

# UC Santa Barbara

Volume 2 (2020)

## Title

The Physical Body in Crime, Punishment, and Law in Early New England, 1630-1675

## Permalink

<https://escholarship.org/uc/item/8vx9m795>

## Author

Medalla, Shekina

## Publication Date

2020-10-01

## The Physical Body in Crime, Punishment, and Law in Early New England, 1630–1675

*Shekina Medalla*

*History, University of California, Santa Barbara*

### Abstract

In the seventeenth century, Massachusetts Bay Colony leaders often meted out bodily punishments with the intention of shaming offenders. Both the type of crime presented and the bodily punishments given reflected a deliberate strategy on the part of Puritan leaders. By examining the Colony's court records between 1630–1675, this paper explores what a Puritan legal system looked like with respect to early bodily chastisements. Almost all the crimes that were punished through physical correction also had some sort of bodily violation. No matter how gruesome, the punishments represented the community's efforts to return the offender to the body politic.

CC BY-NC-SA

### Introduction

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

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

A hundred years later, the newly formed United States witnessed the end of punishment as a public spectacle. A more modern criminal justice system would instead turn to penitentiaries, prisons, and other institutions to discipline transgressors behind closed doors. According to Michel Foucault's study of this shift, by the end of the eighteenth century, "the body as the major target of penal repression disappeared." But despite the disappearance of these barbaric forms of torture on the physical body, modern discipline of the minds and souls of criminals often exerted a far greater intrusion than the bodily punishments that preceded it. Historians since Foucault have produced many notable works dealing with crime, punishment, and law in early New England. Most, however, have focused on the Foucauldian moment of transformation in the eighteenth and early nineteenth centuries; few have specifically explored the role of the body in criminal courts.

Even though bodily punishments were no longer the public spectacles they had once been, it does not necessarily mean that they disappeared altogether. Sometimes public viewing just took another form. For example, sociologist Kai Erikson notes "it is interesting that the 'reform' which brought about this change in penal practice coincided almost exactly with the development of newspapers as a medium of mass incarceration." Sure, we no longer travel to the center of town to witness beheadings of criminals, but a "considerable portion of what we call 'news' is devoted to reports about deviant behavior and its consequences," even though "these items" might not be inherently "newsworthy." The modern

era has many examples of bodily punishments, warranted or not, in the form of torture; these include Jews during the Holocaust who were stripped of their identities through various means of torture; alleged affiliates of known terrorist groups, held by the United States military, who underwent 'enhanced interrogation techniques' (a euphemism for systematic torture); and minorities in the American criminal justice system who still live with inhumane bodily experiences such as violence, sexual abuse, discrimination, overcrowding, and other threats to health and safety. In fact, modern Americans often contend that the main goal of the criminal justice system is correction and rehabilitation; but the very nature of imprisonment—with its emphasis on involuntary confinement—implies a de facto bodily punishment.

Examination of bodily punishments in seventeenth-century Massachusetts reveals complexities not anticipated in Foucault's model. To further examine and analyze punishment in colonial Massachusetts, this paper explores over 250 cases drawn from the first legal records of the Massachusetts Bay Colony spanning the period from 1630–1675. This colony is often viewed as one of the so-called "Puritan" colonies of early New England, colonies founded in the early seventeenth century by some of the most exacting 'Hot Protestants' of the English Reformation. When these Puritans were given the opportunity to create their own legal system, they based it on a modified version of the English common law, transformed in places to fit particular scriptural interpretations, albeit cautiously, as they had no desire to arouse outside scrutiny.

This paper investigates the early Puritan legal system of Massachusetts and focuses on bodily chastisements in actual practice. Whipping, branding, shaming, restraint, and banishment may seem cruel—a common and modern stereotype of Puritans features severe punishments. Foucault's analysis of unrelated, unreformed European legal practices suggests, in contrast, that these punishments made up an unremarkable part of early modern judicial methods. But there was something unique about the Puritans' use of bodily punishments. First, they were employed in crimes that in some way involved desecration of the body. Of all the crimes found in the records, only four dominated: drunkenness, burglary/theft, unruly speech, and malicious speech. Three of these categories clearly involve criminal misbehavior on the body, either on one's own, or that of another person's; the fourth, burglary/theft, made up a metaphoric attack on persons or their simulacra. Thus, not only did the punishments meted out focus on disciplining the body, the crimes themselves involved some form of bodily misbe-

havior that the Puritans abhorred and desired to stamp out.

The second argument addresses the Puritan legal system's intense focus on the body. While this paper cannot fully prove at this point, the evidence suggests that Puritans themselves modified English law to bring it into closer alignment with their interpretation of the sacred scripture, creating a distinct variant of early modern practice. Finally, these modifications affected the types of punishments given out. Puritan judges and juries meted out bodily discipline with the humane intention of reforming and reincorporating the convicted person into the body politic. A communitarian intent lay behind even the most brutal sentences.

### **Migration to New England: Origins of Massachusetts Bay Colony and its Legal System**

To understand the legal system of Massachusetts Bay, we first need to grasp its religious and political background as a Puritan colony. Puritans disapproved of the religious changes brought forth by the English Reformation and sought to leave England. According to some, God provided New England as a place where Puritans could take refuge, and the Puritans would create a new church, one which God wholly approved. Most importantly, the idea that God had set them the task of creating a new (and better) church and society explains the Puritans' concern with creating a revised legal code that matched their religious beliefs. But this new code could not smack of theocracy, or they might otherwise be charged with unlawfully separating from both English law and its official church.

The Puritan churches were largely guided by the Bible, which they saw as a complete guide. The Congregationalists had not established a formal set of laws as most members believed laws should be created over time "by practice and custom." As early as 1635, however, many of them had advocated for a formal set of codes. As the colony grew in size and complexity, its leaders realized it would eventually need positive law, or a written legal code to clarify its governance of colonists. John Cotton proposed An Abstract of Laws and Government in 1636, but it was never officially adopted. The first authorized legal law code was published in 1641. The Massachusetts Body of Liberties, written by Nathaniel Ward, a Puritan clergyman, drew upon the Magna Carta (1215) and the English common law. The Body of Liberties applied to the entire colonial population in a uniform way—a simplification of the English common law in which different parts of the English population

might have had different rights based on somewhat idiosyncratic regional or institutional custom. A succeeding legal document, *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts* [sic], published in 1648, included a more thorough list of laws that comprised not only the liberties but enumerated certain restrictions on colonists' behavior. These Laws and Libertyes of Massachusetts would govern the colony for the next century and included descriptions of crimes and details about how punishments were to be carried out.

At least ten laws dealt with the body. Offenses included within the capital laws—murder, anger/cruelty, poisoning, bestiality, sodomy, adultery, man-stealing, and rape—were all crimes that had the body at their source. Among other crimes, the severity of the offense seems to have dictated whether it was handled with a fine or whether those convicted received bodily punishments. So some lesser crimes—arson or fornication—were punished by fines, while more severe ones, such as forgery, heresy, or extreme cases of fornication, were punished by the pillory, banishment, or other corporal punishments. Nevertheless, Puritans also included limitations on punishment, including provisions against double jeopardy and specifications that bodily punishments must include “none that are in-humane, barbarous or cruel.” Lastly, when one was subject to be punished by torture, the law stated that “no man shall be beaten with above fourty stripes for one Fact at one time. Nor shall any man be punished with whipping, except he have not otherwise to answer in the Law, unles his crime be very shamefull, and his course of life vitious and profligate.” This law made clear that a criminal could not be tortured indefinitely and only those that performed shameful, vicious, or profligate crimes could be subject to the lash.

## Summary of Data

### Defining Crime

As Kai Erikson wrote in his classic historical sociology of Puritan New England, “deviance is not a property inherent in any particular kind of behavior; it is a property conferred upon that behavior by the people who come into direct or indirect contact with it.” Thus it is the members of society who define which acts are deviant and “create the machinery of control in order to protect itself against the ‘harmful’ effects of deviation.” In the trial of Nicholas Frost that opened this paper, his deviance included theft, drunkenness, and fornication, and the punishments conferred upon him were a fine,

whipping, and branding, respectively.

The court cases studied ranged from full and detailed records to brief and fragmentary mentions. Most of the criminal records were written with brevity—a line or two at most—and therefore many lack much background information or context. Even though the individual records are scanty, it is possible to do a collective analysis of trends within some frequently prosecuted types of crime to see patterns of punishment. In this way, a collective analysis of the records reveal how law and governance were intended to enforce the social norms of seventeenth century Massachusetts. An analysis of the colony’s Court records from 1630 to 1675 revealed a total of 287 crimes and 323 associated punishments. The four most performed crimes can be broken down into four large categories: Drunkenness, Burglary/Theft, Unruly Speech (cursing, swearing, lying), Malicious Speech (rebellion, rumor mongering, and contempt for authority), and Obscure & Other Crimes.

Table 1: Total Crimes and Punishments

Total Crimes	Total Punishments
286	323

Table 2: Crimes

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

Table 3: Punishments

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

Three of these categories (Drunkenness, Unruly Speech, and Malicious Speech) involve direct criminal misbehavior on the body either on oneself or of another person. Drunkenness has an obvious bodily effect; cases of unruly or malicious speech centered on the mouth and tongue; the fourth category, Burglary/Theft, involves a

bodily crime by analogy, as seventeenth-century New Englanders saw a house or building as a metaphoric body, according to historian Robert B. St. George. As St. George notes regarding witchcraft cases, there exists a “metaphoric equivalency drawn between the dwelling house and the human body, between architecture and the extended range of meanings attached to the concept of embodiment.” For example, witches attacked houses because “these structures of wood, brick, and stone were material metaphors of the human body... the house references malefic assaults against the family unit (the “little commonwealth,” or dynastic body), the church (Christ’s body), government (the political body), and community order (the social body).” Following St. George, burglary/theft can more easily be seen as a crime against the body; malicious speech attacking the government or the church, for example, can more easily be seen for its inherent nature as an assault on the body politic or the body of Christians.

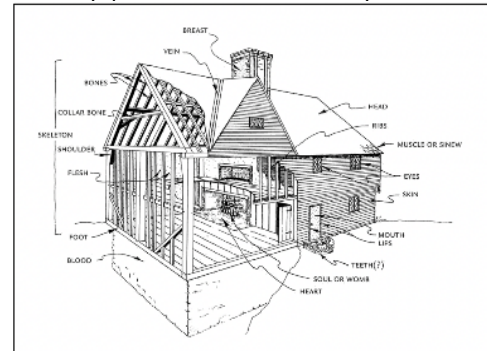


Figure 1: St. George, Robert B. The Human House and Its Parts in Seventeenth-Century New England. Drawing. An explicit visual associating parts of the home with parts of the body.

When we look at the punishments meted out (Table 3), all of them, except fines, directly affected the body. The list includes whippings/severe whippings, settings in bill-bowes (similar to pillories) or stocks, and banishments. Using Nicholas Frost’s case once again as an example, he committed three different crimes: theft, drunkenness, and fornication. He received three different punishments: a fine, a whipping, and a branding. While linking certain punishments to particular crimes may not be simple, the court records do reveal which of those punishments appeared the most often, and it is not a surprise that most target the physical body.

Covering every crime and every punishment found in the records lies beyond the scope of this paper, which is why only the four most prominent crimes and punishments are analyzed. The Puritans’ intense focus in the body is apparent, however, in both the court records and the colony’s legal codes. For example, they sought to rectify sexual (hence bodily) transgressions, such as filthy/unchaste behavior, adultery, fornication, and rape; and violent transgres-

sions against the physical body, such as murder, abusive behavior, burning houses, manslaughter, and striking. Furthermore, the Puritans sought to punish these transgressions by targeting criminals’ bodies; this included imprisonment, hard labor, the death penalty, forcing their tongues in a cleft stick, cutting off their ears, and branding them with a hot iron. The crimes they prosecuted were suited to their interpretation of—what was morally wrong in the eyes of God—the sacred scripture, and the punishments they meted out were meant to reform and reincorporate convicted persons back into society.

## Analysis of Most Prosecuted Crimes

### Drunkenness

Drunkenness was the most common crime, tried in court sixty-four times between 1630–1675. Drinking, per se, was not evil, but an excess of it was. The Puritan interpretation of Scripture held that drunkenness was a crime precipitated by the Devil. They argued that this sin could also guide drunkards into performing increasingly atrocious acts such as robbery, adultery, and even murder. The Puritans, however, desired reincorporation, so they did not sentence transgressors to death but arranged for a more gradual system of penalties that encouraged a drunkard to reform.

In most instances, the penalty was merely a fine, but there were occasions in which one was bound to good behavior. More serious or repeat offenders might have been set in bill-bowes/stocks, or, in extreme cases, whipped or severely whipped. Robert Coles was one such habitual drunkard who committed at least four drinking offences and appeared in court in the span of three years. For his first two appearances in court, Coles was fined, but his third and fourth appearances had more grievous consequences. In 1633, he was not only fined for “abuseing himselfe shamefully with drinke,” he was also “enjoynd to stand with a white sheete of paper on his back,” in which the word drunkard was “written in greate [i.e., either large or capital] lettres to stand therewith soe longe as the Court thinks meete [sic].” Then in 1634, Coles was disenfranchised and forced to “wear about his necke, & soe to hange upon his outward garment, a [letter] D, made of redd cloath, & sett upon white.” This punishment would not be brief nor take place behind closed doors for he was required “to continue this for a year, & not to leave it of att any time when hee comes amongst company.”

Although Puritans believed alcohol was a necessary form of entertainment, indeed deeming it a “lawful liberty,” they only accepted it if taken in moderation. Excessive drink was not only a sin but was

also a disturbance, and the behaviors of repeat offenders only served as examples of its disruptive manifestations. Coles' trials reflected the notion that repetition of an undesired behavior in Puritan society led to repercussions with increasing severity, often using the physical body in order to publicly shame a deviant. For example, in his third offence, Coles merely had to stand for a couple of hours holding a simple sheet of paper with the word drunkard written on it, whereas in his fourth offence, he was forced to wear for an entire year a red-colored letter D sewn on a white-colored garment.

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

Thus, the punishments for repetitive drunkards may appear cruel at first glance, but the underlying purpose of the law was to ensure social order and, therefore, protect the body politic. In 1634, Robert Coles made his fifth appearance but, this time, in a redeeming manner. Just two months prior, he was sentenced to a year of public scrutiny, but seeing his "submission and [hearing] testimony given of his good behavior," the court reversed their initial decision in the fourth trial. This indicates that Puritan leaders placed an emphasis on rewarding acceptable and repentant behavior for they were willing to reverse 'cruel' bodily punishments.

#### **Burglary/Theft**

Punishments for burglary and theft, the second most common category of crime, included branding various parts of the body with a hot iron, whipping, cutting off thieves' ears, and death. However, the law in practice did not emerge as harsh as it did in writing. In fact, the Puritans did not often resort to branding thieves with hot irons nor sentencing them to death. Of the thirty burglary and theft cases, twenty-five resulted in whippings or severe whippings, and two of the thieves who were whipped were also branded

with a hot iron—one on the hand and the other on the head. No whippings were administered in the remaining five cases, but three involved public sanctions in which the thieves were either set in the bill-bowes, set in the stocks, or forced to wear the letter T, for thief, upon his garment.

If those of a lower status performed the crimes, bodily punishments were often inflicted right away; not only were they more susceptible to committing burglary or theft, they were also more likely to be tried in court for doing so. One such group were the indentured servants. While under contract, they were not allowed to marry, have children, nor own property. Thus they were more likely to steal practical objects, such as victuals (food or provisions), clothing, and other items of necessity, fundamental items which their masters (or people of higher status) often had plenty enough of. For instance, servants were whipped for stealing loaves of bread, pigs or other cattle, victuals from their masters, sheets, a pair of shoes, beans, etc. They were also easily caught as they attempted to run away.

Some indentured servants lost further freedoms upon committing burglary or theft; they were subject to tighter scrutiny from their masters, and bodily punishments were used in order to incapacitate them, force them to serve longer terms, or turn them into slaves. Such cases disclose that bodily punishments were often tied to the loss of freedom, especially for the lower echelons of Puritan society. As mentioned earlier, robbing or stealing from a house or a person was a crime against the body. Because they were not allowed to own property, servants had no houses of their own. They lacked a body of security and protection, core elements of a home, and burglary and theft against their masters who possessed such bodies were their means of fulfilling that void. Of course, masters viewed this fulfillment as attacks on their own bodies, and since they procured power more easily than their servants, they were able to create the 'machinery of control'—by using the law as a tool to quell such attacks—in order to protect themselves against the 'harmful' effects of deviation.

#### **Unruly and Malicious Speech**

Unruly speech involves those who curse, swear, and lie. Those who "shall swear rashly and vainly either by the holy Name of God, or any other oath" were fined. If a profane swearer was not able or utterly refused to pay the fine, he was "committed to the Stocks there to continue, not exceeding three hours, and not lesse then one hour." Unruly speech was not a severe crime punishable by death, so the most common forms of punishment for this crime

were whippings and fines. Of the twenty-five cases of unruly speech, eight ended in whippings or severe whippings and six ended in fines. Similarly, malicious speech against the government was not a sin in the scripture, but it was dangerous to hold these opinions for it threatened the stability of the colony. Like unruly speech, a majority of transgressors were also whipped and fined, but those that spoke negatively of the Massachusetts government or had contempt for its authority were also forced to observe the law, were disenfranchised, or banished altogether. The authorities thought it best to disenfranchise or prevent from holding office those who spoke against the government; if one did not agree to the government, why, then, should they have a say in it?

### Conclusion

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

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

### About the Author

Shekina Medalla is a third-year History and Sociology double major. She was the only junior to have been accepted into the 2019–2020 Senior Honors Seminar in the History Department and will graduate with distinction in the major. The research she conducted on her thesis helped her realize her passion in studying the history of law and hopes to pursue this path after her Undergraduate Career at UCSB.