maine occurred on March 25, 1636, at the first meeting of the New Somersetshire Province Court. John Bonithon, Jr. of Saco was accused of incontinency with his father’s servant, Ane. He was ordered to pay a fine of forty shillings while Ane had to pay twenty shillings. The trial concluded by ordering Bonithon to keep the child, a boy named William. While Bonithon was never again charged with sexual misconduct, he was known for openly resisting Massachusetts Bay’s incursions into Maine in the 1650s. After refusing to pay the new rates and sending a letter of protest to the Massachusetts General Court in 1656, a warrant was sent for Bonithon’s arrest ordering him to stand trial in Boston. Despite further attempts from
Massachusetts Bay, Bonithon successfully evaded trial until the 1670s. His sons, William and John Bonithon, Jr., were charged in the 1660s for failing to attend both military training and public worship due to their “living In a disorderly family.”

From the standpoint of the Massachusetts authorities, the Bonithon family were a textbook example of what was wrong with Maine. Not only did John Bonithon openly resist Massachusetts’ political authority, his household was an affront to their definitions of order and decency. A head of household who did not keep his dependents in line challenged the very foundations of Puritan society. In a world without an organized police force, such expectations were necessary ones.

Like many terms whose usage has changed over the years, it is often difficult to tell exactly what seventeenth-century Maine authorities meant when convicting colonists on incontinency charges. The presence of a child makes clear that the judges defined incontinency as sexual intercourse for John Bonithon and Ane. Other incontinency trials, however, were often less clear cut. On September 8, 1640, George Burdett, Anglican minister of Agamenticus, later called York, was indicted for being “infamous for incontinency, a publisher and broacher of divers dangerous speeches the better to seduce that weake sex of women to his incontinent practices.” In addition, Burdett was the first colonist in Maine to be repeatedly prosecuted for a sexual crime. One of the problems faced by colonial Maine was the difficulty of attracting ministers to the fledgling colony. Good ministers tended to settle in southern New England where the congregations were ardent and the winters less severe. Another issue was the minister’s salary, customarily paid by subscription within individual communities. While this method worked well in

\[1^{12}\text{Libby, } Province and Court Records of Maine, Vol. II, p. 202.\]

\[1^{17}\text{All quotes from Puddington/Gouch/Burdett trial, Province of Maine General Court, September 8, 1640, published in Libby, Province and Court Records, Vol. I., ps. 73-75.}\]
southern New England's closely settled towns, it posed challenges to a minister trying to collect money from scattered farms. Consequently, ministers moving to Maine often were those with few options and could not always be relied upon for godly behavior. George Burdett was no exception. Originally educated at Cambridge University, Burdett abandoned his wife and child in England to come to Salem, Massachusetts. A few years later, he moved to New Hampshire and finally to Maine where he married a woman named Susan.14

Unlike most cases in York County, the Burdett trial was handled by a jury, indicating a very serious trial. The court first tried Mary, wife of George Puddington, for frequenting George Burdett's company after being warned not to see him. She was ordered to make a public confession to atone for her "disobedience and light carriage." Burdett was ordered to pay ten pounds sterling to the King and ten pounds to George Puddington. The court then tried Burdett for "deflowring Ruth the wife of John Gouch" and fined him twenty more pounds. Finally, Ruth Gouch was convicted on adultery charges. She was ordered to stand "in a white sheete publiquely . . . six weeks after she is delivered of Child," suggesting that Gouch became pregnant by Burdett. There was no mention of Burdett paying a fine to Gouch's husband. George Puddington and John Gouch had very different reactions to the trial. Puddington forgave his wife but Gouch wrote his wife out of his will.15

Picking through the wreckage of this trial, four crimes emerge. George Burdett was on trial for "incontinent practices," in particular with Mary Puddington and in general with the women of the colony. Puddington was not pregnant and accused only of

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15 See Noyes, Genealogical Dictionary of Maine and New Hampshire.
light carriage, suggesting the jury defined incontinency here as questionable behavior but not necessarily intercourse. Puddington’s charge suggests a similar definition. In contrast, “deflowring Ruth Gouch” was more specific, as was her charge of “adulterie with Mr. George Burdett.” Both of these crimes carried heavier penalties.

A third trial used the term incontinency to explain completely different circumstances. On July 2, 1650, Robert Collens of York was accused of forcing “Jane Bond, the sayd wife of Nicholas Bond to incontency” while her husband was away. If Collens was convicted of rape, hanging was a possible punishment. Similar to the Burdett trial, the case had a jury, referred to in the records as the “Jury of life and death.” Statements during the trial were given by Jane Bond, her son (by an earlier marriage) Henry Simpson and five neighbors. York was the second oldest town in Maine, with three hundred fifty to four hundred residents in 1650, making it unsurprising that the Bond family had neighbors close enough to know when something was wrong. The court found Collens “guiltie of the ackt of Incontinencie, not guilty of the forsement.” He was ordered to pay ten pounds, five to the “cuntrey,” five to Nicholas Bond and to receive thirty-nine lashings.

If Robert Collens was not convicted of “forsement,” the severity of his punishment suggests that the jury defined incontinency in his case as something resembling rape. He was the first colonist to receive a whipping for a sexual crime in York County and thirty-nine lashes was the harshest penalty assigned in the records. On average, convicted offenders received ten to fifteen lashes. The only other defendants receiving the maximum were convicted of adultery. Another factor in the minds of the

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jury was Collens' previous court history. He was convicted for trespass on June 27, 1648 and debt in July of 1649, all charges taken seriously by the court. Finally, Jane Bond received no punishment, which in itself suggests Collens' guilt in the eyes of the jury, especially when compared to the Burdett/Gouch trial. The fact that she was not pregnant provided further proof of her innocence to the seventeenth-century mind as it was commonly believed that both parties had to be willing sexual partners to conceive a child.

Nevertheless, the jury had avoided the most severe punishment available to them. Richard Godbeer's argument that "New England courts refused to convict individuals . . . unless the evidence satisfied fully the standards of proof . . . in a capital case, this meant either confession or at least two independent witnesses" was established in the Introduction. As Collens had pleaded not guilty, there was no confession. Jane Bond was also unable to produce two witnesses. While her son testified to Collens' presence in the bedchamber, neighbors could only report hearing a "great noyes" at the Bond house. The similarities between the Collens trial and the ones discussed in Godbeer's book suggests some uniformity in New England when dealing with rape trials, as Godbeer largely examined trials from Massachusetts Bay and Connecticut.

The following series of trials neatly encapsulate both linguistic transition and repeat offenses, particularly as George Garland was charged with sexual misconduct on more occasions than any other Maine colonist. Garland worked as a tenant farmer for the Jordan family on the Nonesuch River in the town of Scarborough in the 1660s. Only

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18 Libby, Province and Court Records, Vol. 1., ps. 124 and 134.  
20 Godbeer, Sexual Revolution in Early America, p. 102.
about ten years old in the late 1660s, Scarborough was one of the more northerly of the Maine settlements, with approximately seventy-five households scattered on outlying saltwater farms. Despite the isolation provided by the town’s location and household arrangements, trial records suggest that most Scarborough inhabitants were well aware of each others’ activities.

The York County Court of Associates charged Garland on July 18, 1668 for incontinency and living together without being married with Sarah Mills. For good measure, the justices also questioned whether Garland was still married to a woman in England. Mills was a recent widow trying to scrape together a living in the Black Point section of Scarborough, which adjoined the Nonesuch River. The couple were ordered to choose between paying five pounds each or having ten lashes each. As they could not pay the fine, they were whipped. The court also ordered the couple to obey an “act of separation.” This particular term appears frequently in the seventeenth-century Maine court records, with the last “act of separation” sworn in 1685. Couples usually posted a bond, ranging from anywhere between five and fifty pounds, and promised not to see each other again. If they were found together, the bond money was forfeited and they were placed on trial.

The following September, George Garland and Sarah Mills were presented for “theyr unsevell living together not knowing whether they were maryed together” on September 15, 1668. The charge was based on a complaint made by Andrew Auger, who lived on Prout’s Neck in Scarborough. Despite the presentment, there is no record of

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22 All quotes from the Mills/Garland Presentment, York County Court, September 15, 1668, published in Libby, Province and Court Records, Vol. II., p. 169.
the trial taking place and the matter appears to have been dropped, probably because the couple married at this time. In addition to their sexual crime charges, Garland and Mills posed other problems for Maine authorities. Garland constantly struggled to establish himself financially. For her part, Mills was part of an infamous group known as the Scarborough Quakers who spent significant time in court on religious charges. They also became involved in the political manipulations for control of Maine in the mid-seventeenth century. As historian Jonathon Chu wryly observed, Mills “managed to achieve the dubious distinction of being one of the few individuals to be cited by both Bay loyalists and the [province of Maine].”

The Scarborough Quakers actively campaigned against Maine becoming part of Massachusetts Bay, no doubt because the Bay Colony would be apt to punish them even more severely for their religious beliefs. They also frequently appeared in court on charges for missing church on Sunday, though this presumably said more about Mills’ religious commitments than laxness on their part.

Four years later, Garland’s name appeared again in the records for the September 10, 1672 meeting of the Court of Associates for York County. This time, he was accused of publicly announcing his intentions to marry Lucretia Hitchcocke of West Saco, a town just south of Scarborough. Widowed since the death of her husband Richard Hitchcocke in 1668, Hitchcocke inherited enough of her husband’s property to support herself and their young children, rendering her financially more attractive than Sarah Mills. The court objected to Garland’s intentions believing that “hee hath lately owned him selfe to bee

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24 The 1650s and 1660s were difficult years for Quakers in Massachusetts Bay, particularly with the infamous execution of Mary Dyer for her religious beliefs in 1660. See Jonathan M. Chu, *Neighbors, friends, or madmen: the puritan adjustment to Quakerism in seventeenth-century Massachusetts Bay* (Westport: Greenwood Press, 1985).
the husband of another woman called Saraih Mills."25 Garland and Hitchcocke were ordered to separate, with the threat of being sent to Boston for trial if they were found together.

George Garland and Lucretia Hitchcocke returned to court on April 1, 1673 and the justices again ordered them to separate and to post bonds for good behavior, Garland for fifty pounds, Hitchcocke for an unspecified amount. That summer, they returned to court on July 1 where Garland was accused of “Incorageableness in frequenting of the Company of Widow Hitchcocke to all advise & restraynt.”26 In contrast, Lucretia Hitchcocke was accused of fornication, the second such fornication charge levied in York County.

The first fornication charge was against George and Sarah Gray on July 2, 1672. Following the Grays’ conviction of fornication before marriage, they were ordered to pay three pounds and officers’ fees or receive ten lashes each. Other fornication trials from the same period carried similar punishments. Yet the following year, Hitchcocke had to pay ten pounds, or have twenty lashes, while Garland was to receive thirty-nine lashes and to pay a bond of fifty pounds to the County Treasurer on promise of his future good behavior. In addition, both had to pay court fees. It is likely that the severity of their punishments suggest the justices’ growing displeasure with the couple’s repeated sexual offenses.

The final mention of the pair appears on July 7, 1674 when they were threatened with trial in Boston. As there is no mention of them in Massachusetts Bay court records,

it is likely that the courts never carried through with this threat. This may have been due to their respective deaths in 1675, although there is no sound evidence for these reports.²⁷ Had Garland and Hitchcocke survived, they almost certainly would have stood trial in Boston. Sarah Mills’ 1676 marriage to Joseph Winnock of Black Point further suggests that she was widowed, as there are no records documenting an official separation between Mills and Garland.

The Garland/Mills/Hitchcocke trials provide vivid examples of sexual crime trials for repeat offenders in the Province of Maine, particularly as their punishments escalated from a simple “act of separation” to the severity of trial in Boston. However, they are also worth noting for their linguistic details. The Garland/Mills trials in the 1660s were for incontinency, while the Garland/Hitchcocke trials in the 1670s were fornication trials. As a result, George Garland straddled the dividing line in how sexual crime was defined in the Province of Maine.

The language used in these early trials offers some clues regarding the appeal of each term. As the Bonithon, Puddington/Gouch/ Burdett and Bond/Collens trials demonstrate, incontinency covered a multitude of sins. Courts could adjust charges and punishments as they saw fit. Depending on the needs of the justices, incontinency could suggest intercourse, possible rape, adultery, flirtation or potential bigamy. As Gilbert and Sullivan would write some two hundred years later, punishments had to suit the crime. In order for this to happen, it was necessary to know exactly what the crime had been. The Burdett/Puddington/Gouch trial provide one example of this form of legal thought. Each party was punished according to his or her actions and guilt. For all its versatility,

²⁷ Noyes, Genealogical Dictionary, p. 253. The Dictionary lacks sources for this information (an all too frequent habit).
incontinency disappeared completely from the Province of Maine court ledgers in 1675. Other common seventeenth-century sexual charges included light or uncivil carriage, lascivious behavior and too much familiarity, which disappeared shortly afterwards from the trial records. By 1695, Maine colonists were being tried exclusively on fornication charges.  

The linguistic transition taking place in Maine’s sexual crime trials occurred all over the English-speaking world as courts moved from using colloquial terms to describe sexual acts to the clinical formality of the professional legal trade. Rising population levels and shrinking need for agricultural labor in England had led to a greater emphasis on bastardy and child support in English sexual crime trials in the early seventeenth century. Concerns about illicit male sexual behavior had become a luxury few communities could afford. At the same time, overworked justices found themselves addressing more cases than they could handle. The rise in population meant that it was less likely the guilty couple’s neighbors were aware enough to provide the information necessary to decide between shades of grey concerning sexual activity. Using the more formulaic fornication charge required little in the way of evidence or deliberation while providing both conviction and promise of child support. Historian Martin Ingram’s examination of court records from the Winchester diocese in England between 1570 and 1640 demonstrates that prior to 1600, “such presentments as there were often included explanatory details... [while] later the charges tended to become less colourful [and more] routine.”  

28 See Chart Eight, “Maine’s Alternate Sexual Crime Charges by Decade, 1636-1718” in Appendix A.  
A cultural change occurring in the late seventeenth and eighteenth centuries may also have influenced the rise of fornication charges on both sides of the Atlantic, namely the concept of personal privacy. Cornelia Dayton’s essay “Turning Points and the Relevance of Colonial Legal History” argues that the decision “to withdraw certain matters of ‘private behavior from the purview of the courts . . . [indicates] a growing ethic of privacy, a desire among the genteel to place responsibility for moral behavior squarely within the middle class family.” Fornication trials required that fewer details be broadcasted from the court room. In time, courts eventually went so far as to remove sexual crime trials completely from the court room, at least for the middle and upper classes.

While population change explains the transition to fornication trials in England in the early seventeenth century, it does not explain the equivalent linguistic transition in Maine in the 1670s. Maine’s population had undoubtedly grown since initial settlement but it was still sparse, particularly in comparison to England. Historian Jonathon Chu estimates that Kittery, one of the largest towns in Maine, had a population of approximately one hundred adult males by 1670, with an overall population between four and five hundred. Even Boston, the largest town in New England with approximately eleven thousand inhabitants, paled beside London’s population of nearly five hundred thousand.

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Likewise, privacy was not particularly protected by the Maine courts. Abraham and Mary Bragdon Preble faced the court on charges of fornication before marriage on April 2, 1695. Abraham’s uncle was one of the court justices and Mary was from an equally prominent family. Nineteen years later, Abraham Preble, now the local sheriff, took his daughter, Mary Preble Bray, to court to face fornication charges with Samuel Bray. Both generations of the Preble family stand in contrast to the middle and upper class young women speaking privately with judges in their chambers described by Cornelia Dayton in New Haven, Connecticut. Even with the transition towards the more professional fornication charge complete by the early eighteenth century, Maine’s courts still reflected the traditions of a much older period. Gentility was a long time in coming to the colonial frontier.

Initially, couples accused of sexual crimes were ordered to publicly confess or to dress in a white sheet while standing in a public place, a punishment designed to humiliate but not harm recipients financially or physically. Over time, courts chose instead to offer guilty colonists the choice between paying a fine or being whipped. Here, the Prebles’ social status provided them with an advantage as they paid a fine of fifty shillings in lieu of five stripes each. After paying the fine, they were free to leave the court and continue their lives together in peace. Likewise, Samuel and Mary Preble Bray were given a choice in 1714 between paying thirty shillings or receiving seven stripes each. Although the records do not indicate their choice, it is likely that they chose to pay the fine. Less wealthy colonists, like George Garland and Sarah Mills, were whipped in front of their communities.

As Maine had neither a population explosion nor much in the way of concern for personal privacy, explaining the region's linguistic transition returns to the colony's tenuous political and legal position. Maine's initial rulers, Ferdinando Gorges and the Commissioners assigned by Charles II in the 1660s, took a benign disinterest in local affairs. The first Gorges' Commission in 1639 had charged justices to punish fornication rather than incontinency. If justices chose instead to use the vaguer charge of incontinency, that was their decision. In contrast, Massachusetts Bay Colony played a more active role, beginning in the 1650s, although this control was not institutionalized until the 1670s and 1680s.

Sexual crime trials in Essex County, the northernmost region in Massachusetts Bay, initially used the terms incontinency and fornication interchangeably, as did Plymouth, New Hampshire and Rhode Island colonies. Both Essex County and Rhode Island made the linguistic transition to fornication trials in the 1660s. The decision reflects their positions as growing colonies with close links to the commercial Atlantic world. As Maine's transition between incontinency and fornication trial took place in the 1670s, it seems likely that Massachusetts Bay inflicted pressure on the region to streamline its judicial system. In contrast, Plymouth and New Hampshire colonies did not change the language used in their sexual crime trials until the late 1690s, shortly after Plymouth was absorbed into Massachusetts Bay Colony in 1692.

In most places, including the southern New England colonies, the shift between these trials and the more clinical fornication trials was a gradual one, spanning decades rather than years. The continuing legal prominence of the Preble, Hammond, Frost, Pepperell and Wheelwright families reflects their willingness to improvise and to adapt to
new political regimes, including the new linguistic world of the 1670s. Historian Edwin Churchill describes the early Maine judicial system as "surprisingly vital... [with] a remarkable resiliency and adaptability while retaining [its] basic functions and vigor." However, their ability to maintain control over their rowdy populations remained under question well into the eighteenth century.

Beginning with the seasonal fishing camps in the early seventeenth century, colonial Maine was customarily described as a wild frontier, complete with doubtful sexual morals. Charles II’s Commissioners depicted the colony in 1668 as being without "any Government amongst them... some here are of opinion, That as many men may share in a woman, as they do in a boat." Cotton Mather’s 1702 Magnalia Christi Americana or the Ecclesiastical History of New England further condemned Maine colonists for caring more about fishing than religion. George Garland’s constant appearances in the Maine court system further support this image. No matter the legal threat, no matter the punishment, George Garland continued his sexual activities with Sarah Mills or Lucretia Hitchcocke. Death by misadventure in 1675 appears the only thing capable of stopping him as the Maine court system most certainly could not. Garland’s defiance is reinforced by the Williams family whose sexual misconduct trials spanned two generations and forty years.

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38 The published Maine Province and Court Records stop in 1727. Given the Williams family’s history, it is likely they continued to appear in court past that date. See Allen, Maine Province and Court Records, Vol. VI (Portland: Anthoensen Press, 1975).
The Williams family first entered the court records when Paul Williams was convicted for fornication before marriage with Catherine Lecornah in 1684. Williams’ whereabouts prior to purchasing land in the Spruce Creek district of Kittery in the early 1680s are unknown. Lecornah may have worked as a servant for the Hooke family before marrying Williams. Her last name suggests a possible French origin but there are no records documenting her background. If Williams’ record was clean prior to the trial, Lecornah’s was not. She had been convicted for conceiving a bastard child with Marke Roberts in 1680. The court ordered her to either pay a fine of twelve shillings or receive twelve lashes. For his part, Roberts was declared responsible for three shillings a week in child support. Whether or not Williams took on support of Lecornah’s bastard child is unclear. Lecornah gave birth to a daughter named Magdalene in 1688. It is possible she died in childbirth as Williams married a woman named Joanna Crocker between 1690 and 1693.

Paul and Joanna Williams dedicated their early married life to raising children and trouble alike. They had at least four children by 1702, including Paul Williams, Jr., born on October 23, 1695. The Williams were often cited in court for missing church on Sunday, a crime usually carrying a five shilling per person. When not tending her household, Joanna Williams took an active interest in the affairs of her neighbors. She was ordered on April 15, 1715 to pay thirteen shillings and eight pence in fees and costs for “Scandalizing Thomas Mannering & his wife [by] saying that . . . Mannering came home from Seay & Found a man abeed with his wife,” the equivalent of a modern day

39 Ironically given her name, Magdalene Williams was one of the few Williams family members not to be convicted for a sexual crime. She married Nathaniel Leach on December 23, 1708.
libel conviction. Finally, the Williams also took part in a long, bitter series of land disputes with neighbor Nathaniel Keene.

The Williams lived on the west side of Spruce Creek, a little below the John Shapleigh household. A nearby tract of land between the Shapleigh and Shepard farms was granted or sold to a series of owners during the 1670s. During this period, John Shepard tried repeatedly to acquire the land from its various owners. Trouble began in 1689 when Nathaniel Keene purchased the land from Robert Eliot of Portsmouth, New Hampshire. Eliot claimed his right to sell the land from a series of deeds dating back to Ephraim Crockett in 1672. Shepard claimed the purchase was illegal as the original deed disappeared during a Native American attack on Kittery in the 1670s. The court initially ruled in Shepard's favor but eventually reversed their decision in 1705 when the Crockett deed was found. Boundary disputes were a common problem in regions where land changed hands frequently and landmarks were apt to be plowed up or blown down. While this was certainly the case in Spruce Creek, its residents appear particularly cantankerous, even for New Englanders.

If court visits were a hobby for the Williams family, Nathaniel Keene elevated them to a vocation, spending more time in court than anyone else in the Province of Maine, although he did manage to escape sexual crime charges. Despite numerous charges against him, Keene served as a member of the Grand Jury for the Court of General Sessions in 1702, a position he used to his best advantage. The April 7, 1702 court records include a complaint filed by Nathaniel Keene against Joanna Williams for

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striking him with a piece of wood, an attack he described as unprovoked. The following court session, however, filled in the rest of the story. In the summer of 1701, Williams had seen Keene coming across her fields with a surveying party, bent on redrawing the line between their lands. After Keene had threatened her children with a stick, Williams protested and was thrown to the ground by Keene, where he tried to strangle her. She then defended herself with the stick described in Keene’s complaint. At this point, the noise attracted the attention of Williams’ neighbors, who later provided the necessary trial testimony regarding Keene’s attack on Williams and her need for self defense. The trial concluded by acquitting Joanna Williams for attacking Nathaniel Keene. For his part, Keene received a warning not to provoke trouble in the future, an admonition he flatly ignored.

The next twelve years were relatively calm ones for the Williams family, with only the occasional missing of church services warranting a court appearance. This changed when nineteen year old Paul Williams, Jr. began taking after his father. On realizing in the late fall of 1714 that she was pregnant out of wedlock, Abigail Hooper of Kittery, Maine, considered her options. Punishment was inevitable but child support could be expected only if the father of her child was also convicted. Her parents, Thomas and Elizabeth Hooper, could offer little in the way of financial support. Both former servants, they eked out a living on small farms, raising their children as best they could. On December 20, 1714, Hooper went to the house of court justice Charles Frost and named Paul Williams, Jr. as the father of her child.

Following customary procedure, Frost issued a joint warrant to the Sheriff of York County and the Deputies and Constables of Kittery to apprehend Paul Williams.
Constable Joseph Crockett found Williams but as he stated on the back of the warrant, “I had him in Custody about halfe an hour, and then the said Paul Williams did forcably break away from me.” After absconding, Williams ran to the house of neighbor Nathaniel Keene where Crockett waited for several hours outside the barred and shuttered house. Keene’s wife Sarah finally let him inside but Williams had already escaped again.

The next day, with Williams still missing, Frost issued another warrant ordering all available sheriffs and constables to “make Hue and Cry after him from Town to Town and from County to County.” This time, the search was successful and Williams was captured and ordered to attend court on January 4, 1715 to answer for escaping. The matter of Abigail Hooper’s pregnancy was allowed to rest until the following court session in April. For the moment, Paul Williams’ bid for freedom was the greater issue before the court.

Records for the January 5, 1715 session contain several documents connected to the Hooper/Williams trial. The first two are the warrants issued on December 20 and 21, 1714 by Charles Frost, which detail Williams’ escape and capture. A third warrant was then issued for Nathaniel and Sarah Keene, their daughter Deborah, Benjamin Berry and John Crocker, Williams’ maternal uncle, all five of whom had helped Williams escape. Deputy Sheriff Thomas Hayns indicated that he was able to find Nathaniel and Sarah Keene and Berry but not Deborah Keene or Crocker. The court had thus far spent two pounds, seventeen shillings and sixpence chasing after Williams and finding the Keenes and Berry, all of which Williams was held responsible for paying. Finally, a hundred pound bond was sworn to guarantee that Williams would return to court for sentencing in

42 All quotes from the Hooper/Williams trials. Court of General Sessions, January 4, 1715 and April 5, 1715. Published in Allen, Province and Court Records of Maine, Vol. V, ps. 149 and 160.
the spring. As the amount was more than Williams’ father, Paul Williams, Sr., could afford, it was shared between Williams, Keene and Benjamin Hutchings. The bond indicates that while Hutchings and both members of the Williams family were illiterate, Keene was not. After issuing a second warrant for Deborah Keene and Crocker, the court rested until the following session.

When the court next convened in April, John Crocker was ordered to sit in the stocks for one hour and pay court fees of eight shillings for refusing to assist in Williams’ capture. In contrast, Deborah Keene’s crime of helping Williams escape was punished by five lashes on the naked back or a fine of twenty shillings in addition to seventeen shillings in court fees. The role of the Keene family in this particular trial remains something of a mystery. Williams’ parents had feuded with the Keenes for years. Depositions for the 1702 trial accusing Joanna Williams of attacking Nathaniel Keene document the presence of her children, including Williams, at the event. Given this past history, Williams’ choice of the Keenes to help his escape a dozen years later seems odd, to say the least. Possible explanations can only be speculative. Like many teenagers, he may have been at odds with his parents and struck up a friendship with their antagonists.

For their part, the Keenes may have been willing to gamble on a fellow legal renegade. The severity of the punishment given Deborah Keene suggests she played a very active role in the escape. Perhaps she was hoping for a closer alliance with Williams for herself. Men willing to marry into Nathaniel Keene’s family were few and far between, and the Williams men appear to have possessed a certain rakish charm. Deborah Keene eventually married John Barter in 1720. It is unclear whether her sister Sarah married although she gave birth to an illegitimate daughter named Mary. The other
sisters, Abigail and Esther, remained unmarried, a rarity for women from propertied families in the early eighteenth century. A further comment on Nathaniel Keene’s relationship with his family comes from his sister Deborah’s 1711 will which left money to Esther and Sarah with the stipulation that their father not touch it.\textsuperscript{43}

Having settled Williams’ accomplices, the court now considered the initial accusation. As Abigail Hooper “Continu[ed] constant in her Accusations . . . that Paul Williams is the father of the sd Bastard Child of which She was Lately delivered,” the court ruled that Williams was guilty and so responsible for two shillings and sixpence weekly in child support. He also had to pay an additional two pounds, three shillings and sixpence in court costs. Finally, Hooper was convicted on fornication charges and ordered to receive seven lashes or pay a fine of twenty shillings in addition to the court fees of eight shillings.

It is also unclear whether Paul Williams and Abigail Hooper married. Kittery records document the birth of a child named Paul Williams in 1714 or 1715 with unknown parentage. Paul Williams, Sr. and his son Paul were the only Williams living in Kittery at the time. The child cannot be Paul Williams, Sr.’s son as Paul Williams, Jr. was still living. As Abigail Hooper was pregnant by Paul Williams, Jr. in 1714, it seems likely that the child was theirs.\textsuperscript{44} This would suggest a marriage between Williams and Hooper as the child carried his father’s name rather than his mother’s. There are no records of the marriage but marriages often did go unrecorded. Hooper also completely disappears from

\textsuperscript{43} Noyes, Genealogical Dictionary, p. 394.
\textsuperscript{44} Genealogist Everett Stackpole believed the child was the son of Paul Williams and his second wife, Margaret Hamons Williams. As his relationship with Hamons did not start until 1716, this seems unlikely to me. Everett Stackpole, Old Kittery and Her Families, p. 798.
the records at this time, a common fate for married women. Regardless, like Paul Williams, Sr.'s first wife, Catherine Lecornah, Hooper died shortly afterwards.

Paul Williams, Jr. was again charged with fornication on October 1, 1717, this time with Margaret Hamons. Williams was ordered to receive ten lashes on the naked back or pay a fine of thirty shillings as well as court fees of eleven shillings. The same court session accused Rachel Parsons of having a bastard child and ordered her to pay court fees of eight shillings and receive ten lashes or pay thirty shillings. A third trial accused John and Hannah Eldridge of fornication prior to marriage. After confessing, they were ordered to pay court fees of seven shillings each and receive ten lashes or pay thirty shillings each. While all four colonists received the same corporal punishment, there were discrepancies in the fees. By 1715, fines were becoming standardized. All of the colonists convicted on fornication charges in 1716 and 1717 paid the same amount of money, thirty shillings each.\(^5\) Fees, in contrast, were left to the court's discretion. The larger sum of money charged to Williams suggests the court was still making a point regarding his family's behavior. By that time, the Province of Maine had been recording Williams family transgressions for over thirty years.

Margaret Hamons, Paul Williams' new partner, was the daughter of Edmund and Jane Montesse Hamons, another family living in the Spruce Creek district of Kittery. A marriage date of October 25, 1716 was recorded for Paul Williams and Hamons, which suggests that the court followed the customary procedure of waiting until after the child was born for conviction and punishment.\(^6\) As there is no mention of punishment for


Hamons in the court records, her parents may have been able to settle the matter outside of court.

Edmund Hamons died around 1720, although his estate was not fully divided until several years later. Paul and Margaret Hamons Williams were left eight and ¼ acres of land in the 1728 land division and three acres, sixteen poles of land in the 1733 division, which may explain why Williams chose to marry Hamons. It does not, however, explain Hamons' relations with Williams, a mariner of doubtful reputation from a lower economic standing than herself. Their first child was a daughter named Margaret whose exact birth date is unclear. While she did not follow the family tradition of fornication before marriage, the family's reputation may have affected Margaret's marital options as she married Ithamar Littlefield, the illegitimate son of Mary Littlefield and William Harmon.

The actions of Paul Williams, father and son, echo one another. Both men were convicted on fornication charges at early ages. After their first wives died, father and son had second marriages, yet both men continued disputing with their neighbors, avoiding church on Sunday and displaying public intoxication depending on their given moods. Like John Bonithon who kept a "disorderly family" in the 1660s, the Williams' actions flew in the face of the maturity that marriage and parenthood were supposed to bring adult men. Nathaniel Keene was equally badly behaved. Historian Anne Lombard writes that colonial "manliness, which implied not only moral qualities but also physical strength and sexual potency, ... was not a result of his nature but of his transcendence of"
youth.” As colonial men matured and prepared to head their own households, they were expected to put aside any potential wildness from their youths. Paul Williams, Sr., unable to control either his son’s or his own actions, had clearly missed that transcendence. Like George Garland, Sarah Mills and Lucretia Hitchcocke, the Williams family trials support the assertion that Maine was a wild place, bereft of the virtues found in southern New England’s orderly households.

Another concern with Maine colonists was their potential exposure to the disorderly ways of their Native American neighbors. An October 1, 1695 court session accused Elisha Ingersoll of adultery with Dorothy, wife of Robert Saterly. Both parties were Kittery residents. Almost no information regarding the Saterlys survives, suggesting they were tenant farmers, unable to pass property on to potential heirs. Another indication of the Saterlys’ impoverished position was a trial deposition stating that Dorothy was hired to help card wool in the Ingersoll household, a low status job usually performed by orphaned teenagers. In contrast, Ingersoll’s father, John Ingersoll, ran a mill in Falmouth before purchasing a farm in Kittery in 1690. John Ingersoll’s 1714 will left the Falmouth farmstead to Elisha and one of his brothers.

A first reading of the trial records suggests a routine adultery case, complete to a plethora of depositions. Five of the deponents based their testimony on hearing Elizabeth

50 The trial records state that Elisha’s last name was Engerson. While I customarily used the first spelling/name to appear in the court records when referring to trial participants, an exception was made for this trial as all other references to the family refer to them as the Ingersolls, including depositions from two of Elisha’s siblings.
51 All quotes from the Ingersoll trial, General Sessions of the Peace, September 24, 1695, published in Allen, Province and Court Records of Maine, Vol. 4, ps. 46-47. See Marla Miller, The Needle’s Eye, Women and Work in the Age of Revolution (Amherst: University of Massachusetts Press, 2006) for further discussion of women’s hired work in the colonial period.
Crecy describe seeing “unsivell acksons . . . between Elisha Ingersoll and doryty Satarly” in late May of 1695. In contrast, the remaining deponents provided Ingersoll with alibis for the period described by Crecy. Ingersoll’s sister Mary stated that while Saterly had worked at the Ingersoll household, “I was never out of her compeny nether day nor neights except it was to stepe out for a boucket of water or the like.” John Ingersoll’s testimony provided similar information.

However, one of the depositions for the Saterly/Ingersoll case refers to Ingersoll’s position as a newly returned Native American captive. The exact date of Ingersoll’s initial capture is uncertain but he was clearly captured as a boy and returned to English society around the age of twenty. Deponent John Andorson states that he “came out of captivity with Elisha Engresell [around May 25, 1695] & kept company with him on tell: wee bouth came to pescatweay [around May 29].” Like Ingersoll’s siblings, Andorson was trying to provide Ingersoll with an alibi. He may have, however unwittingly, added fuel to the prosecution’s fire.

Deponent Thomas Starbord testified that Elizabeth Crecy had seen Elisha Ingersoll lying on a bed in the middle of the day and had “axt Him whether he was not a shamed to sleep that time of day.” Historian Neal Allen speculates whether Ingersoll was “to some extent weaned from English ways.” Based on their knowledge (speculative or otherwise) of lustful practices among Native Americans, it is possible that Ingersoll’s neighbors were

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more willing to believe Crecy’s accusations than they might have been otherwise.\textsuperscript{56} One after another, they all cite her stories as truth.

In the end, however, the justices declared Elisha Ingersoll not guilty, a decision based on lack of evidence, particularly as Elizabeth Crecy never testified in person.\textsuperscript{57} There are no surviving statements from either Ingersoll or Dorothy Saterly. Like rape, adultery required both witnesses and confessions to be prosecuted. The justices, did however, order Ingersoll to pay court fees of eleven shillings and sixpence. Requiring acquitted defendants to pay court fees was customary in the colonial period, particularly as it provided an indirect form of punishment. Had the defendant’s behavior not warranted the suggestion that he or she might be guilty, a court appearance would not have been necessary. Regardless of whether he was guilty of adultery, Ingersoll was held liable for his potential acculturation among the Abenaki.\textsuperscript{58}

The question of whether Maine was a wild, lawless frontier remains an important one for modern historians. Historian Charles Clark’s \textit{The Eastern Frontier} supports both the 1668 report from Charles II’s Commissioners and Cotton Mather’s \textit{Magnalia Christi Americana} by emphasizing Maine’s fragile morals and even more fragile coastal communities. Perhaps a result of being one of the first historians to publish a major work on northern New England, there is a defensive quality to Clark’s writing. If Maine was a


\textsuperscript{57} Elizabeth Crecy’s role in the trial remains a mystery. She never testified in court and Neal Allen notes that “a warrant [was] issued by William Pepperell, dated 22 July 1695, ordering the sheriff to hold her in jail for her refusal to find sureties for her appearance in court.” (Allen, \textit{Province and Court Records of Maine}, Vol. IV, p. 46). As Crecy married in 1702 and gave birth to her last child in 1718, she was probably in her late teens at the time of the trial. No connection between the Crecy and Saterly families has been established.

\textsuperscript{58} See Kupperman, \textit{The Jamestown Project} for further discussion of difficulties experienced by ransomed captives on both sides of the Euro/Native American conflict.
wild place, he argues, it was not necessarily the fault of the people living there. The changing governments and the scattered settlements, as opposed to the carefully laid out towns of southern New England, caused instability. Historian Edwin Churchill’s “Too Great a Challenge: The Birth and Death of Falmouth, Maine, 1624-1676” contested Clark by arguing that the negative accounts were largely propaganda, used by outside political entities with colonial ambitions of their own in Maine.\textsuperscript{59} The Eastern Frontier was republished in 1983, with a new introduction. Clark observed that while Churchill made some good points, he “only did limited damage, as I see it, to the overall argument developed in this book.”\textsuperscript{60} By and large, the “rowdiness” as Churchill put it, remained intact in Clark’s work.

Given that Charles II’s Commissioners and Cotton Mather were men with little or no first hand experience with the colony, it is necessary to return to Maine’s court records to assess whether the colony matched the descriptions. And the image presented by the court records is, indeed, a wild one. Paul Williams Jr.’s ability to evade justice for thirty hours in 1714 made his trial a particularly sore spot for the York County authorities. A prisoner breaking loose half an hour after capture did not speak well for the colony’s ability to maintain law and order. Nathaniel Keene was known to use physical force when dealing with constant boundary disputes. Likewise, the comings and goings of released Native American captives suggest a society in which nobody was certain of their neighbors’ whereabouts. On the other hand, the trial records also document that York County authorities were eventually able to apprehend Williams, place him on trial and punish him with an endless succession of fines, fees, bonds and whippings. Most land

\textsuperscript{59}See Churchill, “Too Great a Challenge: The Birth and Death of Falmouth, Maine, 1624-1676.”
\textsuperscript{60}Clark, The Eastern Frontier, p. xv.
conflicts between Keene and his neighbors took place in the court room, carefully mediated and paid for by a lengthy stream of fees and fines. From the beginning, Maine had laws regarding all forms of conduct, including sexual crime. In addition to providing for local government, Gorges' 1639 Commission had, after all, spelled out the crimes for which colonists could be held accountable. The reality, in contrast to the image, was that if Maine settlers endlessly flouted the law, the law was always one step behind them.
Chapter Four:

SHADOW AND MYTH:
SEXUAL CRIME IN PLYMOUTH COLONY

A ship called the Mayflower entered a harbor on the Atlantic seaboard in November of 1620. On board were 102 passengers, of varying origin, and the sailors who brought them there. They looked at the coastline and saw late fall in that part of the world: grey and shadowy, with the occasional flame of a red berry. Three hundred years later, accounts of their colony remain caught between light and shadow. The moment of landing on Plymouth Rock and the harvest celebration between English settlers and their Native American neighbors are industries unto themselves, driven by finances and myth alike. It was possible in 2008 to win a visit from Plimoth Plantation’s historical interpreters at your house on Thanksgiving day.¹ Thousands of visitors travel to Plymouth each year to visit the Pilgrims, many claiming to be direct descendents of the Mayflower passengers.

Stepping beyond Plymouth in 1620 is another matter. For all the knowledge of the colony’s first half dozen years, the later decades are difficult to research. Court records are sparse, genealogical accounts sparser still. The Mayflower passengers and their descendents are well documented. The thousands of other people who moved to Plymouth in the seventeenth and eighteenth centuries go almost unnoticed in the records. Aside from John Demos’ classic A Little Commonwealth: Family Life in Plymouth Colony and an unpublished dissertation written by John Navin in 1997, the colony has

received little or no scholarly attention. There are dozens of popular histories, with Nathaniel Philbrick’s *The Mayflower and the Pilgrims’ New World* as the most recent addition, but they all seem to tell the same myth-laced story. Establishing any sense of life in seventeenth-century Plymouth is an uncertain process. What is known is extraordinarily vivid, given the nearly four hundred year time gap. The unknowns, however, are like walking through quicksand. This dichotomy is equally true of the colony’s sexual crime trials. Court records provide solid evidence of names and dates and events. Yet documented sexual crimes were only committed in Plymouth Colony by those colonists for whom the least information survives.

The larger Anglo-American world provided the initial impetus for Plymouth’s sexual crime trials, just as it did in the other New England colonies. Plymouth and the other New England colonies may have differed from England in their determination to try such crimes solely in secular courts, rather than both ecclesiastical and secular courts, but they shared a desire to regulate society through the use of the court. Intercourse outside the bounds of marriage, bastardy and the more severe acts of rape, adultery and incest were crimes in Plymouth, just as they were everywhere else. Some 210 Plymouth inhabitants from a wide range of social, economic and religious backgrounds were tried for sexual crimes in the years between 1636 and 1715. While these numbers were

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5 See Chart Nine, “Plymouth Colony Charges, 1636-1718” in Appendix A. Historian Bradley Chapin estimates that sexual crime trials comprised 22.8 percent of all Plymouth trials between 1633 and 1660,
substantially less than in Essex County during the same period, Plymouth also had a much smaller population.  

Like all legal codes of the period, Plymouth’s *General Fundamentals* established distinctions between capital and criminal sexual offences, declaring “sodomy, rapes, and buggery” to be “capital offences lyable to death.” Adultery was listed as a capital offence but no colonist was ever executed for adultery. Incest was not listed in the 1636 legal code but the two Plymouth Colony incest trials make clear that it was a capital offence. During the seventy-eight year period under discussion, Plymouth Colony had three sodomy charges. There were also sexual assault charges for attempting to place a skunk beneath a young woman’s skirts “in the manner of a midwife” and for committing “buggery with a mare in the highest nature.” There were also six adultery trials, two rape trials and two incest trials. Aside from a higher rate of bestiality trials than other New England jurisdictions, the ratio of extreme sexual crimes to ordinary sexual crimes in Plymouth Colony was comparable to neighboring jurisdictions.

Where Plymouth Colony differs from its New England counterparts was the colony’s more ordinary sexual crime charges. Colonists in Essex County, the Province of Maine and Rhode Island Colony were charged most often with fornication, defined in all early modern courts as sexual intercourse outside of marriage. In contrast, half of the Plymouth sexual crime sexual crime trials, 105 in total, were for charges described as

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with approximately 1.81 trials per year for each thousand people. Small as these numbers are by modern standards, they were higher than comparable rates in Massachusetts Bay and Virginia colonies. Bradley Chapin, *Criminal Justice in Colonial America* (Athens: University of Georgia Press, 1983), p. 126.


“unclean behavior” or “lascivious carriage,” usually construed to mean sexual contact but not necessarily intercourse. In contrast, only fifty-two Plymouth colonists were tried for fornication.

Alternate sex crime charges in Essex County comprised only approximately one sixth of the total trials. While Maine had a higher ratio of alternate charges than Essex County, the practice came to an abrupt halt in the 1670s when the colony was absorbed into Massachusetts Bay. In contrast, Plymouth continued to use a wide range of alternate sex crime charges into the early eighteenth century. The last trial with an alternate charge took place in Maine in 1695, Plymouth’s last trial of this kind was not until 1704. Like Essex County, approximately one sixth of all Rhode Island trials were for alternate sex crime charges, although the last one appeared in 1717. New Hampshire had even fewer.

As in the Province of Maine, the alternate sexual crime charges allowed judges to pinpoint what had transpired between the defendants prior to the court hearing. In small communities, where most people knew each other, this level of detail was both possible and useful. As populations grew and courts had more trials to process, it became more efficient to use fornication as a general charge for most trials. While this was the case in courts all over the Anglo-American world, the Plymouth court records left few immediate clues as to why they continued using alternate sexual crime charges throughout the seventeenth century.

Particularly when compared to Essex County, Plymouth court records left little documentation beyond charges, conviction and punishment. Only thirty-four trial records provide further information, and this is often quite sparse as well.⁹ Unlike Essex County

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⁹ See Chart Ten, “Plymouth Colony Charges With Depositions, 1636-1718” in Appendix A.
and the Province of Maine, only one Plymouth trial had depositions, the 1669 incest trial for Christopher Winter and his daughter, Martha Winter Hewett. One detail, however, is telling. The ratio of charges for the more fully documented trials mirrors the breakdown of the complete Plymouth trial charges. Fifteen of the well documented Plymouth Colony sexual crime trials were for alternate charges, eleven for uncleanness, three for lascivious behavior and one for lewd carriage. Again, the Plymouth Court emphasized the alternate sexual crime charges, rather than the more standard fornication charges.

Thirteen trials were for more serious crimes, with two rape trials, three adultery, three bestiality, three sodomy and two incest trials. The final nine well documented trials charged six colonists with fornication and three with bastardy or paternity. Close examination of these capital and criminal trials provides a detailed picture of the motives and the priorities of Plymouth leaders when addressing sexual misconduct.

An early example of an alternate sexual crime trial in Plymouth Colony was the March 5, 1657 hearing for Katherine Aines and William Paule. Both defendants lived in Taunton, some twenty-five miles west of Plymouth. Aines, the wife of Alexander Aines, was convicted for “unclean and lascivious behavior” with Paule. For his part, Paule was convicted for “unclean and filthy behavior” with Aines. She was whipped at both Plymouth and Taunton and had to wear a B, presumably for bawdy behavior, cut from red cloth on her right arm. For his part, Paule was whipped as well as being responsible for paying court fees.

While the trial’s first stage addressed Aines and Paule’s actions, later stages tackled the larger cultural and economic issues posed by the couple. Katherine Aines’

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husband was missing from the colony at the time of her adultery with William Paule. When Alexander Aines returned to Plymouth, he was called to the court room as a defendant rather than as witness or accuser. The court convicted him for “leavuing his family and exposing his wife to such temptations” and ordered him to be whipped as well. As Aines could not afford to pay either his or his wife’s court fees outright, the court allowed him to pay the money in weekly twelve pence installments.

The court’s decision to punish both husband and wife offers a direct comment on seventeenth-century English definitions of sexuality and marriage. Common belief held that women were naturally sinful, with Eve cited as the first example. Marriage contained this lust while simultaneously creating the households that served as the foundation for Anglo-American society, particularly in family oriented New England.\(^{11}\) As a result, Alexander Aines was held partially responsible for his wife’s actions. Had he been attending to his duties, she might never have been tempted by William Paule.

The same decision also provides a comment on their backgrounds. Alexander Aines was born in Scotland in the 1630s. At the age of eighteen, he fought against Oliver Cromwell at the Battle of Dunbar and was captured on September 3, 1650. Following a forced march to Durham, England, he was sent to the Saugus Ironworks in Essex County, Massachusetts, to work as an indentured servant. After Aines was freed in 1656, he moved to Taunton where he married Katherine who was probably captured by Cromwell in Ireland. Less information survives about William Paule’s background but the trial

records note that he was a “Scotchman,” suggesting that he may also have arrived in the New England colonies as a political captive.  

Plymouth officials most likely saw the trial as a means of indoctrinating all three players in proper, Anglicized behavior. English unease with the inhabitants of both Scotland and Ireland dated back to the medieval period and continued throughout the colonial period. Just over a century later, Stephen Salisbury would observe in a letter that his sister “Betsy undervalues herself so much as to throw herself away to a Scotch Man for it is a rare thing to find a Scotchman that is worthy of the name of a True Gentleman.” A few years later the trial could be deemed a success as Alexander and Katherine settled down, produced four children and eventually moved to New York. For his part, William Paule married Mary Richmond in 1666, daughter of John Richmond, one of the first English settlers in Taunton.

Alexander and Katherine Aines and William Paule are, in some respects, extreme examples. As former residents of Scotland and possibly Ireland, they would have been held in suspicion regardless of where they had settled in the English colonies. Nevertheless, their position in Plymouth Colony as cultural outsiders is worth noting. From its beginnings in the early seventeenth century, Plymouth was always a colony of settlers with different agendas and different plans for the world. Regardless of the crime committed, all of the Plymouth Colony well documented trials involved colonists considered to be cultural outsiders by Plymouth’s political and judicial leaders.

The group who founded Plymouth Colony in 1620 were members of the religious group known as the Separatists or Pilgrims. Determined to separate from the Anglican church, they moved first to Leiden and later to North America in their search for religious freedom and financial stability. While they agreed to the presence of non-Separatists in their North American colony for practical reasons, tensions between the two groups were a constant presence throughout the seventeenth century. William Bradford, who later became the colony’s second governor, wrote of the non-Separatists that “it was thought meet and convenient . . . these strangers [should] go with them.” There were not enough of the Separatists from Leiden to succeed alone and, for the moment, it had mattered only that both groups be willing to gamble on the unknown.

In time, a cold November arrival in North America bound the *Mayflower* passengers together. They were hundreds of miles north of where they were supposed to settle. They owed well over a thousand pounds to the London bankers who had funded their voyage. In order to survive and pay off their debt, some cohesion was necessary. The signing of the Mayflower Compact was the first step towards this goal. The high death rates of the first winter swung the colony even closer towards some level of unity. The *Mayflower* had left England with approximately forty Separatists on board compared to sixty non-Separatists. For the most part, the non-Separatists were indentured servants and children, societal members traditionally lacking in political standing. In contrast, the Separatists were composed of families, each with its own head of household. By early spring, there were five living Separatist heads of household and five living non-Separatist

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16 See Navin, “Plymouth Plantation.” In some cases, particularly with the colonists who died in the first winter, it is difficult to tell the full number of Mayflower passengers with Separatist connections.
heads of household. In addition, the deaths of the Separatist Carver family left their non-Separatist servant John Howland as a head of household in his own right. The spring of 1621 found Plymouth functioning with a hard won sense of political balance between its male heads of household, a balance quickly shattered by fluctuating numbers of new settlers.

The ship *Fortune* arrived from England in late November of 1621, carrying thirty-six new settlers and a land patent granting Plymouth leaders the authority to make laws for the colony. The next year saw the arrival of the *Anne* and the *Little James*. These ships brought two types of settlers, more Separatists from Holland and a new variety known as the “particulars.” The title referred to their crossing the Atlantic “on their particular,” using their own funds to make their journey. Plymouth’s leaders were required to support them as they settled into the colony but struggled to maintain jurisdiction over their actions. These new settlers were also able to work for themselves rather than help pay off the colony’s debt. They were, however, barred from taking part in the colony’s government and the growing trade with local Native Americans.¹⁷

Familial bonds allowed most new Separatist colonists to settle easily into the new colony. Fear and Patience Brewster joined their parents and brothers who had previously sailed on the *Mayflower*. Alice Southworth quickly married William Bradford, whose wife Dorothy died shortly after arriving in North America. In contrast, the new non-Separatist colonists had few reasons to assimilate. Unlike the original English colonists, they shared neither the common bond created by the first winter in Plymouth nor the debt owed by all surviving *Mayflower* passengers. For their part, the original English colonists

did little to reach out to the new settlers, preferring instead to build their ties to the Separatists in power.\(^{18}\)

Growing divisions between these groups reached a boiling point in 1624 when Anglican minister John Lyford and colonist John Oldham sent letters home to England complaining about the colony and its leaders. Following detection by William Bradford and the other colony leaders, both Oldham and Lyford were expelled from Plymouth.\(^ {19}\) Several other colonists fled to growing settlements in other parts of New England or south to Virginia. With almost no exceptions, the colonists leaving came on the *Fortune*, the *Little James* and the *Anne*, rather than the *Mayflower*. The exodus may have relieved immediate tensions within Plymouth town in 1625 but it pointed to problems facing the colony in the 1630s.

Despite the best efforts of its leaders, Plymouth still did not have a formal charter, leaving the colony vulnerable to interference from the English crown. Settlements opposed to Plymouth’s rule were emerging within the colony, in particular Thomas Morton’s notorious Merrymount.\(^ {20}\) Plymouth was still in debt to Thomas Weston and the other Adventurers. The founding of Massachusetts Bay Colony to the north by the Puritans was opening up new markets for livestock and corn but there was always the chance that the more powerful colony would attempt to swallow up smaller, poorer Plymouth. Expansion seemed the only solution to these problems. Better farmland access meant more agricultural products, which would help pay off their debts. Creating officially sanctioned towns would properly expand the colony, putting them in a better

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\(^{18}\) See Navin, “Plymouth Plantation.”

\(^{19}\) William Bradford seized the letters and copied them to use during a public confrontation with Oldham and Lyford, who were then expelled from the colony. See Eugene Stratton, *Plymouth Colony, Its History and People, 1620-1691* (Salt Lake City: Ancestry Press, 1986), p. 26.

position to handle both England and Massachusetts Bay. It would also allow them to combat the Thomas Mortons of the world. But how to attract new colonists for these towns? All Separatists planning to join their North American counterparts had already arrived in Plymouth by 1630. If Plymouth was going to expand, colony leaders needed to once again look beyond the boundaries of their own religious group.

Recognizing the need to attract new colonists, Plymouth decided to maintain its policy of limited religious toleration. Unlike Massachusetts Bay, voting rights were not decided by church membership, although attendance was still a requirement. The colony did not welcome Jews, Catholics or Quakers but accepted Puritans and Anglicans. They also tended to be better heeled, always an asset to a struggling colony. Scituate, located some twenty miles north of Plymouth, was one such town. The area's rich farmland and easy access to the sea attracted colonists more affluent than most in Plymouth Colony. Most of its early settlers were a group of Anglican men from the region of Kent in England. Commonly known as the “men of Kent” or the “Kentish men,” their loyalties were to themselves rather than Plymouth Colony.  

Similar patterns marked the settlement of other Plymouth Colony towns. Sandwich was settled by a group of Puritans from Saugus, Massachusetts. Taunton was founded in 1639 by wealthy Elizabeth Pole, whose father had been knighted in 1601 by King James. Necessary as these settlers were for the continuation of Plymouth Colony, they sometimes felt like the death knell of the colony’s ideals to its original leaders. William Bradford mourned that “thus was this poor church left, like an ancient mother grown old and forsaken of her children . . . she that had made many rich became herself poor.”  

Plymouth remained home to the colony’s

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21 Deane, History of Scituate, Massachusetts, p. 8.
22 Bradford, Of Plymouth Plantation, p. 344.
court but it was increasingly strained by addressing settlers now living twenty and thirty miles away. 23

These tensions are echoed in a series of trials involving Scituate colonists in the 1670s. Like many seventeenth-century women equipped with unreliable methods of birth control, twenty-nine year old Mary Jenkens Atkinson’s luck had run out. She had given birth too early in her marriage for conception to have occurred after the wedding, and she had to stand trial. Adding to her dilemma was the continued absence of her husband, Marmeduke Atkinson. Like Alexander Aines, he had disappeared from Plymouth Colony. Mary was the daughter of Edward Jenkens, a respected Scituate settler and one of the Anglican “men of Kent.” 24 In addition to farming and surveying, Jenkens ran a small ordinary in his house.

Mary Jenkens married Marmeduke Atkinson in 1668, a mariner whom she probably met at her father’s ordinary. Shortly after the wedding, Marmeduke Atkinson left on a sea voyage, having no doubt explained to his already pregnant bride that a wife and child required more income than he could provide in Scituate. Two years later, when Atkinson went on trial on October 29, 1670 for conceiving a child before marriage, there was still no sign of him. The court fined her three pounds, which her father paid. The child was most likely a boy named Joseph as a Joseph Atkinson served in Governor Phip’s 1690 expedition to Quebec, and the name Atkinson otherwise did not exist in Scituate. 25

24 Samuel Deane, History of Scituate, Massachusetts, From Its First Settlement to 1831 (Boston: James Loring Press, 1831, p. 8).
Mary Atkinson and her child were still living with her parents in the early 1670s. During this time, she became acquainted with twenty-four year old John Bucke, son of neighbor Isaac Bucke. Like Edward Jenkens, Bucke was a prosperous member of the Scituate community, having arrived in the early 1640s. During the course of his life, he served as town blacksmith, sheriff and was an active member of the local militia. If he saw the inside of a court room as a defendant more often than his neighbors, it did not affect his standing in the colony. In 1655, he was accused of “unworthily dismean[ing] himself on a militia training day.” The colony records do not describe his actions but genealogist Byron Buck theorized that Bucke supported Scituate militia officers opposed by Plymouth Colony officials. The charges were eventually dropped and Bucke’s twenty-five shilling fine remitted. By the 1670s, Bucke and his wife, Frances, could look forward to the marriage of their only child. Instead, they found themselves supporting their son John through a difficult court trial.

When Mary Atkinson became pregnant with John Bucke’s child in 1671, there was still no sign of Marmeduke Atkinson. While there was no doubt that Atkinson and Bucke would stand trial for conceiving a bastard child, the case posed certain challenges to the Plymouth General Court. Technically speaking, the charges should have been adultery. Mary Atkinson was married to Marmeduke Atkinson. On the other hand, Marmeduke had been missing since the wedding. If he had deserted his wife or died, the charges could be changed to fornication, which carried a less stringent punishment. If they were guilty of fornication, they would be whipped or fined, depending on their finances or preferences. If the court decided the charge was adultery, the punishment would be more severe, with a fee in pounds rather than shillings and a harsher

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26 Bucke, Isaac Bucke of Scituate, Part I, Section 1.5., p. 3.3.
whipping. Regardless of circumstances, financial support needed to be arranged for the child’s upkeep. Due to the serious nature of the trial, the decision was put to a jury rather than the justices who customarily decided such cases in Plymouth Colony.

Recognizing the challenges facing his daughter, Edward Jenkens took action on his own and filed a divorce petition for her. Marmeduke Atkinson had been gone for three years and was unlikely to return. In addition to wanting his daughter convicted for fornication rather than adultery, he wanted her free to marry again. While this would save Jenkens from supporting Atkinson and her children, his actions suggest equal concern for his daughter’s overall welfare.

Under certain circumstances, divorce was allowable in the New England colonies. Couples had to clearly demonstrate bigamy, willful desertion, adultery or impotence to a generally unsympathetic court of law. Bigamy and desertion were relatively easy to prove and most successful divorce cases involved such situations. Desertion was defined as three years of neglect of duty or seven years absence. In most cases, colonists given divorces for bigamy or desertion were granted the right to marry again. Demonstrating adultery or impotence as grounds for divorce required personal testimony and was much harder to prove. Colonists granted divorces in these latter cases were rarely granted the right to marry a second time.28

The conviction for the October 29, 1671 Atkinson/Bucke trial is one of the longer entries found in the Plymouth Colony records. Faced with an impossible decision, the jury hedged, stating as it is “uncertaine whether the husband of the said Mary Atkinson is

27 Another punishment option was to order the couple to wear badges with the letters AD in public, a punishment used in the adultery trial for Anne Linceford and Thomas Bray in 1641. See Stratton, Plymouth Colony.

or was surviving at the time when the said acte was committed, they will suspend the action of the law of adultery . . . until that can be knowne." Consequently, Mary Atkinson and John Bucke were convicted on fornication charges but the punishment was unusually stiff, requiring both parties to pay fines of ten pounds. If Marmeduke Atkinson ever appeared again, the case would be reopened. Edward Jenkens’ attempt to have his daughter divorced from her husband failed outright. 

Four years later, Jenkens again brought the divorce case before the Plymouth Court. After much deliberation, the Court decided that Marmeduke Atkinson “hath absented himself from her the full terme of seven years and more, neither coming att her nor provideing for her,” the terms for a legal desertion. In an unusual move, the court refused the divorce petition but granted her the right to marry again, rendering her divorced in all but name. Mary Atkinson and John Bucke’s relationship appears a fleeting one as they did not marry at this time. Whether this was relief or burden for their parents was not documented.

Very little is known about John Bucke’s later life. He did not marry, an unusual decision for a seventeenth-century man from a comfortable family, and died around the age of thirty. Marmeduke Atkinson did not return to Scituate and nothing is known about his life after his 1668 departure. For her part, Mary Atkinson achieved domestic stability with her marriage to William Cooke in 1690. Edward Jenkens’ 1699 will left Atkinson forty shillings with the instruction that it be used during her lifetime. After her death, it went to her daughter, Ruth Cooke. He also left a granddaughter named Mary Jenkens five shillings. As Jenkens had only one son, who had no daughters named Mary, and

29 All trial quotes from the Atkinson/Bucke trial, Plymouth Colony General Court, March 1, 1675, published in Shurtleff, Records of the colony of New Plymouth, Vol. 5, p. 211.
illegitimate children by law had their mother’s surname, Mary Jenkens probably was John Bucke and Mary Jenkens Atkinson’s daughter. If this was the case, Jenkens was one of the few colonial New Englanders to mention an illegitimate descendent in his will. This overall sense of generosity is supported by an additional note specifying a sum of money to provide bread and beer at his funeral.

Certain parallels can be drawn between the Aines/Paule trial and the Atkinson/Bucke trial. Both involve married woman committing some form of infidelity. The difference between them was Mary Atkinson’s pregnancy. Absolute proof of sexual intercourse drove the court to decide whether Atkinson had committed adultery or fornication. Nevertheless, the Aines’ trial points back to the high rate of trials with alternate sexual charges in Plymouth Colony. Unless a child was conceived, there was no absolute way of proving that sexual intercourse had taken place. The high rate of alternate sexual crime charges in Plymouth suggests that Plymouth officials were unwilling to give colonists the benefit of the doubt. Predominantly using fornication charges would have limited them to cases where intercourse could be proven. Using alternate sexual crime charges gave them a wider range of behavior that could be prosecuted, a factor they took full advantage of.

A similar trial surfaced the following year. On January 17, 1672, Mary Churchill of Plymouth was eighteen years old, unmarried and pregnant, a fact she had just confessed to Thomas Prence, Plymouth’s governor, and Mr. Constant Southworth, another colony official. She was certain that Thomas Dotey, a local fisherman, was the father as she had “carnal copulation with him three several times... on the fifteenth of

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30 See Bucke, *Isaac Bucke of Scituate*, Part. II, p. 3.4
31 This is the only time an illegitimate child is mentioned in any of the wills consulted for the dissertation. Likewise, I saw no other references to money providing for food and drink at the funeral. See Benjamin Hobart, *History of the Town of Abington* (T.H. Carter and Son, Boston, 1866) for the full text of Edward Jenkens’ will.
Following Sergeant Ephraim Tinkham's confirmation that he had found Dote in the Churchill household on August 8, 1671, it appeared likely that Churchill's charge would stick. Probably hoping to avoid arrest, Dote left shortly after Churchill's confession on a midwinter fishing voyage.

Like Mary Atkinson before her, Mary Churchill stood trial alone and was convicted on fornication and bastardy charges on June 5, 1672. The court ordered her to pay a fine of six pounds which her brother, Joseph Churchill, paid as well as providing the surety for the trial. Undaunted, Mary Churchill announced that Thomas Dote was still financially responsible for their daughter Martha. Never ones to allow anyone to escape financial responsibility for their actions, the Plymouth Court allowed her to sue Dote in absentia. On October 30, 1672, they awarded her Thomas Doty's possessions, which largely consisted of one-third ownership of a boat. Whether or not Dote had absconded on the boat in question is unclear. Fortunately for Churchill, Dote returned to the colony in 1673 and the couple married within the year.

As was the case for many unwed mothers in the colonial period, Mary Churchill's father, John Churchill, died some ten years before the trial. The cause of his death is unknown but probably came as a surprise since he was only in his mid-forties. Churchill's estate allowed his wife and children to remain in the family home but left money only to his wife and older children. His will pleads that "if his wife could spare it, such of his children as have nothing in particular given them should have what is left, in

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equable portion, to equalize what is given them." Mary was one of the younger children left dependent on the good will of her older siblings and mother. Her brother’s willingness to pay her court fees indicates that her family did, eventually, provide her with some financial support. For his part, Thomas Dotey’s family background was less respectable. Dotey’s father, Edward Dotey, was a Mayflower passenger who arrived in the colony as an indentured servant to Stephen Hopkins. During and after his indenture, Edward Dotey came in frequent conflict with the law. Thomas Dotey had an equally troubled history. For Dotey and Churchill alike, marriage to each other was probably the best option available. Sadly for Churchill, she died giving birth to their second child in 1675.

While absent men would have been a problem anywhere in the early modern world, they clearly struck a sorer spot for Plymouth officials than in neighboring colonies. Alexander Aines’ temporary absence and Marmeduke Atkinson’s permanent one left their wives with neither protection nor the ability to resist temptation. In addition, their disappearances challenged one of the more important elements of the early modern household. Under the supervision of the male head of household, household members worked together to provide the economic resources necessary to support them all. While Katherine Aines’ financial circumstances are unclear from the records, Mary Atkinson had to live with her parents after her husband deserted her. Thomas Dotey’s absence left his lover without the support she needed to care for their child. In turn, the need for financial resources surfaces frequently in the workings of Plymouth Colony.

Unlike Plymouth, the Puritan colonies of Massachusetts Bay and Connecticut obtained their own funding prior to arrival in North America. Both colonies had charters,

allowing them to maintain an official position in England and to impose their own rules (albeit not ones contrary to English law). Likewise, the less extreme religious stance of the Puritan faith generated more converts than the Separatists. Unlike the Separatist faith, which had literally sundered itself from the Anglican church, joining the Puritans did not require chancing treason charges. Between 1630 and 1640, the years of the Great Migration, approximately ten thousand Puritan settlers moved to New England, ready to take part in the new society. In contrast, the Separatists in Plymouth numbered only a few thousand. Thus, Puritan leaders exerted greater control over their populations from the very start. Colonists fleeing from Plymouth gambled that the colony would not waste its fragile resources searching for them. In contrast, colonists fleeing Massachusetts Bay or Connecticut knew they stood a better chance of being returned for trial.

Some Essex County women claimed that their children were fathered by a "stranger" or a mariner but none of their trials were documented beyond conviction and punishment. Only one Essex County trial involves a missing husband. In contrast, the Province of Maine faced the opposite problem with this particular issue. The frontier region of northern New England must have seemed an ideal haven for men abandoning wives in England or the better established colonies to the south. Thomas Read and Elizabeth Brookes were convicted in the York County Court of General Sessions in 1717 on fornication charges. Reed had previously fled from Braintree, Massachusetts, leaving a wife and two children behind. For all that Maine appeared a trackless frontier, colonists hoping to flee unwanted commitments there were probably startled by the extent of the colony's court system.
Plymouth Colony also faced other challenges in North America. The colony lacked the deep harbors of Boston and Newport, making it difficult for Plymouth to establish the trade routes that allowed their eastern neighbors to flourish. During the Great Migration of the 1630s, most Plymouth inhabitants earned a living by selling produce and farm animals to Massachusetts Bay and Connecticut. The end of large scale migration in the early 1640s led to a rapid fall in prices, leaving many families strapped for cash. Faced with the challenge of supporting a family on rapidly dwindling resources, some men chose simply to leave Plymouth in the hope of finding new lives and new livelihoods. The fact that non-Separatists figured so heavily in Plymouth Colony’s ordinary sexual crime trials suggests the colony’s active attempts to keep tabs on the strangers in their midst, despite their financial struggles. Nevertheless, these trials were, by all accounts, fairly benign. Aside from child support concerns, the daily tenor of Plymouth society would not have been disturbed by them.

Nevertheless, evidence suggests that Plymouth leaders still drew connections between sexual misconduct and cultural/religious deviation. While the court records barely mentioned the 1642 conviction of Thomas Granger for intercourse with a mare, a cow, two goats, five sheep, two calves and a turkey, William Bradford’s Of Plymouth Plantation described Granger’s trial and eventual punishment in detail. Both Granger and the animals concerned were killed, following Biblical law. Bradford followed his description of this trial and execution with a discussion of sexual misconduct in Plymouth. Since it was intended to be a godly colony, Bradford questioned how it was possible that “so many wicked persons and profane people should so quickly come over
into this land.” Bradford’s explanation echoed the challenge facing the Leiden
Separatists in 1620. They were poor and the men transporting them to Plymouth needed
additional colonists able to pay their own way. Once established, the colony needed labor
to clear land and build houses, which usually came in the form of indentured servants. As
a result “the country became pestered with many unworthy persons who, being come
over, crept into once place or another.” The following series of trials would seem to
support Bradford’s concerns. Ranging from incest to rape, they all involved non-
Separatist colonists.

Colonial New Englanders defined incest as intercourse between father and
daughter, uncle and niece, brother and sister. Whether intercourse between cousins was
considered incestuous is unclear from the records. Unlike the Catholic church, they do
not appear to have regarded intercourse between in-laws as incestuous. The first of the
Plymouth Colony incest cases took place in 1660 when Thomas Atkins of Popham,
Maine, was accused of raping his oldest daughter, Mary.

Desperate for funds to pay off the Adventurers, Plymouth leaders had looked
northward in the late 1620s. Wealthy English nobleman Ferdinando Gorges had been
Although his grant extended from Philadelphia to Newfoundland, Gorges primarily
focused his attention on Maine. Unlike most charters of the period, he had almost virtual
control over his lands, including the right to give out smaller charters as he saw fit.
Gorges gave William Bradford and the Plymouth colony land on both sides of the

35 Bradford, Of Plymouth Plantation, p. 320.
36 Bradford, Of Plymouth Plantation, p. 321
Kennebec River as well as exclusive rights to the local fur trade in 1630. Settlers from Plymouth were an active presence in the Kennebec region by the 1640s.

However profitable, the Kennebec settlement was often troubled. As an offshoot of Plymouth rather than a new colony, it occupied an uneasy legal position. All major criminal acts were required to be tried in Plymouth. At the same time, some form of local leadership was necessary since the Kennebec was a two-to-five day journey by boat from Plymouth. The settlement was also subject to intense competition from other English colonists in the area. Gorges’ Province of Maine, equipped with its own legal system and government, eyed the Kennebec region, as did Massachusetts Bay Colony, as did the French to the northeast. Recognizing these tensions, most settlers in the Kennebec went beyond the Gorges’ patent and purchased their lands from local Abenaki, who remained an active presence in the region. These issues coalesced in the early 1650s when an agreement was reached between Plymouth Colony and the Boston based Clarke & Lake Company deciding trading rights for both groups. In addition, sixteen local land owners gathered at Thomas Ashley’s tavern on Merrymeeting Bay on May 23, 1654 to swear a fidelity oath to Plymouth Colony. That same meeting also saw the creation of a local government under the leadership of colonist Thomas Purchase.37

One of the sixteen men swearing fealty to Plymouth Colony in 1654 was Thomas Atkins. Relatively little is known about his background prior to his arrival in Plymouth Colony in the 1640s with his wife, Elizabeth Scammon Atkins, and their first children. Historian John Navin argues that the “Old Comers” of Plymouth closed ranks against

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settlers arriving after 1640, shutting them out from both government positions and the remaining available land: “the political and economic power wielded by the ‘founding fathers’ and the manner in which they controlled and allocated the colony’s lands became a sort of institutionalized oppression.”38 Faced with these obstacles, Atkins jumped at the chance to obtain land of his own. Once settled on the Kennebec in the early 1650s, he earned a living by farming and dabbling in land speculation. His name appears frequently on land deeds from the period, alternately as a buyer or seller.39 Even so, living so far to the eastward left Atkins and his family geographically marginalized in Plymouth Colony.40

The Atkins family had lived on the shores of Atkins Bay in Popham, Maine, for about a decade by 1660. They now had nine daughters, ranging in age from eighteen-year-old Mary to one-year-old Ann. Relatively little is known about their daily life, including the exact location of their home. What is known is that Mary Atkins accused her father of committing incest with her in 1660. Evidence about the stages of the accusation do not survive. Mary most likely made the first allegation before Thomas Purchase and the other settlement leaders who decided Thomas Atkins would stand trial in the Plymouth General Court.

On arrival in Plymouth town late in the spring of 1660, Atkins was jailed, an immediate indicator of the seriousness of the case. Most accused colonists paid their surety, the equivalent of modern day bail, and returned home to wait for trial. The records

40 Following an Abenaki attack in 1676, the Atkins family fled south to Boston. Atkins eventually came back to Popham but his daughters settled in southern Maine, New Hampshire and Massachusetts Bay Colony.
do not mention where Mary Atkins stayed or whether she was accompanied by her
mother or sisters. The General Court met on June 6, 1660 where Atkins flatly denied the
charge. Afterwards, he was returned to jail to wait for trial at the next court in October.

The General Court met again on October 2, 1660 where a jury of twelve men cross-
examined both Thomas and Mary. This time, Thomas confessed that “being in drinke in
the night season in his own house, hee offered some unclean incestious attempts to his
owne daughter, Mary Atkins, aforesaid, in his chimney corner.”41 The jury convicted him
of attempted incest and ordered him whipped before releasing him.

At this point, it is impossible to tell whether Thomas Atkins succeeded in raping his
daughter. From a modern viewpoint, the court’s decision seems to favor Atkins by letting
him off with a whipping for attempted incest rather than hanging him. From a
seventeenth-century viewpoint, it was probably the best outcome that Mary Atkins could
hope for. The court took her accusations seriously enough to try her father and convict
him. Had her father continued to deny the charge, it is likely he would have received no
punishment as she was unable to produce the required witnesses for conviction. The court
would also have taken into consideration the fact that Atkins’ death would have left his
family without a head of household, a particularly crucial issue for a family with no sons.
If nothing else, the whipping forcibly reminded Atkins to leave Mary and his younger
daughters alone in the future. The trial also left Mary’s future life relatively unaffected as
she married William Hackett around 1665.

The second Plymouth incest trial occurred in 1669 when Christopher Winter of
Scituate was accused of incest with his daughter, Martha. While no information about the

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41 All quotes from the Atkins/Atkins trial, Plymouth Colony General Court, October 2, 1660, published in
Shurtleff, Records of the colony of New Plymouth, Vol. 3-4, p. 197.
Winter family exists in the Plymouth Colony genealogical, town or church records, they frequently appear in the court records. Christopher and Jane Cooper Winter were convicted in 1639 for incontinency before marriage. They were both ordered to be whipped, with Jane given the particularly severe charge of being whipped at a cart tail through the streets. Christopher was later excommunicated from his church for marrying Jane, “a woman of scandalous carriage, beeing vaine, light, proud, much given to scoffing.” Curiously, they were put on trial for “public knowledge of each other before marriage” a second time on October 4, 1648. Following the second conviction, they were both fined. The trial records offer no explanation for the second trial.

Christopher Winter was a widower by the 1660s, living with his daughters, Martha and Anna, both in their late twenties. Like many young women in the seventeenth-century, Martha had two suitors, both of whom hoped to marry her. Unlike most seventeenth-century fathers, Winter refused them permission to court his daughter. After some months, however, Winter suddenly announced that Martha could marry suitor, John Hewett, a decision that attracted instant attention from the Scituate community. Shortly after the marriage took place, it became evident that Martha Winter Hewett was pregnant. As she refused to name a father and Hewett denied the charges, the court decided to put both men on trial, with Winter as the prime suspect.

The Hewett/Winter trial is the only Plymouth Colony trial with full surviving depositions. Most well documented trials offered summaries of the trial events. Yet in

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42 Winter/Winter trial, Plymouth Colony General Court, Oct. 4, 1648, published in Shurtleff, Records of the colony of New Plymouth, Vol. 1-2, p. 134. The punishment was usually reserved for crimes more severe than intercourse before marriage such as suspected adultery or heresy. The convicted person’s hands were tied to the back of a cart which they had to follow through the streets while they were whipped from behind. See Deetz, The Times of Their Lives, p. 148.

43 Quoted in Stratton, Plymouth Colony, Its History and People, p. 196. Stratton does not cite where he found this description.
this case, the trial transcript carefully outlines why the court thought Christopher Winter was guilty. He was unusually strict with his daughter in an age when parental severity was normal. He sent “to invite Hewett or Tower to his said daughter some little time after she conceived with child, when as not longe before they were both rejected in theire suite.” Unlike most women in the same situation, Martha refused to name a father. Unlike the fathers of pregnant daughters described in the Essex County chapter, Winter had not brought “them together [to] enquire into it, nor reprove[d] or [bore] witnes against her wickednes, as would have became a father that was innocent.” Finally, Winter was planning to return to England “at about the time this evill began to be taken notice of,” actions placing him under immediate scrutiny.44

Further testimony came from John Hewett and his father Thomas. Both men maintained that the younger Hewett was not the father of the child born shortly after his marriage to Martha Winter. They also testified to Christopher Winter’s contradictory treatment of his daughter, first strict, then lenient following her marriage. Hewett also described waiting with his father-in-law during Martha’s travail, the only mention in the Plymouth records of a midwife playing a role in a case of contested paternity. Where Winter feared “that the midwife should charge it upon her now to tell whose the child was,” Hewett hoped that she would. Winter’s fears were quelled following the birth as Martha refused to name a father.

The jury met to decide the verdict for the case on June 1, 1669. Martha Winter Hewett was declared guilty of whoredom for conceiving a child outside of marriage and refusing to name a father. Both Christopher Winter and John Hewett were acquitted due

to lack of evidence. The proof against Winter was purely circumstantial and the court refused to hang him without stronger proof. Shortly afterwards, John Hewett tried to divorce his wife but the divorce was not granted as the court had no proof that he had not fathered her child.

Incest cases in colonial New England raised difficult questions about the role of the head of household. As was previously established, he was expected to financially and morally provide for the members of his household. The decision whether or not to hang a father who raped his daughter forced courts to decide between finances and moral issues. While the court records suggest they suspected that Christopher Winter had committed incest, their wariness to hang him potentially stemmed from concerns other than hanging an innocent man. A dead father/head of household could no longer commit rape. However, his death could also lead to the financial dissolving of the family and household, potentially leaving his wife and children destitute. Courts decided matters other than immediate guilt. They also decided what was best for the household and the community around it. Although Winter’s wife was dead and his daughter was already married. Nevertheless, the verdict in the Winter case suggests the consequences of severe punishment were carefully considered by the court.

Like the Atkins and Winter incest cases, the first Plymouth Colony rape trial used a “jury of life and death,” suggesting the possibility of capital punishment. Ambrose Fish of Sandwich, Massachusetts, was tried for using force to “carnally know and ravish Lydia Fish . . . against her will” on July 3, 1677. As was noted above, capital crimes required testimony from two outside witnesses, a confession from the accused party or both for

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conviction. In addition, rape victims were required to physically and verbally display their distress before witnesses. The jury for the Fish trial commented that “if one evidence concurring cercomstances be good in law, wee find him guilty” but if “evidence, with concurring circumstances be not good in law, wee find him not guilty.” Aside from this vague observation, the trial records do not detail a verdict. They do, however, note that Ambrose Fish was whipped, suggesting that while the jury believed Lydia Fish had been raped, they lacked sufficient evidence to warrant hanging her likely rapist. Without witnesses who could vouch for either Fish’s assault or Lydia’s attempts to evade it, the jury could not justify the use of capital punishment.46

The second Plymouth Colony rape trial addressed the issue of inter-racial sexual contact, always a tense subject for Anglo-American courts. Long standing close relations between Plymouth colonists and their Wampanoag, Pocasset and Nauset neighbors made court trials involving Native Americans more common in Plymouth than the other New England colonies. A first wary encounter with Wampanoag tribal member Squanto, or Tisquantum, in the spring of 1621 had gradually led to a formal alliance between the two groups. The English needed to develop trade networks to pay off their debts. The Wampanoag needed new allies to survive in a rapidly changing world, particularly after the devastating effects of a small pox epidemic in the early seventeenth century.47 However necessary from a political and economic standpoint, the alliance posed certain problems for two groups who looked at the world from substantially different viewpoints.

46 Another mystery in the Fish trial is the exact nature of Ambrose and Lydia’s familial relationship. The Fish family tree discussed in R.A. Lovell’s Sandwich, A Cape Cod Town (Taunton: William S. Sullwold Publishing, Inc. 1984) suggests they were siblings, making the crime incest as well as rape. As Ambrose was not tried for incest, this would suggest that they were cousins which was not considered to be incest.
A frequent point of conflict revolved around legal authority and punishment. While it was generally understood that actions within the Wampanoag community and the English community would be handled as separate affairs, cross-cultural crimes were generally handled within the Plymouth legal system. This method did not, however, address preexisting cultural and legal differences between the two groups. Crimes committed within Wampanoag society were addressed within families and emphasized some form of privately agreed upon retribution. Crimes committed within the colony or involving colonists, used the court system to reach a conclusion emphasizing punishment administered before the community as a whole.

Sexual crime trials involving colonists and Native Americans in the Plymouth region comprised a tiny fraction of the overall Plymouth trials, with only ten cases between 1636 and 1689, and none thereafter. These trials were equally divided, with five trials for white men and Native American women and five trials for white women and Native American men. Sexual crime posed particular inter-cultural problems since the groups possessed different understandings of illicit sexual practice. Intercourse before marriage, which comprised a quarter of all Plymouth Colony sexual crime trials, was not considered a crime by Wampanoag tribal members. Prior to European contact, rape was almost nonexistent in most Native American tribes. By the seventeenth century, both sides viewed rape as a crime but sought solutions reflecting their different approaches to criminal acts.48

Sam, “the Indian, soe called,” was tried on October 31, 1682 for raping Sarah Freeman of Eastham, described in the records as “an English gerle.” Freeman was the

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approximately eleven-year-old daughter of John and Sarah Merrick Freeman. Both the Freeman and Merrick families were comfortably off, although Sarah Merrick Freeman’s father initially arrived in Plymouth Colony as an indentured servant in the 1630s. Sam was probably a Christian Indian living on the outskirts of Eastham. Again, the Plymouth court was wary of ordering capital punishment. While the court believed Sam deserved to die for his actions, they argued that since “hee was but an Indian, and therfore in an incapacity to know the horibleness of the wickednes of the abominable act,” his punishment would consist only of being severely whipped and banished from Plymouth Colony.

The other two well documented trials involving white colonists and Native Americans grappled with the very different issue of adultery. A Native American man raping a white girl was comprehensible to the seventeenth-century English mind. White women choosing sexual relations with Native American men over their own husbands was not. The first of these trials occurred in 1639 when Mary, wife of Robert Mendame of Duxbury, was accused of “using dallyance divers tymes” with Tinsin, described in the records as “an Indian.” Both their punishments were severe. Mendame was ordered to be whipped behind a cart tail through the town streets and to wear a badge upon her left sleeve. Tinsin was ordered to be whipped with a halter about his neck. Some fifty years later, Hannah, wife of William Tubbs, Jr., also of Duxbury, was put on trial for committing adultery with James Brown, identified in the records as “an Indian.”

was ordered to be whipped thirty times and to pay a fine of five pounds. There is no mention in the records of Brown’s punishment.

The records do not indicate which tribes Tinsin or James Brown were from, although they were most likely Wampanoag. While this may just have been European unwillingness to distinguish between tribal groups, the vagueness suggests shifting Native American identity in mid-seventeenth century southern New England.

Increasingly, individual Native Americans were known by their relationship to colonial society rather than by tribal identity. Brown’s European name indicates that he had probably converted to Christianity, which may also explain his presence in Plymouth following King Philip’s War in 1675-1676.

The severity of the punishments allotted to Mary Mendame and Hannah Tubbs’ indicates the Plymouth court’s unease with their actions. Historian Jennifer Aultman suggests that Mendame received the harsher punishment because “the Court felt she should have ‘known better.’” Tinsin and James Brown were deemed incapable of comprehending adultery and resisting temptation from their white lovers. In turn, the Plymouth justices had declared Sam incapable of understanding his rape of Sarah Freeman because he was a Native American. It is, however, clear that the Plymouth officials read Sam’s actions as rape as Freeman was not punished for fornication.

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52 Almost nothing is known about the Tubbs’ background. Most records deal instead with William Tubbs’ mother, Mercy Sprague Tubbs, who arrived in Plymouth Colony at the age of three on board the Anne in 1623. She married William Tubbs, Sr. in 1637 and was repeatedly accused of keeping company with Joseph Rogers in the 1660s. Following conviction in 1663, she moved alone to Rhode Island. William Tubbs, Sr. was eventually granted a divorce in 1668 and was left to bring up his children, including Tubbs, alone. See Stratton, Plymouth Colony, p. 198.


Incest and rape demands attention in any society, whether colonial or modern. There can be no doubt that these trials, including the ones for adultery, supported William Bradford’s belief that sexual misconduct went hand in hand with cultural and religious deviation. Nevertheless, the question has to be raised: were all non-Separatists “wicked persons and profane people” who needed to be carefully watched, lest they create more havoc in an already fragile colony? \(^{55}\) Trials for extreme sexual crimes comprise a tiny percentage of the overall Plymouth Colony trial numbers. Like the rest of colonial New England, Plymouth Colony’s sexual crimes consisted of some form of sexual contact outside the marital bed. Clearly, Plymouth’s colonists, non-Separatist or otherwise, were no more sexually deviant than anyone else in New England.

Another element must also be taken into consideration when addressing Plymouth Colony’s sexual crime trials. Historian Eugene Stratton argues that one of Plymouth’s virtues was its ability to place nobody above the law. \(^{56}\) Stratton cites various cases demonstrating that men of varying levels of power were able to deal equably with each other in the court system. Yet none of the Separatists ever appear in a sexual crime trial. The only *Mayflower* descendant to commit a sexual crime was Thomas Dotey, and his father was a non-Separatist indentured servant. Given the fairly wide range of documentation on sexual crimes committed by wellborn Essex County, Province of Maine and Rhode Island Colony residents, this raises potential questions about the effect of Pilgrim hagiography on historical research. The *Mayflower* descendents may have been that much better behaved than their northern counterparts. It may also have been in the Colony’s best interests to keep their sexual misconduct quiet, particularly as

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Plymouth officials derived authority through the portrayal of non-Separatists as sexually and culturally deviant members of society.
Chapter Five

“THE COURT DOE OWN HIM HER ATURNEY:”
SEXUAL CRIME AND LEGAL PROCEDURE IN RHODE ISLAND

The colony of Rhode Island was infamous throughout colonial North America. In a remark often attributed to Cotton Mather, Dutch religious leaders Johannes Megapolensis and Samuel Drisius in 1657 called it “the receptacle of all sorts of riff-raff people . . . the sewer of New England [where] all the cranks of New England retire hither.” Not to be outdone, Mather’s Christi Americana or the Ecclesiastical History of New England railed in 1702 about the “lewd things which have been done or said by the giddy sectaries of this Island.” Four hundred years of distance leaves the modern historian wondering whether the colony deserved the reputation. Megapolensis and Drisius had just turned away a ship full of Quakers from New Amsterdam. Knowing they would receive refuge in Rhode Island would not have improved Dutch colonial leaders’ opinion of the colony. For his part, Mather often condemned colonies possessing land desired by Massachusetts Bay Colony. Before decrying Rhode Island’s inhabitants, he wistfully described the colony’s land as “the paradise of all New England.”

While most seventeenth-century discussions of Rhode Island’s reputation revolved around the colony’s emphasis on religious toleration and (relative) democracy, sexual morality also came into play. Cotton Mather’s choice of the word “lewd” had both political and moral connotations. According to The Oxford English Dictionary, the word

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2 Cotton Mather, Magnalia Christi Americana or the Ecclesiastical History of New England (Hartford: Silas Andrus and Son, 1853), p. 521. For further discussion of Mather’s negative remarks regarding colonies desired by Massachusetts Bay, see the Maine chapter.
implied ignorance, vulgarity and lasciviousness to a seventeenth-century audience.³

Connecticut parson John Woodbridge found the colony “too sluttish to be handled,” a word carrying similar connotations.⁴ Seventeenth-century insults often conveyed sexual overtones but Megapolensis, Drisius and Mather’s remarks had political undertones as well.⁵ They suggest a place where illicit sexual behavior received the same tolerance as religious interests.

An initial examination of the Rhode Island court records suggests a place where sexual crimes were treated in much the same fashion as they were elsewhere in New England: accusation, trial, conviction and punishment. Between 1641 and 1718, Rhode Island placed a total of 136 defendants on trial for some form of sexual crime, whether fornication, bastardy, adultery or, on four occasions, rape.⁶ Like Essex County and the Province of Maine, over half of these trials were on fornication charges (78). The second most common charges were, respectively, for bastardy (28) and paternity (23). Unlike other Essex County and Plymouth Colony, Rhode Island had no trials for incest, bestiality and sodomy.

Closer analysis reveals one major departure from sexual crime trials found in neighboring colonies: Rhode Island’s extremely high acquittal rates. Rhode Island acquitted a total of twenty-three defendants in the period under study. In contrast, Essex

⁶ See Chart Eleven, “Rhode Island Colony Charges, 1641-1718” in Appendix A. Two of the four were clearly stated as rape charges, the other two were for “forcing,” a charge suggesting rape but not necessarily carrying the same severity of punishment.
County charged 818 colonists with sexual misconduct and acquitted only twenty-eight of them. In turn, Maine charged 275 colonists and acquitted ten, Plymouth charged 210 colonists and acquitted ten and New Hampshire charged 66 and acquitted four. Rhode Island’s high acquittal rate raises an inevitable question: were Megapolensis, Drisius, Mather and Woodbridge correct in their depiction of the colony as the “sewer of New England?” The acquittals, approximately one for every six colonists charged with sexual misconduct, would seem to suggest a place where sexual crimes could be conducted with relative impunity. While this may have been the case, surviving testimony demonstrates elements beyond sexual immorality at play in Rhode Island court rooms.

Most of the acquittals stemmed directly from Rhode Island court room procedure. The shared community of the court room played an important role throughout the early modern world but it was particularly central here. Like other jurisdictions, Rhode Island court cases were built upon research conducted outside the court room. The crucial moment, however, was the plea made in court before witnesses who could testify to the truth of what they had heard. While Rhode Islanders believed firmly in the words of their biblical texts, the colony’s court trials indicate that secular verbal exchanges were prized more highly in Rhode Island than in neighboring colonies, particularly Massachusetts Bay and Connecticut. Rhode Island’s emphasis on separation between church and state made the colony unique in New England. Unique did not, however, necessarily guarantee the cohesion necessary for survival in the turbulent world of seventeenth-century New England. Historian Bruce Daniels observes that many early New Englanders “subscribed to a form of church government that placed much power in

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the meetings of the congregation” and that the “analog of a congregational meeting in secular society was the town meeting.”8 The town meeting, and by extension, the court room provided secular Rhode Island with the necessary societal cohesion for survival. Over time, judicial interaction in Rhode Island developed into a complex, highly charged, system of legal exchange, one in which sexual crime acquittals were deeply embedded.

The colony of Rhode Island began with Roger Williams’ settlement at Providence in 1635. Williams had been a pastor in the Massachusetts Bay town of Salem in 1635 and before that hailed from Smithfield, a community on the outskirts of London known for its many dynamic Separatist preachers.9 Prior to coming to North America in 1629, he studied religion at Cambridge University. Williams’ sermons questioning Puritan religion, political rule and the treatment of Native Americans led to his expulsion from the colony late in the fall of 1635. Williams then spent the winter with a Wampanoag community on the eastern side of Narragansett Bay. He later purchased land from the Narragansett on the far side of the Seekonk River where he was joined by his wife, children and some of his followers. Williams and the others founded a settlement which they christened Providence.

Later religious dissidents Anne Hutchison, William Coddington and John Clarke founded Portsmouth on the north end of Acquidneck Island in 1638. Coddington, Clarke and their followers then broke away from Portsmouth to found Newport in 1639. Following several years of wrangling with Massachusetts Bay Colony, Plymouth Colony and the existing Rhode Island towns, Samuel Gorton founded Warwick in 1643. For all that they shared a common geographic location, none of these settlements shared a

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common political identity, leaving them vulnerable to the imperial ambitions of Massachusetts Bay and Connecticut.

Founding a colony required a certain amount of vision in the early modern period. The early stages were usually dangerous and cold and colonists needed some larger goal to surmount the misery. Massachusetts Bay and Plymouth Colonies had religious freedom. The Province of Maine and New Hampshire had fish, timber and furs. All colonies had land, which was increasingly scarce home in England. Williams' vision was as much political as it was religious. Where John Winthrop famously wanted a "city on a hill," Williams dreamed of a "livelie experiment" in human relations, a phrase later used by Charles II to describe the colony. Providence, Portsmouth and Newport agreed in 1644 to send Roger Williams to obtain official recognition from England's parliamentary government. A patent was granted in 1644 which united Rhode Island's towns as the Colony of Rhode Island and Providence Plantations, while allowing them the right to experiment with limited democracy and religious toleration.

Unlike Massachusetts Bay, suffrage in Rhode Island was not based on church membership. On the other hand, it was based on gender, race and economic standing. After moving to the colony and acquiring enough land, white male Protestant heads of household could apply for voting rights from their towns. On average, this process took anywhere from three to ten years. Once accepted as freemen, white, male Rhode Islanders voted on their leaders who then created laws for the colony. Women, Native

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11 See Rhode Island Historical Society, The Early Records of the Town of Portsmouth (Providence: E.L. Freeman & Sons, 1901), Sydney James, Colonial Rhode Island: a history (New York: Scribner, 1975) and Bruce Daniels, Dissent and Conformity on Narragansett Bay.
Americans, African Americans, servants and non-Protestants did not receive the vote. Rhode Island’s religious toleration only went so far, although the colony did become a refuge for many persecuted groups. A community of Jews settled in Newport in 1656, followed by Quakers in 1657 fleeing persecution in Boston.\textsuperscript{12}

The restoration of Charles II to the English throne in 1660 posed new challenges for Rhode Island. Concerned about the legality of their patent, the colony sent John Clarke to England to renegotiate. Charles II then granted an official charter to the Colony of Rhode Island and Providence Plantations in 1663. In addition to confirming Rhode Island’s commitment to religious freedom, the new charter established that the colony would be ruled by an annually elected Governor, Deputy Governor and General Assembly. The General Assembly consisted of ten Assistants and ten Deputies, with representatives from all Rhode Island towns, who met twice a year with the Governor. The Governor and Assistants also served as justices in the colony’s court system, a system similar to the one found in Plymouth Colony. In contrast, both Essex County and the Province of Maine largely kept the legislative and judicial branches of the colony separate.

Both Rhode Island’s patent and charter granted the colony the right to create its own body of laws. In turn, the process of creating these laws helped provide the mortar necessary to hold the colony’s divergent visions together. Most New England colonies blended biblical law and English common law to create their legal systems.\textsuperscript{13} Instead, the

\textsuperscript{12} See Sydney James, \textit{Colonial Rhode Island}.
1647 and 1663 legal codes drew predominantly from English common law. Most Rhode Island laws were drawn from Michael Dalton’s popular manual for justices of the peace on both sides of the Atlantic, *The Countrey Justice*. Their construction and organization was based on Sir Edward Coke’s *The Institutes of the Laws of England*. Like the *Institutes*, Rhode Island’s legal code listed and defined criminal activity, outlined penalties and provided a short history of the law.

The decision to base their laws on English common law was a wise tactic from a political standpoint as it helped the colony maintain its connections with the English government. Remaining independent of neighboring New England colonies was contingent on Rhode Island’s ability to appeal to English authority. An active demonstration of adherence to English law was an important tool in a complicated world of negotiated colonial charters and patents. It may also reflect a direct influence from Roger Williams. Prior to studying religion at Cambridge University, Williams worked as a stenographer for Sir Edward Coke, a man whose reputation rested on his constant defense of English common law against challenges from both royal and ecclesiastical interests. Williams’ final year with Coke was spent taking notes as Coke helped draft the 1628 *Petition of Right*, providing Williams with an immediate understanding of the workings of English common law.

A prominent English influence on the Rhode Island court system was the active presence of legal counsel, dating back to the 1647 legal code, which mandated that the

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colony’s towns maintain two attorneys at all times. The colony provided court-appointed lawyers for colonists who could not afford them by 1669. While they were initially only used for civil trials, they eventually became an active part of criminal trials as well.\(^{17}\)

Attorneys, or the suggestion of legal counsel, appear in at least nine of Rhode Island’s 204 sexual crime trials. Of these trials, eight received acquittals. In contrast, lawyers were not employed in any of the sexual crime trials in Essex County, Plymouth Colony or the Province of Maine. Historian George Lee Haskins notes that “dissatisfaction with various aspect of the common law . . . and distrust of lawyers as a class, were constantly voiced by Puritan writers” in both England and New England.\(^{18}\)

The earliest of the trials indicating the use of an attorney offers few details regarding what occurred in the court room. Samuel Legg was accused of fornication with Ezable (presumably Isabel) Scase in 1664. His unnamed attorney argued that he was not guilty and the jury agreed, resulting in an acquittal for Legg. Scase does not appear to have had an attorney speak for her and was convicted on fornication charges and ordered to pay forty shillings.\(^{19}\) The May 11, 1668 session of the Rhode Island Court of Trials placed Mr. John Porter and Horrud, or Herodias, Long on trial for incontinency with each other. Porter successfully pleaded for his own acquittal and returned to court on October 21 for the following session where he presented the court with a piece of paper


\(^{19}\)Scase/Legg trial, Court of Trials of the Colony of Providence Plantations, March 8, 1664, published in Rhode Island Historical Society, *Rhode Island Court Records[.] Records of the Court of Trials of the Colony of Providence Plantations* (Buffalo: Dennis Prince Co., 1946), p. 27.
authorizing him to serve as Long’s attorney. The jury found Long not guilty, and the court agreed to acquit her as well.\textsuperscript{20}

The 1668 court session was not Horrud Long’s first appearance in a Rhode Island court room. Like many colonists, Horrud Long was born in England.\textsuperscript{21} Following her father’s death, she married John Hicks on March 14, 1637 when she was approximately thirteen or fourteen years old. The couple moved to Weymouth, Massachusetts, and then to Newport, Rhode Island, in 1640. As Hicks was almost immediately made a freeman, he was financially well off and, presumably, much older than his wife. Their marriage was clearly unstable as Hicks was charged with beating her in 1645. Shortly afterwards, he moved to Long Island where he maintained that she had committed adultery with George Gardiner and that he deserved a divorce from her: “the knot of affection on her part have been untied long since and her whordom have freed my conscience on the other part.”\textsuperscript{22} Long, in turn, argued that she had been abandoned and had only taken up with Gardner for financial reasons. Hicks was granted his divorce and Long remained with Gardner. She eventually petitioned the colony for a legal separation from Gardner on May 8, 1665. The court agreed, although both Long and Gardiner were fined twenty pounds for their irregular arrangements.\textsuperscript{23}

That same session also featured a petition from Margaret Porter, wife to John Porter. Margaret wanted the court to order her husband to support her as “he is destitute

\textsuperscript{20} Long/Porter trial, Court of Trials of the Colony of Providence Plantations, May 11, 1668, published in Rhode Island Historical Society, \textit{Rhode Island Court Records}, p. 35.
\textsuperscript{22} Statements from John Hicke’s divorce trial, Acquidneck Island Quarterly Court, March 1, 1644, published in Howard Chapin, \textit{Documentary History of Rhode Island} (Providence: Preston and Rounds Co., 1920), p. 54.
\textsuperscript{23} Horrud Long Separation Trial, Court of Trials of the Colony of Providence Plantations, May 8, 1665, published in Rhode Island Historical Society, \textit{Rhode Island Court Records}, p. 31.
of all conngull love towards her, and suitable care for her.\(^{24}\) The court agreed, declaring all Porter's financial affairs void since the time of his desertion. The Porters were divorced shortly afterwards, with John Porter making lifelong arrangements for his ex-wife's financial support. Porter and Horrud Long married in the early 1670s, at which point he also took on financial support for her children from John Hickes and George Gardiner.\(^{25}\)

Given this history, John Porter's success at acquitting both Horrud Long and himself speaks to the weight given legal counsel in the Rhode Island court room. There can have been little to recommend her innocence by that time, particularly by the moral standards of the seventeenth century. Women with her reputation were rarely given the benefit of the doubt in early modern court systems. It is unfortunate that the records do not document exactly how he managed to persuade justices and jury that both he and Long were innocent when the circumstantial evidence clearly suggested otherwise. The fact that Porter and Long were not accused of adultery or fornication suggests that the court was using the charge of incontinency in much the same way as the Maine courts did prior to 1672: to suggest some unspecified form of physical contact that did not necessarily include intercourse. He may have managed to argue for acquittal based on a legal technicality. Incontinency as a legal term to describe illicit sexual behavior was rapidly becoming archaic in the late seventeenth century. The Long/Porter trial was the only time incontinency was used in a Rhode Island sexual crime trial. The acquittal also, no doubt, says something about Porter's position in the colony as a landed gentleman who served as an Assistant throughout the 1640s. Economic and social status mattered as

\(^{24}\) Statements from Margaret Porter appeal trial, May 8, 1665, Court of Trials of the Colony of Providence Plantations, May 8, 1665, published in Rhode Island Historical Society, Rhode Island Court Records, p. 31.

\(^{25}\) See Archer, Fissures in the Rock.
much in Rhode Island as they did elsewhere in the New England colonies and Roger Williams’ democracy had a very limited reach.

The last trial to clearly mention the use of an attorney was for Grace Parsons Bailey Lawton. While married to her first husband, William Bailey, Grace committed adultery with Thomas Lawton around 1670. Bailey appears to have divorced his wife as Grace married Lawton while Bailey was still alive, although there is no record of the divorce. Following Grace’s marriage to Thomas Lawton in 1671, she was tried for adultery on October 18, 1671. Circumstantial evidence did not play in Grace’s favor, particularly since she was now married to the man with whom she was accused of having an adulterous affair. Unsurprisingly, both jury and justices found her guilty. However, her attorney “declar[ed] that there was a failer in the Testimony” and she was acquitted on the technicality.\(^{26}\) Unfortunately, the trial records do not preserve the details, making it impossible to tell how the acquittal was accomplished.

Acquittals based on legal technicalities appear in four other trials as well. John Coggeshall and William Hall, Jr., of Portsmouth were accused of fornication with unspecified women on November 11, 1671. After both men pleaded “informality of the bill,” they were acquitted. It seems that some form of proper procedure was not being followed when charging defendants. Robert Moone’s daughter Mary and Dennis Lannegan successfully used the same plea on October 23, 1673 when they were accused of fornication.\(^{27}\) The Coggeshall, Hall and Moone/Lannegan trials left no records beyond the initial charge, but the ability to gain an acquittal based on a technical error suggests


\(^{27}\) See Fiske, *Rhode Island General Court of Trials* for transcripts of these four trials.
the use of legal counsel. While the active use of attorneys in the Rhode Island court room was undoubtedly the result of English influences on the colony’s judicial system, it also reflects the evolving native legal culture. Like a religious convert testifying before a congregation, the moment that mattered for a lawyer was the argument made in the court room. Their success when defending their clients turned on their ability to persuade skeptical justices that the case they presented was both true and honest. In addition, the sexual crime trials using legal counsel paid close attention to both linguistics and procedure. A witness or justice misusing one or both was easily trumped by reminder of the correct method. In turn, this suggests the growing emphasis on codification brought by the professionalization of the legal trade in the seventeenth and early eighteenth centuries.

While none of the seventeen paternity trials conducted in Rhode Island between 1641 and 1715 appear to have used legal counsel, the well documented ones also emphasized court room exchanges. Most New England jurisdictions ordered unwed mothers to name the father before her midwife at the height of her travail. The Essex County and Plymouth Colony chapters have already examined this practice in both colonies. None of the paternity trials from the Province of Maine contain enough documentation to identify whether Maine’s courts followed the practice but it seems likely, given the colony’s close links to Massachusetts Bay Colony. In contrast, Rhode Island women accused putative fathers in court before a roomful of people.

Why Rhode Island chose this particular method is unclear. As midwives often testified in paternity trials in Britain, it does not appear to be an example of similarities

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between English and Rhode Island practice. Michael Dalton’s *The Countrey Justice* does not specify how or where the mother might legally accuse the putative father. Both methods made use of witnesses who were ordered to remind unwed mothers to tell the truth before speaking. Women who named their children’s fathers in childbirth were told that they would answer for lying at the Day of Judgment. The trial for Susannah Talman and Roger Goulding notes that Talman was “upon oath charged” before Talman identified Goulding as her child’s father. Naming the wrong man could result in perjury charges. A woman afraid of damnation on Judgment Day may have seemed to Rhode Island leaders too close a blend of church and state.

Aside from the questioning put to an unwed mother at the height of her travail by the midwife, giving birth was a relatively private affair in the early modern period, one attended by an average of five to eight people. While witnesses were a necessary part of identifying putative fathers, the birth room was a largely feminine space. In contrast, court rooms were both public and presided over by men. On average, court was held anywhere from two to four times a year and was open to the community as a whole, not just the legal participants. Justices and ordinary colonists alike shared long memories, reaching back into the individual defendants’ histories. Mothers forced to name their children’s’ fathers in the court room did so in front of the watching eyes of the communities in which they lived. The act of doing so was profoundly important to the workings of a colony without state churches. Secular Rhode Island needed its court rooms and its town meetings as a point of commonality between its colonists.

30 All statements from Talman/Goulding trial, Rhode Island General Court of Trials, October 1672, published in Fiske, *Rhode Island General Court of Trials*, ps. 16-17.
31 Again, see Ulrich, *A Midwife’s Tale* for further discussion of colonial birth rooms.
The earliest well documented paternity trial in Rhode Island took place in October of 1672 when Susannah Talman of Portsmouth accused Roger Goulding of fathering her bastard child. Talman’s age at the time of the trial is unclear. The Talman Genealogical Record lists her birth year as 1662, making her ten years old, which seems unlikely.\(^{32}\) Both Dalton’s The Countrey Justice and the 1647 Rhode Island legal code regarded “the knowledge of a maid carnally who is under the age of ten years” to be rape and punishable by death.\(^ {33}\) As Talman’s parents married in 1647, she was probably anywhere from fifteen to twenty-four. Roger Goulding was around twenty, a common age for unmarried men accused of fathering bastard children.

The ritual followed by the Talman/Goulding paternity trial was the same as the other two well documented paternity trials from seventeenth-century Rhode Island. First Susannah Talman was convicted on charges of fornication and conceiving a bastard child. Her punishment was to receive fifteen lashes at the whipping post in the center of Newport or to pay a fine of twenty-six shillings and eight pence. Then Roger Goulding was brought into the room. Holding her baby in her arms, she looked him the eye and accused him of fathering her child.

Roger Goulding denied the charges and asked to be tried by a jury. Unlike other New England colonies where juries were only used for extreme crimes such as rape or murder, Rhode Island residents could request trial by jury if they felt it would better aid their cases.\(^ {34}\) While the full extent to which defendants in sexual crime trials chose to take advantage of this legal right is unclear, the records indicate that at least nine sexual


\(^{34}\) See Catherine DeCesare, Women and the Legal Culture of Colonial Rhode Island,” p. 111.
misconduct trials employed a jury. As these nine trials range from the severe charges of rape and adultery to the lesser charges of paternity and fornication before marriage, it seems likely that juries were more commonly used than the records would suggest. Whether or not having a jury decide the verdict actually benefited the defendant is unclear. Historian Elaine Forman Crane notes that the way juries “perceived testimony depended on how the judges permitted it to be presented and what commentary they might offer.”

Disagreements between juries and justices were always decided in favor of the justice. While five of the defendants known to have been tried by jury were acquitted, their acquittals cannot be definitely attributed to their jury.

For his part, Roger Goulding’s jury declared him not guilty, based on lack of evidence. While this may well have been the case, the potential identity of one of the jurors raises questions about this decision. The final juror listed was a Thomas Gould. Clerks often shortened names by removing the final letters. While there is little or no documentation regarding Goulding’s parentage or family connections, his first son was named Thomas, suggesting that it was a family name. Crane argues that colonial Rhode Islanders understood that “kinship, rumors, and pillow talk could tilt the scales of justice, but they did not believe that such sources undermined the system. Quite the contrary: they believed that knowledge of a defendant’s history and character assisted in determining whether or not he or she was capable of committing a particular crime.” In addition to being prized for their specific knowledge of defendants’ backgrounds, Rhode Island jurists were encouraged to do further case research prior to the trial, whether

37 See Crane, *Killed Strangely*, p. 150
interviewing witnesses, talking to the defendants or contemplating the family’s history in the colony.\textsuperscript{38}

The central role played by juries in the Rhode Island court room is emphasized by the way in trials were conducted in the other New England jurisdictions. Essex County, Plymouth Colony and the Province of Maine kept record books noting charges, convictions, punishments and acquittals. Depositions were gathered by sheriffs and justices of the peace, usually before the trial occurred, and were kept separately from the court record book. While few depositions survive from these three jurisdictions, depositions clearly played an active role in the preparation necessary for conducting a court trial. The only trial to use depositions in Rhode Island between 1641 and 1718 was the 1673 matricide trial for Thomas Cornell. Encouraging jurists to do their own research before the trial allowed for the background knowledge necessary to make an informed decision without the more customary depositions.

Returning to the trial at hand, Susannah’s father, Peter Talman, took immediate action after the jury’s decision was announced: “upon Consideration of the motion made in Court by Peter Talman, and the Law, That she having upon oath charged the said Roger Goulding to be the father of the said child,” the justices decided that Goulding had to “cleere himself” to avoid paying child support charges for Susannah Talman’s child. As Goulding either could not or would not clear his name, he was ordered to pay bail of fifty pounds against the promised child support. He later filed an appeal which most likely was unsuccessful as there is no further mention of Goulding in the trial records.

\textsuperscript{38} Again, see Crane, \textit{Killed Strangely}, ps. 149-151.
Peter Talman stood out even in a colony full of diverse inhabitants. Born in Hamburg, Germany, in the early 1620s, Talman moved to Barbados in 1647. While in Barbados, Talman married his first wife, Ann Hill. Along with his wife, children, assorted in-laws, an English indentured servant, three African slaves and numerous trade goods, Talman moved to Rhode Island in 1648. He opened an apothecary shop shortly afterwards and was made a freeman in Portsmouth, Rhode Island, by 1655. Talman took part in numerous lawsuits involving both his business and property interests throughout the 1650s and 1660s. He was elected as Solicitor for the General Court of Rhode Island in 1662 and served as a Deputy between 1662 and 1665. The record noting “the motion made in Court by Peter Talman” suggests a close familiarity with the law. Unlike other New England colonies, Rhode Island’s political leaders served as justices well into the eighteenth century. Talman’s prior experiences with the Rhode Island legal system would have made him familiar with how best to convict Roger Goulding.

Talman also had reason to be personally familiar with the workings of Rhode Island sexual crime trials. He had brought a suit against Thomas Durfee in 1664, complaining that Durfee was too familiar with Talman’s wife, Ann. The court ordered Durfee to avoid Ann and considered the matter closed. The following year, however, Talman filed for divorce from Ann, citing adultery as the cause. Ann confessed her infidelity, explaining that her youngest child was not Talman’s. The court asked whether she was willing to repent and reconcile with her husband. Ann’s responded that “she would rather caste herselfe on the mercy of God if he take away her life, than to

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The court ordered her to be whipped thirty times, fifteen lashes in Portsmouth and fifteen lashes in Newport. They also fined her ten pounds and granted Talman his divorce request. Two months later, he filed a nuptial contract with Joan Briggs, giving her a house, property and half his household goods. For her part, Ann fled the colony, going either to her brother Robert in Virginia or to Plymouth Colony for a two year period. She returned in 1667 when a warrant was issued for her arrest. While it is unclear from the records with whom Ann committed adultery, both Ann and Thomas Durfee were convicted on fornication charges on May 11, 1668. Although they were legally unable to marry, circumstantial evidence suggests that they remained together.

Multiple convictions for sexual crimes within one family were a relatively common occurrence in colonial New England. Whether they actually had a higher rate of involvement in illicit activities than their counterparts is unclear. What is certain is that their neighbors were less apt to give them the benefit of the doubt. It is likely that Ann Talman’s adultery and fornication trials had an effect on the Susannah Talman trial which opened the discussion of bastardy trials in colonial Rhode Island. The jury’s initial decision to acquit Goulding suggests that he was able to tap into this unease. Paternity trial acquittals usually occurred when there were multiple possibilities for the father. Goulding may have hinted at other partners for Susannah Talman. If the mother was capable of adultery, then there was no telling about the morals of the daughter. Whatever the case, his presumed guilt was not held against him for long. Goulding married

42 See Essex, Plymouth and Maine chapters for further discussion of this issue.
43 See Essex County chapter.
Governor Benedict Arnold’s daughter Penelope three months later on January 1, 1673. Arnold was a popular governor who succeeded Roger Williams in 1644 and held the position until his death in 1678. It is unclear when Susannah Talman married but later family records refer to her as Susannah Beckitt.44

The remaining two well documented paternity trials both occurred on March 25, 1684. First, twenty-two-year-old Priscilla Knight accused William Foster, Jr. of fathering her child.45 Like Susannah Talman, both Knight and Foster were from economically stable backgrounds. Knight’s parents were Richard and Sarah Rogers Knight who moved to Rhode Island in 1646 where he became a carpenter.46 In addition to his lands in Newport, Richard Knight received a grant for one hundred acres in the new town of East Greenwich, located on the western shore of Narragansett Bay. Knight was admitted as a freemen to the colony in 1655. For his part, Foster was the son of William Foster, Sr., who moved to Rhode Island in 1638 after being ordered to leave Ipswich, Massachusetts for his religious beliefs. William Foster, Sr. was admitted to the colony as a freemen in the 1640s. He was also listed in the records as Mr., a title connotating both financial worth and social respect.

Richard Knight’s death in 1680 left behind a widow and six children, almost all of whom were of age. Fortunately for Sarah Rogers Knight, enough money remained for her to remain in the family home with the younger, unmarried children. She also successfully petitioned the colony of Rhode Island to maintain the family’s claim to the East Greenwich land, presumably now farmed by the couple’s older sons and their wives.

44 Virgil Burdette, Talman Genealogical Record.
45 See Knight/Foster trial, Rhode Island General Court of Trials, March 25, 1684, published in Fiske, Rhode Island General Court of Trials, p. 127.
Even so, as demonstrated by the Essex County paternity trials, fatherless daughters were especially vulnerable in colonial New England. In addition to being seen as an easier target, their lack of financial resources and fatherly advocacy made gaining child support via a court trial difficult. Unlike Susannah Talman, Priscilla Knight could only accuse William Foster of fathering her child and hope for the best. Fortunately for her, Foster did not challenge the charge. Although the child died shortly after birth, Foster was ordered to pay thirteen shillings and four pence for birth and burial. In contrast, the Talman/Goulding trial suggests that if Susannah Talman’s father had not argued for the jury to be overruled, Goulding would have been acquitted, leaving the Talman family responsible for the child’s upkeep. Peter Talman played an active role in his daughter’s trial, effectively serving in the role of an attorney.

The trial for Rebeckah Saxbey and James Kinion reads almost identically to the Knight/Foster trial. Like Priscilla Foster, Saxbey was convicted on fornication and bastardy charges. She was ordered to be whipped fifteen times in Newport or pay a fine of twenty-six shillings and eight pence. Also like Foster, Saxbey testified “in open Court . . . that he was the person by whome she was begotten with child and the only father of that child by her born into the world.” As the child was still living, Kinion was ordered to pay two shillings weekly to Saxbey in child support until the court decided otherwise.

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47 No further information regarding Rebeckah Saxbey and James Kinion’s social and economic backgrounds is available. He may have been the brother of John Kenyon of Westerly, Rhode Island, but there is nothing to substantiate the kinship.
48 Statements from Saxbey/Kinion trial, Rhode Island General Court of Trials, March 25, 1684, published in Fiske, Rhode Island General Court of Trials, p. 127.
49 Later trials indicate that Rhode Island did use midwife testimony to decide paternity trials in the mid to late eighteenth century. See Jane Fletcher Fiske, Gleanings from Newport Court Files, 1659-1783 (Boxford: Self-published, 1998), ps. 1748 and 1763 for examples. As my dissertation did not span past 1718, I can offer no explanation for the transition but thought it worth noting.
Rhode Island's paternity trials provide a further window onto the colony's relationship with English law. Both the 1647 patent and 1663 charter allowed Rhode Island to create its own laws, provided that none "prove[d] repugnant to English law." The 1618 edition of Michael Dalton's *The Countrey Justice* offers specific instructions for justices wishing to address the problem of bastard children and their parents: "two Justices of the Peace . . . upon examination of the cause and circumstances, shall and may take order . . . [for the] keeping of the childe, (by charging the mother or reputed father, with the payment of money . . . as also for the punishment of the mother and reputed father." In contrast, neither the 1647 nor the 1663 Rhode Island legal codes mention bastard children or their parents. They address fornication, rape and adultery but ignore bastardy. Like their Puritan counterparts to the north, they appear more concerned with morality than child support. G. Warden notes that this was common when the colony did not want to address issues they felt were irrelevant to their needs. Rhode Island's largely rural population meant that bastard children did not initially pose the same social and economic difficulties as those faced by the crowded villages and parishes of the British Isles. The fact that Rhode Island began conducting paternity trials in 1658 suggests that the colony recognized that bastard children could become an issue in the future, particularly as the colony was beginning to transition towards relying more heavily on trade than agriculture as its primary source of income. Farm labor was an easy outlet for unwanted children, shops and mercantile interests were not.

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52 Edward Richmond and Abigail Davis were convicted for conceiving a bastard child in 1658. They were both ordered to pay fines of forty shillings. Richmond and Davis Trial, Court of Trials of the Colony of Rhode Island and Providence Plantations, June, 1658.
The punishment allotted for unwed mothers in Rhode Island did differ from English common law and *The Countrey Justice* was. Dalton writes that “every lewd woman which shall have a Bastard . . . shall [be] commit[ed] . . . unto the house of correction, there to be punished & set on worke for one year.” In contrast, punishment for unwed mothers in Rhode Island usually consisted of a one time whipping or fine, a punishment consistent with other parts of New England. Dalton’s wording suggests that he drew a distinction between a farmer’s daughter who became pregnant out of wedlock and a pregnant prostitute with no hope of identifying a father to pay child support. This again implies differences between rural Rhode Island and increasingly urban England. Rhode Island’s villages and scattered farms did not provide enough business for “lewd women” to warrant regulation, although this would change later in the eighteenth century. For the moment, it was enough for Rhode Island to simply skip over a law with little or no bearing on their colony.

Another unusual element found in many Rhode Island sexual crime trials was the ability for convicted defendants to plea for reduced sentences. Ann Hill Talman, Susannah Talman’s mother, fled Rhode Island in 1665 after she was convicted on adultery charges. Following her return to Rhode Island in 1667, Talman was arrested and ordered to face the penalties assigned to her two years earlier, fifteen lashings in Newport, fifteen lashings in Portsmouth and a fee of ten pounds. The trial records note that Talman then petitioned the court for mercy. After due consideration, her sentence was reduced to fifteen lashings in Newport and no fine, a sizable reduction.

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53 Dalton, *The Countrey Justice*, p. 32
The October 20, 1669 adultery trial for Margaret Colwell of Providence notes that her “Ingenious Confession” lowered her fine from ten pounds to five, although it does not specify precisely what Colwell said to warrant the reduced fine. She was also whipped fifteen times. Wife to Robert Colwell of Providence, Margaret Colwell ran away with Thomas Walling sometime around 1666. For his part, Walling was whipped fifteen times in Providence and fifteen times in Newport. Walling did not pay a monetary fine and it is unclear from the records whether a fine was dropped. Robert Colwell divorced Margaret on July 2, 1668. Unlike most adulterous couples, Colwell and Walling were married on June 19, 1669.

In contrast, the adultery trial for William Timberlake and Mary Stockes on October 20, 1699 demonstrates the penalties inflicted for refusing to repent in court. Stockes was granddaughter to Richard and Mary Morris. While no details about her life exist today, her grandparents’ names appear frequently in the colony records for their land transactions, including a sale of land in Portsmouth to Peter Talman in 1658. The fact that both Timberlake and Stockes were put on trial for adultery suggests that they both were married.

William Timberlake pleaded not guilty during the trial although both the jury and the justices convicted him. He was then asked, “what hee had yett to say for himselfe to give the Court grownd to show any favor to him.” Unlike other defendants in the Rhode Island legal system, Timberlake defied the court saying that “hee had sayd all that was

55 Margaret Colwell Trial, Court of Trials of the Colony of Providence Plantations, Oct. 20, 1669, published in Rhode Island Historical Society, Rhode Island Court Records, p. 38. The record does not detail what Colwell said to the court.
57 Statements from Stockes/Timberlake trial, Rhode Island General Court of Trials, Oct. 20, 1699, published in Rhode Island Historical Society, Rhode Island Court Records, p. 262.
with him to say.” The court promptly ordered him to be imprisoned until he was whipped fifteen times at Portsmouth, fifteen times at Newport and to pay a ten pound fine. The decision to imprison Timberlake until his punishment speaks to the seriousness of his defiance of the court. Most defendants accused or convicted of sexual crimes paid a surety or bail and were sent home to wait for conviction or punishment. Their wariness appears justified as the record goes on to add that Timberlake had “mad an Escape from Justice at presant by volent breaking the Collony preson.” He was eventually recaptured to face further charges.

Like William Timberlake, Mary Stockes pleaded not guilty yet was convicted of adultery. Following her refusal to ask for clemency, she was ordered to face the same sentence. After Timberlake escaped from prison, Stockes’ grandmother, Mary Morris, begged the court for mercy towards her granddaughter. Morris’ role in the trial suggests that Stockes’ father and grandfather were dead, the parties customarily responsible for representing their female offspring. After consideration, the court did “thereupon condescend that the Corporall punihsment . . . be suspended for a months time.” Then Stockes would be whipped fifteen times at Newport. If she agreed to pay a fine of five pounds, the whipping at Portsmouth would be forgiven. While the sentence was reduced, it was not reduced to the same extent as Ann Talman’s was. Perhaps the court felt that Stockes needed to be pleading directly to them rather than through her grandmother. They may also have felt some sympathy towards Talman regarding her comment that she would rather be dead than return home to Peter Talman.

Unfortunately, no details of Mary Morris’ plea for a reduced sentence for her granddaughter have survived. Her actions bear some resemblance to those undertaken by Deborah Proctor in 1705, a widow who attempted to defend her daughter in court. See the Essex County chapter for further discussion of Proctor.
The cynical question of whether Rhode Islanders were aware of the benefits of pleading repentance is raised by the October 8, 1661 trial for James Woodward and Mary Hicke of Portsmouth for “being in Bead together Contrary to Law.” Mary was the wife of Gabriel Hicke. Convicting the couple could, potentially, carry the charge of adultery although it is unclear from the trial records exactly what had occurred between them. The law required two witnesses for conviction and there was only one underage witness, presumably one of Hicke’s children. Instead, the couple “out of the Conviction of their Consciences did freely Confese the ofence.” The court did its level best to find someone who “could be prevayled with: that would Convict the Sayd persons” but nobody came forward. Eventually, based on the lack of witnesses and the couple’s obvious repentance, the court convicted them on fornication charges and ordered them to pay the standard fine of forty shillings each. On the one hand, they had a less severe punishment than they could have received. On the other hand, they could have sought an acquittal based on the legal technicality. Woodward and Hicke were either sincerely penitent or lacked the services of a good attorney.

Reduced sentences were rare occurrences in colonial New England court rooms, with the Province of Maine as the only other jurisdiction to allow them on a consistent basis. Between 1697 and 1714, fines for over half of all sexual crime trial defendants in Maine were reduced, although the records do not indicate why. As the practice ended a year after the Treaty of Portsmouth concluded Queen Anne’s War, it seems likely that the

59 Statements from Hicke/Woodward trial, Court of Trials of the Colony of Providence Plantations, Oct. 8, 1661, published in Rhode Island Historical Society, Rhode Island Court Records, p. 76.
decision was linked to the conflict.\textsuperscript{60} In contrast, there is no immediate explanation for why Rhode Island allowed its convicted defendants to plea for reduced sentences.

The Separatist religions of the early modern period emphasized the importance of a covenanted congregation bound together by beliefs and strictures both religious and social.\textsuperscript{61} However, the model for discourse in the first churches of Rhode Island was very different than the one used by their counterparts in Massachusetts Bay, Connecticut and Plymouth Colonies. Just as Roger Williams had described his fledgling colony to Charles II as a “livelie experiment,” Newport founder John Clarke believed Baptist congregations to be equally “livelie” places where “the pastor’s view and voice would be part of an open discussion and the members would debate differing beliefs with great freedom.”\textsuperscript{62} This is not to say that Rhode Island court rooms, or for that matter, their churches, lacked hierarchy. Historian Robert Brunkow has documented that “religious reform did not foster extensive political or social change.”\textsuperscript{63} The ability to vote was not tied to church membership but it still required considerable financial resources. Rhode Island judges and juries convicted defendants with the same zeal as their counterparts all over New England. Nevertheless, the Rhode Island court system entertained the possibility of dialogue between defendant and bench. Colonists willing to demonstrate sincere repentance in front of their communities were often granted the privilege of receiving a reduced sentence. In contrast, defendants who refused the offer were treated harshly, with William Timberlake as a pointed example.

\textsuperscript{60} See Maine chapter.
\textsuperscript{62} Sydney V. James, \textit{John Clarke and His Legacies, Religion and Law in Colonial Rhode Island, 1638-1750} (University Park: Pennsylvania State University Press, 1999), p. xii
The ability to receive a reduced punishment brings the discussion of sexual crime trials in colonial Rhode Island full circle. Justices and political leaders in Massachusetts Bay, Connecticut and Plymouth surely believed that allowing defendants to plea for clemency proved their point about colonial Rhode Island’s low morals. Any colony that allowed such lenience had to be lacking in propriety. Perhaps more pertinent was the fact that almost half of the acquittals for sexual crime charges in Rhode Island occurred because colonists, or their lawyers, used legal technicalities to bring about the desired effect. These elements suggest that Cotton Mather may have been correct about Rhode Island, at least by the standards of Massachusetts Bay, Plymouth and Connecticut colonies.

Fuelling these arguments further was Rhode Island’s drastic rise in the number of civil trials in relation to criminal trials at the turn of the eighteenth century.64 By the 1690s, only a handful of colonists were being charged with sexual misconduct per year. In contrast, Essex County, the Province of Maine and Plymouth Colony continued to actively try colonists for sexual misconduct through the early eighteenth century. Rhode Island court rooms were increasingly used to collect financial damages rather than expect colonists to answer for their transgressions.65 A large part of this emphasis on mercantile affairs was the swift rise of Newport, ever tuned to the growing trade opportunities available in the Anglo-American Atlantic world. The early presence of attorneys in the colony reflected Rhode Island’s English influences but they were equally connected to Rhode Island’s commercial interests. As today, lawyers survive only where their services

64 See Fiske, Rhode Island General Court of Trials, 1671-1704 and “Newport Court Book A,” held at the Rhode Island Judicial Archives, Pawtucket, Rhode Island for examples of Rhode Island trials from this period.
are paid for. The rest of New England would eventually make the same commercial and moral transitions but they remained a few decades away in the early eighteenth century. For the moment, an attention to legal procedure and financial affairs was still suspect in the Puritan colonies.  

The growing professionalization of their legal and financial systems did not, however, prevent colonial Rhode Islanders from continuing to use the societal foundations of the sixteenth and seventeenth centuries. Like the Puritan colonies of Massachusetts Bay and Connecticut, Rhode Island also revolved around the household system. In May of 1668, Mr. John Porter successfully served as attorney for both himself and his lover, Horrud Long. Following Porter’s court room appeal, the Rhode Island justices agreed to acquit the couple on incontinency charges. Their marriage shortly afterwards created a household in which Porter provided financial support for both Long and her children. While an earlier marriage for Porter and Long would have been preferable, the end result was a stable household as they remained married to the end of Porter’s life.  

If attorneys and legal procedure were an innovation in seventeenth century New England, they still reinforced old ways in colonial Rhode Island.

Similar patterns can be found in trials where reduced fines were given. A public acknowledgement of guilt accompanied by a promise to marry left Rhode Island courts with the reassurance that the couple were now ready to take legitimate part in colonial society. The 1658 trial for Edward Richmond and Abigail Davis on fornication and bastardy charges concluded with the declaration that “under the hands of the Court or by their names herto [they] are married together before and in pressents of the Court

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67 See Archer, *Fissures in the Rock*. 
legally.68 Richmond and Davis paid their reduced fine and returned home. Like Porter and Long, they were now positioned to raise their newborn child within a fully functioning household. Rhode Island leaders were less concerned with the ways in which households were formed than their New England counterparts but they fully recognized the household's financial and societal centrality towards an orderly world.

Rhode Island has always posed certain challenges to scholars of early American history. The colony's insistence on separating church and state and maintaining religious toleration resulted in political and cultural damnation throughout the seventeenth and eighteenth centuries. Then the American Revolution and the founding of the United States in the 1780s made Rhode Island's outlandish ideas acceptable, if not fashionable. Suddenly Rhode Island was praised for its forward thinking, an attitude continuing to the present day.69 Of the jurisdictions examined for this study, its judicial practices bear the closest relationship to modern court rooms with their emphasis on legal counsel and court room procedure. Even so, Rhode Island's continued emphasis on the household order anticipates another important element of the American Revolution. For all the change in political thought, American families were still organized in households after the foundation of the United States in the 1780s and 1790s.

68 Davis/Richmond trial, Court of Trials of the Colony of Providence Plantations, May 1658, published in Rhode Island Historical Society, Rhode Island Court Records, ps. 45-47.
Chapter Six:

CONCLUSION

*The General Fundamentals,* Plymouth Colony's legal code, made the observation in 1636 that “fornication and other uncleane carriages [were] to be punished at the discretion of the Majestrates.”¹ This belief resonated throughout all the colonies in this study. That sexual misconduct needed to be regulated and managed was agreed upon by Europeans and their descendents throughout the Atlantic world. Whether morality or child support was under discussion, sexual intercourse outside of marriage threatened to disrupt early modern western society. Nevertheless, methods for addressing the issue varied, depending on the jurisdiction in question. Laws and verdicts reflected individual magistrates’ views, yet were equally shaped by the needs of the community beyond the court. As a simultaneous point of commonality and difference between jurisdictions, sexual crime trials provide a unique perspective for studying regional identity and legal autonomy in colonial New England, one largely underutilized by past scholars.

The transition toward creating separate legal systems was an inherent part of the colonization process. Thus, settlement conditions and patterns are a necessary context for understanding the legal decisions and motivations of each jurisdiction. Early European settlement in southern New England was straightforward in origin and geography. The *Mayflower* passengers established a colony at Plymouth in 1620, albeit one divided by religious and cultural interests. The Massachusetts Bay Puritans created a more uniform colony at Boston in 1630, which rapidly expanded as the seventeenth century progressed. Rhode Island began in the 1630s with its disparate settlements at Providence and

Portsmouth, Newport and Warwick. In the meantime, Puritans in Connecticut followed the Connecticut and Thames Rivers northward, planting towns along the way. While there were Native Americans present in southern New England, European diseases had weakened many of them prior to the arrival of the first permanent English settlements. Tribal groups like the Wampanoag in Plymouth Colony initially saw English settlers as potential allies in a complex world of pre-colonial Indian competition, rather than as foes to be defeated or unwelcome neighbors to be ignored. In contrast, tribal groups like the Pequot in Connecticut suffered military defeat at the hands of English colonists and their Narragansett allies.

As the southern New England settlements grew, so did their court systems. Legal rulings could not run counter to English law but chains of custom, command and decision existed within the individual colonies. Even allowing for tensions within Rhode Island’s four towns regarding precedence, the southern New England court systems followed a consistent evolution. The Plymouth court answered to Plymouth Colony, as the Essex County court answered ultimately to Massachusetts Bay Colony. Settlers and justices alike knew their place in the world and their place on the growing number of North American maps. With the exception of Plymouth Colony, all of these settlements had charters from the English crown clearly stating their boundaries and land claims. While Plymouth Colony lacked a charter, its independence from neighboring Massachusetts Bay and Connecticut was reinforced by full membership in the United Colonies of New England in 1643.²

² The United Colonies of New England included Massachusetts Bay, Connecticut, New Haven and Plymouth Colonies. The organization provided its members with a modicum of shared military support between 1643 and 1684. Due to its unorthodox religious practices, Rhode Island was not invited to join.
In contrast, the northern New England colonies of Maine and New Hampshire had a more fractured geographic and legal identity, one subject to Native American, French and English interests. The Abenaki, Penobscot, Passamaquoddy, Maliseet and Micmac tribes wanted to maintain their lands and way of life. Enthusiastic reports from early Maine explorers of deep rivers, thick furs and tall pines made the region instantly desirable to future European colonists and their financial backers. However, cold winters and the active Native American presence made habitation more challenging than expected by European colonists. The realities of contact and settlement were far more complicated than European maps could ever portray. Colonies in Maine were repeatedly founded, lost to dwindling finances and reshaped by their new European backers just as Maine towns were founded, destroyed by attack and reshaped by their survivors.

Early colonization in New Hampshire resembled the development of early Maine: seasonal fishing camps followed by a long series of royal grants to whomever first bent the king’s ear. Fishing camps were established on the chain of islands known as the Isles of Shoals by 1620, while the initial formal grant went to David Thomson in 1622. Thomson abandoned his colony at Odiorne’s Point in the late 1620s and King James I granted the same lands to Captain John Mason. Along with Ferdinando Gorges, Edward Hilton and others, Mason was given other grants farther inland, although the exact boundaries of these lands remain unclear. Like Gorges, Mason never actually set foot in New England, although he was preparing for a voyage to North America when he died in

1635. Unlike Gorges, he had been to Newfoundland where he had served as governor between 1615 and 1621.\footnote{See Clark, \textit{The Eastern Frontier}, p. 16.}

New Hampshire initially consisted of four towns, Portsmouth, Dover, Hampton and Exeter. The first two settlements were founded by men representing John Mason. Like the early seasonal camps in Maine, they sought fish to send home to England. In contrast, Exeter was founded in 1638 by John Wheelwright, one of Anne Hutchinson’s disciples. Hampton was an offshoot of Massachusetts Bay, founded in 1639 by Puritans looking to expand their religious and geographic interests. Following John Mason’s death in 1635, Massachusetts Bay Colony successfully acquired the four New Hampshire towns in the early 1640s.

Perhaps uneasy with potential rowdiness from New Hampshire’s fishermen and religious iconoclasts, Massachusetts Bay combined New Hampshire’s four towns with the northern Essex County towns of Salisbury and Haverhill to create Norfolk County in 1648. However, bolstered by restoration to the English throne in 1661 and concerned about Massachusetts Bay’s growing power, Charles II established New Hampshire as a separate royal colony in 1679. Aside from briefly rejoining Massachusetts Bay in 1688, New Hampshire remained independent of Puritan authority throughout the colonial period. Unlike the other New England colonies, it was very much a royal province. The British crown quickly established a Council to rule over New Hampshire and a customs house to oversee all shipping transactions. While this move was initially met with suspicion, the merchant families of Portsmouth soon adapted to the new order.

The challenges of colonization in Maine and New Hampshire, coupled with rapid administrative change, created unsettled court systems in both places. The Maine judicial
system changed seven times before the permanent founding of the York County Court of Sessions and Court of Common Pleas in 1680. The Preble, Frost, Pepperell, Wheelwright and Hammond family first oversaw a Maine trial in 1645, but they continued to answer alternately to the Gorges family, Charles II’s Commissioners and Massachusetts Bay Colony.

New Hampshire experienced a similar evolution, although the colony’s court system eventually achieved independence in 1680. The earliest court hearings in New Hampshire date back to the colony’s transformation into Massachusetts Bay’s Norfolk County in 1648. The North Norfolk County court met alternately at Dover and Portsmouth between 1648 and 1680 while the South Norfolk County court met in Salisbury and Hampton during the same years. When Norfolk County was dissolved in 1679, New Hampshire founded its own judicial system with a Court of Common Pleas for civil cases and a Court of General Sessions for criminal cases. New Hampshire’s justices came from elite families and were chosen for their knowledge and political connections, rather than their judicial experience. The court held jurisdiction over the mainland New Hampshire towns clustered around the Piscataqua River and colonists from Portsmouth, Dover, Hampton, Exeter, Greenland, Newcastle and Oyster River make regular appearances in the New Hampshire court transcripts.

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5 See Appendix D, “New England Court Systems” for complete list of Maine’s court systems with dates.
6 The Salisbury and Hampton records were published in George Francis Dow, ed., Records and files of the Quarterly courts of Essex county, Massachusetts (Salem: Essex Institute, 1911), Vols. 1-9. Records for the courts in Portsmouth and Dover date between 1659 and 1680 and are held at the New Hampshire State Archives in Concord, New Hampshire.
7 See “New Hampshire File Papers”, Vols. 1-5 and “New Hampshire Provincial Court of Common Pleas & Quarter Sessions”, Vols. unnumbered, 5, 6 and 3 (they are not numbered in chronological order), held at the New Hampshire State Archives in Concord, New Hampshire.
In contrast, fishing settlements on the Isles of Shoals remained semi-autonomous at the turn of the eighteenth century, perhaps because some of the islands fell under New Hampshire jurisdiction while others were under Maine law. Historian Charles Clark notes that few islanders were tried in the mainland courts but doubts whether the “hard-drinking, quick-tempered lonely young bachelor fisherman, the vitriolic fishwives, their fighting husbands, and their daughters” were better behaved than their mainland counterparts. Instead, islanders answered to local fishing masters who administered their own rough interpretations of English common law under a precedent known as “Newfoundland law.” As the Province of Maine increasingly came under the control of Massachusetts Bay in the 1680s, most islanders moved to Star Island on the New Hampshire side of the border. Unlike Massachusetts Bay, the New Hampshire court system left leave them to their own devices.

All of these settlement patterns shaped, and were reflected in, the workings of each jurisdictions’ sexual crime trials. Essex County was the most stable jurisdiction in this study, both financially and politically. Unsurprisingly, the bulk of the well documented Essex County sexual crime trials were paternity suits. Unlike their counterparts in other colonies, Essex County residents were able to devote both financial and personal resources to defend sons accused of fathering bastard children or to gain child support for daughters pregnant out of wedlock. In addition, Essex County had the necessary infrastructure for issuing warrants and collecting depositions.

Essex County produced a total of seventy-two charges with documentation beyond conviction and punishment, fifty-two of which were for bastardy or paternity. Twenty-three of these charges include depositions from the defendants’ friends and

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8 See Charles Clark, *The Eastern Frontier*, p. 29.
family. These trials were almost overwhelmingly successful for the defendant providing depositions. The only real exceptions are cases like the 1690 Sessions/Chandler trial where depositions were produced for both young men accused of fathering Elizabeth Sessions' bastard child. In the end, in conjunction with Sessions' birth testimony, the court convicted Joseph Chandler.  

The absence of such testimony in the other jurisdictions suggests that most New England colonists could not afford the necessary court fees. There are only three trials with surviving depositions from family members or friends in the other jurisdictions. One trial was for incest and the other two were for adultery. In all three cases, these were trials where acquittal could mean the difference between life and death.

In contrast, sexual crime trials in Plymouth consistently featured colonists traditionally at odds with the colony's Separatist leaders. Plymouth was a colony with sparse resources and court trials were expensive. What infrastructure existed was used to support Separatist leadership, rather than the interests of individual colonists. Providing depositions proving a family member's innocence was a very different matter in a colony whose justices were scattered between far flung towns, with only one central court.

Another occasional presence in the Plymouth records are the colony's Wampanoag neighbors. While they were tried under English law for crimes committed with English colonists, the records suggest the uncertainty and fluidity of relations between Native Americans and Europeans prior to King Philip's War, an atmosphere further supported by similar trials in the Rhode Island records. One member of the Wampanoag tribe was ordered to be hung for his rape of an English girl but the court eventually decided to whip him as they doubted whether he understood the full weight of

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9 See Essex County chapter for further discussion of the Sessions/Chandler trial.
his actions.\textsuperscript{10} While Native Americans eventually came under the jurisdiction of the Plymouth court, they remained the ultimate non-Separatists in the minds of English leaders.\textsuperscript{11}

The Province of Maine had a reputation as a wild, lawless place. Strikingly unruly behavior was a frequent occurrence in Maine, and the colony possessed the highest rate of repeat offenders in New England. For all of that, Maine’s court records suggest a place wild but not lawless. Its criminals spent far too much on court fees for a lawless society. The 1715 fornication and paternity trial for Paul Williams provides a specific breakdown of the fees paid to the individual justices and law enforcement officers. These added up to a total of two pounds, three shillings and sixpence. Williams was also required to pay an additional two shillings and six pence a week in child support, a large sum of money for an illiterate mariner in the early eighteenth century.\textsuperscript{12}

Most striking among the Maine defendants is the example of Nathaniel Keene. Keene was charged with more crimes than other colonist in Maine history. Nevertheless, the court records make clear that Keene had no qualms about using the Maine court system for his own ends.\textsuperscript{13} Keene’s behavior supports historian Charles Clark’s argument that Maine approached wayward colonists differently than New Hampshire. Maine justices actively oversaw wild behavior, thereby integrating settlers like Nathaniel Keene fully into the legal system. In contrast, New Hampshire encouraged errant colonists to

\textsuperscript{10} See Plymouth Colony chapter for further discussion of the Sam the Indian trial.
\textsuperscript{11} See Kawashima, Puritan Justice and the Indian, White Man’s Law in Massachusetts, 1630-1763 (Middletown, CT: Wesleyan University Press, 1986) for further discussion of English/Native American judicial relations.
\textsuperscript{13} See Province of Maine chapter for further discussion of Nathaniel Keene.
settle in the Isles of Shoals where they were outside New Hampshire’s control. This out of sight, out of mind approach exacerbated New Hampshire’s lack of judicial identity. Both Maine and New Hampshire shifted from royal colony to Massachusetts Bay control, albeit temporarily in New Hampshire’s case. Despite this domination, Maine’s court system remained intact, highlighting the strength of its local legal culture.

However, there was one place where Maine’s justices remained frustrated. Native American autonomy on the northeast border of colonial territory meant they appeared in the court records only to disrupt judicial affairs, whether by kidnapping a court clerk or making it difficult to transport prisoners to the colony jail. If Native Americans were an issue in New Hampshire, they do not appear in the colony’s court records. Maine was still very much a frontier in the early eighteenth century.

Rhode Island’s origins and geography parallel the Puritan colonies of Massachusetts Bay and Connecticut. It was founded by religious dissidents, albeit dissidents from Massachusetts. Aside from the turmoil of King Philip’s War in the late seventeenth century, Rhode Island maintained comparatively good relations with its Narragansett neighbors. On the other hand, Rhode Island’s sexual crime trials reflect the colony’s trajectory from an experiment in religious diversity to mercantile power. The lively seventeenth-century Rhode Island criminal trials gave way at the turn of the eighteenth century to cases involving debt and damages. By the 1690s, civil trials outnumbered the criminal trials by a nearly ten to one ratio. Prior to that time, civil and criminal trials appear equally in the Rhode Island court records. At the same time, the

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15 See Jane Fiske, *Rhode Island General Court of Trials, 1671-1704* (Boxford: Fiske Press, 1998) and “Newport Court Book A,” held at the Rhode Island Judicial Archives, Pawtucket, Rhode Island for examples of Rhode Island trials from this period.
colony's close legal ties with England resulted in one similarity between the Rhode Island and New Hampshire sexual crime trials.

Overall, the few surviving sexual crime trials from New Hampshire make definite conclusions difficult. In total, there are 66 documented sexual crime trials in New Hampshire. The earliest records come from the courts at Portsmouth and Dover between 1660 and 1680 and are largely incomplete. The twelve colonists whose sexual crime charges survive from this period were convicted for fornication or bastardy, with no charges for the more extreme crimes of rape, incest, sodomy or bestiality. The later records are more consistent, with no gaps between sessions or court books after 1692, although they offer little in the way of documentation beyond conviction and punishment. Nevertheless, it seems clear that New Hampshire, as a royal colony, had little reason to challenge English law.

Nevertheless, like Rhode Island, New Hampshire was the only jurisdiction studied in which an attorney was employed in a sexual crime trial. William and Abigail Wiggin French of Greenland, New Hampshire, were ordered on September 6, 1698 to pay forty shillings each for conceiving a child prior to their marriage. The couple maintained that the child was conceived prior to their wedding date and hired attorney Charles Story to plead their case. The New Hampshire Court of Quarter Sessions noted that that Story appeared in court and that it was “hereby ordered that the Clerk of the peace do issue out a Supsodea to Stop the Scoying of the fine.” No other couple accused of intercourse before marriage received an acquittal in the New Hampshire court. Unlike Rhode Island, New Hampshire rarely granted acquittals. Only one in sixteen colonists received an

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16 See Chart Twelve, “New Hampshire Charges, 1660-1718” in Appendix A.
17 French/French trial, New Hampshire Court of Quarter Sessions, December 6, 1699, Quarter Sessions Record Book, Vol. 5.
acquittal in a New Hampshire sexual crime trial, versus one in six in Rhode Island. The presence of an attorney in one of the few trials with an acquittal suggests that New Hampshire also valued legal counsel.

William and Abigail French both came from financially comfortable backgrounds. William’s parents settled early in Ipswich, Massachusetts, one of the more prosperous Essex County towns. As a younger son, he probably moved to New Hampshire in search of larger land holdings in 1695. For her part, Abigail French’s mother was Hannah Bradstreet, daughter to Simon Bradstreet, the former governor of Massachusetts Bay Colony. They were well able to pay Story’s legal fees, although their staunch Puritan backgrounds raise the question of why they employed Story, given the Puritan unease with lawyers. Regardless, Story’s successful pleading of the French case suggests that like Rhode Island, New Hampshire also valued legal counsel. While Story does not appear connected to any other sexual crime trials, the colony’s records indicate that he was an active player in both New Hampshire judicial and political circles. Story often drew up political and legal bills for the colony and was appointed Secretary to the Province of New Hampshire on August 14, 1696, a job only given to colonists who firmly supported crown law.

Aside from a second occurrence of an attorney in a colonial New England sexual crime trial, the most striking feature in the New Hampshire trials is the higher rate of

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wives convicted for intercourse before marriage than couples, particularly after 1698. Their husbands go unmentioned in the records, suggesting that they either went uncharged or were allowed to settle the matter in private. The New Hampshire courts convicted seven wives for intercourse before marriage in the years between 1693 and 1718. All but one of these convictions took place after 1699. In contrast, four couples were convicted for intercourse in the same period. Like Maine, New Hampshire had a high rate of presentments, the formal presentation of court charges in a session prior to the actual hearing. In New Hampshire’s case, more presentments were read than colonists were actually charged. Presentments were read for twenty women charged with intercourse before marriage but only thirteen couples had presentments for the same charge. Again, most of the wives receiving presentments for the charge took place after 1698. Two of the wives and two of the couples were later charged, the others either evaded their hearings or settled the matter out of court.

Essex County, Plymouth Colony, the Province of Maine and Rhode Island Colony, consistently convicted both husband and wife for intercourse before marriage between 1636 and 1718. What makes the transition towards convicting only wives for intercourse before marriage in New Hampshire significant is that England had the same practice. English men who married their pregnant partners also went unpunished as they were seen as having fulfilled their societal obligation to support the children they conceived. Faced with a growing population, seventeenth-century English courts

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21 See Chart Thirteen, “New Hampshire Charges for Intercourse Before Marriage, 1693-1718” in Appendix A.
22 See Introduction for further discussion of presentments and why they were more common in Maine and New Hampshire.
targeted bastardy rather than fornication when punishing sexual crimes, thereby sending the clear message that child support mattered more than morality to early modern English justices. As New Hampshire had one of the smallest populations in New England at the turn of the eighteenth century, overcrowding was probably not a factor. Land was still readily available in northern New England at that period, albeit with the likely caveat of attack from neighboring Native Americans. Instead, the decision to only prosecute married women suggests the colony’s cultural and legal links with England.

Women in colonial New England largely shared similar court room experiences in the seventeenth and early eighteenth centuries. Married or unmarried, they were punished for conceiving children before marriage. While some courts, particularly in Rhode Island, allowed reduced sentences for married couples, they still faced the humiliation of a court hearing and eventual punishment. Regardless of circumstances, women’s ability to control their sexuality was on trial. In contrast, men’s experiences were not consistent. Men in Essex County, Plymouth Colony, the Province of Maine and Rhode Island Colony who did not marry their pregnant partners were convicted for bastardy and ordered to pay child support, just as they were in England and New Hampshire. In contrast, men who married their pregnant partners in these four jurisdictions experienced a form of double jeopardy. Like their wives, they were convicted for intercourse before marriage and whipped or fined, depending on their financial situations. However, the marriage contract carried the additional implication that they would financially support both mother and child. Else Hambleton notes that “to yoke themselves to a woman

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24 See Clark, *The Eastern Frontier*, p. 170. Based on Evarts Greene and Virginia Harrington’s *American Population before the Federal Census of 1790* (New York: Columbia University Press, 1932), Clark estimates New Hampshire’s population to have been around 6,000 in 1688. In contrast, Massachusetts Bay and Plymouth Colonies together had a population of approximately 44,000 at this point.
unable to control her sexual appetite meant a possible forfeiture of grace and a certain loss of honor,” a point reinforced by the courts’ decision to try these men on fornication charges alongside their wives. They were punished as much for their questionable taste in wives as their actions.

The numbers of convicted wives and attorneys in New Hampshire are too small to be conclusive, yet they underscore New Hampshire’s close political and legal ties with England. While the Province of Maine eventually came under Massachusetts Bay’s authority, it too began as a royal colony. Ferdinando Gorges’ dreams of a medieval fiefdom sit uneasily with John Winthrop’s “city on a hill” or Roger Williams’ “livelie experiment.” It is possible that the reason why Maine and New Hampshire were left out of the traditional New England record for so long was because both colonies depart from expectations about Puritan dominance. Royal interests did not square well with colonies associated with non-conformist Protestantism. Neither did the different needs of the northern colonies sit well with the orderly and more prosperous world of the southern colonies.

Court records from Essex County, the Province of Maine, Plymouth and Rhode Island Colonies and the Province of New Hampshire provide a vivid sense of the workings of five colonial New England jurisdictions. Plymouth and Rhode Island Colonies blurred the lines between legislative and judicial branches of their governments, with elected officials also serving as justices. Essex County and the Provinces of Maine and New Hampshire had separate judiciaries but their justices gained their positions through family connection rather than formal legal training. Essex County kept the most

thorough records, with pages of depositions and warrants fleshing out the sparse record books. The Province of Maine struggled with its isolated position, sometimes noting upheavals due to Native American attacks, sometimes coyly leaving the latest skirmishes out of the court records. Plymouth’s attempts to maintain control over a diverse population echoes through the court transcripts, as does the vocal energy of the Rhode Island court room. New Hampshire’s adherence to English law serves as a reminder of the colony’s position as a Royalist province, far flung from its counterparts in the southern colonies.

Colonial New England is often popularly depicted as an unbroken sequence of Puritans in black, scowling darkly under their buckled hats at the thought of anything lighthearted. New Englanders were undoubtedly uneasy with the end results of ungoverned sexual behavior: bastard children with uncertain financial support, broken marriages, dishonor brought upon the family name. However, to say that they were, well, Puritan about sexuality is another matter. Discussion of this particular issue swings from one extreme to the other. There are the fine, upstanding men and women documented by the genealogies and the family histories who only engaged in such behavior in their marital beds. Historian Roger Thompson’s *Sex in Middlesex* traveled in the opposite direction, portraying colonial New Englanders as lusty, passionate beings to a man (or woman), willing to chance punishment for a moment’s bliss. Written in direct response to Thompson, Else Hambleton’s *Eve’s Daughters* argued that colonial New Englanders rarely strayed from the laws and strictures shaping their society. When they did, it was for economic and social reasons, rather than physical desire.
The motivations towards sexual misconduct are consistent throughout the surviving court records of Essex County, the Province of Maine, Plymouth and Rhode Island Colonies and the Province of New Hampshire. They also suggest that both Thompson and Hambleton may have been correct in their assessments of sexual crime trials. No matter where in New England a traveler might journey, sexual crime trials were filled with desire, impatience, hope for more affluent marital partners, violent anger or other such impulses. Sexuality was as much a part of life in colonial New England as it is anywhere else. Nevertheless, the methods used to govern that sexuality in colonial New England varied greatly. Rather than a solely “Puritan” impulse towards morality, sexual crime convictions were based on a complicated formula encompassing settlement origin, cultural heritage and the existing needs of the surrounding community.

A century, or more, before the invention of chemical dyes, early modern Europeans made use of a wide range of dye stuffs for color: indigo for blue, madder for scarlet, tansy for yellow, logwood for purple. The dark clothes in the Puritan portraits suggest a dour, black and white world. As black was expensive to produce, it was saved for formal attire, the sort worn for a portrait. For their ordinary clothing, colonial New Englanders blended familiar shades with locally available dyes from walnuts, lichens and goldenrod. In turn, a true history of New England contains all of these elements: some native, others brought from Europe, the remainder invented on the spot. The political dominance of the Puritans remains intact. Allowing them a permanent cultural dominance is another matter altogether for modern historians.
BIBLIOGRAPHY

Secondary Sources


“Carrier Family History” Andover Historical Society, Andover, Massachusetts.


Hatch-Hale, Ruth A. *The Hatch Family.* Salt Lake City, UT: Publisher unlisted, 1925.


Primary Sources


Dow, George Francis ed. *Records and Files of the Quarterly Courts of Essex County, Massachusetts.* Salem, MA: Essex Institute, 1911.


“Newport Court Book A.” Rhode Island Judicial Archives, Pawtucket, Rhode Island.


Appendix A.

Charts

Chart One:

*Total Charges by Jurisdiction, 1636-1718*

- Essex County: 818
- Province of Maine: 275
- Plymouth Colony: 210
- Rhode Island Colony: 136
- New Hampshire: 66
Chart Two:

**Individual Charges, 1636-1718**

- Fornication: 891
- Bastardy/Paternity: 486
- Before Marriage: 421
- Other Charge: 298
- Adultery: 30
- Rape: 12
- Incest: 11
- Bestiality: 5
- Sodomy: 5
Chart Three:

**Total Charges With Documentation by Jurisdiction, 1636-1718**

- Essex County: 73
- Province of Maine: 25
- Plymouth Colony: 34
- Rhode Island Colony: 22
- New Hampshire: 5

[Bar Chart Image]
The numbers reflected here are the total number of each kind of trial. However, in cases where colonists were tried for two crimes, for example bastardy and fornication, only one crime/trial counted towards the total number of trials.

* Fornication/other charge before marriage trials do not count towards the whole as this was considered a descriptive characterization rather than a second crime.
* There was a total of 162 bastardy trials, with 34 trials for bastardy and 118 for bastardy and a second crime.
* There was a total of 143 paternity trials, with 118 trials for paternity and 25 for paternity and a second crime.
* While 8 of the adultery trials were clearly labeled as adultery trials, another 2 appear/could have been adultery trials.
* While these 5 trials fairly clearly involved rape, in three cases of underage girls, there are 2 more trials in the Other Charge category that may have been.
* As these charges were for two maidservants, these trials were not technically sodomy trials.
Chart Five:

**Essex County Charges with Depositions, 1636-1718**

- Depositions: 73
- Bastardy/Paternity: 52
- Fornication: 7
- Fornication before Marriage: 4
- Rape/Assault: 3
- Adultery: 4
- Adultery: 2
- Adultery: 2
- Adultery: 1
- Incest: 1
- Bestiality: 1
- Sodomy: 1

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Chart Six:

Province of Maine Charges, 1636-1718

Numbers reflected here are the total number of each kind of trial. However, in cases where colonists were tried for two crimes, for example bastardy and fornication, only one crime/trial counted towards the total number of trials.

*Fornication/other charge before marriage trials do not count towards the whole as this was considered a descriptive characterization rather than a second crime.
* There was a total of 37 bastardy trials, with 16 trials for bastardy and 21 for bastardy and a second crime.
* There was a total of 20 paternity trials, with 7 trials for bastardy and 13 for bastardy and a second crime.
* While 1 adultery trial was clearly labeled as an adultery trial, another 3 could have been tried as adultery trials.
Chart Seven:

Repeat Offenders by Jurisdiction, 1636-1718

- Essex County: 12
- Plymouth Colony: 6
- Province of Maine: 21
- Rhode Island Colony: 3
- Province of New Hampshire: 0
Chart Eight:

Maine's Alternate Sexual Crime Charges by Decade, 1636-1718

- 1636-1645: 12
- 1646-1655: 17
- 1656-1665: 16
- 1666-1675: 21
- 1676-1685: 3
- 1686-1695: 0
- 1696-1705: 0
- 1706-1716: 0
- 1717-1718: 0
Chart Nine:

Plymouth Colony Charges, 1636-1718

The numbers reflected here are the total number of each kind of trial. However, in cases where colonists were tried for two crimes, for example bastardy and fornication, only one crime/charge counted towards the total number of trials.

* Fornication/other charge before marriage trials do not count towards the whole as this was considered a descriptive characterization rather than a second crime.
* There was a total of 27 paternity charges, with 22 trials for paternity and 5 for paternity and a second crime.
* There was a total of 19 bastardy charges, with 11 trials for bastardy and 8 for bastardy and a second crime.
* There were 6 adultery charges, with another 4 trials that were not tried as adultery but could have been.
Chart Ten:

Plymouth Colony Documented Trials, 1636-1718
Chart Eleven:

Rhode Island Colony Charges, 1641-1718

The numbers reflected here are the total number of each kind of trial. However, in cases where colonists were tried for two crimes, for example bastardy and fornication, only one crime/trial counted towards the total number of trials.

*Fornication/other charge before marriage trials do not count towards the whole as this was considered a descriptive characterization rather than a second crime.
* There was a total of 28 bastardy trials, with 6 trials for bastardy and 22 for bastardy and a second crime.
* There was a total of 23 paternity trials, with 12 trials for paternity and 11 for paternity and a second crime.
Chart Twelve:

New Hampshire Charges, 1660-1718

The numbers reflected here are the total number of each kind of trial. However, in cases where colonists were tried for two crimes, for example bastardy and fornication, only one crime/trial counted towards the total number of trials.

*Fornication/other charge before marriage trials do not count towards the whole as this was considered a descriptive characterization rather than a second crime.

* There was a total of 29 bastardy trials, with 15 trials for bastardy and 14 for bastardy and a second crime.
* There was a total of 13 paternity trials, with 11 trials for paternity and 2 for paternity and a second crime.
Chart Thirteen:

New Hampshire Charges for Intercourse
Before Marriage, 1693-1718

- Convicted Wives
- Convicted Couples
- Presented Wives
- Presented Couples
Appendix B.

Alternate Sexual Crime Charges

1. Uncleanness
2. Unseemly behavior
3. Unchaste words
4. Carriage
5. Unseemly carriage
6. Kissing
7. Attempting chastity
8. Incontinency
9. Lascivious speeches
10. Wanton dalliance
11. Miscarriages
12. Keeping/Frequently company
13. Staying overnight
14. Unclean speeches
15. Soliciting adultery
16. Obscene and filthy speeches
17. Abusing woman’s body in foul manner
18. Relations after contract and before marriage
19. Profane and foolish dancing, singing and wanton speeches
20. Suspicious carriages
21. Making love
22. Seeking marriage without friends’ consent
23. Lascivious carriage
24. Uncivil carriage
25. Unproper relations
26. Attempted abasement
27. Too much/unlawful familiarity
28. Acted lasciviously
29. Being together in scandalous manner on Sabbath in husband’s absence
30. Light carriage
31. Bigamy
32. Lying together
33. Coming together
34. Breached separation
35. Too much familiarity
36. Carnall fellowship
37. Putting hand in codpiece
38. Scandalous carriage
39. Useemly speeches and misbehaviors
40. Soliciting adultery
41. Unseemly gloriyng in the abuse of his own and his wife’s chastity
42. Carnal copulation
43. Bedding with each other as man and wife
44. Abuse out of bed naked on the floor
45. Unseemly practices
46. Filthiness
47. Unlawful enticing
48. Defiling the marriage bed
49. Offering violence to the body, tending toward uncleanness
50. Abusive carriages
51. Assault
52. Suffering a young man to lie with her
53. Great offences
54. Heinous, lascivious and adulterous carriages
55. Carnal knowledge
56. Boasting about lascivious and unclean practices
57. Filthy lascivious carriage divers times
58. Filthy carriage
59. Being unchaste before marriage
60. Unchastity
61. Keeping company at an unseasonable time of day
62. Being naught and unseemly being together
63. Offer to lie with another man’s wife and abuse her with uncleanness
64. Using dalliance divers times
65. Suffering a man’s attempt to abuse her body by uncleanness
66. Lying in bed with brother
67. Lude carriages
68. Unclean practices
69. Lascivious and unclean carriages
70. Fornication in unlawful companying before their marriage
71. Unclean speeches and carriages/lascivious speeches and misbehavior
72. Abusing himself with now wife by comitting uncleanness before marriage
73. Carnal knowledge/copulation before marriage contract
74. Attempting chastity of diverse women by lascivious words and carriages
75. Knowledge of each other before public marriage
76. Lewd behavior each with other upon a bed
77. Offering an attempt of boddyly uncleanes
78. Vain, light and lascivious carriage at an unseasonable time of the night
79. Idle and lascivious behavior
80. Lascivious going in the company of young men
81. Misdemeaning of himself in words and carriages
82. Lascivious carriages and unchast in attempting chastity to serve fleshly, beastly lust without intention of marriage
83. Keeping company with each other in an undecent manner at unseasonable time and place before marriage
84. Unseemly carriage at an unseasonable time, being at night
85. Unclean and filthy behavior
86. Unclean and lascivious behavior
87. Attempting chastity by offering violence
88. Disorderly coming together without consent of parents and lawful marriage
89. Lascivious and unnatural practices
90. Adulterous practices and attempts, so far as the strength of nature would permit
91. Obscene and lascivious behavior
92. Drawing his wife in an uncivil manner upon the snow
93. Committing whoredom aggravated with divers circumstances
94. Sundry attempts to abuse her, by attempting by force to lie with her and other lascivious carriages
95. Conceived child before marriage but after contract
96. Lascivious, obscene and wild expressions and actions
97. Uncivil words and carriages towards/giving writings to intice despite being married
98. Whoredom
99. Lascivious and light behavior
100. Found in bed together
101. Lascivious attempts
102. Carnally know and ravish by force
103. Light behavior
104. Desiring and divers times attempting to lye with her
Appendix C.

Preservation and Publication of the Legal Sources

Legal culture in colonial New England was shaped by the individual colonies’ origins and intentions. The preservation of their court records suggests similar influences of origin and intent. Massachusetts Bay was New England’s dominant colony throughout the seventeenth century. Following the Dominion of New England in the 1680s and the Salem witch trials in the 1690s, the colony’s Puritan leaders faltered before rebirth in the eighteenth century as the independent-minded Yankees who would help drive the fervor behind the American Revolution.  

1 Essex County judicial records for the years between 1636 and 1686 were painstakingly edited by George Francis Dow in the early twentieth century and published by the Essex Institute in a nine volume series titled *Records and files of the Quarterly courts of Essex County, Massachusetts*. A Works Project Administration project undertook transcriptions for these records in the 1930s, allowing scholars to expand beyond Dow’s edited records. In contrast, later colonial court records for Essex County remain unpublished and untranscribed.  

2 Like Maine’s colonial courts, the publication of its legal records has also been a vibrant, homespun, affair. Under the guidance of Charles Thornton Libby, Robert Moody and Neal Allen, the Maine Historical Society published Maine’s judicial records for the years between 1636 and 1727 in a five volume series titled *Maine Province and Court*

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Unlike the published court records for Massachusetts Bay and Plymouth, Maine’s published records were thoroughly annotated, thus providing scholars with the necessary context for understanding the events described in the trials.

Plymouth was a small, poor colony eventually absorbed by its larger neighbor to the northeast. Nevertheless, its position as the first permanently established settlement in New England has generated much interest in the colony’s records and history. Under the guidance of Nathaniel B. Shurtleff, Plymouth Colony records for the years between 1633 and 1691 were published in a ten volume series titled *Records of the Colony of New Plymouth, in New England*. David Konig published records for Plymouth Colony/County in a ten volume series titled *Plymouth Court Records, 1686-1859*.

The Colony of Rhode Island and Providence Plantations struggled to create unity between its incongruent towns and religious congregations throughout the seventeenth century. Given this history, the lack of consistency in the publication and preservation of Rhode Island’s legal records is unsurprising. Transcriptions for the years between 1641 and 1646 were published by Howard Chapin in his *Documentary History of Rhode Island*. The Rhode Island Historical Society published records for the years between 1647 and 1662. Original records for the years between 1671 and 1718 are preserved in a volume known as “Newport Court Book A.”

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The Province of New Hampshire’s court system was not established until late in the seventeenth century and lacked the power of the court systems in the other jurisdictions. Perhaps reflecting this, New Hampshire is the only jurisdiction for whom there are no published court records. The surviving records are held at the New Hampshire State Archives and are rather haphazardly organized.\(^6\) Documents for the Dover and Portsmouth County Court for the years between 1659 and 1681 are held in the New Hampshire File Papers, Volumes One through Five. These volumes were assembled by the New Hampshire Chapter of the Daughters of the Founders and Patriots of America in 1959. As there are almost no surviving sexual crime trials in these records, it is possible that they were edited by the Daughters of the Founders and Patriots of America.

Records from the New Hampshire Provincial Court of Common Pleas & Quarter Sessions are found in a series of record books whose numbering is out of sequence. An unnumbered volume covers the years between 1683 and 1688, Volume VI has the years between 1692 and 1704, Volume V has the years between 1704-1710 and Volume III has the years between 1710 and 1718. There are no surviving depositions, warrants or other forms of documentation for any of these records.

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Appendix D.

New England Court Systems

Massachusetts Bay

"Greate and Generall Court" of Massachusetts Bay, March 4, 1629-March 3, 1636.

Court of Assistants, under the Charter of the Governor and Company of the Massachusetts Bay in New England, 1629-1692

Superior Court of Judicature, under the Province Charter, 1692-1780

Supreme Judicial Court, under the Constitution, 1780-

Essex County

Essex County Inferior Quarterly Court in Salem, 1636-1692

Essex County Inferior Quarterly Court in Ipswich, 1641-1692

Essex County Court of General Sessions of the Peace, 1692-1718

Essex County Court of Common Pleas, 1692-1718

Old Norfolk County

South Norfolk County Courts at Salisbury, 1648-1680

South Norfolk County Courts at Hampton 1648-1680

Province of Maine Courts

New Somersetshire, Province Court, 1636

Province of Maine General Court, 1640-1651

York County Court, under Massachusetts, 1653-1664

York County Court of Associates, under Massachusetts, 1658-1661, 1663-1664, 1668-1679

Province of Maine Court, Eastern and Western Divisions, 1665-1667

York County Court, under Massachusetts, 1668-1679
York County Court of Pleas 1680-1692
York County Court of Sessions, 1680-1692
York County Court of General Sessions of the Peace, York County, 1692-1718
York County Inferior Court of Common Pleas, York County, 1692-1718

Plymouth Colony and County

Court of Assistants of Plymouth Colony, 1633-1666, 1686
General Court of Plymouth Colony, 1637-1691
Court of Election (also handles regular cases), 1650-1691

Court of His Majestie at Plymouth Colony, 1666-1686
Plymouth Court of General Sessions, 1686-1718
Plymouth Court of Common of Pleas, 1686-1718

Province of New Hampshire

Dover and Portsmouth County Court, held alternately in Dover and Portsmouth, 1659-1680

New Hampshire Court of Quarter Sessions, 1680-1718
New Hampshire Court of Common Pleas, 1680-1718
BIOGRAPHY OF THE AUTHOR

Abby Chandler was born in New Haven, Connecticut on February 20, 1974, although much of her childhood was spent in Small Point, Maine. She attended Pingree School, graduating in 1992. She received her B.A. in History from Colby College in Waterville, Maine in 1996. Abby spent five years following college working in the museum field, including the Homeplace 1850 in Tennessee and Living History Farms in Iowa. She received a Masters degree in American History with a certificate in Public History from the University of Massachusetts Amherst in 2002. From there, she went on to a doctoral degree in History at the University of Maine. In spite of her work in academia, she has maintained close ties to the museum field and incorporates the skills learned there while teaching. She is an active member of The Association of Living History, Farms and Agricultural Museums as well as being an associate of the Omohundro Institute of Early American History and Culture. She is a candidate for the Doctor of Philosophy degree in History from the University of Maine in December 2008.