

The Wicked Man's Portion  
Discourses of Vice and Boundaries of Moral Citizenship

in Early New England

by

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A Dissertation Presented in Partial Fulfillment  
of the Requirements for the Degree  
Doctor of Philosophy

Approved April 2013 by the  
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ARIZONA STATE UNIVERSITY

May 2013

## ABSTRACT

"The Wicked Man's Portion" uses crime writing as a means to measure modernity in early America. Crime writing does things all too familiarly "modern"; it imagines audiences in need of moral instruction, citizens questioning the decisions of those in power, and men and women seeking reassurance that their community was safe, just, and moral. Crime writing pries open the dialectic between the expectations of authority and individuals' experiences. What emerges is the concept of a moral citizen, a self-reliant individual sharing responsibility for a well-ordered community. The first chapter examines typological interpretations of scripture in execution sermons revealing the interrelation between religion and law. Chapters two and three focus on the interaction between criminal law and beliefs in the supernatural; chapter two looks at supernatural crimes and forensic methods, such as those surrounding witch trials, and chapter three examines arguments for capital punishment that hinged upon divine involvement in human affairs. The fourth chapter discusses gallows publications' functions in the public sphere and contributions to inchoate democracy. The final chapter asks how equity defined punishment in economic terms. This chapter pays particular attention variations of punishment determined by race, class, and gender.

## DEDICATION

To my wife and family

## ACKNOWLEDGMENTS

I would like to thank my committee, Beth Tobin and Catherine O'Donnell, and particularly my chair, Eric Wertheimer, for their support and guidance. I would also like to thank Jeremy Hurley for his careful reading of the first chapter.

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## INTRODUCTION

Imagine with me for a moment. It's October 21, 1773, a bit before three in the afternoon. Red and yellow maple leaves paint Boston's cobblestone and dirt streets, adding a colorful backdrop to some familiar buildings – King's Chapel, Faneuil Hall, and the Old North Church - as well as many forgotten wooden structures long since destroyed and replaced. A chill in the air reminds us to grab our coats before heading outside to watch Levi Ames' procession toward Boston Neck. There, before a crowd of men, women, and children, servants, laborers and merchants, poor and rich, Congregationalists, Quakers, Anabaptists and Baptists, English, Irish, Africans and, perhaps, Algonquin, Levi Ames will be put to death. We know he'll be lead up the gallows steps, a rope placed about his neck, and a minister will ask him if he has any last words. He may or may not speak. He may pray with a minister. At four o'clock, the floor will fall out from under Ames' feet, the rope will pull taught, and, if the executioner has worked with alacrity, his life will exit his body with only a few spasms. Less than perfect work by the executioner may mean multiple attempts, intense pain, suffering, and the mutilation of Ames's head and neck. We hear the procession coming. A throng marches into view and begins filing past us. Ames, bound, rides a cart. I point out to you that he's accompanied by Samuel Stillman, a Baptist minister, a notable choice in a colony where public taxes support only Congregationalist ministers. After several minutes the main crowd files out of view, leaving only a few stragglers and spectators like us.

We've decided not to attend the execution. After all, Ames is only twenty-one years old, only a petty burglar, and the considerable gossip surrounding his execution we've overheard at coffeehouses and printing shops suggests a large and unruly crowd

(reports suggest between seven and eight thousand people attended). Not everyone in Boston agrees property crimes should be punished by death. Furthermore, some have expressed anger that a young American thief should die while the British soldiers responsible for the Massacre three years before still walk free and the murder Ebenezer Richardson has been allowed to leave the province. The Crown may kill Ames, but not without dissent. Perhaps later today or this week, we'll purchase a cheap account of the event from a printing shop or street vendor, but for now, we return inside, closing the door to the cold and street sounds, now eerie reminders that death passed this way.

As we reconstructed these events with our imaginations, we can always revisit from different perspectives. Perhaps we go to the hanging, see the fear on Ames' face, hear the talk of the crowd – some angry, some believing in the justice of his punishment, some drawn by a prurient attraction to violence, or a mimetic desire to participate in a sacrifice to the law. Perhaps we see Rev. Stillman embrace the bound young man, or the executioner place the rope about his neck. Are we close enough to hear Ames' wavering voice stammer out a scripted exhortation against stealing? Or does he deliver an honest warning? Does he deliver any warning at all? Do we purchase one of the several printed poems or ballads circulating throughout the crowd? Can we hear him thank Edward Ranger and his wife, parishioners from Stillman's congregation, for some kindness they showed to him? Or are we in the back of the crowd, craning our necks? Do we see Ames drop, shiver, hang still?

I've describe the events of one afternoon in late Provincial Boston based on accounts recorded in an execution narrative and newspaper articles. Dozens of New England men and women met such fates before the Revolution and for several decades

after. Similar accounts record their lives, crimes, and deaths in varying detail. At the most basic level, language used to describe execution events focused on causality, positioning the execution as the outcome of the crime. Levi Ames died “for the Crime of Burglary.” To accept this formulation means that Ames died because he broke into houses and stole items. This is only true to a limited extent. Though execution sermons attempted to equate sin with death as a natural causal relationship, we know that transgressing laws does not result in death in the same manner as disease, poison, accidents, or lightning. Men and women died “for” crimes, not “by” or “from” them; they were actually killed because community standards, based on popular belief to differing degrees, authorized men in their communities to kill them. Levi Ames did not die from burglary; he died because a man bound his hands, put a rope around his neck and dropped him several feet, causing the spinal cord in his neck to snap and his windpipe to collapse, destroying life-sustaining communication between his brain and body. The man who killed Ames, the executioner, was authorized to perform this act. If he had not been, he would have been eligible to be killed himself. But, sanctioned by law, powerful men, and local ideological beliefs, the executioner not only killed without fearing legal repercussions, but did so in the role of public servant.

Considering that the executioner killed with impunity because he was authorized to do so, that the force and power of the community permitted his action as a means to condemn the actions of another, marks the starting point of this research project. My research flows against the current that carried Ames from crime to death, instead of beginning at the gallows and asking how he and those like him arrived upon the scaffold. I trace this route through printed documents which address crime and criminality from



the founding of Plymouth and the Massachusetts Bay colonies until the beginning of the nineteenth century when fundamental shifts occurred in how New Englanders dealt with crime – including the end of the execution sermon, the advent of prisons, and the conclusion of public punishments and executions.

Through careful readings of gallows publications, criminal law codes, and analysis of other crime related publication, the following pages reveal a complex dialectic between laws put in place to form the moral boundaries in the community and the analysis of those laws in gallows literature when individuals crossed those boundaries. Steven Wilf has rightfully termed gallows publications and other forms of crime writing “vernacular legal culture,” asserting that these forms of writing brought the law to the people and provided a rhetorical space in which the public made sense of laws, crime, and punishment.<sup>1</sup> Discussing laws in popular spaces influenced how future laws formed, hence influencing the political environment in revolutionary America. Taking Wilf’s observations about the tautological relationship between law and popular writing about crime as a starting point, I ask how the law shaped the community, and how the community shaped law in early New England, starting with the founding of Massachusetts and Plymouth Colonies?

### **Gallows Publications and Criminal Law**

Primary sources for this investigation include gallows publications such as execution sermons, criminal and conversion narratives, broadside poems, trial reports, and criminal biographies. Newspapers reported on crimes, court proceedings, and punishments which makes them fascinating supplements to crime publications and court records, as well as offering a different model of writing and reading about crime. Even a

passing glance over the body of extant popular crime publications reveals the fundamental role religious belief and religious authorities held in justifying punishment for crime and execution in early New England, necessitating the inclusion of religious writing in the scope of my research. I also examine legal records including codified sets of laws and court records.

Gallows publications had many things in common, primarily their relation to the execution event and their ephemeral qualities. The interrelation of the various gallows publication genres differed from case to case; some cases produced only broadsides, others only sermons, other criminal narratives appended to sermons, and so on. Scholars studying these works have often shied away from referring to them collectively, but they have been called “crime publications” (Cohen), “popular gallows literature” (Halttunen), and “gallows literature” (Bosco).<sup>2</sup> I will refer to printed documents published in relation to an execution event as “gallows publications” simply to differentiate them from publications about crime but not related to an execution, which are “crime publications” or “crime literature” more generally. Court records are not gallows publications or crime publications because they were not widely disseminated; though they provide essential information about crime and punishment, they primarily serve to inform readings of gallows publications.

Discussing writing about crime in early New England poses some definitional and categorical challenges. Writing about crime was a multimedia affair then as now. Court records recorded hundreds of infractions from drunkenness to murder and newspapers included notable criminal events alongside advertisements, shipping information, political news, and American and European current events. Court rolls primarily intended

to record events and proceedings. For the scholar, they provide a valuable depository of facts, either about the crime itself, the application of the law, and the community response to events. They were not kept for to inform the public or an audience about crime, but for the more pragmatic task of running an orderly colony. In the latter half of the eighteenth century, popular trial reports appeared recounting the events in court, but these were written by court reporters and were not official court records. Their information can be incomplete or heavily editorialized. Newspapers appeared whether or not they featured crime. The stories tended to stick mostly to the facts of a case, even when a particularly lurid event prompted newspapers to widely print and reprint the story. While intended for a wider audience, newspaper reports on crime were recognizable to a modern reader in that they primarily related facts.

If the court records and newspapers recorded crime in record or relate events, the rhetorical purpose of the various publications that followed a public execution is not so straightforward. These mostly ephemeral documents included execution sermons, broadsides printed with ballads (sometimes called dying verses), last speeches, criminal narratives, and court reports. A brief overview of the attributes of these unusual documents reveals why scholars have so often written about them as a unified publishing phenomenon while carefully parsing their differences.

Execution sermons were the first genre of gallows publication to appear in New England, a transplant from England adapted by Congregationalist values to a new environment. The sermons were delivered by ministers on or around execution day and published sometime after. They appeared in packets or pamphlets sold at booksellers, print shops, and sometimes distributed by peddlers or the ministers themselves. True

Puritan sermons, they focused heavily on textual exegesis to relate scriptural teachings about vice to the execution event at hand. If a murderer was to be hanged, the sermons often addressed murder or violence. While at a glance execution sermons appear to address crime in a fairly uniform manner, resourceful ministers tinkered with their messages to meet the needs of the audience. The primary message was generally the universality of sin and the communal need for repentance. The first three chapters of this project focus primarily on execution sermons, as they were the most complex and ideologically revealing genre of gallows publication. In encountering the sermon, readers, like listeners, were guided through a complex set of scripturally supported claims. A modern scholar can mine these claims to understand some of the religious ideology that supported the law. Conversion narratives were sometimes appended to sermons beginning around the turn of the eighteenth century. These dialogues reproduced conversations between ministers and prisoners awaiting execution as the ministers guided the condemned man or woman down the path toward salvation.

The various forms of gallows publications printed on broadsides included dying verses, last speeches, and criminal narratives. As Daniel Cohen has argued, these forms appeared in the eighteenth century. Their emergence into the sphere of gallows publications coincided with an ongoing trend of secularization in New England.<sup>3</sup> Many factors contributed to secularization, including a more ethnically diverse population, increased English involvement in governance, pressure from commercial interests, and a breakdown of Congregationalist religious hegemony. Cheaply printed and crowned with woodcut images, broadside publications were sold around the gallows on execution day or in printers' shops. These forms existed in England before the eighteenth century, but

Puritan influence largely prevented presses from producing them. Unlike their English counterparts, broadside publications in New England were not bawdy and often reiterated themes of repentance, recounted how smaller sins accumulated to drag a sinner to his downfall, and warnings to readers (often represented in print as the crowd around the gallows) to avoid transgression.

The differences between various forms of broadside publications are reflected more in presentation than content. For example, last speeches retold the condemned's life of crime from a first person perspective, while criminal narratives were sometimes narrated by an unidentified third person, often assumed to be the printer or a minister. Dying verses were doggerel poetry that often retold many of the same things one would expect from criminal narratives or last speeches, but in verse. They tended to concentrate more on themes of warning and repentance, condensing the message to fit the rhyming format. Cheap and ephemeral, broadside gallows publications appealed to a broader audience than execution sermons, but they never fully eclipsed the sermon form throughout the eighteenth century.

Criminal narratives, though often printed on broadsides, expanded as a genre as the eighteenth century wore on and Cohen and Karen Halttunen have posited this form of gallows publication as the foundation for later iterations of American crime writing and nineteenth century Gothicism. Criminal narratives sometimes even abandoned themes of salvation and repentance, or presented them as a perfunctory afterthought, while detailing criminal activity to appeal to prurient interests.<sup>4</sup> Refashioning the criminal as a roguish hero, late criminal narratives took advantage of a curiosity that undoubtedly hovered in the gallows' shadows even as the ministers delivered their execution sermons.

A form of writing I analyze in significant detail that is not gallows publications or court records are codified sets of criminal law. While it is tempting to see the law a precursor to executions and the gallows publications they produced, I aim to prove that they were ideological arguments in discourse with sermons and other forms of gallows publications. Part of law's character is to appear absolute, but it rarely is in practice; law is up for interpretation by legislators, lawyers, juries, magistrates, ministers, printers, citizens, and readers. Gallows publications have a dialectical relationship with the law, most often offering arguments supporting the law, but occasionally challenging it. In a sense, codified sets of criminal law imagined how law would be put in practice, while gallows publications analyzed the effects of how those laws were implemented.

### **Why New England?**

Why focus solely on New England and primarily on Massachusetts? Aside from limiting the scope of this project to a manageable focus, several other factors inform this decision. Studying the interrelation between law, religion, crime, and print in colonial and early Republican New England, primarily in Massachusetts, reveals layered and interwoven patterns of competing and complementary influences. Early Massachusetts is an ideal focus for this study for several reasons. First, in the seventeenth century, Puritan colonists intended to create a law-based theocratic government structured on Christianity which dissolved officially but persisted in practice and common understandings of social structures into the eighteenth century and, perhaps, beyond. Second, New England's geographic isolation relative to the modern Western world throughout the seventeenth and eighteenth century fostered change and unique models of social development. Third, the remarkably high level of literacy in colonial Massachusetts created a society uniquely

tied to the printed word, which is both interesting itself and helps facilitate a study of law, religion, and crime. Fourth, interactions with Native American cultures complicate our understanding of how law, religion, and print functioned and reveal the ever-present challenges of geographic heterogeneity. Finally, as English law was developed into a recognizably modern form by the time colonization of New England began, the study can focus on a relatively familiar legal structure informed by Protestant religious beliefs not so different than those held by faiths contemporary to our own time. Of course, people in other colonies also interacted with Native Americans, wrote about crime and punishment, adopted and adapted English law, but the declared attempt to create a religiously homogeneous society and the prevalence of print and literacy in New England sets it apart and facilitates analysis. Generations of early American scholarship have addressed crime, punishment, religion, and print, but these themes need to be integrated in one critical study. Such an integrated study calls on us to revise how we look at early New England.

### **“That Happened in England”**

Another specter lingering around the edges of this project is the obvious fact that New Englanders were English subjects and brought many of their customs with them from England, including elements of law, crime, and punishment. In fact, one of the most common challenges I’ve encountered thus far while presenting my research to colleagues, professors, and at conferences has been variations of, “that happened in England too--it's not unique to New England.” Certainly, studying what remained the same and what changed as colonists carried customs with them from England is important to consider, but that line of inquiry could constitute an entire research project. I do intend to

acknowledge particularly important aspects of transmission and adaptation when relevant, but I do not intend to steer the entire project in that direction for several reasons.

First, as far as the trans-Atlantic transmission of the common law is concerned, William Nelson has already poignantly argued for studying colonial American law separate from English law based on the observation that further research into the substantial body of plea rolls and English court records is needed before enough is known about the substance and application of English law to draw such a comparison. A comparative study would undoubtedly need frequent revisions as more is learned about early modern law in England. However, it seems unnecessary to delay a study of law, crime and punishment in New England until more is known about English law because the more manageable body of legal records and law writing in the colonies is available now and can reveal important insights into life in early New England.

Secondly, while it's obvious that English customs formed the foundation for colonial customs of law, crime, and punishment, it is equally apparent that differing environments, demographics, charters, models of social organization and labor, and religious beliefs, all precipitated deep, meaningful changes in how colonial subjects experienced legal, criminal, and punitive apparatuses. For instance, executions for crimes against property occurred frequently in England in the seventeenth and eighteenth centuries, while property crimes were not numbered among capital offenses in Massachusetts until the middle of the eighteenth century, at which time punishing crimes on property with death remained somewhat controversial. Legal scholars have attributed the addition of property crimes to the catalog of capital offenses in Massachusetts to an



overall increase in England's interest and involvement in the colony. Understanding Puritan influence on law explains these differences in attitudes.

One only needs to observe variance across the colonies themselves to understand that English custom was not merely lifted from Europe and replanted in the colonies. Even those customs that retained much of the appearance of English custom were observed alongside customs that underwent significant change, a process that must alter our understanding of the preserved customs in a new context. One need not chart all the intricate mechanisms of transmission to convincingly argue that change occurred.

Finally, I do intend to point out aspects of customs that were carried over, adopted or adapted from England where relevant, but I do not want to focus specifically on transmission and change as an independent theme of analysis. Readers familiar with English custom will be able to draw connections and comparisons from reading my observances of New England and anecdotal, supplementary, and brief discussions of transmission will make clear that I do not believe colonial New England customs of crime and punishment to be exceptional occurrences wholly independent of English influence.

### **Gallows Publications and Reliability**

Questions about the reliability of gallows publications as a source of information must also be addressed and, luckily for me, an exchange of letters between Daniel Cohen and Daniel Williams in *New England Quarterly* provides both a starting point and a controversy to explore. When Williams asserted that Cohen accepted the veracity of documents too readily, Cohen argued that gallows publications are a reliable source for understanding crime in early New England because, though authorship is often dubious,

the messages heavily tailored, and the events seemingly dramatized, court records support the facts printed in popular crime accounts. It's more uncommon that writing is entirely embellished and, even though gallows publications seem to show evidence that authorship is contested, the times, dates, offenses, names, places, and key elements to most stories seem to be accurate enough to support analysis. Stephen Wilf has recently echoed Cohen's point and shown how criminals' voices manifested in gallows publications, even through the fog of time and editors with political and religious agendas.

I tend to agree with Cohen and Wilf that a careful reader can draw valuable information from these texts, but I am more interested in determining how various influences modified the content of these documents. The consistency of the messages presented in gallows publications also suggests that, to at least some extent, authors were likely to have found these manners of arguing and presenting crime and punishment effective. I do not plan to spend considerable time determining the veracity of the particulars of any text. Textual analysis to understand the message and extrapolate an intended audience from the message defines my critical angle. I acknowledge that, where early New England gallows publications are concerned, a wise reader is a skeptical reader and hopefully skepticism will drive inquiry.

I also recognize, indeed even emphasize, that variance existed between what written laws said and the implementation of those laws. William Nelson points out colonial New England juries were often allowed considerable authority to determine not only guilt or innocence, but the meaning of laws themselves. Empowering juries in this way promoted unity in often insular communities, but created differences in how laws

were applied throughout the jurisdiction they governed. I do not propose that what is written in the law is how the law was applied. For instance, the 1648 Book of Lawes and Liberties lists disobedience to parents as a capital offense in an effort to keep the capital laws in agreement with the Ten Commandments. Though at least one child in Massachusetts Bay Colony must have been disobedient to his or her parents – criminals’ voices lament this fault throughout gallows publications – no child died for this capital crime. Both the written law and the gallows publications discussing how sentences were really carried out can be viewed as two different aspects of our overall understanding of colonial law.

### **Crime, Law, and Religion**

I suppose the final question to ask is why study gallows publications and criminal law as a way to understand the moral boundaries in early New England? What, beyond satisfying academic curiosity, makes this study, from this perspective, valuable? This study reveals that law itself is ideological; this line of inquiry reintroduces ideological beliefs, sometimes belief in the supernatural, into examinations of acts attributed to law and seeks to understand how different ideological perspectives present and interpret actions performed under the authority of law. Put more fully, this study exemplifies the ideological, narratological, and textual effects of ideology, custom, and aesthetics on law, as well as the converse. Whether we consider religion’s influence on a code of capital laws, ethnocentric beliefs about civilization on legislative actions meant to control native people, aesthetic beliefs in the sublime on the presentation of victims’ (usually female) bodies in crime accounts, or beliefs in the authority of law itself, we find each act of violence and its representation can be viewed from a spectrum of perspectives, each

informing the other. This study explores often occulted underpinnings of our communities by examining a fundamental, yet extraordinary phenomenon – society’s violence against individuals whose actions or beliefs collide with the expectations of the community’s dominant mechanisms to secure unity and order. The subject is a society both similar to and different from our own – communities of recent ancestors viewed over the course of a century and a half. How did they make sense of, justify, condemn, or promote legally authorized violence and killing? What beliefs informed their reactions? What drove the community to share their interpretations in print?

The answers to these questions often take us to startling, and even disturbing places, but throughout this inquiry two overarching trends emerge. Over the course of New England’s first two hundred years, increasing diversity in ethnicity, religion, and commercial interests shifted the focus of law and arguments about law from establishing and promoting colonial unity to protecting the rights of individuals. More groups struggled to develop laws protecting their own self-interests, empowering some and disenfranchising others. This trend is evident in gallows publications’ increased focus on individual criminals and their biographies, but also in how these publications became tailored to emphasize a criminal’s race, gender, or class. Certainly these were always considerations, but while seventeenth century gallows publications and crime writing focus on reuniting the community and the commonality of “sinnerness,” later publications drew stricter demarcations between men and women, English, African, and Native American. These divisions, fueled by competing groups all attempting to harness the power of law and its corresponding narratives, helped promote disunity and individualism.

Secondly, diversity and competing interests expunged beliefs in the supernatural from codified law and gallows publications. Starting in the 1690's, no more witch hunts occurred in New England, magical techniques were no longer forensically employed, nor was fear of divine punishment befalling the community used to justify executing criminals with any regularity. Gallows literature and law began to address crime and punishment as citizens always had – as one individual harming his or her neighbors and a corresponding cathartic/deterrent response. By the end of the eighteenth century, the supernatural no longer lurked beyond the moral boundaries and God left punishment fully to earthly magistrates.

Law and popular discussions of its implementation in gallows publications charted the moral boundaries of early New England. Over time, those boundaries changed, expanded, contracted, encircled some and released others. The residents of New England were not only in a geographic frontier, but a social and political one as well. Transgressors crossed the peripheries of community values and individual rights and in doing so helped define those boundaries for others in the community. From their stories, we can reconstruct those boundaries and understand how law and discourses about law helped construct one ideological community that gave rise to American society.

### **Overview of Chapters**

In the first chapter, “Juridical Typology and the Puritan Execution Sermon,” I begin by examining the influence of Puritan religious beliefs on the law and legally-sanctioned violent acts performed in seventeenth century Plymouth and Massachusetts Bay colonies through examining several prominent execution sermons. These sermons include Samuel Danforth’s *The Cry of Sodom Inquired Into* (1674), Increase Mather, A

*Sermon Occasioned by the Execution of a Man Found Guilty of Murder* (1686), Cotton Mather's *The Call of the Gospel* (1686), and Joshua Moody's *An Exhortation to a Condemned Malefactor* (1686). Danforth's sermon, preached for the execution of Benjamin Goad, a young man hanged for bestiality, is significant for being the first published execution sermon in New England; the Mathers and Moody published their sermons to address the execution of murderer James Morgan. These early execution sermons set the standard for the genre because they lay the ideological groundwork for Congregationalists execution sermon, but also because Increase and Cotton Mather were prolific writers of execution sermons and would continue to dominate the genre in Massachusetts until Cotton Mather's death in 1728.

The Puritan founders the New England colonies attempted to integrate the legal structures of their communities with their interpretations of scripture. This was accomplished to varying degrees and through different avenues. The most obvious attempt to turn their wilderness colony into a new Israel through legal avenues lay in the condemnation of acts prohibited by religion and the codification of laws to prevent and punish such acts. For example, the 1648 Massachusetts code of laws made breaking any of the Ten Commandments punishable by death.

Yet, not one child died for disobeying his or her parents nor did anyone hang exclusively for blasphemy in early New England. Centuries of English legal culture informed Puritan concepts of law and justice as fully as their reading of scripture. What emerged were arguments presented in sermons, particularly execution sermons, that presented Biblical precedent for colonial legal practices founded on English law concepts. Samuel Danforth saw a grand jury in God's visit to Lot and His condemnation

of Sodom and Gomorrah. Increase Mather explained how mens rea, or intent, differentiated between acts of murder or killing by discussing the Old Testament City of Refuge. The key to understanding these arguments is to read them not solely as crime accounts, but also with an eye to typology, a manner of scriptural interpretation that saw events as corresponding prefigurations and fulfillments, to provide Biblical support to contemporary juridical practice. Evidence of typology is also present in the capital laws of the colony. Examining how execution sermons relied on typological interpretations of scripture reveals the profound influence of that exegetical practice on colonial society in Massachusetts and the interrelation between religion and law, the primary mechanisms of social organization and control.

In seventeenth century New England, gallows publications and the laws they supported emphasized the communal nature of sin and used typology to construct a single unified moral framework for New England. As Halttunen has noted, early gallows literature focused more on constructing arguments aimed at the moral fortification of the entire community than highlight the criminal and his or her downfall.<sup>5</sup> Typological interpretations of crime and punishment encouraged the community to think not of the individual as a transgressor, but as an example of sin and common guilt. Their deaths became necessary if New England were to succeed in its founders' mission of becoming a Godly community, a City of a Hill, and a New Israel. Failure to punish transgressor threatened the entire community with divine punishment or abandonment. Understanding those arguments, as well as the diminishing influence of supernatural beliefs on law, occupy the foci of following two chapters.

Chapter 2, “Justice and the Invisible World” examines crime writing in the first 100 years of colonial New England to understand what effects beliefs in the direct involvement of supernatural forces and phenomenon had on the criminal justice system. For colonial New Englanders, supernatural forces were at play in nearly all aspects of daily life, including the commission and punishment of crime. By defining crime in a context that allowed supernatural evidence and consequences, a civil authority managed beliefs in the supernatural by insisting upon a divine imperative for punishment. Rhetoric emphasizing supernatural involvement, divine or otherwise, in the discovery and punishment of crime provided colonial authorities with valuable language for deterrence. Furthermore, belief in the supernatural extended to endowing individuals with supernatural powers, primarily expressed in the supernatural crime of witchcraft.

This chapter brings together an array of sources to understand the relationships between supernatural beliefs and the implementation of criminal law in New England. While the focus deviates from gallows publications more so than any other chapter to explore a more holistic picture of law and the supernatural. Sources range from Governor John Winthrop’s journal to Increase Mather’s study of the supernatural, *Illustrious Providences*, from seventeenth century New Haven court records to gallows publications in eighteenth century Maine. Codified colonial laws addressing supernatural crimes are also analyzed in detail. From these sources we see men fathering deformed piglets, corpses bleeding at their murderer’s touch, laws to prevent witchcraft, and victims’ ghosts convicting their own killers.

Here I argue that, though supernatural threats could be powerful and influential, only communal belief in such phenomenon could allow its inclusion in the law. As time



wore on and people became more skeptical of God and the devil's direct involvement in criminal affairs, and as law moved to protect individual property and commercial interests more than enforce ideological unity, the supernatural faded from criminal law and its implementation.

The third chapter, "Pollution and Sacrifice" builds upon the discussion begun in the second chapter. While chapter two focuses on a wide array of supernatural crimes and punishments, this third chapter focuses on the divine imperative for punishment expressed throughout execution sermons and other gallows publications. The basic message, repeated time and time again, was that sin polluted the land and purgation of the sinner via execution was a means of lifting divine judgment off the community. While most studies of early New England crime have focused on the deterrent and pragmatic aspects of crime and crime writings, the argument that executions prevented God from inflicting the community with plagues, wars, or other terrible judgment adds a supernatural, even sacrificial, element to the execution of criminals. While I stop short of claiming that public executions were actually ritual sacrifices to God, the continual appearance of assertions in execution sermons and other forms of gallows literature that transgressors must be executed so avert supernatural punishment from the entire community demands we explore the effects of this narrative on the understanding and practice of justice.

Threats of divine punishment in execution sermons and other crime writings served to unite the community under a common threat. Sermons studied here include Samuel Danforth's *The Cry of Sodom Inquired Into* (1674) and his son's (also named Samuel Danforth) *The Woful Effects of Drunkenness* (1709). Increase Mather's

supernatural study, *Illustrious Providences* (1684), Cotton Mather's treatise on Salem witchcraft, *Wonders of the Invisible World* (1693), and his crime compendium, *Pillars of Salt* (1699), are analyzed alongside their execution sermons. I study Increase Mather's execution sermons most intensely as he articulated threats of divine punishment and their typological backing claims more thoroughly than any other ministers. His sermons studied here are *The Wicked Man's Portion* (1675), *Sermon Occasioned by the Execution of a Man* (1686) and *The Folly of Sinning* (1698). Cotton Mather's sermons *The Call of the Gospel* (1686) and *Terribilia Dei* (1697) appear alongside sermons by John Williams (*Warnings to the Unclean*, 1698), Nathaniel Clap (*A Broken Heart Acceptable with God*, 1715) and Eliphalet Adams (*A Sermon Preached on the Occasion of the Execution of Katherine Garrett*, 1738).

To understand the power of these arguments and their influences on the practice of public execution, I apply Claude Levi-Strauss's theories on myth and ritual and Rene Girard's description of the mythological scapegoat to these sermons. What emerges is a powerful rhetorical imperative for community unity and a corresponding ritual to eliminate threats to that community, the public execution. These themes emphasize the role public punishment in cementing communal ideology reflected in juridical practices. This line of argument connects the typological juridical readings in sermons in chapter one to the pervasive beliefs in the supernatural discussed in chapter two, analyzes their strengths and rhetorical longevity, and theorizes how the legal system changed to fade out such arguments in the eighteenth century.

As the eighteenth century wore on, diversity and competing interests weakened the ideological unity that made typological justifications and threats of divine punishment

effective apologies for public execution. A paradigm shift began and other publications began circulating around the gallows to accompany sermons. This fourth chapter “Discourses of Vice,” asks how the rise in individualism and the vitiation of communal ideology affected how gallows publications functioned in the public sphere. This line of inquiry responds to an observation in Daniel Cohen’s *Pillars of Salt, Monuments of Grace* in which he notes that gallows publications may cause scholars observing participation in the public sphere to question, or create an exception within, Michael Warner’s argument about anonymity and participation in the print sphere in *Letters of the Republic*. Warner argues for the “principle of negativity,” the tendency of early Republican writers to obscure their identities in anonymity in order to participate in “discourses of virtue” in the public print sphere. Writers believed publishing under pseudonyms or simply anonymously promoted equality of voices and de-emphasized the individual to keep attention on the subject of discourse, which usually pertained to politics, philosophy, or other social observations intended to comment on or improve public virtue.

Cohen is correct to view gallows publications and related writings as exceptions to Warner’s model of public representations of individuals. Unlike writing intended to promote public virtue, writing on crime emphasized the individuality of criminal subjects, not only naming them but even engaging in rather detailed biographies. If discourses of virtue equated the negation of individuality with improvement of public virtue, discourses of vice equated emphasizing the individual with the prevention of vice, a task also intended to promote public virtue. This makes rhetorical sense on several levels. If virtue is something to detach from the individual and spread throughout the

community, vice is something to isolate in the individual and destroy. Beginning with this understanding, the penultimate chapter of this study explores how gallows publications and their subjects constituted a line of public discourse, which I call discourses of vice, and embarks on a rhetorical analysis of gallows publications and exploration of the treatment of criminality in the early New England print sphere. This chapter does not challenge Warner's argument, rather explores alternative narratives by taking up Cohen's call for an exploration of gallows publications in the public sphere that considers Warner's theories. Primary sources include myriad gallows publications surrounding the cases of James Morgan (1686), Patience Boston (1735), Moses Paul (1772), and Levi Ames (1773). These cases were chosen because they produce more than one gallows publication, including execution sermons, criminal narratives, and broadside speeches and verses. These cases had significant attention in the public sphere, and so lend themselves to studying how gallows publications functioned over time and in a changing environment. One will notice the absence of the supernatural in these readings.

The final chapter, "The Wicked Man's Portion" embarks upon several close readings of laws and crime publications to uncover what justifications for punishment in early New England tell us about the moral value systems of that period. This chapter moves away from gallows literature and executions somewhat to include writing about corporal and economic punishments. Crime publications were not complex legal treatises to be dissected by lawyers, but popular presentations of crime and punishment. They defined criminal behavior by profiling criminals and they used the evidence in these profiles to justify punishment. Their polemics hinge on demonstrating the logic and propriety of dealing with crime *x* with punishment *y* and to understand the values

underlying their arguments we must deconstruct these equations. Building upon Stephen Wilf's observations about vernacular legal culture in early American, I apply a simple equation to polemics about crime and punishment – *crime x=y amount of pain/suffering* – to dissect justification for capital and corporal punishment. All crime publications argued for the equity or justice of matching a particular crime with a corresponding punishment; this chapter seeks to reveal the values of each aspect of this equation and how they contributed to securing the overall concept of justice.

By examining the economic relationships between crime and punishment, this final chapter also examines how individualism became engrained in how the New England community dealt with crime and punishment. The variables that modified the crime/punishment equation include race, gender, class, and nature of the crime. This chapter moves from examining how the codified laws addressed individuals based on criteria of their identities to how crime publications communicated these value systems to the public. Sources include execution sermons for Joseph Hanno, an African American executed for murder, Cotton Mather's *The Hatchets to hew down the Tree of Sin, which bears the Fruit of Death*, a tract aiming to communicate colonial laws to Native Americans, the criminal narrative of Native American criminal Joseph Quasson, a conversion narrative for Esther Rogers, a young woman hanged for infanticide, and Cotton Mather's discussions with obstinate pirate William Fly.

## CHAPTER 1

### JURIDICAL TYPOLOGY AND THE PURITAN EXECUTION SERMON

Benjamin Goad's eyes rose above the throng of onlookers gathered about the scaffold. The weight of a noose rested on his young shoulders as he stood before his community to be executed for bestiality. It was the second of April in 1674, early spring. Maybe Goad wanted to see the trees and hills and grass and houses of Boston while he could. Or maybe he stared off in a daze, stupefied by terror. He looked over familiar and unfamiliar faces, countenances sympathetic, vengeful, afflicted, amused. Boys and girls he knew from town and men and women from the church his parents implored him to attend. And strangers, many strangers. Goad shuddered. His eyes turned upward until the crowd fell below view and he saw only treetops and clouds. Perhaps they thought he prayed. Maybe he did.

What were Goad's final thoughts as he looked out over the crowd? Had he internalized the words Rev. Samuel Danforth delivered during the sermon occasioned by the execution, *The Cry of Sodom Enquired Into*? Had he heard the minister's warnings about wicked uncleanness and God's terrible judgment on the condemned man's spiritual kin, the Sodomites? As Goad's mind turned to heaven or to childhood places or simply overflowed with confusion and terror, his attention was arrested by a familiar mare. A man led the animal before the crowd and stopped in Goad's sight. Goad understood that an end to his earthly consciousness grew closer with each breath, but the horse was oblivious to her own impending destruction. She may have sensed tension, feared the crowd, or simply stood, awaiting her human masters' next request. As Goad watched, a man with a heavy bludgeon, possibly a hammer or an ax, raised the instrument and

brought it down between the mare's unsuspecting eyes. Her front legs buckled, she withered to the ground, shook ungracefully, and grew still. Moments later, at the end of a hangman's rope, Goad's neck broke and tremors animated his body as it swung and twisted. And then death's stillness overspread his body as well, hanging plumb to the scaffold stage.<sup>6</sup>

As in England, bestiality, or buggery as it was often called, was a capital crime in colonial Massachusetts.<sup>7</sup> Goad must have anticipated the indignity of the ritual, expected the awkward slaughter of an animal he copulated with carried out before his eyes as he stood above a crowd seconds from his own destruction. Governor John Leverett had condemned him with this sentence: "That yo<sup>u</sup> shall returne from y<sup>e</sup> place (y<sup>e</sup> barr) to the place from whence yo<sup>u</sup> Came & from thence to the place of execution & there hang till yow be dead = And that the mare yow abused before your execution in yo<sup>r</sup> sight shall be knockt on y<sup>e</sup> head" (*Records of the Court of Assistants* 3: 10-11).

The Governor's sentence adhered to the laws of the colony as printed in the 1648 code entitled *The Book of the General Lawes and Libertyes Concerning the inhabitants of the Massachusetts*. The fifteen capital offenses listed were idolatry, witchcraft, blasphemy, murder, poisoning, bestiality, sodomy, adultery, man stealing<sup>8</sup>, false witness, conspiracy, children who curse or spite their parents, rebellious sons, and rape. The seventh capital law reads, "If any man or woman shall LYE WITH ANY BEAST, or bruit creature, by carnall copulation; they shall surely be put to death: and the beast shall be slain, & buried, and not eaten. *Lev. 20.15.16*" (*Laws and Libertyes* 5-6).<sup>9</sup>

The citation appended to the law beckons us to follow the line of authority further, from Leverett's sentence, to the colonial legal code, to Old Testament scripture.

Specifically, the law appeals to the twentieth chapter of the Book of Leviticus, a code of laws for priests and laity thought to have been compiled by Moses. Leviticus 20:15-16 commands, “Also the man that lieth with a beast, shall die the death, and ye shall slay the beast. And if a woman come to any beast, and lie therewith, then thou shalt kill the woman and the beast; they shall die the death, their blood shall be upon them.” It was this law, intended for Middle Eastern shepherds millennia before, recontextualized in a new form amongst laws for contract, trespass, and property rights, that condemned Goad and the hapless mare.

Puritans like Leverett and the other members of the Court of Assistants and General Court of Massachusetts Bay Colony sought to continue the founder’s “errand into the wilderness” and make New England a community of believers governed by the tenets of their religion. The amalgamation of Old Testament law and English common law in the capital code was an intentional mechanism of social engineering designed to protect the covenant between God and his exiled church at the outskirts of civilization. The Puritans never expected to welcome every inhabitant of New England into God’s spiritual elect, but upholding the covenant meant requiring all residents of the land to follow God’s law and what better way to enforce this than through the colony’s juridical apparatus?

“Statutes imposing the death penalty,” Daniel Cohen writes, “were characterized by a closer fidelity to biblical law than almost any other category of legislation in seventeenth century Massachusetts” (Cohen 103). Justification of capital crimes rested on Biblical mandates: in *The Book of the General Lawes and Libertyes*, each capital law was paired with an accompanying Bible verse or set of verses justifying the severe



punishment. The verses came primarily from Old Testament laws, such as the Ten Commandments, and laws listed in the books of Leviticus and Deuteronomy (*The Laws and Liberties* 6). For example, murder appears fourth in the list of capital crimes and reads, “If any person shall commit any wilfull MURTHER, which is Man slaughter, committed upon premeditated malice, hatred, or crueltie not in a mans necessary and just defense, nor by meer casualty against his will, he shall be put to death” (*The Laws and Liberties* 5). The two verses listed after the penalty for murder, Exodus 21.12.13 (“He that smiteth a man, and he die, shall die the death”) and Numbers 35.31 (“Moreover ye shall take no recompense for the life of the murderer, which is worthy to die, but he shall be put to death.”), continue a need to validate colonial laws through biblical precedent.

As English people, Massachusetts colonists brought English juridical thought and practice with them and adapted those ideas to their remote, small, religious colony. Grand juries investigated offenses, findings were presented to a jury during a trial, and judges handed down sentences that adhered to codified and publicized laws. Defendants entered pleas and witnesses appeared to condemn or exonerate the accused. Jurisdiction fell to a series of courts that met at regular intervals seasonally, from local justices of the peace to the Court of Assistants, which included the governor and colonial magistrates. Property owning men eligible to serve on juries and pass sentences as judges needed to be members of the Congregational church, which itself served as an important means of dispute resolution in many smaller communities. William E. Nelson has convincingly suggested that the church played a primary role in conflict resolution in early eighteenth-century Plymouth County, and church records indicate that the same was true for smaller communities throughout seventeenth-century New England.<sup>10</sup> Still, the juridical

apparatus of colonial Massachusetts, for all its religious influences, remained essentially an incarnation of English common law which, apart from the ecclesiastical courts, did not ground their laws on religious mandates.

Massachusetts' chief rhetorical advocates for a Biblical interpretation of capital laws were not jurists, but ministers, and their primary vehicles for justifying public executions to the community were execution sermons. While Cohen's assertion that, "by defining capital crimes largely in theological terms, as offenses against the law of Scripture and its divine author, New England's early ministers shifted the burden of ultimate responsibility for capital sentences to a magistrate far less vulnerable to popular challenge than any temporal authority," is pragmatic and correct, I would argue that, at least until the Charter of 1691 realigned colonial law more fully with English rule, attention to the Puritan theological tradition of typology more fully explains the role of ministers and execution sermons in the colonial execution ritual (Cohen 102). Early execution sermons in colonial Massachusetts relied upon typology, a manner of scriptural interpretation that saw events as corresponding prefigurations and fulfillments, to provide Biblical support to contemporary juridical practice. Capital laws enacted and enforced during the same period also show evidence of typological thinking. Examining how execution sermons relied on typological interpretations of scripture reveals the profound influence of that exegetical practice on colonial society in Massachusetts and the interrelation between religion and law, the primary mechanisms of social organization and control.

That ministers used typology to justify capital punishment, and provided Biblical support for capital laws, also speaks to the communal understanding of guilt inherent to

Puritan belief. God held the community responsible for the transgressions of its individual members; if the community failed to follow divine mandates for punishing a wayward individual, God would punish them. This concept relates to a well-known Puritan concept that defined their relationship to God, the covenant. In this context, condemned criminals fit into a larger ontological framework in which their actions held significance in the overall typological narrative that underscored the very founding of New England. As I will argue in chapters two and three, ministers exploited threats of divine punishment and emphasized public responsibility for individual guilt to justify capital punishment, but to understand that rhetorical line of argument and its prominence in execution sermons, one must first understand typology and its role in fitting scriptural mandates to argument for putting criminals to death.

### **Typology**

Veins of typological thought coursed through Christian theological arguments before and after the Reformation; English Puritans neither invented typology nor employed it exclusively.<sup>11</sup> But settlers of New England were in a unique position to incorporate typological thinking into their communities. Regarding New England Puritans and typology, Sacvan Bercovitch explains, “they brought (typology) with them from England, where it permeated the literature of all factions of Puritanism, and they proceeded to use it explicitly from one generation to the next as an integral part of their outlook: in their histories and diaries, poetry and polemics, jeremiads and discourses on grace” (Bercovitch 2). Discourses about crime, particularly execution sermons, also relied heavily on typology and incorporated it into rhetorical support for colonial juridical institutions.

Samuel Mather's<sup>12</sup> 1683 work *Figures Or Types of the Old Testament* outlined in detail the most widespread application of typology in Puritan thought, which Bercovitch defines as "the historiographic-theological method of relating the Old Testament to the life of Christ (as 'antitype') and, through him, to the doctrine and progress of the Christian church" (167). Throughout 678 pages of painstaking detail, Mather sought to prove that God revealed the Gospel to the people in the Old Testament through "types" and "shadows." For instance, Old Testament figures such as David, Abraham, and Moses all prefigured Christ. Abraham's paternal willingness to sacrifice Isaac prefigured God's sacrifice of Christ. In typological thinking, that made the Old Testament prophets "types" and Christ their "antitype," or a corresponding fulfillment foreshadowed in the type. Typological thinking of the variety Mather employed in *Figures or Types* removed barriers of history and time, opening the door for a broader application of typology that accepted current events in the historical scope. It is this broader application that informs our understanding of execution sermons.

Puritans ministers told their flocks that they played roles in the grand story of history and humanity contained in the Bible. As preservationists of Christ's true Church, the people and events that made up their lives fit into history alongside events of the New Testament. As such, Old Testament events prefigured not only Christ and the New Testament, but events in their lives as well. By placing themselves within Biblical history, Puritans could look to the Old Testament and find types that foreshadowed the events they saw in the New Testament and those unfolding in their own lives. For example, William Bradford saw his people's flight from England in Israel's flight from Egypt and saw New England as Canaan. This is not the same as prophecy, as prophecy

generally refers to direct predictions of future events, while typology of the sort employed by Puritan divines examined texts for events that corresponded to those they saw happening around them and used the “types” they discovered to reveal meaning in those events.

Typology also lay at the theological heart of a perhaps better known aspect of Puritan belief - the covenant. The covenant, a religious concept hauntingly familiar to the legal field of contract law, deeply influenced and was influenced by Puritan typological thought. They believed that by following God’s laws and seeking to be a Godly community, they entered into a covenant with God, not unlike the covenant God made with Abraham. Maintaining the covenant procured God’s favor for New England and protection for its people, but if they lost their covenant God would set them adrift to rise and fall along with the rest of the sinful world. Such fates, they believed, befell Old Israel in ancient times; in their own experience, England’s refusal to reject the trappings of popery convinced Puritan separatists that their homeland’s covenant had been lost as well.

Defending the covenant occupied a primary role in the Puritans blueprint for their new, godly society, and was a defining factor for why seventeenth century New England society emphasized corporate over individual guilt. If the Puritans were a community like Israel – and examining Old Testament Israel as a type convinced many they were an antitype – then New Israel had to fulfill the role prefigured in Old Israel, including observing the laws intended for the original Israelites. For the Puritan colonists, adopting covenantal terms as revealed in scripture was tantamount to establishing a covenant with God. They were not a reincarnation of Old Israel, and typology is not entirely self-

fulfilling prophecy, as they could only control events and their own identities to a limited degree. In order to better emulate God's original chosen people (the type), Puritan founders of the New England colonies (the antitype) grafted Old Testament laws to the common law system they brought from England.<sup>13</sup>

As previously noted, ministers advocated for the law because their typological understanding of their colony and its role in the larger saga of Biblical events invested them in its application and preservation. Without the law, informed by typology, they could not uphold the covenant with God. Without the covenant, God would abandon New England just as he had abandoned England and New England would lose God's grace and help, just as Israel had eventually been punished. Puritan ministers and the religious faithful wanted to stop the decline of society and preserve the covenant until Christ returned, an event the founders and first generation of divines, such as John Cotton and Richard Mather, believed to be imminent. Nowhere did they strive so earnestly to explain the connection between the law and covenant, and ward off sin and destruction, as in their execution sermons.

### **The Execution Sermon**

On Sunday morning, March 7, 1686, twenty-three-year-old Cotton Mather stood in the back of the Second Church in Boston, dumbfounded by the "vast Concourse" of people before him. The previous day, a condemned murderer named James Morgan asked young Rev. Mather to preach a sermon for him on the Sabbath before his execution. Mather agreed. He recalled the event as an opportunity for him to be "*shown unto Israel*," but had he anticipated what must have felt like all of "*Israel*" showing up to hear him preach? Carefully, but undoubtedly awkwardly, the young minister made his way through

the overfilled church “by climbing over *Pues* and *Heads*.” It seems Mather recovered from his entrance, as “the people, throughout the country, very greedily desired” the publication of his sermon (Mather, *Diary* 122).

Morgan also requested a sermon from Cotton’s father, Increase Mather, an established minister at Boston’s Second Church, and from Rev. Joshua Moody, a minister from Portsmouth familiar to the ministry in Boston. The sermon Cotton Mather penned for the occasion, *The Call of the Gospel*, would become his first published sermon; Boston printer Richard Pierce printed in along with his father’s and Rev. Moody’s sermons in a packet of three discourses. Mather remembers in his diary that his “poor sermon” was published, “in the Midst, between my *Father* and Mr. *Moodeyes*,” that they were “the *three last* of them the Malefactor heard” and that he delivered his message as, “a *sorry youth*, in conjunction with *two* of the venerablest Men in the Land.” In *The Call of the Gospel*, Cotton expounded upon Isaiah 45:32 – “LOOK unto Me, and be ye SAVED, all the Ends of the Earth.” Morgan had written to him and others expressing his contriteness and eagerness to repent and Mather dedicated nearly the entire sermon to preaching the message of salvation (Mather, *Diary* 122; Dunton 120-22).

James Morgan, seated in the front of the church listening to Mather’s message, must have been overwhelmed. Morgan likely knew executions attracted large crowds, but, if he was the Sabbath-breaker all three ministers proclaimed him, perhaps he didn’t account for such attendance at his execution sermon. The previous December, Joseph Johnson, a butcher, attempted to enter a room where Morgan argued with his wife. Morgan told him to not come in and threatened Johnson with an iron spit. Johnson ignored Morgan’s warning and found himself stabbed with the spit in “his belly a little

above the navel.” He died three days later and Morgan was accused, and eventually convicted, of his murder (*Record of Court of Assistants* 294).

When Pierce published the sermons preached for Morgan’s execution, he appended a narrative that he claimed to have obtained by “an innocent wile” and “a harmless stratagem.” “The DISCOURSE of the MINISTER with *James Morgan* on the *WAY* to his *Execution*” contained a “*true copy* of the *Discourse* which pass’d between himself (Mather) & the Malefactor from the *Goal* to the place of *Execution*.” While the narrative’s authorship remains quite dubious, Morgan tells Mather “On Sabbath days I us’d to lye at home or be ill employ’d elsewhere when I should have bin at Church. *This* has undone me!” (Mather 105). Whether or not Morgan truly neglected his church fellowship cannot be known, but he certainly must have been cognizant of his surroundings that morning as thousands of ears listened to the minister describe his sin, his chance for salvation, and his impending death.<sup>14</sup>

On March 11, James Morgan’s execution day, Increase Mather took to the pulpit and preached *A Sermon Occasioned by the Execution of a Man Found Guilty of Murder*. The father dedicated less time to converting Morgan than his son had; instead he spent considerably more time performing deep, typological readings of scripture to justify and support the practice of capital punishment. The weight of the roughly 5,000 people assembled to hear Mather’s sermon caused the gallery and floor of the Second Church to crack, forcing minister and congregation to remove to Samuel Willard’s Third Church.<sup>15</sup>

While execution sermons were noted for drawing great crowds, Puritan ministers in colonial Massachusetts preached sermons for many occasions from funerals to feasts to fasts, to elections and executions. While ministers also preached gallows lectures and



sermons in England, the popularity and publication styles of execution sermons appear to be a particularly New England phenomenon in the seventeenth century. Men and women in England bought gallows literature in pamphlets that contained crime accounts, conversion narratives, dying verses, and other writings along with sermons or excerpts from sermons. In New England, execution sermons largely replaced the more varied gallows fare until the second or third decade of the eighteenth century. Regarding the execution sermons exclusivity as the only prominent form of gallows literature in seventeenth century New England, Cohen explains, “Puritan ministers and magistrates actively censored the few presses operating in Massachusetts, exercising a degree of control that was not matched by the authorities in London” (41). As with the law, Puritan authority also saw to it that the press upheld the covenant and supported the common spiritual mission of New England.

Another difference between the New England execution sermon and those published in England lay in the reputations of the men who delivered and supplied them. English ministers who attended to the condemned rarely counted themselves among the clerical elite, whereas some of the most popular and influential ministers in New England produced many execution sermons. The Mathers, Joshua Moody, Samuel Willard, Samuel Danforth, and others occupied important positions within the church and community. Danforth’s sermon for Benjamin Goad, the first extant published execution sermon in colonial Massachusetts, began with a forward written by John Sherman (minister from Watertown), Urian Oakes (Cambridge Minister and later president of Harvard College), and Thomas Shepherd (also a Cambridge minister and member of the much-revered founding generation). Increase Mather was the President of Harvard

College from 1692 until 1701 and even headed a political mission to England to secure a new charter after the short-lived Dominion of New England. Cotton Mather, perhaps the most prolific Puritan minister of his generation, authored half of all execution sermons published from 1686 to 1730. Executions occurred less frequently in New England than in England and within a much smaller population, so it is to be expected that they would garner more attention and create a significant spectacle. However, the amalgamation of religion and capital law in New England also likely contributed to the willingness of important religious leaders to speak at executions. Capital law was written to reflect Old Testament laws and the minister likely saw execution sermons as expedient opportunities to validate the necessity of the connection.<sup>16</sup>

Until late in the seventeenth century, when Cotton Mather and his peers expanded the scope and tone of their printed gallows sermons, execution sermons followed the common form of most Puritan sermons. The minister would begin with a “Text,” a verse of scripture to be expounded upon, such as Mather’s choice of Isaiah 45:32 for *The Call of the Gospel*. From the text the ministers drew the epistemological portion of the sermon, known as “the Doctrine.” The final section, “the Application,” instructed listeners how to internalize the Doctrine and exhorted them to act or repent. Each part of the sermon was divided into “Reasons” or “Propositions” that supported either Doctrine or Application with scripture, logic, stories, examples, warnings, and, instructions.

Execution sermons bear more than a little resemblance to a more well-known form of Puritan sermon, the jeremiad. In fact, seventeenth century execution sermons were really jeremiads with an object lesson. Preached in the meetinghouses, Puritan jeremiads bewailing moral decline and exhorting reform fell on sympathetic, but familiar,

ears. A sermon preached in conjunction with an execution became a public event, one that allowed the minister to address not only his congregation, but the larger community as well. What better evidence for decline could a minister desire than a man or woman condemned for murder or bestiality or infanticide or witchcraft? And if the execution sermons went to print, the publicity of the execution could carry the sermon to new audiences and the message could circulate throughout the community and resonate for weeks, months, or even years. By the early eighteenth century, ministers realized the power of the object lesson and began routinely attaching conversion or criminal narratives to printed sermons.

Those attending an execution sermon understood that the message applied to them as well as the condemned man or women whose transgression precipitated the events. The jeremiad form must have been familiar to many in the audience, but ministers left nothing to chance. Using the condemned man or woman's crime as a starting point, ministers routinely addressed various groups in the community, especially those whom they considered particularly at risk for following in the malefactor's footsteps. Nearly all sermons warned the youth to obey parents, avoid bad company, attend church, and take care to avoid the slippery slope of sins that would eventually cause God to recall his restraining grace and abandon them to Satan. If the condemned man or woman was of African or Native American descent, the sermon would address other Native Americans or "Negros" in attendance. Other groups frequently singled out for attention included parents, children, masters, servants, sailors, and magistrates.

In 1674, the double execution of Robert Driver and Nicholas Faevor, servants who murdered their master, prompted Mather to write the sermon *The Wicked Man's*

*Portion*. Because Driver and Faevor rose up against their master, Mather interprets this as violating the Fifth Commandment to “Honor thy mother and thy father.” On the grounds that disrespect for authority threatens the safety of society, Mather presents examples of children disobeying their parents, common people disrespecting their superiors, and servants spiting their masters. In true jeremiad form, he laments, “look in the street and there we may observe (I have sometimes beheld it not altogether without grief and shame) the child behaving himself proudly against the Ancient, and the base against the Honourable; so that in this respect *New England* is in a great measure become degenerate from the good manners of the *Christian World*.” Mather ends his observation with this stark warning: “There has been no such deed in our Israel before now. And mark what I say, If ever New-England be destroyed, this very sin of disobedience to the *Fifth Commandment* will be the ruine of this Land” (Mather 17).

Just as the sermons directed warnings at certain segments of society, they also selected certain sins for special attention. As we shall see, learned ministers frequently embarked on fairly heady exegetical tasks during the Doctrine portion of their sermon, but returned to clear, applicable, and unmistakable warnings during the Application; therefore, ministers saved their most direct and powerful attacks on sin until the end of their sermons. To return to Increase Mather’s *The Wicked Man’s Portion*, the minister warns against (in order), disobeying authority, pride, idleness, disobedience to parents, drunkenness, covetousness, “passions, revenge, anger and the like,” discontent, and melancholy (Mather 17-20). These sins, in Mather’s opinion, precipitated the circumstances that allowed the servants to kill their master. Samuel Danforth’s sermon occasioned by Benjamin Goad’s execution focused on sins collected under the general

title “uncleanness,” but covered much of the same ground as Mather, warning against pride, gluttony and drunkenness, sloth and idleness, disobedience to parents and masters, evil company, irreligion and profaneness ( 18-20).

Listeners were urged to repent, to turn to God, to seek salvation, to refrain from sinning, and to attend to the moral decline of the community. A primary concept the audience needed to understand was “restraining grace.” For those who fought their evil nature and avoided or repented for sin, God offered assistance by limited Satan’s influence in their lives and helping them seek Him; this help was known as restraining grace. For those who used their free will to sin, God would gradually remove his protective help from them, allowing their sins to pile up and descend into worse and worse transgressions. Choosing a sinful life meant rejecting God and God would not help those who rejected him.<sup>17</sup>

In Joshua Moody’s “An Exhortation to a Condemned Malefactor,” preached for James Morgan the afternoon after Cotton Mather’s morning sermon, the minister urged Morgan to “Acknowledge an *Holy & Righteous hand of God in leaving thee to this great Trangression*” (97). Moody explains how God withdrew His restraint from the condemned murderer:

*Thus* you say you have *liv’d*, and *these* sins you have *traded* in, till now at last the Lord has left you to commit that great and horrendous sin of Murder, in the doing of which you have even filled up your measure, and all the rest of your sins do in this sin do in this one sin find you out and light upon you. You may look at *this* sin as part of the punishment for your former and other sins. And it is one of the Lord’s most righteous, but with

all most tremendous waies of punishing sin viz. with sin or by sin. Lesser sins are punished by leaving men to greater sins. (86)

Execution sermons traced this path from sin to destruction again and again, each time pointing to a man or woman about to pay the ultimate price for one crime that undoubtedly represented the culmination of a sinful life.

Execution sermons were part of a social ritual that included the public killing of a man or woman before the community. The sermons attempted to explain why these people must be killed, and as part of the ritual, they also attempted the practical task of deterring crime. In many ways they were in many ways typical Puritan sermons. Themes common to jeremiads, such the declension of the community's moral integrity, the prevalence of sin, and warning to change in order to ward off impending doom, accompany exhortations to avoid particular sins and warnings to various susceptible segments of society. Public executions were deterrents, aimed at publically demonstrating state power and the consequences of violating community law. They relied on fear and awe, common ground for jeremiad sermons.<sup>18</sup>

In contemporary scholarship focused on early New England crime and punishment, most discussion surrounding the role and purpose of execution sermons has focused on the pragmatic "Applications" that addressed the condemned and community directly, condemned particular sins, and offered salvation. What tied the church and juridical apparatus together were the common Puritan cause of the colony; the theological tenet of Puritanism that demanded the community adhered to religious laws was typology. If we turn our attention from the "Application" back to the "Doctrine" we see that ministers did more than point to executions in the Bible and read Divine mandates

for deadly justice on Earth; we see the theological concept that allowed the cohesion of colonial capital laws and Puritan religious belief. If we read the minister's interpretation of scripture keeping in mind their typological way of understanding the Bible, we find Biblical support for not only capital punishment, but scriptural precedent for a variety of early modern English juridical practices from pardons to grand juries.

### **Typology in the Doctrine of Execution Sermons**

We know that Benjamin Goad attended the sermon Samuel Danforth delivered for his execution because the court records state, "In Ansr to the peticon of Benja(min) Goad the Court Grants his request liberty to Goe to meeting on the lds day at Roxbury the mrshall Genll or his deputy taking effectual course for his return to prison the same day" (*Records of the Court of Assistants* 14). Danforth entitled that sermon *The Cry of Sodom Inquired Into*, drawing a predictable connection between the sexual nature of Goad's transgression and the Old Testament's most famous degenerate cities, Sodom and Gomorrah. Delivered in April 1674, only six months before Danforth's own death, *The Cry of Sodom Inquired Into* is remembered for being the first published execution sermon in Massachusetts; the sophistication of the typological exegesis Danforth brings to bear on his texts from Genesis lays an ideological and ontological framework that supported public execution with remarkable clarity. The sermon addresses sin in a typological manner (*The Cry of Sodom*), but also the colonial judicial process used to convict and punish Goad, the grand jury (*Inquired Into*).

To typologically understand sin, listeners needed to understand both the dangers posed by the sin and the scriptural precedence for its condemnation. Danforth emphasized the "uncleanness" of bestiality and a litany of other sins in his sermon, a set

of sins the minister defined according to “Jude ver 7” as including “*Fornication*” and “*going after strange flesh.*” Fornication encompassed “not onely *Whoredom* and *Self-Pollution*, but also *Adultery*,” while “*Going after strange flesh*, comprehends *Sodomy* and *Bestiality*” (Danforth 3). The minister reserved his definition of bestiality until last and spent considerable time describing Goad’s crime:

*Bestiality, or buggery, when any prostitutes themselves to a Beast. This is an accursed thing, Deut. 27.21. Cursed be he that lieth with any manner of Beast: and all the people shall say, Amen. This is monstrous and horrible Confusion: it turneth a man into a brut Beast. He that joyneth himself with a Beast, is one flesh with a Beast. Levit. 18.23. Neither shalt thou lie with any Beast, to defile thyself therewith; neither shall any woman stand before a Beast to lie down thereto; it is confusion.* This horrid wickedness pollutes the very Beast, and makes it more unclean and beastly than it was, and unworthy to live among Beasts, and therefore the Lord to show his detestation of such villainy, has appointed the Beast it self to be slain. (5)

The language of infection or pollution condemns the animal for the criminal’s sin, a powerful metaphor to demonstrate how sin contaminates communities. Sin transmits condemnation from man to animal via an immoral act, emphasizing a particular quality of sin, its ability to permeate communities, corrupting all right down to the livestock. Even worse, copulation with animals, an act essentially physical that calls attention to anatomical similarities, put tension on the thin barrier separating human beings from the beasts they lived amongst. It challenges divinely constructed hierarchies, turning “a man into a brut Beast.” Executing the



horse reinstates man's power over the animal. While God's law governs all creation, only human beings follow and enforce that law, an attribute indicative of the essential difference - people's spiritual nature. Thus the ritual of dual execution puts an end to the "monstrous and horrible *Confusion*."

Ministers often took time in execution sermons to define various sins in detail with support from the Bible so community members would see the interrelation of all sins, identify with the condemned as a fellow sinner, and seek to avoid every sin, not just the atrocious transgressions worthy of death. The "Application" section of Danforth's sermon – which he does not label "Application" but instead divides into "Uses" – exhibits many of the attributes of such arguments discussed so far. For example, Danforth explains how God withdrew his restraining grace from Goad, telling the congregation, "He would not hearken to the Voice of God, and therefore he gave him up to his own heart's lust" (8). Goad's path of sin included idleness, lust, and self-pollution, and "other Sodomical wickedness," but also various attempts at bestiality. Danforth claimed that, up until Goad's ill-fated encounter with the unlucky mare, God withheld him from completing the act. Danforth explains, "He often attempted Buggery with Beasts, before God left him to commit it: at last God gave him over to it, and he continued in the frequent practice thereof for several months" (9).

Rev. Danforth reinforced the message of the spectacle. He informed his listeners that "God's End in inflicting remarkable Judgements upon some, is for caution and warning to others," that "Fearful Judgements do likewise abide all other impenitent sinners, as well as those that are made Examples," and "The fear and dread of the Majesty of God, upon the sight of the mischief that follows upon any sinful and wicked

course, will make men wise and wary” (12). Of course, Danforth also indicted segments of the community for particular exhortation, including the youth: “Let the awful Apprehension of the Wrath of God, which hath lighted up on this Youth, be a bridle to curb and restrain the rest of our youth, and all others, from indulging themselves in any kind of Carnal Uncleaness” (15). He warned all to avoid a nearly comprehensive list of sins, from pride to disobeying parents to gluttony to Sabbath-breaking. Finally, he ends by urging listeners and readers to repent and seek salvation. The salvation message closes nearly every published execution sermon.

While in many respects *The Cry of Sodom Inquired Into* seems unremarkable aside from the taboo nature of the crime it addresses and its distinction as first published execution sermon, if we turn our attention to Danforth’s choice of a text for this sermon and the interpretation that follows, we find a complex, typological explanation not only for the condemnation of bestiality, but also for the propriety of a grand jury inquisition and punishment based on such investigation. The connection between Goad’s sin and the uncleanness of Sodom and Gomorrah is clear, but the text Danforth chose, Genesis chapter 28, verse 20 and 21, emphasizes God’s investigation of those cities’ crimes, not the crimes themselves. The verses read: “And the Lord said, Because the cry of Sodom and Gomorrah is great, and because their sin is very grievous; I will go down now, and see whether they have done altogether according to the cry of it, which is come unto me; and if not, I will know” (1). As previously stated, the title of the sermon expresses this purpose, *The Cry of Sodom* referencing the sin and *Inquired Into*, the grand jury.

By the time Danforth sat down to pen *The Cry of Sodom Inquired Into* in 1674, the grand jury had been an institution in English common law for roughly five-hundred

years. Legal historians believe the institution of the grand jury dates back to the Assize of Clarendon, an act of King Henry II in 1166. This act began the transformation of the English legal system from superstitious means of uncovering and convicting people of crimes (such as the ordeal or trial by battle) and replaced them with early forms of jury trial and evidence-based conviction. As the eyres, or traveling assizes, moved from county to county, men divided into jurisdictional groups known as hundreds were charged with the responsibility of investigating the crimes and presenting the evidences at the eyres. These men were referred to as juries. After Clarendon, when trials began relying on juries to convict, a distinction needed to be made between the juries assembled to convict and those assembled to investigate. When the English justice system moved from the system of eyres to goal delivery, the investigative juries became known as “grand juries” to distinguish them from trial juries. Sir John Baker explains the roles of early grand juries, writing,

The grand jury was charged to make presentments from its own knowledge, but the regular practice from at least 1360 was for draft accusations – known as bills of indictment – to be prepared in advance of the session. The grand jurors scrutinized these bills, if necessary hearing *ex parte* evidence from accusers. If they considered that there was a case to answer they found the bill ‘true’, and it was endorsed *billa vera* (‘a true bill’), but if they did not it was endorsed *ignoramus* (‘we do not know’) and proceeding on the bill ended. (504)

Bills deemed *billa vera* advanced to the trial stage. The grand juries supplied a written accusation under an oath, the indictment, not the conviction.

That a grand jury investigated Goad's case is noted in the court records: "Benjamin Goad being found Guilty of Bestiality by the Grand Jury= was Brought to the barr and was Indicted by the name of Benjami Goad of Roxbury in New England..." They indicted him because "on the seventh day of february last past in the Afternoon the sun being two howers high Comitt the unnatural & horrid act of Beastiallitje on a highway or field..." (*Records of the Court of Assistants* 10). The case ran into some confusion because the court only had one witness of the event when a death sentence generally required two. To solve this problem, the magistrates decided to accept Goad's own confession when he was first apprehended (though he later pleaded not guilty) as the second witness and condemned him to die.

Danforth claims that God chooses to model just such an inquisitorial method for humanity. He explains that God personally investigated the charges against Sodom to "set an Example unto Civil Judges, to take exact cognizance of the Cause, and after accurate Examination to proceed to Sentence and Judgement. He condescendeth to the manner of men to make Proof and Triall of the truth and weight of that horrid Cry, which came up to Heavan against the *filthy Sodomites*" (2). This reading also neatly resolve what appears to be a question of divine omnipotence in his chosen text from ("...I will go down now, and see whether they have done altogether according the cry of it, which is come unto me; and if not, I will know.") by identifying a pedagogical purpose in God's condescension to person investigation.

The Doctrine of *The Cry of Sodom Inquired Into* reads: "Abominable Filthiness and Uncleanness is a Crying Sin, and grievous Wickedness in the account of God; for which he maketh diligent Inquisition, and executeth dreadfull Vengeance" (2).

Typologically speaking, Danforth reads Sodom and Gomorrah as prefigurations of later sexual crimes afflicting the church and interprets God's investigation into those cities as the type corresponding with the contemporary practice of grand jury investigation, the antitype. Like Goad, Sodom also had one witness – Lot. More than scriptural support for colonial legal practices, Danforth interprets the events of Goad's life, crime, conviction, and execution typologically, placing them into context beside Biblical events. They were not just Goad's experience, but an incident affecting the entire community and threatening the covenant with God. This version of typological exegesis required Danforth to take a historical view of the Bible, but also demanded a literary approach to scripture that sought to make sense of signs, symbols, and interpret events somewhat metaphorically. The belief that typology revealed literal truths about the interrelation of history, scripture and current events demands that we consider the practice differently than literary exegesis; we must remember that the law that convicted Goad was also typologically informed, a literal legislative attempt to adhere to Old Testament laws thought necessary to maintain the covenant.

It may be easier to understand how Danforth could use the story of Sodom's destruction as literal precedence supporting the grand jury and execution based on their findings if we also observe that God is frequently presented as an actor or active influencing force in the lives of criminals and even in criminal investigations. When God removed his restraining grace from Goad, for instance, he allowed Goad to commit a terrible sinful act. One of the most common and fearful defenses of capital punishment presented in execution sermons is the threat sin posed to "the Land." Those that offend God threaten the safety of the entire community. Danforth's sermon is no different. He

threatens that “the Church cannot be cleansed, until this wicked person be put away from among us” (9). He goes on to warn,

If we will not pronounce such a Villain Accursed, we must be content to bear the Curse ourselves. The Land cannot be cleansed, untill it has spewed out this Unclean Beast. The execution of Justice upon such a notorious Malefactor, is the onely way to turn away the wrath of God from us, and to consecrate our selves to the Lord, and obtain his blessing upon us. (9)

Though the Puritans certainly banished people from Massachusetts, the most egregious sinners needed to be executed in to protect “the Land.” Goad’s act confused humanity with the lower animals. Danforth explains why this confusion is an affront to God, stating that sin of uncleanness, “pollutes the *Body*, and turns the Temple of the holy Ghost into a Hog-stie and a Dogs Kennel” and “Such as wallow in the lusts of Uncleanness are *Dogs* and *Swine*” (6). About the severity of this particularly crime and the corresponding punishment, Cohen observes,

By his chronic defiance of proper authority and fundamental norms of conduct, and more particularly by his public flouting of sexual taboos, Benjamin Goad had established himself as a clear threat to the social order as conceived by Puritan ministers and magistrates. Given the limited institutional remedies available in seventeenth-century Massachusetts, such a challenge could be best met by the deviant’s final excision from the community (103).

Failure to do so put everyone in jeopardy for infection.

Increase Mather's sermon for James Morgan, *A Sermon Occasioned by the Execution of a Man found Guilty of Murder*, offers a deeply typological argument for execution as the necessary punishment for murder that is even more juridical-minded than Danforth's. Mather chooses a law and punishment for his text, Numbers 35.16: "And if he smite him with an instrument of iron (so that he die) he is a murderer, the murderer shall surely be put to death." The cover page of Mather's sermon included two even more harrowing passages from Deuteronomy 19:20-21 ("And the rest shall hear *this*, and fear, and shall henceforth commit no more any such wickedness among you. Therefore thine eye shall have no compassion, *but* life for life, eye for eye, tooth for tooth, hand for hand, foot for foot") and Proverbs 28:17 ("A man that doeth violence to the blood of a man, shall flee to the pit; let no man sustain him") (Mather 1). From these stark verses Mather begins typologically explaining three aspects of Morgan's crime – the definition of murder, *mens rea*, and the propriety of public execution as punishment for murder.

Mather derived typological support for all three claims from the Old Testament institution of the City of Refuge. The City of Refuge was a means of trying criminals in the Old Testament that stemmed from prejudicial times when criminal fled public or non-official justice. Mather begins describing the City of Refuge and its role in scripture by differentiating between two types of "manslayers," one who could seek asylum in the City of Refuge and the other who could not. Those who killed by accident could flee to the City of Refuge where they were tried. If judges determined the killing was indeed an accident, that person could remain safely in the City of Refuge. But someone guilty of intentional murder would be cast out of the City of Refuge to face justice. Mather

explains, “A Man may in hatred or passion kill another, and then the *City of Refuge* could not secure or save him from the hand of Justice” (2), showing that in Old Testament law intent, not just the end result of an action, played an important role in defining murder and determining if a person qualified as a murderer deserving death.

Mather goes on to make many distinctions about murder, murderers, and the typological foundations of determining and punishing the crime by offering a series of definitions and explanations as if arguing in a law treatise, but before we explore his careful apology for punishing murder with death, it is important to understand his typological support for mens rea – or a “guilty mind” - as a requisite determination for condemning a person for murder. For centuries common law recognized that intent played an important role in convicting someone of a felony. Baker writes, “the word ‘felony’ implied wickedness, and therefore ought not to have extended to blameless accident or misadventure” (523). Baker goes on to explain that a system of pardons generally addressed this issue; an individual would be indicted for a crime, convicted based on the definition of the crime (i.e. – killing someone amounted to murder, regardless of intent), and then pardoned if the crime was determined to have been committed accidentally. In 1390, English jurists wrote mens rea directly into the law by adding a stipulation to indictments that claimed the defendant committed “killing by lying in wait, assault, or malice aforethought” (Baker 529). By adding this language, the proceedings sought to determine intent as a qualifying criterion for felony.

Mather’s typological appeal to the City of Refuge supports this tradition of considering intent in felony prosecution, as a killer’s access to that asylum also depended on intent. From the story of the City of Refuge, Mather extrapolates what it means to be



“A Criminal” and “The Punishment to be inflicted on such a criminal.” He lists “three Particulars, which if they concur the person is guilty of Murder.” The first of these repeats the need for mens rea – “If he smites another man, *h.e.* if he does so not accidentally but designedly” (Mather 3). He places intent at the outset of this definition, as well as at the outset of his sermon, to remind listeners that murder is a moral transgression and that the distinction between deliberately killing another and killing another by accident existed not only in English legal traditions, but in the Old Testament as well. The typological connection supported the necessity of the law and the punishment.

The juridical language Mather used to describe the proper punishment for a murderer under Old Testament law connected scripture to colonial legal practice in a clearly typological manner. Under the Old Testament system of justice centered around the City of Refuge, if a killer fled the city, but was subsequently found guilty of murder, his executioner was a family member of his victim. The process was mitigated by a trial, which Mather describes in juridical terms: “Only before Execution could be done, the Magistrate was to pass a Judgment...If the Magistrate of that place found him not Guilty, he was returned to the City of Refuge...but if he was found guilty of Murder, he was to be put to death publickly by the hand of Justice” (4). He followed this description with his Doctrine, in which Mather minced no words: “That Murder is a Sin so great and heinous as that whoever shall be found Guilty of it, must be put to Death by the hand of Public Justice” (4). He later goes on to observe that “capital murder is wilfull” and repeats some arguments pertaining to intent. “There is a difference,” Mather writes, “between *Murder*, and *Casual Homicide*, or Accidental Man slaughter” (7). His support

is once again the City of Refuge and he cites verses from Deuteronomy and Exodus to support the need for intent as a fact of murder.

The continuation of juridical language used to describe Old Testament practices and contemporary legal practices forms the typological basis of Mather's argument. He goes on to define murder in seventeenth-century context but uses the same language and concepts he employed in his description of the City of Refuge. The emphasis on *mens rea* permeates the entire argument. His definition of murder, listed under the heading of Proposition I, reads, "*Murder is when a Man does voluntarily and unjustly takes away the life of another person.*" The "three things implied in murder" he identifies – "The object slain must be one of mankind," "capital murder is wilfull," and "In Murder the life of a Man is taken away unjustly" repeat many of the themes already discussed in Old Testament terms. Interestingly, Mather's careful distinctions outlined in his sermons resembled complex arguments of law. For instance, he took great care to distinguish between just and unjust killing, an obvious and logical rhetorical necessity in a sermon preached before a man is killed. According to scripture, human life is sacred and "It may not be medled with, except in cases where the Great and Sovereign God, who has absolute power of Life and Death, has appointed" (4-7). Listeners undoubtedly understood James Morgan's impending death constituted one of those cases, but Mather's sermon sought to be clear on this point.

To explain that "In Murder the life of a Man is taken away unjustly," Mather constructs several typological arguments for instances in which killing is permitted. The first of these is "In case of a Just war," observing that "There is a great difference between Blood shed in War and in a time of Peace" and that "Sometimes in War, they

that take away Lives do an Acceptable Service to God” (9). He describes wars involving David and Abraham, and even cites scripture to claim it may sometimes be sinful not to participate in war. He also notes that it is acceptable to take life in self-defense.

The second iteration of just killing Mather describes offers a powerful typological justification for the authority of magistrates and their power to take life. Here we see typology employed to justify state power and public execution. Mather asserts, “*They that are in Civil authority, may and ought to take away the lives of men, that shall commit Crimes, by the law of God worthy of Death.*” The ensuing line of reasoning so profoundly links the propriety of colonial authority and law to Old Testament precedence, that it is helpful to reproduce it in its entirety:

The Apostle therefore saith concerning the Magistrate: *He is the Minister of God to thee for good. But if though do that which is evil, be afraid; for he beareth not the Sword in vain; for his is the Minister of God: a Revenger to execute Wrath upon him that does Evil. Rom. 13.14.* Private Revenge is evil, but publick revenge on those who violate the Laws of God, is good. The Magistrate is God’s Vicegerent. As none can give life but God, so none may take it away, but God or such as he has appointed. It is their work to see that the Lives of Men be taken from them, when God hath said, *That they shall surely be put to Death.* Hence, *David* speaks, as in *Psal. 101.8. I will easily destroy all the Wicked of the Land, that I may cut off all the Wicked Doers from the City of Lord.* God had put the Sword into his hand for that end; so that he may clear the Land of wicked Malefactors, who were worthy of Death, and he was resolved to see

Justice done. But private persons are not to arrogate to themselves that which is the Magistrate's proper work. Men must have lawful Authority for what they do, else in taking away Life, they become guilty of Murder. Suppose a person never to have committed such Capital Crimes, if a private person, or one that has no legal authority, shall take away his Life, he is guilty of Murder (8-9).

The typological connection is simple: God gave authorities in the Bible the power and mandate to enforce law and take life, therefore that power is an attribute of magistrates. No such power was extended to private individuals; therefore they did not have the authority to take life. Not only do magistrates have the authority, when they used that authority to enforce God's laws, those indicated in scripture, they acted as God's agents and the death they dealt became God's judgment and will.

According to Mather, murder "is indeed the greatest Sin again the Second Table of the Moral Law" because it is "a most unnatural thing" and because it demands vengeance and harsh punishment. That punishment must be death by public justice – "*The Murderer is to be put to death by the Hand of Publick Justice.*" "Men," Mather told Morgan and the crowd of approximately five-thousand others, "may not pardon or remit the punishment of that sin." The discussion that follows blurs the line between scripture and common law; this is evident by the interchangeability of the words "sin" and "crime." For instance, Mather writes, "This Sin shall not be satisfied for, with any other punishment, but the death of the murderer. He follows this statement with examples of other punishments used in common law for other crimes, but ends with scripture: "There are some Crimes, that other punishment less than death may be accepted of as a

Compensation for the wrong done; either some molct<sup>19</sup> or Fine in their Estates, or some other corporal punishment less than death, but in case of Murder no Fine or Imprisonment or Banishment or Corporal Punishment less than death can be accepted: *You shall take so satisfaction for the Life of a Murderer.*” Finishing this thought, Mather turns from sentences and punishments to equity, itself an established aspect of common law, to condemn murder, stating, “And indeed equity requires this; by the Law of Retaliation, it is (illegible) that men should be done unto, as they have done unto others; and that Limb should go for Limb, so Life for Life” (14).

Before turning to his application, which Mather begins with the assertion that “This Doctrine justifieth the Authority here in respect of the Sentence of death which has been passed on the Murderer, who is this day to be executed” – he first repeats a warning Danforth delivered twelve years earlier in his execution sermon for Goad. He states that Morgan must be executed so “That so the Land where the Murder is committed, may be purged from the guilt of Blood.” Like Goad’s unclean crime of bestiality, Morgan’s crime of murder was “such a Crime as does pollute the very Land where it is done; not only the person that has shed blood is polluted thereby, but the whole Land lieth under pollution until such time as Justice is done upon the Murderer.” He quoted scripture that reads “*Thine Eye shall not pity him, but thou shalt put away the guilt of innocent Blood from Israel, that it may go well with thee.*” From this Mather concludes, “If the Murderer be not punished, it may go ill with the whole, all may fare the worse for it; if the sin be not duly punished, there is partaking in the guilt of it” (14).

Evidence of typological interpretations of English and colonial juridical concepts appear alongside warnings of curses and collective punishment for the guilt of one

because the typological manner of understanding contemporary events by searching scripture for prefigurations turns up such curses in the Old Testament alongside scripture explaining God's laws. If contemporary crimes were mirrored in scripture, and the punishments long engrained in traditions of English common law found shadows in the laws of Deuteronomy, Leviticus, and other Old Testament texts, then it should follow that the consequences would also exist in New Israel as well as Old.

### **Conclusion**

When New England Puritans looked to the Old Testament and saw events mirroring those unfolding around them, and those events were crimes and punishments, they believed that the way to maintain a covenant with God and form a Godly community in New England depended upon following the path laid before them in scripture.

Considering the prevalence of typological thought in other forms of seventeenth-century writing from New England, it is logical that execution sermons would make meaning in that manner as well. Typology informed how New Englanders formed their community and the parameters of that community were outlined in the laws they composed. Capital laws in particular bear the marks of typology most overtly in the Bible verses following the crimes and correlating punishments. To say that in seventeenth-century New England Puritan beliefs in scripture influenced the formation of law is accurate, but if we consider typology, we realize that law, and particularly English common law, also influenced how magistrates and ministers interpreted the millennia-old injunctions they found in the scriptures that anchored their faith.

The manner in which execution sermons employed typology to justify capital punishment also speaks to why ministers portrayed guilt as a communal burden, not only

born by the executed transgressor, but also by his or her neighbors if they failed to cleanse their community with scripturally mandated laws. As I will argue in chapter three, a typological understanding of capital law a mechanism to defend community's covenant with God transformed the execution event into a cleansing ritual. In practice, New England colonists were as likely to be influenced by English concepts of justice as scriptural fundamentalism, a rift that exposes a tension between the letter of the law and its implementation. Not everyone who violated a capital law found themselves on the gallows; generally speaking, only men and women who committed crimes that would have likely marched them up onto scaffold in England found themselves there in New England. Blasphemy, adultery, worshipping false gods, and disobeying parents were capital but unenforced. It is likely this disconnect between the law and typological justification for its application facilitated the removal of strict religious mandates for capital punishment and later increased attention to individual guilt in the eighteenth century.

## CHAPTER 2

### JUSTICE AND THE INVISIBLE WORLD

#### Crime and the Supernatural New England's First Hundred Years

One senses John Winthrop's pity in his account of Mary Martin, a twenty-two year old woman executed for infanticide in 1647. Her father, a former mayor of Plymouth, England, brought his family to Casco Bay in what is now Maine, whereupon he fell into hard circumstances. Winthrop faults Mary's father for not taking "that course for their safe bestowing in his absence, as the care and wisdom of a father should have done" when business allowed him to return to England. Though he describes Mary and her sister as "very proper maidens and of modest behavior," the governor sadly relates how Mary ended up with Mr. Mitton, "a married man of Casco" who soon found himself taken with her and began "soliciting her chastity" (Winthrop 317-318). Mary succumbed to Mitton's advances and slept with him various times over a three month period before she moved to Boston and began working for a Mrs. Bourne. Mrs. Bourne thought highly of her servant; when others suspected Mary was concealing a pregnancy, "her mistress would not give ear to any such report, but blamed such as told her of it" (318).

Unbeknownst to her, Mary was secretly pregnant and very much concerned for the shame that would befall her upon her child's birth. When on December 13 she delivered a healthy baby girl alone in a backroom "she kneeled upon the head of it, till she thought it had been dead." But it was not dead. Winthrop explains, "the child, being strong, recovered and cried again." Undoubtedly distressed at this point, Mary "used violence to



it until it was quite dead” (318). She then hid the baby’s body in a chest in her room and cleaned as to leave no trace of the pathetic scene.

Mary got away with this crime for nearly three weeks until the Bournes departed for England and suspicious neighbors took the opportunity to investigate. While residing at another residence in the Bourne’s absence, she was examined by a midwife who quickly discovered that she had indeed delivered a baby. Found out, Mary tried to claim “it was still-born, and so she put it on the fire,” but they searched her things and soon uncovered the baby in her chest. To determine Mary’s guilt, “when she was brought before the jury, they caused her to touch the face of it (her baby), whereupon the blood came fresh into it” (318).

This compelled Mary to confess to killing the child; a surgeon also found a fracture in the child’s skull. The court condemned Mary to die by hanging on March 18, 1647. Winthrop noted that she “behaved herself penitently.” She claimed to have prayed for pardon and committed herself to avoiding sin after her first and second transgressions into fornication, but, after the third mistake, she asked God, “that if she did fall into it again, he would make her an example.” Her final request came to pass in both her execution and the repetition of her story in print. Winthrop describes how Mary’s execution did not go as planned: “After she was turned off and had hung a space, she spake, and asked what they did mean to do. Then some stepped up, and turned the knot of the rope backward, and then she soon died” (318).

Fifty years later, Boston minister Cotton Mather resurrected Mary’s tale in his history of New England criminals, *Pillars of Salt*. He may have received the story from his maternal grandfather, the venerated minister of the founding generation, John Cotton,

who Mather notes preached a sermon occasioned by Mary's execution. Mather summarized and included many of Winthrop's details, but failed to share the governor's pity. Instead, he emphasized her sinfulness and God's direct involvement in her punishment, pointing out where God made himself known in the ordeal. Governor Winthrop mentions the vows Mary made to avoid sin or become an example as evidence of her contrition and weakness, but Mather makes clear that such vows offend God. He writes, "Heaven will convince the Sinful Children of men, that the *Vowes*, which they make, Relying on the Stability and Resolution of their own Hearts, are of no significancy. *A Chain of Hell* was upon her, and the forfeited *Grace of Heaven* was withheld from her; She fell a *Third Time*, into the Sin, against which her vows had been uttered" (Mather 60). Mather puts a divine warning in the mouths of the nosey neighbors Mrs. Bourne scolded for questioning Mary's virtue. Their questions, according the minister, "were warnings from God, unto her guilty Soul." The discovery of Mary's dead child and her confession in *Pillars of Salt* echo Winthrop's version of the story in his journal, including the relation that "when she Touch'd the *Face* of it before the Jury, the *Blood* came fresh into it" (61).

Like Winthrop, Mather allows that Mary died penitently. He also recounts the executioner's error, but here Mather draws his most explicit inference of God's hand in Mary Martin's death. He writes, "There was this Remarkable at her Execution: She acknowledged, her *Twice* Essaying to Kill her Child, before she could make an End of it; and now, through the Unskilfulness of the Executioner, she was turned off the Ladder *Twice*, before She Dyed" (61). The executioner's unsuccessful first attempt to kill Mary

resulted from her own botched initial effort to kill her child. Both succeeded on the second try. God makes himself known in this correlation.

Here we see two beliefs in the supernatural come to bear on the case of Mary Martin. God intercedes by punishing Mary's false vows and by making her death reflect that of her child's. But these are not the most striking examples of supernatural presence in this story; modern readers likely first notice the infant's corpse, dead nineteen days, bleeding upon Mary's touch and precipitating her confession. This process, as thaumaturgical as forensic, was called cruentation and, in England, it involved a variety of means by which the corpse of a murdered person could be induced to indict its own killer. Cruentation generally involved a corpse bleeding upon the touch of its murderer, but corpses were also said to shed tears or simply blush. While that mechanism of discovery is obviously scientifically impossible, if those guilty of murder, like Mary Martin, believed in it, cruentation may have convicted some killers; they would have been likely to confess or at least show considerable reluctance to touch the corpse if they thought it would bleed and accuse them.<sup>20</sup>

These two strands of belief in the supernatural – divine and mysterious – are woven throughout writing about crime composed in the first one-hundred years of New England's colonization, overlapping at some points and conflicting at others. Like so many ideas and practices that defined life in early New England, New Englanders held English beliefs about religion and justice whose aspects changed in the new geographical and ideological environment. For instance, English writers on crime report cruentation being used in all manners of murder cases, while New Englanders only mention using the technique to convict women of infanticide. Why New Englanders employed the practice

so narrowly is uncertain, as is why they continued using it at all when they rejected so many other apparently magical methods of divination. Even so, what crime writing reveals is a belief in the direct involvement of forces divine and diabolical, mysterious and magical. These forces shaped social events, manipulated weather, caused or cured sickness, revealed truths about the past, present, and future, and could be employed in both the commission and punishment of crime. By defining crime in a context that allowed supernatural evidence and consequences, an amalgamation of modern civil authority and beliefs in the supernatural created a divine imperative for punishment. Rhetoric emphasizing supernatural involvement, divine or otherwise, in the discovery and punishment of crime provided colonial authorities with valuable language for deterrence. Furthermore, belief in the supernatural extended to endowing individuals with supernatural powers, primarily expressed in the supernatural crime of witchcraft.

The inclusion of supernatural crimes and supernatural punishment in the law, gallows publications, and other writing about crime was linked to the relative ideological homogeneity of the New England population during the first century of colonization. Only when typology defined the capital laws and enough of the population was invested in the covenant and social unity could the colonial juridical apparatus justify punishing supernatural crimes such as witchcraft; the Salem event was a late outlier of the witch scares that had spread across early modern Europe. If people believed the arguments gallows publications, primarily execution sermons, set forth about communal guilt and threats to the covenant, then they would believe the supernatural had a direct effect on their lives even when they were not directly victimized by a crime.

The important difference between the supernatural and preternatural deserves a moment's attention as well. Some phenomenon described in early New England gallows publication and writing about crime modern readers might call "supernatural" they would have viewed as unexplained. Cruentation, for example, or interspecies breeding accidents did not necessarily hinge on a belief in anything otherworldly, only an incomplete understanding of the empirical operations of the natural world.

### **Supernatural/Preternatural Forensics**

In 1738, ninety years after Mary Martin's execution, a disturbed young servant woman named Patience Boston drowned her master's grandchild in a well not far from where Mary's demise began in Maine. Boston, who had falsely accused herself of infanticide on two different occasions, immediately informed the local authorities. The jury employed a familiar supernatural line of inquest – cruentation. They placed the body of the murdered child in front of Boston and told her to touch it. Boston admitted, "this terrified me, lest the blood should come forth, to be a Witness against me" but then resolved to touch the corpse anyway, believing that "God would not suffer the Child to bleed" (Boston 124). However, unlike Mary Martin's case, this attempt to convict via mysterious, other-worldly powers failed. Boston touched the child and nothing happened, but, as in the past, she was eager to convict herself. She admitted the child fell into the well on his own and she drowned him with the pole. Boston was convicted and eventually executed.

Though cruentation failed to convict Patience Boston, her story confirms that belief in the practice persisted well into the eighteenth century. As late as 1772 a broadside poem published in New London, Connecticut mentions the successful

employment of cruentation to convict Elizabeth Shaw of infanticide. Shaw was executed for infanticide in 1744, not long after Boston, but the notoriety or sensational value of some cases encouraged printers to republish gallows literature for decades after the execution. The supernatural plays an integral role in Shaw's conviction, first in the preservation of the infant's body, and later in the successful employment of cruentation:

Soon after this she did confess,  
Say'ng on my father's ground,  
There she replies the infant lies,  
and there the corps they found.

While lying there no beast did tear  
Which seems to testify,  
For blood conceal'd must be reveal'd  
it did for vengeance cry.

She was commanded with her hand,  
to touch the infant's flesh,  
Which when she came to touch the same  
the corps did bleed afresh.<sup>21</sup>

Doggerel broadside poetry might not offer much insight into the workings of provincial juridical apparatus, but it demonstrates that belief in supernatural involvement in the discovery of crimes persisted in New England until at least the middle of the eighteenth century, though it is difficult to determine how widespread that belief may have been. Perhaps the inclusion of a failed cruentation attempt in Patience Boston's narrative shows the practice in its latter days. Mention of a failed supernatural proof alone is notable as a primary justification for publishing criminal accounts was to deter crime, and supernatural involvement in the discovery of crime provided a deterrent throughout the seventeenth century. If successful cruentation in Mary Martin's case provides us with a starting point, the failure of the practice Boston's narrative signals

where we discover the twilight of supernatural proofs in criminal investigations and convictions. The poem for Elizabeth Shaw, published nearly thirty years after her execution, can only hint at an enduring interest in crime and the supernatural in the later eighteenth century.

A long history of supernatural intervention in criminal convictions existed in England, but by the seventeenth century, pleas at the Common Bench and King's Bench had replaced divine proofs of guilt or innocence. The English system once relied on oath taking. The accused swore an oath; if he recited it successfully, he was innocent, but if he stumbled or confused his words, he could be found guilty. An accused person could also try to confirm his innocence by wager of law, a practice in which the accused brought "compurgators" or "oath-helpers" to confirm his innocence. Furthermore, courts employed ordeals, physical trials meant to prove innocence or guilt. For instance, in the trial of fire, the accused held a red hot piece of iron. The wound would be examined a few days later and infection indicated God's guilty verdict. In the trial of water, a person was tied and dropped into water. Sinking was a sign of innocence.<sup>22</sup> The Puritans did not bring the ordeals with them, but they relied on other supernatural means of proof, such as cruentation.

It is difficult to pin down an exact attitude toward the supernatural in early modern crime writing. Indeed, it is often hard to tell what phenomena were considered supernatural at all. A 1650 work written by Jean Baptiste van Helmont and published in London described cruentation in terms of natural philosophy, making it seem perhaps more preternatural:

...in a man dying of a wound, the *inferior virtues*, which are *mumiall*, (for these are not subject to the restraint of our will, and operate not in conformity to the dictates of reason) have deeply impressed upon themselves a certain Character of revenge: and hence it is, at the approach of the assassine, the blood whose fountain death has sealed up, begins a *tumultuation* and *ebullition* in the veines, and violently gusheth forth, being, as in a furious fit of anger, enraged and agitated by the *image* or *imprese* of revenge conceived against the murderer, at the instant of the soules immature, and compulsive exile from the body (van Helmont 65-66).

An urge for revenge is encoded in the victim's blood via a physiological process, an attempt to demystify an apparently supernatural peculiarity. Moral and spiritual properties interacted with physical properties to produce reliable, observable, and comprehensible results. Efforts to find empirical explanations for supernatural events increased with the onset of the Enlightenment, an intellectual process that eventually moved from theories such as van Helmont's to discrediting many supernatural beliefs entirely.

Two bestiality cases from New Haven during the 1640's further illustrate how tentative the line separating natural and supernatural was in early New England. George Spenser and the aptly-named Thomas Hogg were both accused of bestiality when sows birthed piglets that bore their resemblances, but their trials ended with opposite results. Though the colonial records mention no connection between these cases, given their proximity in terms of time and geography, we can speculate that the customs and climate



of belief explains the similarities. Like cruentation, both demonstrate a forensic blend of the natural and supernatural.

In 1642, John Wakeman bought a pig from Henry Browning. That pig soon delivered a brood of normal piglets, with one exception. A stillborn piglet appeared a “prodigious monster,” hairless and with tender skin “a reddish white colour like a child’s.” The court records that the piglet’s single eye, resembling “some blemished eye of a man’s,” was located beneath a large forehead that was also compared to a human infant’s. Likewise, its deformed face was “not much unlike a child’s” and its neck and ears “had also such resemblance.” Oddest of all, over the piglet’s Cyclopean eye “a thing of flesh grew forth and hung down, it was hollow, and like a man’s instrument of generation.” An autopsy on the piglet, conducted alongside a dissection of one of its litter-mates, revealed anatomical discrepancies between the two, but this rational means of discovery was pursued in service of a premonition of Wakeman’s wife. The records state, “Some hand of God appeared in that impression upon Goodwife Wakman’s spirit” leading her to believe she knew the cause of the strange animal’s birth. Others viewing the piglet shared her premonition, also noting that the useless white eye in the dead piglet’s head resembled the useless white eye of a servant in the community, George Spenser. Spenser’s bad reputation and low means stood against him as well, but his blind eye – described as having “a pearl in it” and “whitish and deformed” – so closely resembled “the eye of the monster” that it was “as like the eye in the glass as the eye in the face.” Though Spenser initially declared his innocence and went to prison, he mistook a magistrate’s offer of spiritual forgiveness and absolution in return for a confession for a

pardon of the temporal variety. He thus confessed, convicting himself, and condemning him, and the corrupted sow, to death.<sup>23</sup>

Five years later a likeness between Thomas Hogg's facial defects and yet more deformed piglets found New Haven courts trying a bestiality case under the same evidentiary circumstances. Hogg must have been quite poor, as one of the complaints that kept him in prison for three months preceding the trial was that his genitals were sometimes visible through his poorly mended garments. He was often seen in this manner in incriminating places. Combined with his bad reputation amongst his fellow servants, both black and white, his indecent exposure earned him imprisonment, hard labor, and a severe whipping.

Hogg was not convicted for bestiality because New Haven, like the other New England colonies, followed a two witness rule if the accused did not confess. Hogg refused to confess, but the circumstantial evidence against him, and the court's manner of gathering it, speaks to the interaction between natural and supernatural evidence. As with Spenser, the likeness between Hogg and piglets spurred the investigation and charges, but to convict Hogg the court brought him to the barn where the pig in question was held. The records refer to the sow as "Mrs Swine" and as "his mistress." They "bid him scratch the sow that had the monsters and immediately there appeared a working of lust in the sow, insomuch that she poured out seed before them." Even Hogg had to admit that "he saw a hand of God in it." As a control subject, the court made him scratch a different sow and observed no such effect. Despite the divine input in this experiment, the New Haven court decided to affirm the two witness rule and Hogg's denials saved his life.<sup>24</sup>

As these cases show, moral authority in early New England often chose to follow the letter of the law rather than supernatural evidence when the two conflicted. Still, ministers resisted empirical explanations for supernatural events throughout the seventeenth and into the eighteenth century. Supernatural events, they argued, spoke to the presence of an invisible world inhabited by demons and angels, Satan and God. Linking crime to evil supernatural forces and punishment to good brought a level of immediacy to polemics against sin and crime. Criminals offended more than their victim and community; they also offended God and the mechanisms of His creation. God assisted His followers in punishing wrongdoers, thus supporting the moral health of the community. This again points to the prominence in a belief in communal over individual guilt in relation to the punishments of crimes.

In his 1674 sermon, *The Wicked Man's Portion*, Increase Mather claims that Heaven assists in discovering murders. The double execution of Robert Driver and Nicholas Faevor, servants who murdered their mutual master, occasioned the sermon. Mather writes, "Hence the Lord hath strange ways to discover this sin [murder]. Rather then the *Murderer* shall not be found out, the Heaven shall reveal his iniquity and the Earth shall rise up against him. How often have the fowls of Heaven, and the dumb creatures of earth brought Murder to light?"(Mather 8). Samuel Checkley repeated the same warning sixty years later in 1733, also in a sermon preached at the execution of a murderer. After listing a variety of ways murders were revealed – from murderers' confessions spurred on by uncontainable guilt to confessions by witnesses or accomplices – Checkley concludes, "They (murders) have been discovered sometimes by Dreams, and

Night Visions, and at other Times the very Beasts have been Instrumental in bringing them to Light” (Checkly 13-14).

The purpose of such warnings is clear – if you murder, you will get caught. Even if killers evaded civil authorities, witnesses, and unreliable accomplices, they must still contend with dreams and animals. Elizabeth Shaw’s broadside poem specifically mentions that animals did not destroy her baby’s corpse, a circumstance “testifying” to the natural world’s support for divinely mandated morality. Gallows publications emphasized discovery’s inevitability, a powerful deterrent. All creation, sometimes even including the Devil and his minions, stood against the murderer.

Natural philosophy and advancements in understanding the natural world fascinated Increase Mather, but his writing on these subjects spends considerable effort refuting rational claims and preserving a sense of mystery he felt was essential to keeping God’s presence tangible in the world.<sup>25</sup> He researched contemporary empirical explanations for many natural events – from comets to hurricanes – and wrote intricate treatises accounting for new discoveries while maintaining God’s direct involvement in worldly affairs. Mather’s primary project to this effect, *An Essay for the Recording of Remarkable Providences* (1684), compiled firsthand accounts of supernatural occurrences, events from New England history, and borrowed stories from English and European publications. It covered many supernatural events, from sea rescues to storms, magic to ghosts. Crime and punishment appear numerous times, particularly regarding witchcraft (which is a supernatural crime), but also in numerous divine punishments and supernatural discoveries.

In a section of *Remarkable Providences* dealing with apparitions, Mather includes two stories “recited by Mr. Webster in his *Book of Witchcraft*.” The book Mather refers to is John Webster’s publication *The Displaying of Supposed Witchcraft*, published in London in 1677. These stories recount incidents in which ghosts “appeared, so that the sin of murder (as well as that of theft) might be discovered.” Both tales occurred in seventeenth century England. In the first, Raynard was having an affair with Fletcher’s wife. Raynard and an accomplice, Dunn, murdered Fletcher and, with the help of Fletcher’s wife, concealed his body. Fletcher’s ghost began appearing to Raynard and threatened him. Raynard’s sister overheard her brother’s conversation with his victim’s ghost, became fearful, and informed the authorities. Raynard, Dunn, and Fletcher’s wife were soon executed “near the place where Raynard lived and Fletcher was buried.”<sup>26</sup>

Another tale Mather borrowed from Webster tells the story of a young servant woman working in the home of a man named Walker. Walker got the girl pregnant. To cover his tracks, he hired Mark Sharp to murder her. Under the pretense of removing her to a safe and anonymous place to have her baby, Sharp lead the girl onto the moors where he killed her with a pick and disposed of her body in a coal pit. Sometime later her ghost appeared to a local miller “with her hair hanging down all bloody, and five large wounds in her head.” She told the miller her killers’ identities, details of the murder, and where to find the murder weapon and evidence. She also enjoined him to report her plight to the authorities and threatened to haunt him if he failed to do so. The miller resisted, but after two more increasingly threatening visitations from the murdered woman, he informed the authorities. They conducted a search, found the weapon and body, tried Walker and Sharp, and executed them. Webster’s account closes with a bit of hearsay, noting, “It was

reported that the apparition did appear to the judge, or the foreman of the jury, but of that I know no certainty.”<sup>27</sup>

In these accounts, supernatural assistance in the discovery of crime created a helpful narrative to prevent crime. Criminals were exposed by preternatural or supernatural means, but their punishment rested in the hands of civil authority. But Puritan authorities - religious authorities in particular - used crime accounts as opportunities to emphasize divine powers at work in the world and to reinforce the propriety of colonial laws and punishments by relating instances of direct supernatural punishments. Increase Mather explained, “a judgment may be so circumstanced as that the displeasure of Heaven is plainly written upon it in legible characters” (Mather 169).

Perhaps not surprisingly, divine judgments often fell upon those the Puritans disliked. Mather relates the story of Thomas Harris, a servant foolish enough to join the Quakers in “dancing and singing, according to their diabolical manner.” Massachusetts colonial laws and practices throughout the seventeenth century condemned Quakerism and ordered Quakers banished, jailed, whipped, humiliated, and even killed.<sup>28</sup> When Harris converted to Quakerism, Samuel Banks, a Quaker Mather declared “the most blasphemous villain ever known in these parts,” told him, “that henceforth his tongue should be as the pen of a ready writer, to declare the praises of their Lord.” Heartened and enthused, Harris began declaring all sorts of blasphemous things, including that “his father was a devil that begat him.” A short while later, Harris and his new friends went to stay at a Quaker house, but, mysteriously, Harris arose from bed in the night and told the others he intended to go to South-hold. Ignoring his friends’ pleadings that he stay until morning, Harris set out only to disappear. Mather notes that “only his hat and his gloves

and his neckcloth was found in the road from the farm to the town.” Two days later, Banks suddenly had a revelation while reading his Bible and cried out that Harris was dead. The following day Harris was “found by the sea-side, about a quarter mile from the place, where his hat and other things were found, but out of the road, with three holes like stabs in his throat, and no tongue in his head, nor the least sign thereof, but all was clear to his neck-bone within, his mouth closed shut, one of his eyes upon his cheek out of his head, the other sunk so deep in his head that at first it seemed quite out, but was whole there” (241).

Mather concludes his relation of Harris’s demise with an eye witness account from “Mr. Joshua Hobart, who was one of them to view his dead body.” Hobart reported “that there was no sign of any tongue left in his mouth,” adding, “such was the end of that tongue which had the promise of being as the pen of a ready-writer.” To further connect this tale to supernatural forces, Mather notes that the sheriff in that area, a Captain Young, “being in bed, in the dead of night, was awakened by the voice of this Harris calling in his window very loud, requiring him to see that justice was done him” (243). Though Harris’s voice summoned the sheriff again the following night, there is no mention that the sheriff undertook the posthumous request. Harris lost his tongue to blasphemy. While Mather does not indicate that God himself slew Harris or removed his tongue, a divine hand was at work in the irony his former blasphemies lent to his manner of dying.

Tales such as this served not only to encourage communal ideological unity and discourage undesirable ideas, dialogue, and action - such as converting to Quakerism and blasphemy- but they also supported community laws prohibiting these things.

Blasphemy, for example, was a capital offense in New England throughout most of the seventeenth century. The 1648 Massachusetts code place blasphemy third in the list and commanded that,

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

24.15.16. (*Laws and Libertyes 5*).

Connecticut prescribed the same punishment and crafted the law similarly, but without the level of specificity we see in the Massachusetts law. The Connecticut law, printed in 1673, reads, “If any person within this Colony shall Blaspheme the Name of God, the Father, Son, or Holy Ghost, with direct, express, presumptuous, or high-handed blasphemy, of shall Curse in the like manner, he shall be put to death. *Levit. 24.15.16.*” (*Book of General Laws 9*). The verses of scripture both colonial laws cite call for blasphemers to be stoned to death. While the Connecticut law uses much the same language as the Massachusetts law, the latter actually attempts to preempt common arguments against Christianity (“or reproach the holy Religion of God as if it were but a politick device to keep ignorant men in awe”) and make clear that spreading such ideas



would result in capital punishment. The 1692 Massachusetts code of laws continued to make blasphemy capital, maintaining nearly the same language as the 1648 code.

By 1697, Massachusetts law reduced the penalty, but defined blasphemy more exactly. Chapter VII of the *Acts and Laws of His Majesty's Province of the Massachusetts-Bay in New England* is entitled "An Act Against Atheism and Blasphemy." Blasphemy included "Denying, Cursing, or Reproaching the True God; His Creation or Government of the World; Or by Denying Cursing or Reproaching the Holy Word of God..." Though no longer capital, punishments for these offenses were far from humane: "Punished by Imprisonment, not exceeding Six Months; by Setting in the Pillory; by whipping; by boaring thorow the Tongue, with a red hot Iron; or Setting upon the Gallows with a Rope about their Neck" (*Acts and Laws* 236). Luckily for blasphemers and atheists, the law contained a caveat "that not more than Two of the fore-mentioned Punishments shall be inflicted for One and the same Fact." This law was still in effect in 1761 when S. Kneeland printed a compilation of Massachusetts legislation since 1692.<sup>29</sup>

Considering the legislative attention and severity of punishment colonial authorities gave blasphemy, only one person was executed for it and it was a lesser charge among several that condemned him.<sup>30</sup> Others suffered corporal punishment or humiliation. Blasphemy appears to have been difficult for colonial authorities to prosecute, likely because it is a speech act easily denied or reframed, and therefore offered few opportunities for punishment. While ministers could direct murderers, pirates, arsonists, and rapists to look at the gallows, fatal lessons to deter blasphemers needed to come from elsewhere, and they frequently turned to direct divine punishment. A final example illustrates this point. In a 1704 execution sermon preached for six

condemned pirates, Cotton Mather recited a particularly poignant example of divine punishment inflicted upon a blasphemer:

A horrid Fellow aboard a ship, was belching out his Afronts to Heaven, and Swearing and Cursing at a most hideous rate. God struck the Wretch Dead with a Flash of Lightning, in the midst of his Blasphemies. But when they came to examine what *Wounds* he had about him, they could not find any but this, That his Tongue was pierced by the *Lightning*, Exactly as it had been *bored with an Hot Iron*, most proper *Evil*, for a Blasphemer to be pursued withal (Mather 33).

It is impossible to ignore that Mather's description of God's punishment here mirrors standing law in Massachusetts. On one hand, God killed the blaspheming man with the lightning emphasizing the capital nature of the transgression; that the corpse's tongue displayed only one wound, and that wound resembled the current punishment of boring the tongue with a hot iron, connects colonial law to divine will.

When colonial legislation failed to be enacted according the letter of the law, as with capital blasphemy, supernatural or divine punishment took the place of the gallows as exemplary deterrents. Hearing about the destruction of Sodom in the distant past could not inflict the same terror as learning that someone like you was recently struck by lightning or had his tongue torn out through his throat near where you live. Like executions, these stories encouraged the audience to fear real and tangible consequences. Execution sermons relied heavily on examples from scripture to support the explanations for crimes and punishments. When the Puritans controlled the colony, they even typologically crafted their laws to reflect scriptural mandates, though Edgar McManus

correctly states that “some Old Testament prohibitions were modified and updated to conform with contemporary legal thinking” (McManus 25). After 1692, following a new charter and the Salem Witch Trials, the relationships between scripture and law began to unravel. Contemporary accounts of divine punishment served to link law to divine will after formal connections between law and scripture diminished, but their primary rhetorical effect was to provide immediacy to God, morality, and punishment.

As the eighteenth century wore on, execution sermons and gallows publications only intermittently included supernatural involvement in the discovery or punishment of crime. Gallows publications became simultaneously more sensational and psychological.<sup>31</sup> Criminals and their transgressions took center stage, pushing God, the devil, and the mysterious to the peripheries. The tragedy at Salem marked a critical turning point for the connection between the law and the supernatural. Common recognition that the witch trials and executions were conducted erroneously, and that they likely resulted in the state-sponsored deaths of innocent people, helped erase witchcraft from colonial legal codes in New England. However, for much of New England’s first century under English control, witchcraft fueled belief in the supernatural and accounted for the most profound conflicts between colonial authority and individuals over involvement of supernatural or mysterious forces. To fully understand the role of the supernatural in colonial models of justice, we must examine witchcraft, the essential supernatural crime.

### **Supernatural Crime**

Thanks to generations of popular and scholarly obsession with the Salem Witch Trials of 1692, supernatural crime is probably one of the most thoroughly analyzed topics

in Puritan New England. Though legislated against as a single crime, “witchcraft” really encompassed an assortment of acts and rituals intended to cause supernatural harm.

While ministers condemned a variety of acts as witchcraft, the courts, in legislature and practice, concerned themselves with two primary aspects. First, the courts condemned *maleficium*, or the supernatural power of witches to inflict harm on victims. This included a variety of inflictions from physical and psychological torment to damage to livestock, crops, or property. Secondly, in trials for witchcraft colonial courts demanded to know whether or not the accused witch had a compact or familiarity with the devil.<sup>32</sup>

Scholars studying early modern witchcraft have struggled to explain how witchcraft actually functioned as a social and juridical phenomenon. Unlike criminal accounts of murder, rape, or theft, which we readily accept occur to varying degrees in most communities, scientific advancements since the Enlightenment have gradually disabused most people about the veracity of witchcraft claims. So, if witchcraft is not real, why do many early modern texts describe the practice and how did enough people believe in witchcraft to support persecutions that devolved into massacre? The answers to these fundamental questions can be pieced together from complementary theories from various perspectives. For example, Paul Boyer and Stephen Nissenbaum’s model of social strife and upheaval, John Demos’ psycho-historical analysis, and Carol F. Karlsen’s gender-based theory of witchcraft persecution all offer insightful and probable explanations of why witch trials occurred in early New England.

Demos emphasizes that social turmoil and natural disasters created conditions for witch accusations and intensified colonial authority’s drive to hunt witches. The Salem event, for example, followed the King Phillip’s War, the revocation of the colonial

charter, and the failed Dominion of New England, all of which threatened lives, livelihood, and community solvency. Boyer and Nissenbaum point to similar circumstances at the local level, citing conflict between the economic boom going on in Salem Town and agrarian isolation and stagnancy in Salem Village. Karlsen's profile of a typical New England witch as middle-aged to older women, alternatively of independent means or on the mercy of the community, certainly explains many of the patterns of accusation. Richard Godbeer adds that what authorities termed witchcraft often included a wider set folk beliefs and practices that common people, including some devout Puritans, viewed amorally. Common people accepted some practices of divination, such as the sieve and scissor, as simply methods to obtain information. Others employed countermagic, such as tossing a witchcraft victim's urine into the fire or hanging a horseshoe over the door to keep witches out. Though religious authorities deemed these acts diabolical, many men and women accepted these techniques in mostly pragmatic terms. They felt the same way about malificium; plaintiffs in witchcraft cases were most concerned that a malicious act had been perpetrated against them, while the judges who listened to their pleadings primarily searched for evidence of the defendant's relationship with the devil.

Given the expansive body of literature addressing the social, political, and religious origins of witchcraft beliefs in New England, here it seems expedient to explore the construction of laws prohibiting supernatural crimes and forensic methods for conviction rather than delve further into the extant scholarly milieu on the subject of witchcraft. Belief in the reality and malignancy of witchcraft found its way into the very laws that structured early New England. Obviously belief in witchcraft, and fear of

witches, preempted the legal apparatus constructed to stop it and encouraged colonial leaders to include it amongst other capital crimes, but in the experience of seventeenth century men and women, particularly those accused of witchcraft, witchcraft laws became preconditions that allowed persecution and execution.

Adapted from medieval and Inquisition practices, such as those outlined in the *Malleus Maleficarum*, Puritans relied on supernatural proofs to uncover and convict people of supernatural crime.<sup>33</sup> In his famous 1693 apology for the Salem Witch Trials, *Wonders of the Invisible World*, Cotton Mather describes supernatural forensics used to detect, convict, and execute accused witches. William Perkins 1608 *A discourse of the damned art of witchcraft* supplies Mather's first foray into the supernatural forensics of witchcraft, closely followed by John Gaule's 1646 work *Select cases of conscience touching witches and witchcrafts* and Richard Bernard 1627 *A guide to grand-jury men*.<sup>34</sup> All three works discourage what they consider to be superstitious means of discovering a witch; Mather's citation of Perkins, for instance, states "Some *Tokens* for the Trial of Witches, are altogether *Unwarrantable*. Such are the old Paganish Sign, The Witches *Long Eyes*, The Tradition, of the Witches not weeping; The casting of the Witch into the Water, with Thumbs, and Toes, ty'd across." All three men Mather cites state that such primitive means of uncovering a witch are too close to witchcraft themselves. Spectral evidence – primarily victim's accounts of being tortured by the image of a suspected witch – became a divisive element at Salem. Though the court initially allowed it, pressure from ministers, including Increase Mather, eventually lead to spectral evidence being deemed inadmissible. The Devil, the elder Mather and others argued, could take any shape, even imitating devout members of the Elect.<sup>35</sup>

Evidence authorities considered acceptable to convict a witch focused heavily on testimony from the community, forms of divination, victim's accounts, testimony of confessed witches, and the actions of suspected witches, though with cautions attached to each. Perkins warns those pursuing witches that "The Testimony of some Wizzard, tho' offering to show the witches face in a Glass...may be a good presumption, to cause a strait Examination; but a sufficient proof of Conviction, it cannot be." He soon follows with the acceptable means of convicting a witch. The ideal conviction of a person for witchcraft follows confession after an examination. "...the Testimony of Two Witnesses, of Good and Honest Report avouching before the Magistrate upon their own Knowledge" was also sufficient. These people would, presumably, recount supernatural information. After all, witchcraft is a supernatural crime. The court could look for evidence of supernatural interactions between the witch and the devil or other evil spiritual agents. A common sign was the "devil's mark" or "witches teate." The devil was thought to mark his followers with visible signs on their bodies. These could range from birthmarks, to moles, to other skin imperfections. The "witches teate" refers to much the same phenomenon, but attributes the mark to a special nipple-like orifice used by witches to feed imps or animals familiars. Familiars, evil supernatural beings in animal form, were thought to accompany witches and evidence to suggest a witch had contact with a familiar is cited by Perkins as valid support for a witchcraft conviction.<sup>36</sup>

The link between these supernatural signs and probable explanations is strong. Any blemish could be a mark or teate and any interaction with a strange animal consorting with a familiar. Mather lists other examples from his source texts, such as harm done by witchcraft, ecstatic states witches were believe to enter, and material

evidence like “Pictures, Poppets, and other Hellish Compositions.” In these proofs we see supernatural interpretations of natural events or objects. However, one proof, quoted from Perkins, accepts divine oracular revelation of a witch as proof to aide conviction. Perkins states that a witch can be known, “By Some *Witness of God* Himself, happening upon the Execrable Curses of Witches upon themselves, Praying of God to show some Token, if they Guilty.”<sup>37</sup>

*Wonders of the Invisible World* provides detailed and haunting descriptions of New England witchcraft. After Mather finishes his exposition of unseen horrors threatening the souls and success of the community, he recounts several cases from the Salem incident. Consider that each of the women and sole man he describes were tried, convicted, and executed for a crime they did not commit. Whether each believed in the guilt or innocence of the others cannot be known, but, dissimilarly from other early American crime reports, we cannot question whether the fantastic stories and evidence Mather draws from the trial reports actually occurred; believed at the time or not, the coughed up nails, apparitions, and malificium are clearly being interpreted by superstitious minds.

Throughout the seventeenth century, legislature passed in New England expressly made witchcraft a capital offense. Oddly, Rhode Island’s law also condemned witchcraft and prescribed death as the punishment, but no witch trial occurred in Rhode Island and the colony even served as a haven for some people accused of witchcraft fleeing Massachusetts or Connecticut. Law provided a critical mechanism for community defense against supernatural crime. Witch trials were not isolated events addressed individually; they stood alongside capital trials for many other offenses and appear in



context of early court records with equal and lesser crimes from fornication and adultery to murder and bestiality. When contextualized with other ways belief in the supernatural shaped narratives of crime and punishment, we see that witchcraft stands out only in so far as it was the instance in which the supernatural became crime, rather than a force to find out or prevent crime or a threat of divine punishment.

A 1641 overview of New England laws published in London as “An Abstract of the Lawes of New England” places witchcraft as the third and fourth transgressions out of twenty-four to “deserve capitall punishment, of cutting off from a mans people, whether by death or banishment.” The first law addresses witches themselves and reads “Witchcraft which is fellowship by covenant with a familiar Spirit to be punished with death.” The following law targets those in league with witches, “Consulters with Witches not to be tollerated, but either to be cut off by death, or by banishment.” These laws build upon a basic scriptural injunction from Exodus 22: 18, “Thou shalt not suffer a witch to live,” by providing criteria for identifying a witch as someone who covenants with a familiar spirit. Nathaniel Ward’s “Body of Liberties,” also published in 1641, very likely formed the basis of the London publication; the set of capital laws contained in that document included witchcraft as the second entry and also relied on Exodus 22:18. The law reads, “If any man or woeman be a witch (that is or hath consulted with a familiar spirit,) They shall be put to death.”<sup>38</sup> In this context, witchcraft appears as primarily a spiritual or religious crime in the eyes of the law, which emphasizes a witch’s intentional and contractual agreement with a familiar spirit but makes no mention of harm done to neighbors, property, or any other tangible transgression. Likewise, the law condemning people who consult with witches seems primarily concerned with the negative spiritual

associations that arise from those relationships rather than the commission of crime that physically affected the community. Certainly, witchcraft cases in early New England, as in early modern Europe, nearly always arose from tangible effects of supposed witchcraft (sickness, torment, bewitched cattle, failed crops), but, from a scriptural point of view, those were effects caused by a witch's association with evil spirits, and so it was that association that was legislated against.<sup>39</sup>

Ward's "Body of Liberties" was not enacted by the General Court of Massachusetts to avoid seeming in conflict with English law, but it provided a foundation for the colony's first enacted code of law seven years later.<sup>40</sup> In 1648, Stephen Day of Cambridge printed six hundred copies of *The Book of the General Lawes and Libertyes Concerning the Inhabitants of the Massachusetts*<sup>41</sup> for the General Court of Massachusetts. Witchcraft remained a capital offense in *The Book of General Lawes and Libertyes* and continued to be the second offense listed. The wording of the law remained largely intact as well – "If any man or woman be a WITCH, that is, hath or consulteth with a familiar spirit, they shall be put to death." In addition to Exodus 20:18, which was still appended to the law, *The Book of General Lawes and Libertyes* includes Leviticus 20:27 and Deuteronomy 18:10-11.<sup>42</sup> Though the language of the law itself changed little from Ward's "Body of Liberties," these scriptural citations expand the definition of witchcraft somewhat. Still, the omission of supernatural harm as an attribute of criminal witchcraft reveals colonial authority's preoccupation with the spiritual aspect of the crime.

The language of Massachusetts witchcraft law remained the same in the 1660 revised reprinting of *The Book of General Lawes and Libertyes*. Connecticut's 1673

capital law condemning witchcraft used the exact language and same scriptural citations as the Massachusetts law while Rhode Island's 1663 witchcraft law fails to define the crime at all, stating only, "That witchcraft is and shall be a Felony, And whosoever shall be Lawfully convicted thereof, shall suffer the Pains of Death." The Rhode Island law omits any scriptural support for the law. While this is an interesting departure from Massachusetts' and Connecticut's laws, it is worth remembering that Rhode Island failed to convict even one witch with its injunction against witchcraft.<sup>43</sup>

As the events in Salem unfolded in 1692, the Massachusetts General Court received a new charter from the crown and proceeded to print it along with an updated set of laws entitled "Act and Laws, Passed by the Great and General Court or Assembly of Their Majesties Province of the Massachusetts-Bay in New England." This set of laws contains "An Act, Against Conjuraton, Witchcraft, and Dealing with Evil and Wicked Spirits." The act drastically expanded the legal definition of witchcraft, including writing malefic acts into the law. After repeating the older laws' prohibitions against associating with evil spirits, the act outlaws disturbing dead bodies or using body parts from dead people in witchcraft rituals. It then expressly prohibits "any Witchcraft, Inchantment, Charm or Sorcery, whereby any person shall be Killed, Destroyed, Wasted, Consumed, Pined or Lamed in his or her Body, or any part thereof." Those found guilty of such a crime, or associating with a witch in the commission of such a crime, would be put to death.<sup>44</sup>

The practical threats common men and women faced from witchcraft were finally acknowledged the law. Notably, the act not only acknowledged individual damages thought to be caused by witchcraft, but even drew distinctions between various

supernatural acts in terms of punishments. While those using dead bodies in witchcraft rituals and those thought to use malificium to harm neighbors faced the death penalty, practitioners of less harmful magic, such as employing divination to find lost items, locate treasure, tell the future, or harm property or cattle, faced a diminished, though quite undesirable, sentence: “suffer Imprisonment by the space of one whole year, without Bail or Mainprize, and once in every Quarter of the said Year, shall in some Shire Town, stand openly upon the Pillory by the space of six hours, and there shall openly confess his or her Error and Offence, which said Offense shall be written in Capital Letters, and placed upon the Breast of said Offender.” If this was not enough to prevent recidivism, those found guilty of a lesser supernatural crime for a second time were put to death.<sup>45</sup>

Nearly all histories of New England witchcraft agree that, in terms of witchcraft prosecutions, Salem changed everything. Collections of Massachusetts law published after 1692 omit witchcraft from the list of capital crimes and in 1711 the General Court of Massachusetts published “An Act to Reverse the Attainders of *George Burroughs* and others for Witchcraft.” The act posthumously exonerated the Salem Village minister and many of his unfortunate parishioner and coincided with formal and informal apologies from those involved in the trial, including Judge Samuel Sewall, as well as an overall secularizing trend in Massachusetts jurisprudence. It did not end all beliefs in witchcraft, but, after Salem, capital punishment ceased to be the community’s response to supernatural crime.<sup>46</sup>

An end to prosecutions for supernatural crimes in New England following the events at Salem makes sense if we examine the arc of legislation in light of other events

in the colony. Throughout most of the seventeenth century, witchcraft prosecutions most commonly ended in acquittal. As Richard Godbeer points out, failure to convict often stemmed from communication breakdowns between judges and plaintiffs; plaintiffs sought reparations for damages while judges searched for covenants between defendants and the Devil. In Salem, where prosecutorial standards were loosened to allow hearsay and spectral evidence, the community quickly realized that justice had been corrupted.<sup>47</sup>

Secularization resulting from the charter of 1692 and greater English control over colonial affairs also helped usher out laws against supernatural crime. Ministers who warned against the secularization of society observed a real trend in colonial life. As the Puritans' typological mission to create a new Israel in New England waned, individuals covenanting with the Devil posed less of a threat than the piracy and property crimes that filled the spaces in capital law codes left vacant by witchcraft, blasphemy, and adultery.

### **Super- and Not-So-Supernatural**

Reviewing the relationship between crime, law, and the supernatural in colonial New England leaves many questions to be answered. Reading ministers' warnings, a governor's journal, and the unreliable criminal narratives that were likely authored by ministers and printers provides us with valuable perspectives about how authority employed supernatural events to deter crime and prosecuted supernatural crimes. What we do not know, however, is the reception of these arguments throughout New England's growing population. How many people believed God struck down blasphemers? Who accepted that witches and devils consorted in the shadows of their frontier towns and villages? Did blasphemy laws quiet undesirable talk in taverns and private homes? The efficacy of rhetoric that employed the supernatural to deter crime cannot be measured, as

it is impossible to determine exactly why individuals chose not to commit crime; we can only look at crime rates, court records, and gallows publications which, in truth, primarily expose the failure of colonial authority to police the acts and ideas of the public.

Yet, in the persistence of supernatural imagery, divine punishments, preternatural forensic techniques, and witch trials, we unmistakably encounter the supernatural as a strong presence in colonial authority's efforts to control crime and punish transgressors. We see a certain logic in deterring blasphemy with fantastic tales of instant death, an effective scare tactic as ghosts and beasts reveal murders, a pragmatic psychological technique as a nervous killer's hands hover over her child's corpse, and a desire to preserve community harmony in witch trials, though the result often had the opposite effect. Rhetoric of the supernatural presented tangible and logical effects in preaching and writing about crime, particularly in terms of deterrence, even if no ghosts ever watched witches on their way to hidden Sabbaths and blasphemers were merely unlucky enough to be on boats during storms.

To fully understand the impact of supernatural belief on capital punishment and legal practices in early New England, we must turn from the laws and records that preserved instances of unexplained or supernatural events to the gallows publications that sought to preserve an environment in which a divine mandate for capital punishment was possible. If this chapter has revealed the pervasive and practical relationships between the supernatural and the law, the next will examine the rhetorical efforts ministers employed in gallows literature to preserve a community where implementation of the law held both worldly and otherworldly consequences.

## CHAPTER 3

### POLLUTION AND SACRIFICE

#### Reassessing Early New England Execution and Ritual

One of their names was Joseph Tanqua. The only name remembered for the man hanged alongside him is Josias. They shared more than a fatal date, October 12, 1709; both were Native American, both were convicted of murder, and both committed the crime under the influence of alcohol. Josias committed his crime first on December 1, 1708. Gripped by drunkenness and rage, he brutally murdered his wife, Margaret, in their home. After beating her, stomping on her, and clubbing her with a burning stick, he forced her into the fireplace where she suffered severe burns. Joseph Tanqua struck Isaac George, a fellow Native American, in the head with a hoe following an argument in a potato field. George lived two weeks before dying from the wound.<sup>48</sup>

Both men were convicted at the Bristol County Assize in what is now Rhode Island and sentenced to death. Samuel Sewall's diary contains a brief entry regarding the pair dated October 2<sup>nd</sup>. As he reported the specifics of the execution plans to Governor Joseph Dudley, Colonel Samuel Vetch, present in Boston to raise troops for an expedition to Canada that never materialized, "muttered something as if there was no malice prepense." Sewall fails to mention why Vetch questioned their sentence, but his criticism – that the murders were not premeditated, a necessity then as now to pronounce murder capital – likely arose from the men's drunkenness. Sewall's irritation is palpable here and he quickly puts Vetch in his place, retorting, "I told him of the man's kicking his wife into the fire. He had not heard of that" (Sewall 265).

Though the men died for murder, provincial authorities wanted to make clear that drunkenness precipitated the crimes. Since the early days of the colony, alcohol threatened the Puritan's goal of making Massachusetts a covenanted community tied to God through obedience to His laws. Sales of alcohol to Native Americans were particularly problematic; without the European's long cultural history with brewed and fermented drinks, New England's original inhabitants struggled to adjust to the drug's introduction into their societies. Intoxicated Native Americans, like intoxicated Europeans, were more likely to commit crimes, harder to convert and deal with diplomatically. On the other side of the coin, alcohol also allowed colonists to take advantage of Native people through subterfuge and such dishonest dealings were frowned upon, or at least authorities sometimes made it seem so in print.

To make sure all attending Joseph and Josias' execution understood the pairs' true downfall was drunkenness, not murder, colonial authorities chose Taunton minister Samuel Danforth to deliver a sermon on their execution day. Danforth makes this clear in his sermon, informing listeners, "The Honourable Judges of Her Majesties Superior Court of Judicature, have seen cause to direct me to Preach against the Sin of Drunkenness on this Occasion; because both the Murderers, and the Persons Murdered, were overtaken with Drink, when the acts of Murder were perpetrated" (Danforth 2).

Thirty-five years earlier, Danforth's father, also named Samuel Danforth, delivered the colony's first printed execution sermon, *The Cry of Sodom Inquired Into*. In that sermon, the elder Danforth impressed upon listeners and readers the necessity of executing individuals who committed crimes related to uncleanness. Benjamin Goad, a young man condemned to die for committing bestiality with a mare, listened on as the



minister used the story of Sodom and Gomorrah to emphasize that God's imminent judgment hung over lands polluted with sin, ready to crush entire communities with righteous destruction. "The Land cannot be cleansed, until it has spewed out this Unclean Beast," he explained, "The execution of Justice upon such a notorious Malefactor, is the onely way to turn away the wrath of God from us, and to consecrate our selves to the Lord, and obtain his blessing upon us" (9).

The younger Samuel Danforth undoubtedly heard his father's sermons and absorbed this message from him and other venerable divines in the colony. His sermon for Josias and Joseph Tanqua, which he entitled *The Woful Effects of Drunkenness*, repeated dire warnings of divine judgments that would be unleashed upon the community if they allowed criminals, in this case murderers, to live. Danforth emphasizes this at the outset, stating, "Now in order to the Retaining the gracious Presense of our holy God among us, the Land which we inhabit, ought to be cleansed from that defilement, which the Voluntary and Unjust taking away the Lives of men doth bring upon it" (2). He repeats this message more forcefully a few pages later, making it the very doctrine of his sermon – "The Abounding of the Vice of Drunkenness among any People (especially among such a people as are the Visible People of God, and do profess the true Religion) doth bring down from Heaven dreadful Woes, and desolating Judgments upon them, as a Nation or a Body of People, as well as Signal Punishments on Some particular Drunkards among them" (6). He goes on to discuss many of the real consequences of drunkenness, such as causing accidents, sickness, and poverty before he offers a possible example of God's judgment made manifest against the sin. He speculates, "The visible Blast upon many Orchards of the late years, should lead us to consider, whether the visible Abuse of

the Liquor pressed forth from the fruit of the Trees in those Orchards, have not procured this Blast, as a judicial Stroke of Divine Displeasure inflicted upon us” (14).

Reverend Danforth repeats such warnings throughout his discourse against drunkenness. One observes the various logical strains presented to the spectrum of audiences the minister understood to be in attendance for the execution. For those prone to drink, he offers evidence of the immorality of that vice, but also practical admonitions about safety and health. He pays particular attention to warning the youth and Native Americans to avoid strong drink, as well as upbraiding colonist who supplied alcohol to their native neighbors. For the youth and other potential wayward listeners, the execution spectacle played its intended terrifying role as the symbol of downfall and rejection. But to who did Rev. Danforth and other ministers direct warnings of divine punishment unleashed upon a polluted, corrupted community? And what does such an argument imply about how the community understood its relationship to the execution ritual?

The answers to these questions demand we view the execution ritual in early New England in a startling, and perhaps troubling, new light. Scholars studying public execution before and immediately following the Revolution have focused primarily on the pragmatic nature of punitive practices, such as deterring crime and establishing the power of governing authority. While these were certainly the two primary functions of the execution ritual, another justification – namely, preventing God from inflicting the community with plagues, wars, or other terrible judgment – adds a supernatural, even sacrificial, element to the execution of criminals. Here we will see the logical end of typologically constructed law and the arguments that supported it and explore the ideological differences in what capital punishment meant to a society that believed in

communal guilt. While it may go too far to claim that execution *was* ritualistic human sacrifice in the sense we generally associate with pre-modern cultures, repeated assertions in execution sermons and other forms of gallows literature that transgressors must be executed to avert supernatural punishment from the entire community present rhetoric approaching justification for ritualistic sacrifice.

### **Understanding Execution in Early New England**

When a person was convicted of a capital crime and condemned to death in early New England, or occasionally as they sat in jail awaiting trial for a capital crime, the community embarked on a cathartic ritual to account for both the crime and the execution. Puritan ideology controlled nearly every aspect of ritualized execution. The laws used to condemn capital crimes were supported by scripture and the church preached that God's covenant with the community made following these laws necessary; failure to do so could bring divine punishment upon the entire community. Condemned criminals were turned over to ministers who began molding them for the role they would play on their execution day. How much influence the ministers exercised over the hearts and minds of the condemned is open for debate, but clearly the church controlled narratives of execution, at least rhetorically turning the community's worst malefactors into examples of God's mercy. Executions of saved sinners were mimetic crucifixions, mirroring how Christ died for the sins of the entire community, fortifying the community's morality.

Both Daniel Cohen and Karen Halttunen have explored the evolution of early American gallows publications, tracing a path from solely execution sermons to more secular publications including poems, criminal narratives, and trial reports. Where their

models overlap, they are complimentary. Halttunen describes how seventeenth century ministers cast criminals as “common sinners,” seeking to reincorporate them into the community of saints even as they were executed. The execution scene became simultaneously a punishment and a reintegration for the condemned criminal. She goes on to describe how readers influenced the secularization of execution literature as time wore on, pointing to the weakening grasp of the church and reader’s desire to satisfy more prurient interests. Halttunen places gallows publications, with their descriptions of bloody acts and dying malefactors, as the foundation for the prevalence of Gothicism in American literature.

Cohen observes a similar phenomenon, but focuses more on the community than the individual. Certainly, he provides examples of individual criminals, but his study of sermons spends more time exploring how executions were opportunities to exhort the community toward goodness and salvation. Cohen’s essay, “In Defense of the Gallows,” outlines the rhetorical apologies for execution in sermons in detail. Cohen analyzes execution sermons from four periods – colonial, provincial, revolutionary, and early republican – to provide a trajectory of rhetorical strategies. In each period, he finds that political influences and Enlightenment ideas about nationhood weakened religion’s singular authority over interpreting narratives of execution. At the outset of New England’s earliest periods, Cohen shows that sermons and religious authorities dominated narratives of execution. Though he does not draw the connection between the Puritan’s typological exegesis and the formation of scriptural justifications for capital laws and execution, Cohen nevertheless underscores Puritan ideology’s pervasive and fundamental connection to the law. He moves quickly through the provincial period, primarily noting

the emergence of secular and pragmatic arguments for capital punishment during this time, before continuing on to the Revolutionary and early Republican periods where he asserts arguments of deterrence, public safety, and justice dominated the sermons.

Religious historian Scott D. Seay makes generally the same arguments as Cohen, but with closer attention to the theological underpinnings of execution sermons.

Grounding his discussion of seventeenth century New England execution sermons on the Puritan concept of the “federal doctrine of original sin,” Seay provides further insight into what Halttunen previously referred to as “the murderer as common sinner.” According to the federal doctrine of original sin, all people share a common, innate sinfulness as a consequence of Adam’s fall. The criminal, alone with the rope about his or her neck, was spiritually one with the crowd. Seay states, “their doctrine of original sin allowed Puritan execution preachers to argue that capital crimes were qualitatively indistinguishable from the sins that everyone committed each day” (Seay 74). Seay examines the Great Awakening in detail. According to Seay, the more egalitarian view of conversion espoused by followers of that movement is reflected in the execution sermons of that period as a willingness to accept the salvation of the condemned without worrying whether or not the criminal was truly one of the elect.

These three studies outline in detail the evolution of New England criminal narratives from their theological roots in Puritanism to their secular ends as gallows publications. However, though religion lost its position as the sole interpreter of the execution ritual, the prevalence of religious arguments for capital punishment into the nineteenth century is perhaps even more remarkable than their decline. Examining the sermons reveals several powerful arguments linking executing citizens as punishment for

breaking state laws to divine or supernatural consequences. When we consider that the Puritan exegetical practice of typology actually helped define the actual letter of the law, execution sermons must not be viewed as merely the church supporting the law, but rather as integrated into system of social control in which religious authority controlled narratives of execution. This arrangement waned as the eighteenth century progressed and other forms of criminal publications became more prominent, Congregationalist and other protestant religious leaders became apologists when the practice of public execution faced mounting opposition in the early years of the Republic.

Scholars have often described early modern execution rituals in terms of spectacle or theatricality. Indeed, anyone venturing to study seventeenth and eighteenth century crime and punishment must begin beneath the long shadow of Michel Foucault's *Discipline and Punish*. Foucault's model offers a very useful framework within which to view early modern public execution. In essence, he gives us a nuanced and insightful argument of deterrence, stating, "it is the certainty of being punished and not the horrifying spectacle of public punishment that must discourage crime; the exemplary mechanics of punishment changes its mechanism" (Foucault 8). Foucault emphasizes the spectacle of execution or torture and describes in detail how, with each horrific mutilation or killing, the state uses the body of the condemned as a canvas upon which to clearly illustrate its power over the individual. The state alone had the capability to inflict unthinkable physical harms on a person with impunity, even revoke the condemned's right to live, and doing so in front of a large audience reminded all present not only of the state's power, but also of their relative helplessness to withstand it. In Europe as in New England, broadsides and other publications extended the spectacle from the gallows to

the printed page, further reminding would-be criminals of the potential consequence of their actions.

All public executions are intentionally spectacular events. Furthermore, deterrence explains an essential, perhaps even primary, element of all public punishment. The clearest difference between the events Foucault describes and executions in early New England lies in the ideological intentions of the execution as outlined in the law and narratives of execution. Foucault describes victims intentionally shamed by the state and by the executioner; the state desires to keep the shame on the individual, and, if the crowd pities or glorifies the victim, then the state has, to some extent, lost control of the event's narrative. However, even when the state interpretation is replaced by the raw emotions of the crowd, the crowd's disgust at the executioner or empathy for the condemned did not necessarily weaken the deterrent effect of the spectacle; rather, the observer's helplessness in the face of such violence reaffirmed the power of the state. The situation in early Massachusetts differed somewhat; the intimate connection between state and church created a scenario in which the legislative and juridical authorities allowed religious authority to control the narrative of execution. The legislative, juridical, and religious were, of course, frequently in the hands of the same men, but the choice to interpret crime from a religious viewpoint made the task primarily an expression of religious principles and the alignment of those principles with the functions of the governing bodies. Put another way, where the state and the church combined to control crime, the religious leaders played apologist for the actions of both.

Ideological differences were not all that set early New England apart from England, Europe, and the other colonies in terms of execution and physical punishment.

Edgar McManus puts those differences in perspective:

“Although Puritan penal practices appear harsh today, they were not harsh by the standards of the seventeenth century. English law then allowed live evisceration and burning at the stake, and in Virginia capital offenders were broken on the wheel and burned alive. Puritan law eschewed barbarous punishments and settled for hanging as the standard form of execution. Whatever we may think of hanging today, there were far worse ways to die in colonial times. Following a failed slave insurrection in 1712, New Yorkers were treated to a round of grisly spectacles as rebels were roasted over fires, racked and broken on the wheel, and gibbeted alive in chains. Capital offenders were put to death without moral qualms, but they were dispatched swiftly without unnecessary suffering”

(McManus 182).

Ideological justifications for executions explain the disparity between New England’s modes of execution and the practice of other countries and colonies in the trans-Atlantic sphere. Halttunen has observed, “True, the power of the state was clearly at work in the system of justice that convicted a felon and put him to death. But the explicit purpose of the spectacle, as expressed in the execution sermons, was the moral and religious edification of the community, not the display of political power” (Halttunen 28). While this overstates religious motivations while simultaneously dismissing obvious and pragmatic aspects of the ritual that consciously enforced state power, Halttunen’s



observation that the difference between European executions and New England executions largely rested in how authority tailored the message at the gallows is correct. Unlike Foucault's prevailing depictions of early modern European public punishment, early New England narratives created around the execution spectacle focused on the salvation of the community by turning the downfall of the condemned into a warning against sin, divine punishment, and an exhibition of God's mercy. Because church and governmental leaders established salvation of the condemned as part of the execution ritual, the sinner was rhetorically reunited with the community, not rejected from it. At the same time the salvation of the condemned converted them from an unrepentant sinner to a redeemed soul (or at least the community hoped that happened and judged appearances on execution day), they were also made sacred by their induction into the community of belief. Their status as a person chosen by God for condemnation loomed large, but they also became potential candidates for salvation. The community reaffirmed its covenant with God by killing an individual singled out by his or her actions that violate divinely supported law and threatened the covenanted community. But God's laws still applied to the condemned person. Their soul mattered; they had to be saved. Converting the condemned into an example of God's grace and mercy via execution differs from Foucault's model in which the condemned is singled out as a threat and violently destroyed as a show of state power. That's not to say that the executions Foucault analyzes were devoid of a religious or cathartic elements, but the primary rhetorical presentation was removing violators so they would no longer threaten community or authority.

It is likely that allowing religious leaders to convert criminals in jail and use their execution day as a sort of “coming out” to display God’s transformative power prevented the condemned from being tortured to death. Hanging a newly converted Christian is a much more acceptable exercise than breaking him on the wheel, burning him, or drawing and quartering him; a crowd could accept a just punishment for a crime, but they would be less likely to accept the mutilation of one of their own. Themes of salvation expanded in execution literature as time wore on. The earliest execution sermons sometimes briefly addressed the condemned and encouraged them to seek salvation. By the end of the seventeenth century, ministers often dedicated significant space in their sermons to converting condemned prisoners and by the early eighteenth century the salvation of men and women doomed to the gallows developed into a unique type of publication, the conversion narrative.

Other more pragmatic considerations contributed to keeping New England executions comparatively humane. As a colony, the power of government in colonial Massachusetts was always more tentative than in England or France, where executions occurred close to the seat of the monarchy. Indeed, the original charters for all New England colonies expressly forbid American settlements from writing laws contrary to English law. Furthermore, small New England communities lacked the resources to carry out grand acts of spectacular violence. Certainly, severe humiliation and other corporal punishments occurred, but they were of a milder version than their European counterparts and often saved for particularly egregious offenses, repeat offenders, or used as downgraded punishments for people who violated capital laws but whom the courts chose not to execute for one reason or another. Communities were small and close knit. No one

was far enough removed from his neighbors to be the authority figure authorizing horrific punishments and it's likely that finding anyone willing to carry them out would have proven difficult.<sup>49</sup>

The final, most significant differences were in arguments aimed at convincing the community to accept the necessity of execution. Accomplished primarily via execution publications written by ministers, the transformation the condemned from destructive elements in the community to be removed to models of God's grace succumbing bravely to the inevitability of divine justice altered the social purpose of public execution in colonial New England. It altered the meaning of the ritual, the role of the condemned, and the roles of the witnesses. It also altered the very laws public executions enforced.

We must be careful, however, not to over emphasize religious compassion toward condemned criminals and look carefully at other rhetorical tactics ministers and authorities employed to justify capital punishment in New England. Certainly conversion played a significant role in the execution ritual, but one could argue a converted criminal might even be a good candidate for leniency and that message could undermine the legitimacy of execution. Compassion might help limit the scope of violence and soften the views toward authority as the populace watches their leaders execute their neighbors, but it could also invoke sympathy for the condemned and work counter to intended effect. To counter this, and to reinforce the necessity of public execution, ministers carefully crafted messages of warning into their apologies for executions; they not only warned citizens to avoid crime and execution, they warned the general population that if executions were not carried out, God would punish the entire community. All those who wished to live peacefully and prosper found no choice but to support the necessity of

execution. Failure to do so exposed their livelihood and prosperity to divine judgments such as plagues, floods, storms, blights, and Indian attacks. The frequency and persistence of these lines of argument in gallows literature deserve to be explored more fully if we are to truly understand the ideological underpinnings of early New England executions.

### **Publick Destroying Judgments**

When in the course of delivering an execution sermon a minister wished to direct a warning of divine punishment upon all inhabitants of New England, he spoke of calamities befalling “the Land.” Along with the elder Reverend Danforth’s *The Cry of Sodom Inquired Into*, Increase Mather’s 1674 sermon, *The Wicked Man’s Portion*, represents one of the earliest examples of a printed execution sermon. The double execution of Robert Driver and Nicholas Faevor, servants who murdered their master, prompted Mather to compose a discourse that addressed murder as well as reinforce class obligations between servants and masters. Mather based his sermon on Ecclesiastes 7:17 – “Be not overmuch wicked, neither be thou foolish; why shouldest thou dye before they time?” Mather engages in rhetorical somersaults for much of the sermon, trying to align the Calvinist doctrine of predestination with the verse’s assertion that one could die before his or her time. God’s punishment, for both the individual and the community, is a central theme of the sermon. While arguing that God’s judgment can cut sinner’s lives short, he extends the threshold of punishment beyond the individual to the community, stating,

“If men be generally wicked overmuch, the Lord sends Publick destroying Judgments, whereby thousands dy before their time. So on the old world,

so on Sodom and Gomorrha, in the morning they were well and likely to have lived many a fair day, but dead and damned before night. Those sore Judgments of Famine, Plague, and Sword, come and sweep away multitudes before their time, when a people are become wicked overmuch” (Mather 5).

Stern warnings such as this are common in execution sermons. Moral decline threatened the safety of the community. The condemned, in this case Driver and Faevor, exemplified decline; certainly the community was warned not to imitate the condemned or face physical death at the hands of the state, but they were also exhorted to reform their behavior or face tangible punishments at the hands of God. Mather returns to this theme more directly later in the sermon. Because Driver and Faevor rose up against their master, Mather interprets this as violating the Fifth Commandment to “Honor they mother and thy father.” On the grounds that disrespect for authority threatens the safety of society, Mather presents examples of children disobeying their parents and servants disobeying their masters. He ends his observation with this stark warning: “And mark what I say, If ever New-England be destroyed, this very sin of disobedience to the *Fifth Commandment* will be the ruine of this Land” (17).

Indeed, in *The Wicked Man’s Portion*, Mather not only equates disobedience to authority to disobedience to God, but endows temporal leaders with divine authority. He writes, “...sometimes Gods Viceregents are improved as executioners of his wrath and justice upon such sinners. The Magistrate beareth not the sword in vain, but is the Minister of God a revenger to execute wrath upon him that doth evill” (5). Mather singles New England out as a society bound in a near-legal covenant with God by their laws,

endowing the legal system with special divine backing, explaining, “When sinners shall transgress in a Land where there are Laws established and regulated according to the Word of God, and those Laws faithfully executed, they *run themselves upon the thick Bosses of the Buckler of the Almighty*” (10). Later he explicitly claims public execution of criminals as the direct work of God, stating,

“God is wise and wonderfull in his Providences, and knoweth how to order the death of two or three as so to prevent the destruction of many thereby. Hence he hath appointed that Justice shall be *executed* in a solemn way, upon *Capital offenders*, that others may hear and fear, and none may do any more so wickedly” (12).

Mather so thoroughly invests God in the positive law commanding the execution of the two servants that questioning their punishment becomes tantamount to questioning God’s judgment and authority. What’s more, he calls for moral reform lest judgment smite all of New England, relying on the condemned to stand as evidence of depravity. The divine and temporal reduce into only one form of social control – God’s judgment. *The Wicked Man’s Portion*, though only the second execution sermon to be published in New England, was neither the first nor last to make these arguments.

Second generation ministers like Increase Mather endowed New England with a typological character, a New Israel bound to God by a covenant, an acknowledgement that God would support New England if they followed his law, but punish or abandon them if they failed to be a righteous community. The laws of the colony were structured to enforce God’s moral injunctions through the apparatus of English common law. Though only some New Englanders were destined to join God’s Elect and become part of Christ’s rapidly approaching kingdom, Old Testament scripture and history showed that

those communities who followed God's laws earned his blessings, while those who did not languished or found themselves consumed by immoral and perhaps even Satanic enemies. God protected his people and carried on the church, a concept Puritans called the "Preservation of the Saints," but history and scripture showed that at times God's people suffered greatly for the moral failures of the communities around them, be they Egyptian, Sodomite, Babylonian, Roman, Roman Catholic, or Anglican. Increase Mather and the other ministers needed to look only to the lives of their own exiled fathers.

If God's people suffered for and by the sins of the corrupted communities around them, then the Puritans believed that to avoid this suffering a community must enforce a particular morality, namely God's morality as Calvinist Congregationalists interpreted it modeled in the Old Testament and the early church. Much Puritan rhetoric reinforced building a holy community by presenting unity with God as a desirable state and offered New England's theocratic utopian experiment as more haven than bunker. However, execution sermons, discourses addressing the community's failures in the quest to uphold ideals, could not avoid employing threats and pointing to evidence of God's displeasure in natural and social events surrounding them.

Puritans paid keen attention to signs of God's displeasure in all maladies that befell them. Suffering as small as a toothache (which Cotton Mather believed was God's hint for him to stop talking too much) or as big as a hurricane called them to self-reflection and action.<sup>50</sup> On August 13, 1683 the Connecticut River overflowed and flooded the communities along its banks. This was the second costly flood to strike the region that summer, following a flood on July 20. Increase Mather described the event in his compendium of miraculous occurrences, *Remarkable Providences*, recording, "the

waters were then observed to rise twenty-six foot above their usual boundaries: the grass in the meadows, also the English grain, was carried away before it: the Indian corn, but the continuance of the waters, is spoiled, so that the four river towns, viz. Windsor, Hartford, Weathersfield, Middle-town, are extream sufferers” (Mather 233). Mather emphasizes how God’s displeasure is deeply demonstrated in the flood, writing “There is an awful intimation of Divine displeasure remarkable in this matter, inasmuch as August 8, a day of public humiliation, with fasting and prayer, was attended in that colony, partly on the account of Gods hand against in the former flood, the next week after which the hand of God was stretched out over them again in the same way, after a more terrible manner than at first.” He describes a similar flood disaster in Virginia before concluding, “Thus doth the great God, ‘who sits kings upon the floods forever,’ make the world see how many ways he hath to punish them, when it shall seem good unto him” (234).

Execution sermons offered a unique forum for ministers to instruct the community on what they were doing wrong, show evidence that God was displeased, and present exhortations to improve. Evidence of God’s anger abounded in the historical events of New England’s first century. By the second half of the seventeenth century, when the second generation of ministers led the church and execution sermons began appearing in print, New England’s ministers could list many events as signs of God’s growing displeasure with the colony. Cotton Mather recounts New England’s troubles and triumphs in *Wonders of the Invisible World*:

“First, The Indian *Powawes* used their Sorceries to molest the First Planters here; but God said unto them, *Touch them not!* Then *Seducing Spirits*, came to *Root* in this Vineyard, but God so Rated them off, that



they have not prevailed much further than the Edges of our Land. After this we have had a continual *Blast* upon some of our principal Grain, Annually diminishing a vast part of our *Ordinary Food*. Herewithal, Wasting *Sicknesses*, especially Burning, and Mortal Agues, have Shot the Arrows of Death in at our Windows. Next, We have had many Adversaries of our own Language, who have been perpetually assaying to deprive us of those *English Liberties*, in the Encouragement whereof these Territories have been Settled. As if this had not been enough; The *Tawnies* among whom we came, have Watered our Soyl, with the Blood, of many Hundreds of our Inhabitants. Desolating *Fires* also have many times laid the chief Treasure of the whole Province in Ashes” (Cotton Mather 43).

Mather finishes by lamenting New England’s losses in the war against the French and the rise of witchcraft in Salem. It’s no wonder that Puritans, already disposed to examining events with an eye to determining judgment, would correlate colony-wide inflictions with divine displeasure over moral declension. As New England’s population increased and diversified, so too did the types and incidents of crime. The Puritans most famous model of sermon discourse, the “jeremiad,” addressed this observation directly, pointing out moral decline, God’s displeasure, and demanding reformations. Execution sermons were jeremiads with an object lesson delivered to a uniquely broad audience.<sup>51</sup>

Of course not all inflictions were signs from God and it was important for ministers to educate the community in how to decipher divine will in temporal events. As Cotton Mather put it, “Tis very preposterous, for us, first of all to take it for granted, This or that *Calamity* is a *Judgment* of God for some iniquity; and then, upon this

presumption, to *Search out that Iniquity*.” Mather attempted to instruct others how to identify evidence of divine judgment against criminal offenders in two sermons he delivered in 1697 published together as *Terribilia Dei*. He begins his discourse defining judgments by pointing to scriptural evidence of divine dispensations, and, of course, reiterating Christ’s essential role in avoiding eternal judgment. In his “Third Council,” Mather informs his audience, “There are Astonishing *Judgments*, dispensed by the *Hand* of God, upon others in this World; and with a very *Trembling Fear*, we should be afraid of those *Judgments*.” Believers had a duty to observe God’s judgments and fear, but Mather warns, “There is one thing in the *Judgments* of God, whereof we should always be *Afraid*; that is, Lest we do make an Injudicious Interpretation of them” and “’Tis a Dangerous Thing for us, to indulge our own *Fancy* & much more, for us to indulge our own *Passion*, in making of *Glosses* upon the *Judgments of God*: God will not *hold the man guiltless*, who shall so *take His Name in vain*” (Mather 15).

To help his listeners discern God’s will in calamities, Mather enumerates a list of criteria. “First,” he says, “The *Sin* of the Sinner must be evident, from the scripture of God, before we may dare Apply a *Judgment* of God.” This is the same standard Puritan legislatures across New England applied to writing capital laws, so it is no surprise ministers easily construed public execution as an instance of divine judgment upon a sinner for a particular sin. Though directed at identifying afflictions befalling others, Mather’s second criterion holds true for identifying public judgments as well. He writes,

Secondly, A *Judgment* of God, for Sin, must be clothed with some convincing circumstance and Character upon it self, Reasonably to speak its being so, before we may venture to call it so. There must be something

in the *Time* of it, of the *Place* of it, or, in its Resemblance to the *Fault* for which it comes, or in the Confession of the person Chastised, that shall make the Conscience to say, *There are the plain Signatures of a Judgment for some Sin, in the Stroke now given by God!*" (16).

He follows these criteria with examples of judgments in scripture, which he calls "*The Judgments of God in Former Ages.*" Mather instructs readers they should see scriptural judgments and fear them. Here again we observe the destruction of the Sodomites as Mather begins presenting examples of judgments upon entire communities. Next Mather expressly addresses public judgments in directing his audience's attention to "*The Judgments of God on other places*" indicating "They should make us *Afraid*, Lest we fall within the Circuit of those *Judgments.*" Watching other nations and noting obvious correlations between their sins and their sufferings afforded New Englanders a glimpse of what God had in store not only for disobedient individuals, but for entire wayward nations. "A fire in one House alarms the whole Town," observes Mather, and continues, "*The Judgments of God have set all Europe on Fire; yea the Sparks are flown over into America: Lamentable Desolations have been made both Northward and Southward of us; Be Afraid then, O poor people of God, Lest though also become Desolate*" (18). French and Spanish Catholicism caused New England Puritans unease, which makes as much sense politically as theologically; those listening to Mather were themselves a variety of exiles fleeing that fire in Europe. Puritans believed the small pox plague that ravaged native people before English arrival was a dispensation from God against the Indians for the benefit of His people. Their world afforded no shortage of immoral nations suffering for their sins. "Do We see *Destructions* come upon other

Country's?" Mather asks, concluding, "Our God says thereupon, *Surely, This country too should be Afraid, Lest I bring the like upon them.*" (19).

Execution sermons repeatedly cautioned listeners that moral declension jeopardized the well-being of all New England, emphasizing that sin threatened everyone, even the righteous. Indeed, time and time again they used metaphors of cleansing, purifying, and absolving to explain the necessity of execution; the condemned must die to cleanse a land polluted by his or her sins. In 1686 Rev. Joshua Moody told condemned murderer James Morgan, "Its true the *shedding of your blood* will take away, the Sin from the *Land* that it shall not ly there, else innocent blood should be imputed to the Land; but this does nothing towards the Satisfaction of God's *Justice* in order to the Removal of his wrath from the *Murderer*" (Moody 91-92). Increase Mather also published a sermon occasioned by Morgan's death in which he cites scripture to not only reinforced the necessity of the killer's execution, but also to absolve colonial authority of any responsibility in the matter. One has to wonder if Mather responded to murmurings or objections to the sentence or only anticipated the need to tamp out potential opposition when we read, "Let everyone remember that Scripture, Prov. 28.17. *A man that doth violence to the blood of any person, shall flee to the Pit, let no man stay him*; if he has shed blood, to the Pit let him go, and flie thither, let all convenient speed be used in the execution of Justice, that so the Land may be cleared from blood, and let no man in Authority stay him, let no private person Solicit for him" (Mather 10). Morgan's execution gave twenty-three-year-old Cotton Mather's his first opportunity to publish a sermon. His piece, *The Call of the Gospel*, appeared alongside his father's and Joshua Moody's in a set of three sermons published together, though each was published

separately as well. The younger Mather primarily kept to the theme of salvation, allowing his father to play chief scriptural apologist for Morgan's execution, but even Cotton reminded everyone that Morgan's sin – murder – polluted "the Land." After admonishing any in the crowd who would taunt or hiss at Morgan, Mather said to Morgan, "Yet the Land must not be polluted by the sparing of you" (Mather, Cotton 45).

These themes echo throughout nearly every execution sermon published in the last quarter of the seventeenth century. Minister apologized for public execution by citing scripture and justifying deterrence, but also by threatening the entire community with divine punishment if they failed to deal properly with sin. Though all seventeenth century New England execution sermons were published in Boston in Massachusetts Bay, it is likely that audiences in New Plymouth, Connecticut, New Haven and, later, New Hampshire, heard the same threats from the pulpit on execution day. Evidence in writings from Connecticut about witchcraft and interpretations of calamitous natural events demonstrate that Connecticut Puritans were every bit as convinced that supernatural forces worked in the world and that God used such events as punishment as their neighbors to the north.<sup>52</sup> Furthermore, as the New England colonies began publishing laws throughout the seventeenth century, Connecticut, New Plymouth, and New Haven modeled their capital laws so closely around Massachusetts 1648 code that they were nearly identical. Connecticut used Massachusetts' language almost verbatim including the references to scripture. Those colonies also shared very similar judicial structures, each with town or county courts appealing to higher courts, such as the Court of Assistants and the General Court in Massachusetts. What ministers told their listeners on execution day in Rhode Island is less clear; Roger Williams' colony had no centralized

court structure for much of the seventeenth century, followed English law, and encouraged greater separation of church and state.

Cotton Mather authored several more gallows sermons and works of gallows writing in the seventeenth century and many more in the first three decades of the eighteenth. Mather's style did not always conform to the Puritan ideal of plainness as closely as his elders and contemporaries, and his penchant for hyperbole undoubtedly produced some of the most dire warnings of impending divine punishment. In a 1693 sermon occasioned by the execution of a young woman guilty of infanticide, Mather paused in the middle of a diatribe against the shortcomings of young people to make certain older people did not fail to remember their own sins. He writes, "It is possible, that *Old* people, may by their Beastly Baseness help to pull down the fury of a Provoked God upon the Land" (Mather 58). Hypocrisy, Mather reminded older listeners, jeopardized the community by provoking God. In his 1699 criminal compendium, Mather prophecies against declension, "The is the *Vengeance* of God in this Thing, to Ripen the Nation for an Amazing Storm, that will doubtless break upon it, ere *this Generation pass away*" (Mather, *Pillars of Salt*, 27).

In a 1698 sermon Rev. John Williams delivered at the execution of a young woman for infanticide, he emphasizes the threat of divine punishment hanging over the land if they tolerate sin in terms of the familiar pollution metaphor,

"In that a whole Land cannot be innocent but polluted, that suffer innocent blood to cry against it, in neglecting the Execution of Justice, for such a transgression: in that a whole Land shall smart for sparing a convicted murderer's life. When Murder is uncertain as to the author of it; see what

is incumbent on a people, for the preventing the Wrath of God. *Deut.* 11  
12,12,13 *Numb.* 35.33. the conniving at and suffering of such sins, greatly  
moved God to wrath against *Israel*” (Williams 27).

Williams told the condemned young woman, Sarah Smith, “by your unbelief you have sealed down the Wrath of God upon your own Soul; you have fallen also into great Land-Polluting moral evils, Lying, Stealing, Adultery and Murder.” Williams continues, “you have by these things filled up the measure of your sins; so that you must Dye, that the Land be not guilty: None may stay you from death, and suffer you to live; least the land be greatly polluted” (57-58).

The same year, in a sermon called *The Folly of Sinning Opened and Applied*, Increase Mather told listeners, “Poverty is a great affliction, and Sin is the cause of it. That provokes the Lord to send Impoverishing Judgments on a whole Land sometimes.” Later he tells Sarah Threeneedles, another young woman awaiting execution for infanticide, “You have defiled the Land wherein you live. It should be a humbling Consideration to you, that all this Province of New England must fare the worse, and be exposed to the wrath of Heaven if you should be suffered to live any longer in it” (Mather 38-39).

Two years later, in 1701, John Roger’s sermon at the execution of Esther Rodger’s, *Death, The Certain Wages of Sin to the Impenitent* cited Sodom and Gomorra as warnings of community punishment and addresses sin in juridical terms. He also equates war with punishment for sin, stating, “Sin has sown the seeds of Enmity and Discord in the nature and mind of men one against another, whence Murders and other mischiefs do proceed; and what the Ruines and Calamities of Wars have been, all

Ages may and do sufficiently witness to us; neither has our own time wanted the experience of such Sufferings; though we may have wanted the sense of those sins that procured them, and for that cause are likely to bring them on again” (Rogers 39). Nine years later we find Samuel Danforth repeating these warnings at the execution of Josias and Joseph Tanque. Five more years on, in 1715, Rev. Nathaniel Clap gave a sermon for Jeremiah Meecham, a man condemned for murder, in which he stated, “The Civil Magistrate should take care to punish the Murderer with Death” and “The Crime defiles the Land where it is committed, and the Land cannot be cleansed without the death of the Murderer” (Clap 39).

This pattern of warning continued throughout the first three decades of the eighteenth century until the Congregationalist Puritans began accepting greater cooperation with Presbyterians and other protestant groups, increased adherence to English law diminished the correlation between positive and divine law, the Great Awakening weakened cries of declension, and Enlightenment ideas challenged claims of supernatural involvement. However, as late as 1733, Samuel Checkley repeated warnings of pollution imputed to the land my sin in *Mercy with God for the Chief of Sinners*; in familiar tones he states, “And verily, should you not die, for the Sin you have been convicted of, the Magistrate would bear the Sword in vain; and the Guilt of Blood, would lie upon the Land. You must therefore go down, yea flee to the Pit, and none may stay you” (Checkly 22-23).

A final example, Eliphelet Adams’ 1738 execution sermon for Katherine Garrett, a Native American woman condemned for infanticide, illustrates that the pollution metaphor survived well into the eighteenth century and through various ideological and



political changes during that period. Adams offers one of the most explicit and literal interpretations of the argument for capital punishment to avoid divine judgments. He tells Garrett,

*“Because thereby they Contribute to bring guilt upon the Land, to ripen it for and lay it open to divine Judgments. As on the one hand the putting to Death them that are innocent sadly Exposeth the places where it is done, So on the other hand, the suffering them to Escape, who by their Crimes have fitted themselves for such Destruction, it Defiles and brings guilt and lays a land open to God’s Judgments”* (Adams 15).

Significantly, Adams was a pastor of a church in New London, Connecticut was his first published execution sermon and the first extant work of gallows literature published outside Boston. Adams previously published works on other subjects, such as a 1717 “Discourse occasioned by the late distressing storm which began Feb. 20<sup>th</sup>. 1716,17” in which he echoes Increase Mather’s estimation of storms in *Remarkable Providences*. Adams writes, “Violent Storms are oftentimes fatal to mens Lives & to their Substance, producing Shipwrecks by Sea and terrible Desolations by Land; Thus God’s Purposes are Executed and a Sinful People most justly Punished” (Adams 12).

What are we to make of this pattern of continual warnings of divine punishment? Execution and the rhetoric employed in execution sermons are most frequently considered for their pragmatic effects, such as deterring crime. Certainly, warnings of divine punishment unleashed on a community that failed to deal properly with malefactors introduces several practical explanations for such rhetoric. As we have seen, ministers show again and again that God demands the execution of certain sinners,

particularly those who commit murder (or infanticide, a type of murder) or shocking crimes such as bestiality or witchcraft. They repeatedly cite the same verses from scripture to argue that sparing such criminals is not an option for civil authority. For example, the thirty-fifth chapter of the Book of Numbers appears frequently to justify the execution of murderers. Increase Mather quotes that scripture in *The Folly of Sinning* (1698); it reads, “You shall take no satisfaction for the Life of a Murderer which is guilty of blood. You shall not pollute the Land wherein you are, for blood it defileth the Land, and the Land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it” (Mather 39). Direct scriptural injunctions remove responsibility for the sentence of death on a murderer from magistrates and place it upon God. Therein is the pragmatic use of this rhetoric; it not only justifies the punishment, but also shields civil authority from criticism. As Mather stated in *A Sermon Occasioned by the Execution of a Man*, “Therefore none ought to blame those in Authority for causing the Murderer to be put to death; conscience to God, and to the people under their charge, and to their own Souls also, has necessitated them to do what they have done in this matter” (Mather 18).

Rhetoric of pollution and risk of divine judgment brought upon the entire community by the sins of a few also reaches audiences aside from the stated or obvious targets of execution sermons. Execution sermons routinely warn the young, the profligate, and the criminal, but others in the community, such as solemnly religious church members and many law-abiding, peaceful men and women, were also targeted to hear apologies for the gallows. Descriptions of sin as pollution and threats of divine judgments reach those listeners or readers in two key ways. First, all law-abiding people become victims if their community is polluted with sin or they are struck with a plague,

storm, or drought. A murderer may have killed his neighbor, but the execution of the killer does not restore his victim's life. The majority people in any audience attending an execution or listening to an execution sermon were not direct victims of the condemned; this is particularly true in the case of a crime such as bestiality. As Foucault notes, it is possible for the audience to sympathize with the condemned.<sup>53</sup> By generalizing the effects of sin as "pollution" and creating consequences for that pollution that include widespread divine judgments, ministers rhetorically made all listeners victims of sin. When the sin reached a moral nadir such as witchcraft, murder, or bestiality, the extremity of that one particular sin could even increase the community's risk of suffering divine punishment. Therefore, arguments such as these create a community of victims, all victimized by sin, all at risk. Here again we see a pragmatic justification for execution, but, if we consider how widespread this rhetorical strategy was in seventeenth and eighteenth century New England execution sermons, execution begins to take on a new tone, one resembling ritualistic sacrifice.

### **Rhetoric of Ritual Sacrifice**

From this analysis of execution sermons' warnings of divine punishment and the concept of communal guilt that made those rhetorical avenues effective apologies for capital punishment we can reevaluate what public execution meant in the context of a typologically constructed legal apparatus. According to René Girard, narratives of events in which a majority of people, or the state acting on their behalf, choose to execute one or more others are written from the perspective of persecutors, not from the perspectives of victims. In order for persecution events to occur, the community must be undergoing a crisis. In New England, ministers pointed to myriad events, from storms to floods to wars

to political upheaval, as evidence of crisis. Secondly, the persecuted individuals must bear the marks of a victim. For people condemned to die in Puritan New England, the sentence itself became the mark of the victim. Transgression against the law, which was often the most public and notable manifestation of moral decline and polluting sin, singled a man or woman out for victimization. Girard's final stereotype states that the majority must believe that a minority are responsible for a crisis. He writes, "Ultimately, the persecutors always convince themselves that a small number of people, or even a single individual, despite his relative weakness, is extremely harmful to the whole of society" (Girard 15). We see this phenomenon at work in early New England, quite clearly in the extreme events surrounding the Salem Witch Trials, but also in execution sermons imputing to condemned men and women the power to bring suffering upon the community if their sins go unpunished. The divine punishment ministers warn against is explicitly supernatural; certainly having murderers, arsonists, rapists, and burglars roaming about and free to act with impunity threatens the community, but ministers emphasized supernatural involvement. If the community fails to execute the murder, ministers warn them of storms, floods, and plagues, not murder. Sparing a condemned man or woman held severe consequences for the entire community.

Girard and Claude Levi-Strauss have both explored the interrelation between myth and ritual and their findings provide an insightful position for describing the interrelation of law, punishment, religion, and ritual in early Massachusetts. Myth is one aspect of religion, the sacred narratives used to help explain the practices, beliefs, and rituals associated with a practice that hinges upon a belief in the supernatural. Myth enters our study of Puritan law and punishment practices in several ways, but primarily

through their typological method of scriptural exegesis and attempts to make their community a new “type” to Old Testaments Israel’s “antitype.” Scripture accompanying capital crimes in *Book of the General Lawes and Liberties* typologically inscribes mythological meaning to those laws. Each Old Testament verse links the practice of killing a person who commits the act outlined in the law to a foundation in scripture. Even after scripture ceased to appear alongside New England’s capital codes, ministers continued emphasizing the dangers of moral declension in their gallows rhetoric. Every time a minister retold the story of Sodom’s demise or recited verses from Numbers, Deuteronomy, or Exodus demanding no quarter for condemned sinners, he reinstated the typological connection to myth into the community’s justification for killing one or more of its members. In cases of witchcraft executions, and particularly in Salem’s witch crisis, women and a few men were killed for colluding with a supernatural enemy whose very existence sprung from mythology.

Girard makes it clear that myths are not always linked in a one to one relationship with ritual and Levi-Strauss asserts that multiple usages or permutations of meaning can exist between the myth and the associated ritual. Such is the case with scriptural support for Puritan laws. “Thou shalt not kill” is a sound law for citizens in a community to follow, whether it derives its basis from the damage done to a community by murder or whether it is divinely mandated. But when we consider that the injunction against murder is taken from the Book of Exodus and the Ten Commandments, myth is reinserted into the equation. According to that story, God delivered the Ten Commandments directly into the hands of Moses, a mythological archetype in which a human being interacts directly with a supernatural being. Moses himself is a mythological hero; he facilitated

divine warnings and plagues in Egypt, parted the Red Sea, fed his people on heavenly manna, and communed directly with God. As with many mythological heroes, he also underwent punishment by God and rejection from the community. And while murder might be a fine law to enforce from the Ten Commandments, the social benefits of killing blasphemers, false God worshippers, and homosexuals is not immediately clear aside from a religious context. We learn from sermons that the consequences of these crimes, if they go unpunished, could be plague or punishment brought on the entire community. When the only consequence of a crime, beyond, perhaps, a lack of social cohesion, is divine punishment, the connection between the execution ritual and the underlying myth becomes clearer.

It is important to pause here and identify some limitations of depicting capital punishment in early New England as a religious ritual tied to mythological beliefs. First, to reiterate, English common law is much more fully represented than religious law in colonial law in all colonies except New Haven, an anomaly that disappeared with that colony's integration with Connecticut in 1662. Only New Haven attempted to govern primarily on scriptural law – even adopting John Cotton's early legal tract "Moses His Judicials" after Massachusetts dismissed it. Yet, New Haven's small population and relatively short incorporation as a distinct community made crime and the treatment of criminals rare and not as well documented as its neighbors. If we look at the Puritan colonies of Massachusetts, New Plymouth, and Connecticut, we see only a partial integration of scriptural law with common law in the capital codes. The tenets of English law, such as the right to a jury and the right to defend oneself, survived. No matter how

ferently New Englanders believed sin would call down hardships from God, they were unwilling to give up the rights and protection afforded to them as English subjects.<sup>54</sup>

Furthermore, some of the capital laws did go unenforced or people convicted of those crimes frequently saw their punishments mitigated to something less severe than death. This shows that New Englanders sought primarily justice in their application of the law, not protection from God's wrath. While the events at Salem stand contrary to this observation, other more pedestrian incidents demonstrate that the law could be applied fairly when those responsible for enforcing it were not gripped by moral panic. Some capital laws, such as those against blasphemy or disrespecting parents, brought no one to the gallows. The one person accused of blasphemy was simultaneously accused of sodomy, for which he was executed. Old Testament scripture called for adulterers to be stoned to death and allowed finding a man and woman lying together to stand as sufficient evidence for conviction, but the Puritans in New England changed stoning to hanging and only allowed proof of intercourse as grounds for conviction. When in 1638 the Massachusetts Court of Assistants found three people guilty of adultery, they diminished their sentences from death to corporal punishment because they felt the law had been insufficiently publicized.<sup>55</sup>

Still, even if we consider that the rhetoric of ritualistic sacrifice supported and justified execution to the public rather than informing the details of how the law was applied, the implications for the ideological support for the practice are profound. A striking link between myth and ritual in early New England is the execution as a ritual reminiscent of Christ's crucifixion, the primary myth of Puritan religion. The connection between this myth and ritualistic execution is not explicit. Christ was pure, a divine being

made man. The victims of Puritan public hangings were not only simply human, but most often criminals, believed by their peers to be deviant, bad, or unpredictable. However, as Levi-Strauss has suggested, the relationship between myth and ritual can be dialectical.<sup>56</sup> For the Puritans, in order for the execution ritual to be cathartic, it needed to align with their understanding between the community and the individual, and between God and the community. The condemned may be made sacred through conversion, yet converting did not exonerate her from her crime nor make her eligible to escape punishment. To commute the sentence would be to violate God's law. Killing a reformed, converted Christian took on a different aspect than killing a vile criminal. True, at the time of their crime, the condemned was a degenerate criminal, but salvation was transformative. The condemned bore the marks what Girard calls an "element of the sacred" at the time of the execution they became positive examples to others, reunited the community with their death, and reminded all of Christ's sacrifice, though Christ had been innocent and the condemned, guilty (Girard 57).

While public executions in early New England were not practiced as ritualistic sacrifices to God in the pre-modern sense, rhetoric in execution sermons linking divine, supernatural punishment to the execution ritual and typological construction of capital laws demonstrates that belief in the supernatural significantly figured into ideological support for capital punishment. In his sermons for murderer James Morgan, Increase Mather encouraged his audience to pray to God to divert his wrath against New England for the murderers civil authority had been unable to bring to justice. "We have cause to Pray for *New-England*, as the Lords People of old were directed to, in case of uncertain murder...Be merciful O Lord, to thy People in *New England*, and lay not innocent Blood



to their charge.” Arguments such as these served not only to justify execution pragmatically and absolve civil authority from responsibility in sentencing individuals to death, but they created a community of victims, victims undergoing or threatened by crisis, victims directed to the gallows, and its criminal patrons, for relief.

This community of victims would fade along with the ideological unity Puritan hegemony provided. Undoubtedly, New Englander’s reluctance to apply the law in a fundamentalist manner both fueled threats of divine punishment in execution sermons and gallows publications and weakened the effectiveness of that rhetoric on an increasingly diverse audience. Such threats faded along with their efficacy, replaced by criminal biographies that preferred proto-psychological examinations of crime than typological warnings. This change is evident in gallows publications’ shifting emphasis from communal guilt and responsibility to attention on the individual transgressor and the deterrent purpose of public execution.

One might be eager to speculate that a more rational and modern understanding of capital punishment that emphasized individual rather than communal guilt would be a juridical move forward. Certainly, religious fundamentalism has historically lead to barbaric and atrocious implementations of capital punishment, but, as we turn to later iterations of gallows publications and increased emphasis on individual guilt, it is worth noting that public executions increased in New England as the eighteenth century wore on. Puritan made blasphemy and disobedience capital, but killed no one for these crimes; they resisted the English practice of publically executing people for property crimes. When New Englanders finally began executing burglars and robbers, religious opposition limited the number of people killed for property crimes. Still, unlike capital adulterers,

capital burglars did find themselves on the gallows. Furthermore, increased emphasis on individuals meant gallows publications increasingly analyze attributes of individual criminals, bringing increased focus to transgressors' race, gender, and class. More rational justifications for capital laws did not mean more humane or infrequent employment for executioners.

## CHAPTER 4

### DISCOURSES OF VICE

In 1686, James Morgan murdered a man with an iron rod. Before Morgan's execution, three of the most prominent ministers in Boston preached sermons on his behalf, including one that would become Cotton Mather's first published work, *The Call of the Gospel*. Patience Boston, a mentally ill Native American servant woman, drowned her master's child in a well and hanged for it in 1738. In 1772, Moses Paul, a Native American man, died for murdering a white man, though the specifics of the crime call his guilt into question. The next year, Levi Ames, a young Boston thief, died amongst controversy, hung from the gallows at Boston Neck. In 1790, Joseph Mountain's highly stylized account of his life as a highwayman and his execution for rape demonstrate two narrative stereotypes that would expand in the coming century – the rogue/hero and the black sexual predator prowling for white victims.

The incidents listed here comprise a fraction of the numerous gallows publications appearing in New England throughout the long eighteenth century. What links these unfortunate men and women are their appearances in gallows publications, a widespread and ubiquitous body of writing in early New England and common throughout colonial America. We know their names, their crimes, their convictions, their comportment in jail, their conversions (or obstinacy), and their punishments. Whether we draw this information from an execution sermon, or a trial report, or a gallows poem printed on a broadside, or a criminal narrative, these common facts are available to modern scholars as well as their contemporary communities.

Writing about crime, be it sermon, narrative, poem, or trial report, played several important roles in early New England. Public executions most commonly drove printers and sellers to produce and distribute writing about crime and criminals, excepting a few notable cases when the subject suffered humiliation, fines, or jail time, such as counterfeiter Seth Hudson. Gallows publications are as fully writing about punishment as it is about crime. The cheap documents sold on execution day and at print shops served as extensions of the gallows ritual, a handbill for public theater surrounding executions, a keepsake reminding its holder of a gruesome warning. Publishing cheap broadsides and sermons allowed printers to capitalize on the public execution financially while providing ministers and colonial authorities opportunities to justify punishment and reinforce community morality.

Gallows publications also contain criminals' voices. Certainly, ministers, jailors, printers, lawyers, and others influenced and even authored some criminal accounts; they edited, filtered, or prompted criminals to play their roles as penitent sinners without spite for the authorities. Still, scholars studying gallows publications, including Daniel A. Cohen and more recently Steven Wilf, have convincingly shown that criminals' presence in their notorious (auto)biographies gives us a unique look at common peoples' lives. Amidst their apologies and repentance are excuses, accusations, justifications, and challenges to their sentences.<sup>57</sup>

This brief overview of some facets of early New England gallows publications demonstrates both what we have learned about the genre and some of what makes it unique. Considering the large and diverse body of gallows publications printed in early New England, and an ever-growing body of scholarship studying these works, a holistic

study of how gallows publications functioned in the public print sphere in early New England is needed to understand how gallows publications related to other forms of print discourse. The following chapter proposes just such a study of gallows publications in the early New England print sphere. I suggest that gallows publications are concerned with understanding the moral and legal binds that tie the community together, yet, unlike much writing of the time, gallows publications' rhetoric takes a radically different approach. More specifically, gallows publications, which I will from here on refer to as discourses of vice, highlight the individuals, appeals to both erudite and popular audiences, capitalizes on shock or prurient voyeurism to engage its audience, and, most importantly, reinforces the power and propriety of the rule of law.

Appeals to the supernatural, including threats of divine intervention, are noticeably absent from most of the follow accounts. Those lines of argument required a level of ideological unity that was either disintegrating or gone by the time these documents appeared with in New England. Certainly Christian themes such as conversion and sin appear, but in a more or less spiritual facet rather than warnings of divine involvement in human affairs. James Morgan, the murderer from 1686 who we've encountered already, is certainly an exception; the reader may also recall that cruentation failed to convict Patience Boston and her case is an important turning point for the role of supernatural forensics in gallows publications. What we increasingly see in these texts are nearly psychological profiles of individual criminals. Their backgrounds, thoughts, fears, and confusion are all on display. Ministers continued to publish execution sermons, but printers and others began competing with them for the gallows publication markets and their more worldly, voyeuristic depictions of criminals were more biography than

theology, a rhetorical shift from emphasizing community interest to focusing on individual transgressors.

### **Discourses of Virtue/Discourses of Vice**

By applying Jurgen Habermas's paradigms for the structural transformation of the early modern European public sphere to colonial American and the early Republic, Michael Warner laid much of the groundwork for studies of early American print discourse. Several of his key observations offer critical concepts valuable for understanding public discourse and the print sphere to better understand how forums of communication worked in early America. Discourses of vice challenge Warner's observations as frequently as support them, so as a manner of comparative analysis, it is expedient to examine some of his observations as they relate to gallows publications. The goal of this comparison is to contrast Warner's concept of "the principle of negativity," the submersion of individual identities in pseudonyms and anonymity and a criterion he believes necessary for participation in "discourses of virtue" in the public print sphere, against what I will call "the principle of the exemplar," the highlighting of criminal individuality and biography necessary to discussions of morality in "discourses of vice."<sup>58</sup> Warner makes clear that various discourses existed in the print sphere and each adhered to principles of participation. The comparison we embark on here is not intended to contradict his observations, but rather to show how a different discourse – discourses of vice – functioned in the print sphere.

Following Habermas, Warner states, "print discourse made it possible to imagine a people that could act as a people and in distinction from the state" (Warner xiii). Whereas Habermas saw this separation forming the bourgeois public sphere in early

modern Europe, Warner sees the emergence of republicanism as a facet of a public sphere that allowed for conceptually divorcing the people from the state. The relationship between republicanism and print discourse in the public sphere is tautological, each fueling ideological interpretations of the other. Readers reading printed texts understood they were not the individual recipients of printed correspondence, but rather individual members of a larger sphere of people interacting with a text. The printedness of the text draws readers into an impersonal relationship with the message, one that allows the reader “to imagine oneself...becoming part of an arena of the national people that cannot be realized except through such mediating imaginings” (xiii). For Warner, this constitutes the structural transformation of the American public sphere in the mid-eighteenth century.

Here we encounter divergence between Warner’s concept of discourses of virtue and gallows publications’ roles as discourses of vice. Discourses of vice ask the reader to imagine himself as a parishioner hearing a sermon, a witness to a crime, a real or potential victim, and a spectator at an execution. Printed sermons often contained addendums, such as conversion narratives between criminals in prison and attending ministers, but the majority of printed sermons highlighted an actual address a minister delivered to a real audience in attendance at his church. In this instance, the printedness of the sermon extends the message beyond the church doors, but the oral event, the preaching of the sermon, is continually understood. Warner claims that much printing in seventeenth century New England was “devotional” rather than republican; the reader didn’t imagine himself as having a relationship with other imagined readers, but rather a relationship with God. Despite their often juridical-minded messages (making spiritual

sense of both the crime and punishment remained primary tasks for all execution sermons), it seems likely that Warner is correct in categorizing these texts as “devotional” and excluding them from his understanding of the relationship between the reader and printed text.

However, just as a printed execution sermons remained linked to the oral preaching of that sermon, gallows publications’ connections to finite events and people – crimes, criminals, and executions – call into question how much readers may have generalized the readership of these texts. Rather than draw distinctions between the people and the state, gallows publications reinforce the connection. The community becomes a unified representation of state and people while criminals become outcasts. Certainly, as Michel Foucault and others have shown, the spectacle of execution used awe to keep individuals in line and put the power of the state on display, but New England executions contained little of the morbid showmanship of early modern European spectacles upon the scaffold.<sup>59</sup> New Englanders never broke criminals on the wheel, disemboweled, or drew and quartered those condemned to die and, though crime writing often contains accounts of executions, it is more like to highlight penitent comportment of the condemned than his or her violent end. Gallows publications more often strove to unify the community, people, and state and sometimes even the condemned criminal. Even after the middle of the eighteenth century where Warner sees a republican transformation in print discourse, it seems gallows publications continued to support state power and assume the unified moral and safety interests of the state and the people even as a the state’s role as a protector of individual rights developed in discourses of virtue. Of course, this individualism also entered into discourses of vice,



though it manifested primarily as an increased interest in the lives and crimes of criminals.

Warner has described a phenomenon in early republican writing that he calls “the principle of negativity.” Individuals privileged to participate in public discourse intentionally abandoned their individual identities, choosing instead to remain anonymous or write under pseudonyms. They wrote to discuss public virtue, a discourse believed necessary in a democratic state. Eventually, the negation of individuality in the public sphere was conflated with the concept of virtue. Warner writes, “although the negativity of persons in the public sphere appears in the form of a positive trait - virtue - it is at this point in the republican tradition that virtue comes to be defined by the negation of other traits of personhood, in particular as rational and disinterested concern for the public good” (Warner 42).

Warner’s theories on discourses of virtue throw other Revolutionary and early republican sociopolitical discourses into sharp relief, particularly discourses of vice. In fact, printed materials discussing virtue often addressed their audience in ways dialectically opposed to how printed writing about crime and criminals addressed their subjects. Most notably, individual identities are not excluded in discourse of vice. In fact, the individual – his life, his actions, and even his body – becomes central. Victims and state representatives are also presented as individuals. If, as Warner suggests, in discourses of virtue individuals are symbolically negated to discuss public good, in printed discourses of vice individuals are foregrounded and negated bodily (both in print and on the gallows) to discuss individual transgressions.

Another quality of discourses of virtue is that individuals are negated in print to create a conceptual public voice. As Warner, Jacques Derrida, and Christopher Looby have all suggested, this conceptual public voice, or voice of the people, was seen as constitutive of the state. However, the rule of law was also an important element in the identity of the state. Executions, the spectacles that most obviously displayed state power, reminded citizens of the state's ability to physically eliminate individuals. Furthermore, executions were purgative acts. The criminal, after all, likely perpetrated his or her crime against another member of the community, not an amorphous entity conceptualized as the state. In punishing criminals, authority figures protected the public and in highlighting criminals in the execution ritual and in print, the community came together to reinforce laws and community values. If dissenters stood in the crowds surrounding the gallows, their voices rarely reached a printing press. Both rituals of execution or punishment and printed accounts of criminals pit the community as a whole, "state" and "people," against one or more named, identified, and eliminated criminal threats.

Warner observes that "assumptions that make printed works intelligible as publications also help determine how the political arena operates." These assumptions are "the basis for deciding who speaks, to whom, with what constraints, and with what legitimacy." Warner calls these decisions "the metapolitics of speech" (xi). Warner clarifies this point, stating "even in its local discourse, print did not and could not have had a universal character or an undifferentiated audience. Both print and writing could only be alien to the entirely or even partially illiterate, including almost all Native Americans and the enslaved blacks" (11). Warner also excludes women, lower class

individuals, and criminals from his model of who gained access to printed speech via the metapolitics of speech.

Daniel A. Cohen first written that gallows publications provided a significant caveat to Warner's observations about the metapolitics of speech and who had access to print. Cohen states,

If Warner is right, criminal conversion narratives of the same period constitute a dramatic exception to the rule of exclusion. In fact, accounts of felons like Esther Rodgers, Joseph Quasson, Patience Boston, and Edmund Fortis boldly privileged the spiritual insight and subjective experiences of precisely those disadvantaged groups. While race, class, gender, age, and deviant conduct had certainly counted against the criminals throughout their lives, such factors had little bearing on their fundamental human need for redemption through Christ. If anything, those same traits made the criminal converts all the more valuable as religious models; if even such pariahs could achieve glorious salvation in the shadow of the gallows, surely the humdrum readers of their narratives could aspire to heaven as well (Cohen 79).

Cohen adds that "condemned criminals were actively integrated into an ongoing public discourse, not only as readers but also as authoritative speakers and even as posthumous authors" (79). Gallows publications in eighteenth century New England did not conform to the patterns Warner observes for political discourses that see the people and state as separate entities; it is no surprise that those allowed to participate in crime

discourses and the manners in which individuals entered such discourses largely explains the divergence between discourses of virtue and discourses of vice.

Legal historian Stephen Wilf has also theorized writing about crime in a way that blurs demarcations between “people” and “state.” Wilf places crime writing in a tradition he calls “vernacular legal culture.” Unlike “official legal codes” that “spoke in authoritative, often univocal, fashion,” and often “depended on sanctions,” Wilf explains, “vernacular legal culture sometimes had to rely upon persuasion as much as compulsion and therefore employed a range of storytelling and ritual strategies” (Wilf 58). He goes on to note that crime writing is often in conversation with other crime writing, as well as official legal doctrine, creating an intertextual community of writing about law and crime.

Wilf emphasizes the narrative aspects of vernacular legal culture, stating that it “shifted the perceived definition of law from *nomos* – a body of rules and regulations – to narrative. Law becomes a social fact embedded in a context of racial and economic distinctions, local settings, and individual lives” (Wilf 59). Indeed, Wilf sees the focus on the individual and his or her experiences as crucial to understanding how vernacular legal culture worked to make law applicable to common people: “By emphasizing the experiential rather than the normative, these narratives create their own terms for choosing and weighing evidence” (59). Echoing Cohen, Wilf adds that vernacular legal culture “was open to participation by a broad range of society. This openness created a unique accessible forum for discourse about legal process” (59).

The discourses of virtue Warner focuses on were normative; writers entered the public sphere to address themes intended for the moral and ideological construction of society as a whole. In discussing the principle of negativity, Warner writes, “it is a

ground rule of argument in public discourse that defines its norms as abstract and universal, but it is also a political resource available only in this discourse, and available only to those participants whose social role allows such self-negation” (Warner 42). He later states that a key element of print discourse is that it “was an abstract public *never localizable in any relation between persons*” (61). As Cohen points out, the subjects of discourses of vice were forced by their social roles (usually poor, often women or minorities, always criminals) into print with their identities intact, the very opposite of the well-off, white, male, and anonymous participants in Warner’s public sphere. As we will see in the case of and Levi Ames, gallows publications could still be used as a way to enter politic discussions, and, particularly in the late eighteenth century, discourses of vice begin to take on some aspects of discourses of virtue, particularly the principle of negativity for some authors (never subjects). However, gallows publications never lost the local, episodic quality Wilf observes and it continued to focus on isolating and rejecting unwanted action or belief, rather than generalizing or normalizing desirable public virtue or morality.

Before examining some exemplary cases studies that demonstrate how discourses of vice functioned in the public sphere, let me recap the various differences between discourses of virtue and discourses of vice. First, discourses of virtue existed because of a conceptual separation of the state and the people brought on by the print public sphere; discourses of vice, embodied as vernacular legal culture, integrated state and legal authorizes and communities by presenting laws and legal proceedings as narratives, hence bridging the state/people divide. Next, discourses of virtue excluded most people from entering the print sphere, including women, Native Americans and Africans,

criminals, and illiterate or poor people, while discourses of vice most often find exactly these people as the subjects of crime narratives. Even if their voices were often filtered through authority's pen and press, their first person accounts were often the primary voices in discourses of vice. Third, Warner states that print discourse eroded local, identifiable discourses and replaced them with abstract print discourse that produced a normative effect on communities involved in discourse. Discourses of vice, even when they were reprinted far from the locale where the crime or execution occurred, remained tied to a place and were often episodic and locally focused. Finally, discourses of virtue required participants to obscure their identities to emphasize their messages, symbolically negating the individual to discuss general virtue. Discourses of vice mirrored the execution ritual in which the individual is a primary and central focus. Crime narratives emphasized the individual in print, though he or she was most often negated bodily on the gallows.

The following cases have been chosen for their relative popularity in early New England and from modern scholars. James Morgan's execution inspired three sermons and appeared in Cotton Mather's *Pillars of Salt*. Patience Boston's execution in Maine inspired gallows publications in Boston that were reprinted well after her execution. Well-known Mohegan minister Samson Occom delivered the address for Moses Paul, an execution sermon more famous as the first full-length publication by a Native American ministers. Finally, no eighteenth century execution inspired a larger body of gallows publication than Levi Ames' and his execution also inspired the first piece of gallows writing to protest an execution.

## James Morgan - 1686

When Increase Mather penned his sermon occasioned by the execution of convicted murderer James Morgan, he did so with a juridical eye. Delivered and printed under the simple and straightforward title, *A Sermon Occasioned by the Execution of a Man Found Guilty of Murder*, Mather's sermon investigates one particular aspect of Morgan's crime, namely the material composition of Morgan's murder weapon, an iron spit. Morgan drove the spit through Joseph Johnson's stomach after a quarrel in a boarding house in which Johnson attempted to intervene in a violent altercation between Morgan and his wife. Neighbors, including Johnson, first mounted an unsuccessful intervention and Johnson's second entry into Morgan's room infuriated him. When Johnson ignored Morgan's demand to stay back, Morgan grabbed the iron spit and impaled the interloper. None of this is outlined in Mather's sermon; what Mather extrapolates on at great length is iron.

Numbers 35. 16, the verse printed at the outset of Mather's sermon, state, "And if he smite him with an instrument of iron (so that he die) he is a murderer, the murder shall surely be put to death." He also refers to the scriptural story of the City of Refuge, an ancient legal apparatus in which killers fled to a neutral city where their crimes were determined to be either accidental manslaughter or murder. Accidental killers could expect protection in the City of Refuge while murderers were expelled to face justice for their crimes. Delineating the differences between accidental killing and murder comprises Mather's primary argument. His interest in iron supports his case because scripture gave special attention to the material of the weapon as a way to determine guilt. Mather states, "If the *Instrument* which he smites him with be of *Iron*, that makes the Murder to be more

evident.” To reveal the scriptural logos, Mather explains that in Old Testament times investigators examined murder weapons to determine their lethal potential. A stone or wooden object may or may not do the job, but “if it were with an *Instrument of Iron*, no enquiry was made as the greatness of it, because the least nail of Iron might easily kill, And it is to be presumed, that a man will not strike another with an *Instrument of Iron* except Blood and Murder be in his Heart” (Mather 3).

Puritan ministers employed their typological exegetical methods to understand crime, law, and punishment. In this case, Mather uses scriptural precedent to support the conviction and execution of James Morgan; the connection lays in intent, and in this instance the ferric composition of the murder weapon linked New England juridical practices to a scriptural foundation. In this way, Puritan ministers supported state authority, even lending divine support for temporal practices of criminal justice. At this point in the development of discourse in New England, print had not created conceptual space between the state and the people. Political author and moral authority merged and the press became the mouthpiece for both. The other two sermons delivered before Morgan’s execution, Cotton Mather’s *Call of the Gospel* and James Moody’s *An Exhortation to a Condemned Malefactor*, barely address crime or punishment at all, focusing almost exclusively on messages of salvation and forgiveness. The political tones of Increase Mather’s sermon would appear more frequently as the eighteenth century wore on. Cotton Mather became a master of blending political and juridical messages about crime with spiritual lessons and calls for salvation. Yet, at the time of Morgan’s death, execution sermons maintained the distinct “devotional” quality Michael Warner attributes to all printed discourse during the Puritan period.



However, though the sermons preached for Morgan were amongst the first execution sermons in New England, we already see many tenets of discourses of vice. First, James Morgan is one of the first subjects of printed discourses about crime in New England to have his voice transcribed into print. The printer, Richard Pierce, included a transcript of “The Discourse of the Minister with *James Morgan* on his *Way* to his *Execution*” along with Moody and the Mathers’ sermons for Morgan in a collection of three. While criminal narratives, last words and final speeches were common in England, they were not replicated widely in New England until the eighteenth century. That Pierce claims to have come by the transcript clandestinely certainly calls the authenticity of the narrative into question, but whether or not James Morgan really spoke the words attributed to him, it remains true that the intention of the publication was to give voice to a poor criminal on the way to his death.

James Morgan gained surprising notoriety. In a letter to George Larkin, John Dunton offers a possible reason for the excitement surrounding Morgan’s execution: “there has not (it seems) been seen an execution here for this seven years” (Dunton 118). He notes “some have come fifty miles to see it” (118). He also recounts a scary incident in which 5000 spectator attempted to crowd into the Boston’s Second Church to hear Increase Mather preach, damaging the structural integrity of the building and forcing the assembly to move to a larger location. That Morgan’s death produced three sermons, and that they were published separately and together, as well as in multiple editions, speaks to the great public attention Morgan’s case drew. The printed sermons and gallows narrative capitalized on the excitement surrounding the execution event.

That James Morgan was a poor man, a drinker, weak in religious fervor, and apparently capable of a murderous rage only enhanced public interest in the narrative of his deep penitence and the intense desire for conversion. Still, though his conversion occupied the focus of all printed material surrounding his execution, as well as the content of the sermons delivered to live audiences, it's the very commonness of Morgan as a man that stands out. A key tenet of discourses of vice is the prominence given to people such as Morgan, people who otherwise rarely appear in print. Did James Morgan really buy into the script prepared for him? Was he truly penitent? His desire for attention – requesting three execution sermons – is suspect. Did he desire public attention, or did three ministers decide to capitalize on his downfall to gain converts and reinforce moral rectitude in the community? Did Morgan hold out hope for earthly clemency while hearing promises of otherworldly salvation? We may never know, but what we can observe is the scapegoat principle common to all discourses of vice, calling public attention to a named, identified criminal and publicizing his or her life, fall, and salvation.

For a week in March in 1686, all eyes in Boston were on a common man fallen low. The corresponding reaction in print speaks to this public interest in a real event – a public execution. This is also an important tenet of discourses of vice, the crimes, rituals, and spectacles they reference. As Wilf noted, they were both local and episodic. James Morgan's brief appearance began dramatically with a real murder he committed and ends with his actual public execution. The primary publicity lay in the unraveling events, which became less true for discourses of vice as the eighteenth century wore on, population grew larger and more dispersed. However, before 1700, more people likely experienced Morgan's episode than read about it in print.

### **Patience Boston: Mother, Woman, Murderer, Nausett**

In so far as discourses of vice emphasized criminals' biographies, they often highlighted notable aspects of individuals rather than attempting to paint holistic portraits of their subjects. Writing about crime in early New England primarily focused on biographical details that explained subjects' crimes in moral terms; they begin by exposing early sins in youth, often lying, impiety, or disobeying parents, and end with whatever transgression earned the subject's death sentence. Murder was the primary crime to earn a death sentence in New England, but others included bestiality, rape, piracy, burglary, and, of course, witchcraft.<sup>60</sup>

However, writers and printers of gallows publications often chose some attribute of the criminal, such as sex, race, or occupation, and directed the discourse towards others in that population. The subject became a specific example to people like him or her, warning others like them to avoid what the distributors of crime writing believed were common sins of their kinds. In this respect, discourses of vice are remarkably sensitive vehicles for controlling groups of people. To return to Wilf's description of vernacular legal culture, writing about crime made law real to people outside authority, and integrated law into the daily lives of the people it governed. While that may be a noble paradigm of how crime writing brought law to the people, another more nefarious element emerges when we examine how discourses of vice could target and intimidate particular groups, amplifying the message of the execution while selecting an audience. While this might seem logical when applied to pirates, it becomes insidious when directed at Native Americans or women. As scapegoats, they stood in for their demographics' crimes against the greater population.

Patience Boston, a young Native American woman executed in York in what is now Maine for drowning her master's grandson in a well in 1735, and Moses Paul, a Mohegan man executed for murder in 1772 in New Haven, Connecticut, demonstrate how discourses of vice emphasized certain attributes of the criminals to the exclusion or neglect of others as a way to target a particular audience and deliver a warning or message. While both were indigenous, Boston's text emphasizes her sex while paying less attention to her race; conversely, Samson Occom's sermon for Moses Paul appeals directly to Native Americans and takes the opportunity created by Paul's execution to chastise native communities. That Occom himself was Mohegan may or may not have mitigated readers' anxiety toward the message he overtly directed to an indigenous audience, but his indigenous identity gave credence to provincial stereotypes of Native people as drunk, unmotivated, uncivilized, and dangerous.

Though Patience Boston was a Native American woman, her narrative, "A Faithful Narrative of the Wicked Life and Remarkable Conversion of Patience Boston alias Samson," spends very little time on that aspect of her biography, instead emphasizing her womanhood and, more particularly, motherhood. She reveals that she's Native American at the outset of her narrative by stating that she was "born at Menomey on *Cape Cod*" and that her mother, Sarah Jethro, was "in full Communion with an Indian Church at *Nosset*" (Boston 1). The Nauset people, a tribe closely related to their Wampanoag neighbors to the West, populated Cape Cod and maintained allegiance to the English during the King Phillip's War. Their loyalty earned them little; the tribe had been organized into praying villages and their numbers reduced very low by sickness before Patience was born in 1711. Twice in her narrative she speaks of encounters with

“Indians” who coerced her into trouble, likely because she herself was Native American. Her narrative mentions that she drank heavily with her “Indian” cohorts. She also married a “Negro servant,” became bound to his master, and may have had a child with him, a relationship the community, including the master, would have likely prevented had she been white.

Motherhood, not race, dominates the narrative. Boston’s mother died when she was young, leaving her as a servant in a religious family. Her mistress stood in as her mother, teaching her to read and also providing religious and moral guidance. Of her mistress’s death, Boston recalls, “I think I could not have mourned more, if my own Mother had died” and “I see that she was a Mother to me, though I was a wicked mischievous and rebellious servant” (2). By fifteen Boston had lost two mothers. She then married a pious African servant and became pregnant, though because she confesses to “breaking the marriage covenant” and her husband’s departure on a whaling voyage, it’s impossible to determine if he was the father. Upon learning she was pregnant, she confessed, “I had tho’ts of murdering it” (3). Contrasted against her mistress’s example of moral motherhood, Boston’s carousing so seriously injured her first child in utero that “both its arms were broken” and “it died in a few weeks.”

Boston tried briefly to reform when she became pregnant a second time, but again she says “I had *Murder* in my *Heart* towards my Second, as well as my first Child; an so I had, after my Child was born, attempting something that way when I perceived it’s Crying, and it’s taken up my Time to tend it, caused some Uneasiness in the Family” (4). When the child died in bed two months later, Boston became intoxicated and falsely accused herself of infanticide to her husband. She repeated the lie three times to the same

judge, though he remained suspicious she was drunk and lying. When she sobered up in prison, Boston reversed her confession. She must have only confirmed what others knew, because she was quickly acquitted. After being released she again claimed to have had a child and killed it, though this time examination proved she had never even been pregnant.

Though the pattern here indicates psychological distress, it also depicts a woman whose motherly instincts are as corrupted and unnatural as a moral audience could imagine. When Boston finally murders a child, it's not her own, but her master's eight-year-old grandson. She despised her master, James Bailey, and viewed the child as a vulnerability she could exploit for revenge against him. She first tried to lure in him to the woods and club him with a stick, but lost her nerve. Soon after she found herself left alone with the child and designed this murder plot: "I went to the Well and threw the Pole in, that I might have an Excuse to draw the Boy to the Well, which having done, I asked his Help to get up the Pole, that I might push him in, which having done, I took a longer Pole, and thrust him down under the Water, till he was drowned" (7-8). Investigators attempted to make her touch the child's corpse, believing the corpse would react to the murder's touch, and though nothing happened, Boston was still convicted and sentenced to die.

Boston's narrative takes a dramatic turn after her conviction. While in prison she experienced waves of ecstatic faith and hope brought on by local ministers' attempts to convert her to Christianity. These high swells were punctuated by deep valleys of despair. One must question the authorship of some the scriptural quotations and bibliographic recommendations attributed to Boston which sometimes converge into sections that

sound nearly quoted from sermons. Yet, a primary way the efficacy of religious teaching is on display in Boston's narrative is in the changes she undergoes as a woman and a mother. It is unclear when she had her third child, but apparently it must have been during her time with Bailey. Neither the child's name nor age is mentioned, but the child lived with Boston in prison. On display in the latter half of her narrative is her care and concern for her child. She is concerned for what will happen to the child after she is executed; when assured by others that it would be placed with a good religious home, Boston sardonically notes this method of raising orphans failed to help her. Still, her religious conversion changed her from a monster likely to kill children to a woman worrying for her child's well-being.

One scene complicates the narrative's arc in a fascinating way. What Boston displays is a monstrous woman, so horrible as to wish her own children dead and kill a child in cold blood, converted by religious teachers and rightfully acted upon by the law, transformed into a proper woman and mother. However, at one point Boston vowed to go to each public worship until her execution. She made this promise to God, but one night before meeting her child became ill. Boston states,

“But that very Night my poor Child was taken with a Fever, so that I could not carry it out; and was justly deprived of the Opportunity. My Child was dangerously ill. I examined myself, whether I was willing to part with it; and hoping God would take it to himself, I think I was willing. (And before this I had been brought I trust to justify God, though he should cast it into Hell.) I thought also that my own Death would be easier if my Child was gone before; so I was willing God should do as he

pleased. I desired the Prayers of the Congregation for it; and when God was please to restore it, I desired to be a truly thankful, and thought God might graciously continue it to me as a Comfort in my lonely Condition” (25-26).

Did Boston’s motherly instincts improve from religious instruction? In this passage, it appears more that she found an ideological framework to reframe her same lack of motherly concern. Perhaps her decision to go to meeting and leave the child in God’s hands is supposed to demonstrate faith, but she clearly wishes this child dead as well. She seems begrudgingly thankful God spares it to keep her company in jail. Her last observation of her child in the narrative condemns it: “I once thought that all Children went to Heaven, and did not see so clearly the Justice of God, if it should be otherwise; but one Night, as I was sitting with my Child in my Lap, and looking at it, I think it was made plain to me that my Child had the same sinful Nature that I had, and stood in as much need of a Saviour; and that it would be just with God to damn it” (29).

Did the readers of Boston’s narrative question the efficacy of her conversion? Did they accept her metamorphosis from monstrous to model mother? Was her womanhood restored? As Edgar McManus, Peter C. Hoffer, and N.E. Hull have all demonstrated, anxiety about infanticide in England spread to New England with the new Provincial charters in 1692. Until this point, only a confession could convict a woman of infanticide, but the adoption of the English infanticide laws meant that any women claiming a stillborn child without a witness could be convicted of infanticide. Gallows publications did much to stoke anxiety about infanticide; executions in such cases produced very moving gallows publications. What influence did this anxiety have on Boston’s narrative,



how her character is portrayed, or the public's reaction? While we can only speculate how the audience received Boston's story, its message is clear – religious instruction is a job for mothers and mothers who fail to provide religious instruction, or worse, despise it, are not only unfit but threatening and dangerous to children. Christian piety is presented as the central tenet of fit motherhood. That Boston was an indigenous person was certainly not incidental to her life, her criminal or servant status, and her untimely end on the gallows, but it remains incidental in this narrative. Mothers, not Indians, were being warned.<sup>61</sup>

### **Moses Paul: Mohegan Scapegoat**

Moses Paul's execution was a clear warning to Native Americans. Paul allegedly murdered Moses Cook, a white man, during an altercation in a tavern. The official story claimed the owners of Clark's Tavern refused to give Paul a drink because he was already intoxicated. Infuriated, Paul vowed murderous revenge, waited outside the tavern, and enacted his vengeance upon the next patron to leave, the hapless Moses Cook. Paul hit Cook in the head with a heavy iron rod, killing him. Moses Paul's tale combines three elements that nearly always appear together in discourses of vice – alcohol, violence, and Native Americans.

Consulting court records, Ava Chamberlain has offered a convincing alternative story – Moses Paul's version of the tale – recasts Paul as the victim. In testimony during an appeal of his capital conviction, Moses Paul claimed Moses Cook assaulted and beat him several times in the tavern, apparently because Paul was Native. Only when Cook approached Paul with a cane to murder him did Paul strike back with the nearest object at

hand, an iron spit, killing his assailant.<sup>62</sup> Discourses of vice surrounding his crime and execution neglect this version of the story.

The three main criminal publications addressing Paul's execution all emphasize his status as Mohegan even in their titles: a pamphlet, "A Letter from J---h J---n, one of the Mohegan Tribe of Indians, to his Countryman, *Moses Paul*, under Sentence of Death, in New Haven Goal," a broadside, "A Short Account of the Life of Moses Paul (An Indian) who is this Day to be executed in New-Haven, for the Murder of Mr. Moses Cook, of Waterbury," and Samson Occom's famous sermon, "A Sermon Preached at the Execution of Moses Paul (An Indian)." That printers published two texts by Mohegan Christians Joseph Johnson and Samson Occom added to the focus on Native identity surrounding Paul's trial and execution.

While Occom's sermon dives into race politics, Johnson's letter merely introduces the author's common ancestry with the condemned before embarking in a pedantic presentation of the Christian Salvation message. The broadside, which claims to include material provided by Paul himself, also addresses what it means to be Native and what it means to be "civilized." The broadside, though primarily casting Paul as a penitent drunken Indian, includes some facts that problematize that depiction of him. Discourses of vice in New England had been bemoaning and fearing drunken Indians for over a century before Paul took to the scaffold. Colonies, including Connecticut, had laws against serving alcohol to Native Americans, though this seemed to do little to curb either Native drinking or colonial anxiety about it. Before conforming to this stereotype, the broadside notes that Paul's mother was "a constant Attendant on Divine Worship, in the Presbyterian Meeting House in Barnstable," establishing Paul's early Christian

background. It also notes that he was raised as a servant in a family “with whom he lived six or seven years, and in whose Family he learned to read and write, and where he was instructed in many of the important Articles of the Christian Religion” (A Short Account of Moses Paul). These inclusions complicate the image of Paul as a savage Indian, but their presence is likely conventional; discourses of vice often minimized their subjects’ bad upbringing, instead concentrating on their early religious education. A convicted killer who abandoned moral instruction appeared more liable for his or her crime and shared more in common with the audience. Moral instruction was a primary purpose for gallows publications, after all. That Moses Paul first abandoned this moral upbringing during military service and became entrenched in sin during time at sea are also common narratives for men’s criminal downfalls.

Samson Occom’s sermon begins with a commonly quoted line of scripture in crime publications – Romans VI. 23 – “For the wages of sin is death, but the gift of God is eternal life through Jesus Christ our Lord.” The bulk of his message condemns sin and again repeats the salvation message. The first published execution sermon by a Native American minister, Occom’s address for Paul follows an unremarkable course. Well-educated and formerly an important popular indigenous minister in New England, Occom had even traveled to England to gain support for Dartmouth College, originally intended to educate Indians. He knew what it was like to represent his people before an English audience, and though the English clergymen who once supported Occom had abandoned him to toil in obscurity in a praying Indian village on Long Island, Occom knew his credibility as a minister on this occasion required he adhere to the form of an execution sermon. He focused on the salvation message, directed his warnings to both the crowd

and Paul, and offered both hope for redemption through Christ. For a Native American minister to produce a discourse of vice, he had to demonstrate his parity with others constructing that discourse. Literacy was low among Native people and most of the readers of his sermon were likely white.

The end of Occom's discourse calls us back to the oral origin of printed execution sermons as he included a section addressed to "*My poor kindred.*" Unsurprisingly, Occom uses this space in his dialogue to rail against drunkenness, again reinforcing the stereotype of the drunken Indian. There's an earnest tone to his appeal; his frustration is tangible. He pleads that drunkenness, "has stript us of every desirable comfort in life; by this we are poor, miserable and wretched; by this sin we have no name or credit in the world among polite nations; and for this sin we are despised in the world, and it is all right and just, for we despise ourselves more; and if we don't regard ourselves, who will regard us?" (Occom 29).

Occom goes on to lament a litany of problems brought on by drunkenness in Native communities, from being conned by unscrupulous deals to drowning to falling injuries. Sadly, Occom's sermon reinforced stereotypes. Moses Paul certainly became a scapegoat, a typical drunken Indian, a model Native execution subject whether his drunken rage caused him to kill Moses Cook or whether he acted in self-defense. As with Patience Boston's depiction as an abominable mother, Paul takes on the traits of a murderous drunken Indian to chastise and warn a certain community. Providing accurate biographical details is not a primary function of discourses of vice; they were not true crime accounts or something akin to modern investigative journalism. They were

narratives against crime, ways to involve legal culture in daily lives, and ways to amplify threats and warnings toward groups believed posed threats the community.

### **Levi Ames: Intertextuality of Virtue and Vice**

In terms of understanding how discourses of vice functioned in early New England's public sphere, the Levi Ames case was at once standard and exceptional; simple and problematic. When Ames ascended to the platform on October 21, 1773, he met his demise before the eyes of a community in which many questioned the authority and sovereignty of the state that executed him. If Ames had lived on a month and a half longer, he would have witnessed the Boston Tea Party on December 16, 1773. The Tea Act, passed less than five months earlier on May 10, spurred resentment that had been simmering since the Boston Massacre three years earlier. Discourses of vice generally supported the right of the state to punish the individual, but this relationship between the print sphere and the state was not in concord on the day Ames died.

Levi Ames was certainly not a martyr or a public hero; the majority of the publications surrounding his death are unremarkable in anything other than the sheer number produced, or, perhaps, in a pervasive tone of sympathy. Most of the documents treat him like a criminal and use his execution as an example to deter crime, which was, of course, the purpose in executing criminals. Though he only lived until age twenty-one, Ames' life reads like a long list of stolen items. In "The Last Words and Dying Speech of Levi Ames," Ames (or, more likely, someone ghost writing/fabricating the biography for him) recounts his life of crime. Ames was born in Groton, Massachusetts. His father died when he was only two years old and he was placed in some variety of indentured servitude at a young age. Ames was unhappy with this arrangement, stating, "and not

being permitted to live with the person I chose to live with, I ran away from my master...” (Williams, 177). From that point onward, his account of his criminal career presents a path of transgression typical to many criminal narratives. He names places, victims, and items stolen with surprising thoroughness and accuracy. For example, he states, “I robbed the Rev. Mr. Clark of Lexington, of a tankard, twelve tea-spoons, one large ditto, a pepper-box, and two pair of sugar tongs” (Williams, 178). Ames often stole metal objects, particularly those made of silver, and sold or traded them to dishonest metal workers who remade them into other items.

The crime for which Ames died fits into a pattern of petty thievery that characterized his life. He met his accomplice, Joseph Atwood, in Boston and together they burglarized the house of a Mr. Bicker. Though Ames claims that Atwood actually went into the house and stole items, Atwood’s defense was that he stood watch as Ames perpetrated the crime. He was given a lighter sentence of twenty lashes and ten years indenture to Bicker.<sup>63</sup> All the two men stole was small change and a bag of silver coins.

From this unremarkable theft, came an astounding number of publications. Neither the three sermons, nor the criminal narrative, nor eight of the nine broadside ballads challenge the most common tenets of discourses of vice; again, they’re most remarkable in their quantity, not content. The sermons, by Samuel Stillman, Samuel Mather, and Andrew Eliot, all relate Ames’ crimes to related Bible stories (such as Christ forgiving the thief on the cross) and remind the reader that they, like Ames, are sinners. Stillman includes a conversion narrative documenting his time ministering to Ames in prison, and Mather’s sermon describes the scene of execution, both common elements of execution sermons in the latter half of the eighteenth century. The criminal narrative,

“The Last Words and Dying Speech of Levi Ames” recounts his early years, his fall into a criminal lifestyle, his arrest, conversion, and an exhortation he allegedly made to the crowd encouraging them to avoid his mistakes. The narrative claims to be “Taken from his own Mouth, and published at his Desire, as a solemn Warning to all, more particularly young People.” His exhortation begins with a sort of public service announcement – “To keep your doors and windows shut on evenings, and secured well to prevent temptation.” He then goes on to invoke the usual points of caution. He tells parents to carefully bring up their children, he tells young people to avoid sin, which nearly always includes swearing, drunkenness and bad women. He ends by asking the people to show kindness to his mother and thanking the ministers.

Eight of the broadside ballads exhibit common execution ballad conventions. They’re lined verse, written in the first person. The perspective is usually that of Ames himself moments before the death, except for “The Speech of Death to Levi Ames” which personifies death but delivers the usual message with the usual method. The lines rhyme and either follow a pattern of rhyming couplets – “Ye youth! Who throng this fatal plain/And crowd the accursed tree/ O! Shun the paths that lead to shame/Nor fall like wretch me.”(Dying Groans of Levi Ames) – or an pattern of alternating rhymed lines – “Ah! What a spectacle I soon shall be/ A Corps suspended from yon shameful tree” (The Dying Penitent). Slant rhyme is common. The messages are the same as the criminal narrative; youth should avoid paths of sin but hope remains through repentance and conversion.

These, like most execution ballads and the conversion narratives, recreate the spectacle of execution in print and reinforce the social purpose of public execution

intended by the state. They create an interpretative framework for the crowd and the community through which to see the execution as fortifying spectacle. The criminal, though deserving death, has repented before reaching the gallows and, as one of the flock who must leave for the common good, presents lessons of virtue while he himself becomes a warning against the dangers of vice. First the Crown and later the new republic could rely on independent printers to reinforce the message that, even if Christ forgives sinners, the state does not have that luxury. Therefore, the publications present execution as an outcome that is both inevitable and natural. Crime leads to death. The state and laws are absolutely sovereign. Once sentenced no criminal can or should hope for reprieve, only repent and use their death for the betterment of the community. Though it's likely that printers and ministers fabricated many of the criminals' words, in attributing the words to the condemned, the social purpose of execution was fulfilled.

A dissenting publication is truly remarkable considering how rarely execution literature strayed from the standard elements. "Theft and Murder! A Poem on the Execution of Levi Ames" is a piece of revolutionary propaganda disguised as an execution ballad. Though the author remains anonymous, perhaps it comes as no surprise that revolutionary agitator Isaiah Thomas printed and sold the broadside. Instead of exhorting the crowd to avoid sin through recreating the spectacle of Ames' death, "Theft and Murder!" pits Ames' relatively harmless crime of property theft against a pardon granted to Ebenezer Richardson some months earlier. Richardson drew the ire of the community by dealing in tea and when a mob ascended upon his house, burning his effigy and throwing stones, Richardson shot and killed a young boy. The author writes "Look back to FIFTH of MARCH, and see/ The scarlet Murders! Bloody stains!/ What



peace think you now can there be/ In such a land where guilt remains”<sup>64</sup> indicting authorities for failing to punish Richardson, but his criticisms go further. He goes so far as to attack the public reinforcement of the government instituted laws, stating, “Oh no! The Ministers they say/ For him(Ames) there can be no reprieve/ He must be hanged upon the day/ and his punishment receive/ The great corruptions of this day/ They fill my mournful heart with grief/ Murder is pardon’d but so they say/ There’s no redemption for this thief.” The broadside presents a profound paradigm shift away from using the spectacle of execution as a way to bolster the sovereignty of the state, to using the execution spectacle to undermine the state. The same event is appropriated in print for a purpose opposite from its intended function. With its call for equitable treatment under the law and anonymous authorship, the poem fit within Warner’s description of discourses of virtue, while retaining Ames’ identity, and continuing the traditions of discourses of vice.

### **Conclusion**

It should come as no surprise that African Americans’ status as “Negro” was almost always noted in the same manner Moses Paul and other Native Americans were identified as “Indians” in the titles of criminal narratives. A broadside published for a man remembered only as “Arthur, A Negro,” executed for rape in Worcester in 1768 recounts his many years of criminal activity, all of which follow flights from his masters. Interestingly, as we saw in Patience Boston’s marriage to her African American husband, Arthur spent time with Native Americans, drinking and getting into trouble, including using the house of a familiar “squaw” as a hideout to escape his master and authorities. Like Occom and Paul’s warnings to other Native Americans, Arthur warned “those of my

own Colour, as they regard their own Souls, to avoid Desertion from their Masters, Drunkenness and Lewdness” (Arthur). While few of his own color were literate, his narrative gave readers the impression that his execution served to reinforce moral fortitude among blacks in the community. His blackness was used to identify the audience, and Arthur became a scapegoat to control others like him.

Of course, discourses of vice don't only contain messages meant to intimidate particular groups or draw public attention to criminal activity or judicial inequity. Samson Occom's advice to other indigenous people to avoid being conned or scammed was honest and Levi Ames' death for a property crime likely upset others in his community. Patience Boston never became a fit mother. She wished death on children, even her own children, until her own untimely end. In Moses Paul we see how a man's race was a mark of guilt before the grand jury even began investigating and how racial prejudice hindered honest work by all-white juries investigating crimes. Modern readers likely see Arthur's masters as the immoral element in his narrative and his many thefts as merely self-preservation. In choosing to make criminals under sentence of death scapegoats to the moral integrity of the community, discourses of vice looked into criminals' lives and exposed their words and thoughts, offering a rare glimpse into the conditions of common people from all cultural backgrounds in early New England. Unlike discourses of virtue, which negated the individual in print to argue ideologically for the common good, discourses of vice put a spotlight on the individual, her name, age, race, origin, history, religious conviction, and more.

The primacy of individuals and individual guilt in these texts is not only a primary criteria for the function of discourses of vice in the public sphere, it's also evidence of the

overall trend in eighteenth century New England gallows publications that moved emphasis from the community to the individual. It is fascinating to observe that discourses of virtue were simultaneous reversing this trend, moving Enlightenment political philosophy into the space left by Congregationalist religious hegemony's waning influence. A primary facet of Enlightenment political thought was, of course, individual rights. In that sense, gallows publications truly demarcate the boundaries of moral citizenship, showing in detail where the scope of individual rights ended and community interest reestablished itself. The transgressors identities stood out because they were exemplars, object lessons on the limits of individual rights.

## CHAPTER 5

### THE WICKED MAN'S PORTION

#### Punishment, Equity, and Economics in New England Crime Writing Before the Revolution

Anyone sentenced to stand on the pillory in early New England faced more than humiliation. Crowds threw not only jeers and derision, but also stones and eggs. Though judges often paired time on the pillory with whipping, men and women standing on the pillory often experienced pain much sooner, especially if they committed crimes their neighbors considered particularly heinous. In 1770, Charles Johnson, sentenced to spend an hour on Boston's King Street pillory for attempting to rape a child, "was so severely pelted by the Populace" that authorities decided to postpone his "30 stripes at the public Whipping Post" because "he could scarce stand when taken out of the pillory."<sup>65</sup>

Johnson faced both spontaneous and planned, quantified punishment. No one in the mob likely counted how many objects struck Johnson, nor did anyone probably care. The spontaneous and arbitrary nature of the injuries Johnson and others suffered on the pillory at the hands of angry publics contrasts sharply with the "30 stripes" provincial authorities demanded he suffer at the "public Whipping post." Certainly those who sentenced him to stand on the pillory for an attempted rape of a child understood people in the community would injure Johnson and that injury factored peripherally into his punishment along with the humiliation of standing on the pillory. Though, as Steven Wilf notes, "the differences between official and extra-official punishment often became blurred," authorities still demanded their pound of flesh, here expressed in a number of times a whip struck this man's back (Wilf 89).

Correlation between crime and punishment is such a fundamental aspect of justice that questioning how corporal punishment equated a crime with an amount of pain or injury inflicted upon a perpetrator's body seems like questioning the very basis of punishment itself. The equation *crime x= y amount of pain or suffering* lies at the heart of the entire concept of punishment; yet, for the entire equation to equal *justice*, a narrative must take place to establish the propriety of the equation. The ground rules for making such an argument rest in valuations of crime. More egregious crimes demand harsher punishments. These arguments often seem logical or straightforward, but they are informed by numerous variables including how much damage a crime causes a community, public outrage, ideological beliefs, identity of the criminal, recidivism, frequency of commission, legal precedent, and more. We still apply this general logic to our criminal legal codes today, though our more "humane" system equates crimes with time served in penitentiaries, a change in the criminal justice system begun soon after Charles Johnson's time by Benjamin Rush and other reformers. Time, at least, is measurable; as Elaine Scarry has argued, pain is not.<sup>66</sup>

This chapter aims to examine rhetoric in early New England gallows publications and other writing about crime to understand who argued for the justice of punishment and who challenged those arguments. Early New England is an interesting subject for this line of inquiry for several reasons. First, New England's justice system simplified the English legal system. While New Englanders followed law and precedent, they were not slaves to writs or procedure. They did not rely on lawyers or legal experts and government leaders held roles as judges and magistrates. New England's legal system combined elements of all English courts into one system and the most important aspect of this amalgamation

was the combination of Common Law and Equity.<sup>67</sup> In England, Equity acted as a check on the Common Law. If litigants felt they had not received justice at Common Law, they could appeal to the court of Equity, headed by the Chancellor, for redress. The court of Equity investigated cases and relied more on the judgment of the Chancellor and his magistrates than on procedure. Eventually litigants appealed directly to Equity as a more rational and promising avenue to justice. New England courts had schedules of appeals from lower courts to higher courts, but the laws and access to justice followed the same mechanisms throughout the justice system. Equity became a central concept to the entire system.

Secondly, New Englanders in the seventeenth century boasted the world's highest literacy rate, allowing print to play a more integral role in public affairs than in other comparable communities. New England presses were not free; the content of all printed material passed through a religious and social filter. In 1700, Robert Calef had to have his critique of the Salem Witch Trials (a response to Cotton Mather's *Wonders of the Invisible World* entitled *More Wonders of the Invisible World*) published in London. The Mathers were too entrenched in New England to find a press willing to publish something critical or satirical about them.

The result, as Daniel Cohen has noted, was that printed material about crime most often resulted in political and religious authorities justifying capital punishment. Cohen writes, "For more than a century and a half, New England ministers had regularly sought to justify capital punishment in their execution sermons. Throughout that period clergymen apparently viewed themselves, and were viewed by others, as quasi-official apologists for the courts" (Cohen 101). Not only execution sermons supported capital

punishments. Criminal narratives were biographical litanies of crimes, each related to justify the death of the text's subject. Yet, as Wilf notes, other voices crept into crime texts to challenge the dominant, pro-execution narratives that defined at least the thematic façade of New England crime writing. Therefore, by studying New England, we can look beyond the apparent intent of laws and try to understand how authorities communicated the propriety of their laws to the public via print discourses about individual criminal cases.

What can we tell about the values of early New England society from analyzing arguments intended to both appeal to and construct a popular understanding of law and sense of justice? These discourses of vice were not complex legal treatises to be dissected by lawyers, but popular presentations of crime and punishment. They defined criminal behavior by profiling criminals and they used the evidence in these profiles to justify punishment. Their polemics hinge on demonstrating the logic and propriety of dealing with crime  $x$  with punishment  $y$  and to understand the values underlying their arguments we must deconstruct these equations.

### ***Crime $x = y$ pain/suffering: Understand the Equity Equation***

Before turning to how gallows publications and other writing about crime explained the correlation of punishment to crime, it is expedient to examine how the law valued several crimes in terms of punishment, particularly punishment allotted in amounts of pain. Comparing three laws allotting different punishments for fornication is revealing. Samuel Kneeland's 1761 printing of *Acts and laws, of His Majesty's province of the Massachusetts-Bay in New-England* lists three separate punishments for fornication, one for a man who fornicated with "any single woman," one for adultery, and

another for “any English Man or Man of other Christian nation” who had relations with “a Negro or Molatto Woman” (152). In this circumstance, the physical sex act serves as a sort of constant or control group; outside whatever meaning a community gives the sex act, anatomy and physiology make no distinction for the races or marital statuses of the participants.

Beginning with the general law against fornication, we see a law simultaneously punitive and pragmatic. Originally adopted in 1692, it reads:

That if any Man commit Fornication with any Single Woman, upon due Conviction thereof, they shall be fined unto their Majesties, not exceeding the sum of *Five Pounds*, or be corporally punished by Whipping, not exceeding ten Stripes a Piece, at the discretion of the Sessions of the Peace, who shall have Cognizance of the Offense (Acts and Laws 10).

The law goes on to outline the procedures for matching fathers to their unclaimed children – if a woman repeatedly swore under oath that a certain man made her pregnant and testified to having sexual relations with him, and that man could not offer proof or convincing evidence to the contrary, he was deemed the father and made responsible for caring for the child.

The law stipulates “single women” which differentiated the act from adultery, which was deemed a worse crime and carried a harsher penalty. Compared to adultery or fornication with a woman of African descent, the fine for fornication was relatively low and the number of stripes correspondingly limited. Both Wilf and Elaine Forman Crane have pointed out that the dispensation of fines or stripes was largely demarcated upon



class lines. Men who could afford the fine could pay to avoid the humiliation; men who could not afford to pay the fine could still be punished. In this sense, this law reveals an equivalency of five pounds to 10 or fewer stripes, though the humiliation of the whipping and the unquantifiable nature of the pain suffered by the condemned immediately challenge the rationality of this equation.

Indeed, class is the discriminating factor here and it is no surprise that those who could not afford five pounds would suffer humiliation along with their pain. Class implied dignity and loss of that dignity through humiliation was likely perceived to mean more suffering for a higher class man than a lower one. The injunction against adultery showed no such consideration for class. With severity that inspired Hawthorne a century and a half later, the law states:

And if any Man shall commit Adultery, the Man and Woman that shall be convicted of such Crime before their Majesties Justices of Assize and General Goal Delivery, shall be set upon the Gallows by the space of an Hour, with a Rope about their Neck, and the other End cast over the Gallows; and in the Way from thence to the common Goal, shall be severely Whip'd, not exceeding forty stripes each: Also, every Person and Persons so offending, shall for ever after wear a Capital A of two Inches long, and proportionable bigness, cut out in Cloth of a Contrary Colour to their Cloaths, and sewed upon their upper Garments, on the out-side of their Arm, or on their Back, in open View. And if any Person or Persons, having been convicted and sentenced for such Offense, shall at any time be found without their Letter so worn, during their Abode in this Province,

they shall by Warrant from a Justice of the Peace, be forthwith apprehended, and ordered to be publickly Whip'd, not exceeding fifteen Stripes" (Act and Laws 51).

This became law in 1694. The law's severity immediately stands out in contrast to the fornication law. Far from offering a way for men to buy their way out of humiliation, this law proscribes deep and continual humiliation, even uses an ongoing threat of pain to perpetuate the shame. That both parties undergo forty stripes suggests that the crime of adultery affected the community in ways exponentially worse than fornication.

In fact, adultery could hurt the community more deeply than fornication. Fornication could occur between unwed lovers who may have been on their way to marriage or just regular people succumbing to their sinful natures. Adultery, on the other hand, violated the marriage contract and vows before God. Not only that, it created greater opportunity for violence and discord by breaking up families and creating enmity between men and women in the community. Even worse, adultery threatened deeply held traditions of inheritance. While New Englanders did not follow primogeniture strictly, their children did inherit land, property, class status, and even a particular job or profession. To give your inheritance to another man's son upset this system.

It could be argued that these laws were draconian or harsh, but juries in New England were able to interpret law as part of their conviction. If a jury believed this punishment was too harsh, they may have been slow to convict, convicted for a lesser crime, or otherwise mitigated the severity of the punishment.<sup>68</sup> Still, in the law's intent we see adultery as a crime expensive in both pain and reputation.

If the laws for fornication and adultery demonstrate the logic behind the equation of pain and suffering “earned” for a certain crime, the law against fornication between men and African or African American women demonstrates how lopsided justice became when race was introduced as a variable in the equation. The punishment for the man is similar to the punishment for fornication, but the women suffered exile and bondage:

And if any English Man, or Man of other Christian Nation with this Province, shall commit Fornication with a Negro, or Molatto Woman, the Man so offending shall be severely whipped, at the Discretion of the Justices of the Court of Assize, or Court of General Sessions of the Peace, before whom the Conviction shall be; and shall also pay a Fine of *five Pounds* to Her Majesty for and towards the Support of the Government; and be enjoined to maintain the Child, if any there be: And the Woman shall be sold, and sent out of the Province, as aforesaid. (Acts and Laws 152).

The imbalance here reflects the dubious status of black people in early New England. They were at once people in need of moral correction, spiritual guidance, and attention in the law while also being property, governed by law without significant recourse to it. The law for interracial fornication makes no mention of whipping the woman; it is difficult to ascertain if her sale was even considered a punishment for her crime. One wonders if free black women would have been sold into servitude in this situation or if the law refers to slaves. In either case, the sale of the black woman adds another economic variable to the equation – her owner. By selling the offending woman out of the province, her owner was at least partially reimbursed for his loss of a servant and the value of his slave. It is

also interesting that the offending man was not held culpable for the slave owner's loss, but rather the sale of the slave seems to provide the reimbursement; perhaps owners fornicated with their own slaves at a greater frequency that this influenced how culpability was conceptualized in interracial sex cases. As we will see, the complicated status of slaves as both people and property complicated how people of color were addressed in the law and in gallow publications.

The variations in punishment for sex in early New England highlight some of the variables that judges, lawmakers, juries, and citizens needed to calculate to understand the justice and equity of punishment. However, though laws were published, the task of justifying the propriety and equity between crimes and punishment remains mostly implicit if we focus our attention of legal codes and sets of laws. Gallows publications and writing about crimes, on the other, often argued for the propriety of punishment explicitly, exposing the underlying values and logic that supported the creation of laws such as these.

### **Identity and Valuation**

No sooner did New Englanders begin publishing execution sermons than they began arguing for the propriety and equity of punishments for crime. In 1674, the very first execution sermon published in New England, Samuel Danforth's *The Cry of Sodom Inquired Into*, contains an overt discussion of punishment and equity. However, Danforth posits the source of equity and punitive judgment not in the law, or in the hands of magistrates or juries, but with God himself. In discussing Benjamin Goad's execution for bestiality, Danforth argues for the justice in Goad's execution as a divine response to an accumulated record of sin. He writes, "Consider the *Equity* of Gods severe Dispensation

towards this vile *Youth*. The Lord hath proceeded slowly and leisurely, and hath endured this wicked *Youth* with much long-suffering, until his sin grew to this prodigious height, and cried for Vengeance” (Danforth 8). Danforth recounts the various sins Goad allegedly committed on his way to his ultimate downfall, bugging a horse. These included “Lying, Stealing, Sabbath breaking” as well as “Sloth and Idleness,” self-pollution and running away from his master. God’s justice contains mercy, patience, multiple chances, and attempt to provide reformation. It was Goad’s recalcitrance to reform, not simply the sin of buggery, that justified his execution. And, according to Danforth, Goad’s executioner was God himself.

While it is easy to see that putting God in the role of the condemner and executioner is a clear appeal to ultimate authority and serves to distance the magistrates and executioners from the act of killing Goad, Danforth’s argument for God’s equity appeals to the equation of punishment to crime. The variables he cites for the severity of Goad’s punishment include recidivism, other harmful acts that bring tangible harm to society (lying and stealing), incorrigibility, as well as religious beliefs and scriptural support for punishing bestiality with execution. Danforth argues that God’s wrath threatens to punish the entire community if they fail to execute Goad, so the community is incentivized to see the punishment as equal to the crime to avoid punishment themselves.

### **Equity and Race: Joseph Hanno**

Though almost all execution sermons addressed the crime to punishment equation to some degree, Cotton Mather became an expert at presenting such arguments in sermons and other writings from the late seventeenth century until his death in 1728.

Mather inserted himself into discussions of punishment equity with surprising alacrity and resourcefulness, though even his skill could not conceal some of the contradictions that inevitably arose in trying to justify punishment.

Take, for instance, *Tremenda*, a sermon published in 1721 whose title page proclaims it was “Delivered unto a Great Assembly, in which was present, a Miserable African, just going to be executed for a most Inhumane and Uncommon Murder.” The subject of the address was Joseph Hanno, a black man convicted for murdering his wife.<sup>69</sup> However, according to Mather, Hanno’s downfall was not only murder, but also hubris. The overarching device Mather uses to move his argument forward is a “dreadful sound,” an auditory metaphor to describe God’s outrage with sin. Of Hanno, Mather writes, “It adds doleful Murmurs to the *Dreadful Sound*, That this Wretched *Ethiopian* has been so distinguished from the most of his Complexion; and been admitted into such *Distinguishing Privileges*” (Mather 23). What were the privileges Hanno undeservedly acquired? They were simply literacy and freedom: “He was favoured with a Religious Education, which Enabled him to Read the *Oracles* of God, and learn the *Principles* of Christianity; and then had an Emancipation into a *Liberty*, which he has been too unthankful for” (10).

Gifted as Hanno was with the rights and privileges of most white men in Massachusetts, Mather indicts him for failing in his obligations to his race. As a literate and religiously instructed African American, Hanno should have been “a Pattern of all Goodness unto other *Ethiopians*” (10). In condemning Hanno, Mather equates his physical and moral blackness, writing “to prove so Doubly and so Deeply *Black* a

Character; Oh! How *Many* and how severe *Stripes*, in the Infernal Prison must such a One be worthy of! *Ungrateful Wretch!* What are thou worthy of?”(10).

Even as he condemns Hanno to death for murder, Mather quantifies his other transgressions in measurements of punishment and pain – stripes. The increment of the whip strike here resembles a form of currency, something one of “worthy of” if he or she sins severely enough. Hanno owed a service to others of his complexion, but failed to fulfill that service. The awareness he likely gained from literacy contained expectations from the white majority to be a steward to other African Americans, a responsibility Hanno may or may not have been aware of, asked for, or wanted to provide. In aspiring to be more than he was, he became, in Mather’s eyes, worse than uneducated blacks.

One of the ways gallows publications justified punishment and turned pain currency into community value was to exhort members of the community resembling the condemned to avoid his or her mistakes. This was the case with Hanno, though Mather emphasizes his hubris over his murder. A page after referring to Hanno as “the Black Thing,” the minister addresses other blacks in the community, imploring them not to desire freedom. He writes,

The *Ethiopian*, and Other *Slaves*<sup>70</sup> among us, may hear a *Dreadful Sound* in the Fate of their Unhappy Brother here before them; and they are to take warning from it. There is a *Fondness* for *Freedom* in many of you, who live Comfortably in a very easy *Servitude*; wherein you are not so *Well-advised* as you should be. If you were *Free*, many of you would not Live near so well as you do. Be your *Servitude* never so hard, yet *Patience* will be you duty under it, while GOD shall order it for you...you have no

*Cares upon you, but only Come when you are called and Do what you are bidden* (Mather 27).

A conversion narrative published along with *Tremenda* contains a few lines of dialogue allegedly from Joseph Hanno himself that support not only the propriety of his execution, but also demonstrate the hubristic attitude Mather finds so inappropriate for a black man. Hanno claims, “Yes, Sir, I have a Great deal of Knowledge. No body of my Colour, in Old England Or New, has so much.” Mather replies, “I wish you were less *Puffed up* with it” (38). Hanno’s knowledge, beyond what he could deserve or expect, became a liability for him; he became at once like and unlike his white audience. He was able to read, but not able to overcome the base desire to kill his wife. He was able to follow religious principles, but unable to become a positive influence on other African and African American people in his community. He was free, but ungrateful. He was a paradigm for wasted investment in black education or equality in the community. Instead, he stood as double warning against the inherent dangers of black violence and the perfidiousness that accompanied black education. He was at once like the white audience and unlike them; in approaching their level of understanding and participating in white culture (freedom, literacy, religious self-study), he stood as an example to all, but ultimately the mark of his unalterable difference, his blackness, encouraged Mather to reinforce the propriety of slavery and servitude for African men and women in his sermon.

### **Equity and Jurisdiction: Native Americans and the Law**

A tract Mather published in 1705 entitled *The Hatchet to Hew Down the Tree of Sin* and Samuel Danforth’s 1709 execution sermon, *The Woful Effects of Drunkenness*,



both demonstrate the difficulty provincial authorities faced extending the logic of punishment and their English models of fairness and equity to the Native American people they wished to include under the law. As Edgar McManus notes, “the most dangerous group of all from the standpoint of public safety were the native American Indians whose lands the settlers occupied” (McManus 123). McManus goes on to say that colonial law and custom attempted to both offer some level of fairness in dealing with Native Americans and simultaneously presented settlers another means for exploitation. To make jurisdiction more confusing, some tribes were at times self-governing, only liable for crimes against whites, while others fell under the “protection” of colonial laws.

Mather’s tract outlines each capital law and other common transgressions and states their corresponding punishment. The laws are printed first in English, then in Algonquin. The full title proclaims both the moral and practical ends of the tract: “The Hatchets to hew down the Tree of Sin, which bears the Fruit of Death. Or, The Law, by which the Magistrates are to punish Offenses, among the *Indians*, as well as among the *English*.” It is difficult to discern which native people he envisioned in his audience. Those Indians who were taught to read became literate in English, not in their native tongues translated in to printed, phonetic language. Perhaps the tract was intended to be read to native people by literate Indians or English. Just as likely, however, is that the tract expressed an extension of jurisdiction, declaring the law’s sovereignty over Native people and giving the appearance of equity. Were readers supposed to view the translation of these laws as a vehicle for making native people aware of their status under the law?

Even if we assume that the translated portions are intended to allow literate people to read the laws aloud to Native Americans in their own language, problems of cultural translation remain. For example, the first crime and law Mather lists is for blasphemy:

I. If any Man willfully Blaspheme the Holy Name of God; Father, Son, or Holy Ghost; of deny or reproach the true God, His Creation or Government of the World; or Deny, or Reproach the Holy Word of God, in the Old or New Testament:

The Magistrate may Either Imprison him, (not more than Six Months,) until he find Sureties for the Good Behavior; Or he may set him in the Pillory, or Scourge him, or bore him thro' the Tongue with a Red Hot Iron; or set him on the Gallows with a Rope about his Neck. It must be done, at the Discretion of the Court of Assize (Mather 2).

This is followed by:

I. Howan wekontamoe Blasphemuaont (asuh kehkomaui)  
wunneetupanatamwe oowesuonk God, Wutooshimau, Wunnaumoniin,  
asuh Wunneetupanatamwe Nashauanit, asuh Howan kohkonnoowau asuh  
kehkomaui wunnamuhkutee God, Ukkeztauonk asuh  
oowunnaawunnumooonk Muttaok; asuh howan kohkonnoowau asuh  
kehkomaui wunnetupanatamwe wuttinnoowaonk God ut nukkone kah  
wusku Testament.

Nananawaen woh asuh ukkuppishagkinouh (matta moochke onk netqutta  
tahsuoh nepausoh) no pajeh namehteau Quoshomunishuaeninuoh wutche

wunneniyuonk; asuh woh upponamouh ut Pillory; asuh woh wuttattagkomouh; asuh poahkussohham weenan weeche nashpunnae (asuh chikohtagkee) missechuog; asuh woh upponamouh kehchequabenittimuk weeche pemeneahtinash ut uppuhkukqut. Yeu mos asemuk, nashpe kehcheiyue wussittumwaenuh.

The colonializing value of extending this law over Native Americans is clear, as it effectively outlaws practicing native religions. The equation between crime and punishment can also be easily discerned. Blasphemy was a heinous crime worthy of significant physical pain and humiliation, but by this time in the early 18<sup>th</sup> century, no longer valued so highly as to call for the transgressor's life. Though by this time their goals of creating God's nation on earth had largely subsided, ideological unity was a primary aim of the colony's founders and lawmakers believed denizens of the colony must acknowledge the dominance of the colonial hegemony via protecting their religion from insult or opposition. Yet, did non-English speaking Native Americans understand Christian beliefs sufficiently to make the culpable for offending "the Holy Word of God in the Old or New Testament?" And while there were churches who delivered services to Indians in their own language, it is difficult to imagine what Native person would understand the tenets of Christianity, encounter this law in a format he or she would understand, blaspheme in their own language, be caught or turned in to colonial authority by someone who understood their language, tried and punished. Even if they did understand the law in its ideological context, how would someone be caught and punished for blaspheming Christianity in a native tongue?

It seems most likely, then, that the Algonquin translations served mostly to bolster the appearance of equity in an instance of dubious jurisdiction. Jurisdiction literally means to “speak the law,” so for a law to be in effect it must be declared so. This European concept has been most commonly observed in the Spanish practice of reading the Requirimiento, a prepared statement extending Spanish sovereignty over Native lands pronounced prior to conquest. It is essential to a concept of justice that those governed by the law must be aware of the terms as part of the social contract. In printed the laws in Algonquin, Mather attempts to establish the justice of colonial jurisdiction over Native subjects by making the law appear accessible to them. Yet the tract takes no time underscoring the justification of colonial jurisdiction, translating the meaning of English cultural habits, language taboos, or religious ideology. It merely creates the appearance of equity, claiming moral jurisdiction in religious terms for government laws, crimes, and punishments.

Indeed, Mather concludes by stating his intended purpose in publishing these laws: “O Indians, Now you know the Laws, beware of Transgressing them. And, if Sin be thus Punished by the Magistrate, Consider what a terrible and Eternal Punishment, you will bring upon your selves from the hand of the Infinite GOD, if you sin against Him” (14). If we return to examining the colonizing value of this tract, we see that Mather creates a sense of equity. It is, after all, “The Law, by which the Magistrates are to punish Offenses, among the *Indians*, as well as among the *English*.” The impression is that the law drew no distinction between Native Americans and English, though the very tract itself contradicts that equation. This was untrue, as there were laws against certain kinds

of commerce with Native Americans, particular the trade in alcohol and laws that prevented them from owning guns or horses.

Of all 219 legal executions in New England before 1800, whites constituted 161, while thirty of those executed were of African ancestry (most commonly designated “negro” in the records), and twenty-eight were Native Americans.<sup>71</sup> While almost all of those who died on the gallows were convicted of murder, the number of whites executed includes several instances of multiple executions for piracy and witchcraft. For example, in 1723 twenty-six of the forty eight man crew of the pirate ship *Ranger* all perished on gallows specially constructed for them in Newport, Rhode Island. Their pirate flag flew overhead and their bodies were thrown into a mass grave.<sup>72</sup> Convictions for blasphemy among whites were rare and so it seems unlikely many Native Americans were punished for blaspheming against a Christian God in Indian languages. Mather listed that crime first to place God in his rightful place above the laws governing interactions between people. He lists swearing second, and, unsurprisingly, lists drunkenness third before murder, assault, rape, incest, buggery, or robbery. Colonial authority viewed drunkenness as a particularly troublesome problem among Native Americans, who they already viewed as unpredictable and uncivilized. The law included penalties for both the intoxicated person and anyone providing alcohol to Native people. It reads:

III. If any Man be Drunk; THE Magistrate must Fine him Five Shillings, to the use of the poor of the Town: Or, Set him in the Stocks; (Not more than Three Hours.)

If that Man be Drunk again; the Magistrate must punish him after the manner over again; and also make him lie in Gaol, till he find Sureties

bound in Ten Pounds, for the Mans good Behavior. Or scourge him, not more than Ten Stripes.

And if an Indian have any Strong Drink in his custody, (except Cyder made of the Fruit of their own growth) the Drink shall be seized for the poor of the Town. And the Indian examined before a Justice. And the Englishman that sells the Strong Drink to the Indian, shall be Fined Forty Shillings for every Pint (4).

Forty shillings constituted a substantial fine, but the lack of a corresponding corporal punishment means that those convicted of selling alcohol to Native Americans were expected to be able to pay. Intoxicated second offenders, however, were likely lower class and unlikely to be able to produce the four pound fine or ten pound security necessary to get them out of jail. No one wanted to continually pay to keep a drunk in jail and the corresponding one pound to one stripe equation allowed for the convicted drunkard to pay in pain instead of silver; three humiliating hours in the stocks earned the equivalent punishment of a five shillings fine.

A murderer and an execution presented the community with several economic equations to work out. Unlike laws against blasphemy, alcohol, or fornication, the crime to punishment equation for murder was an easy connection for anyone in the community to understand – if you kill, you will be killed. For printers and booksellers, executions offered an opportunity to make money selling broadsides featuring poems, last speeches, or criminal narratives. Some printers profited from printing execution sermons. In the second half of the eighteenth century, some industrious printers began interviewing condemned prisoners themselves. Printers were often believed to be the authors of

gallows poetry and some dubious criminal narratives. For them, executions were events tied to the everyday economic concerns of their trade.

Ministers and colonial authority invested more in an execution than the writing they produced to communicate the significance of the execution to the public. A man or woman executed for murder created an event that focused public attention on morality, crime, safety, and death. Gallows publications highlighted not only murder, but all sins leading up to that fatal act. This was rhetorically advantageous as it allowed a wider discussion of morality, further justified the execution, and, in cases in which the crime or condemned criminal corresponded with a particular social concern, allowed authorities an opportunity to further emphasize that crime. It seems Native American murderers who made their way into gallows publications always committed the crime while drunk and the literature surrounding their executions nearly always focused on drunkenness as much if not more than murder. Concerns about infanticide and correspondingly harsh laws introduced in the early eighteenth century caused a preponderance of gallows publications occasioned by the executions of women to highlight this crime.

Samuel Danforth's 1709 sermon, *The Woful Effects of Drunkenness*, demonstrates how an execution sermon for one crime, usually murder, could focus on a different social issue in order to target a particular audience or rail against a more ubiquitous transgression. Danforth was the son of Samuel Danforth who wrote *The Cry of Sodom Inquired Into* in 1674, a sermon who generalized from its subject's crime of buggery to "uncleanness" in order to address an array of sexual crimes and sins. Like his father, the younger Danforth felt it expedient to broaden the scope of his exhortation from the crime that precipitated the execution. In his sermon, murder becomes one of many "woful

effects of drunkenness.” The very title page of the printed sermon emphasizes drunkenness more than murder. In addition to the title, which fails to even mention killing, the subscript reads: A Sermon Preached at Bristol, Octob. 12, 1709 when Two Indians, Josias and Joseph, were Executed for Murder Occasioned By the Drunkenness both of the Murthering and Murthered Parties” (Danforth). In a preface dedicated “To the Honourable Commissioners, for the Gospelling the Indians in America,” Danforth recounts the history of the religious education both condemned men received, both before committing murder and while awaiting their trials and executions in prison. He closes with the wish “that there may be a remarkable Divine Blessing attending your Indefatigable Cares and Endeavors, to bring the Indians to the knowledge and practice of the Christian Religion, and the Reforming them from all manner of Vice and Profaneness” (A4).

Indian subjects of execution sermons always prompted ministers to address drunkenness, though nearly all Indians were guilty of murder. Part of the value of executing a Native American person was the chance to address drunkenness in the community, in the tribes, and to reiterate bans of selling or trading alcohol with native people. Expedient as this may have seemed, it’s remarkable that gallows publications continued to assume the burden of rationalizing the equity of a punishment. Part of the burden of execution sermons was to prove that the accused understood and willfully rejected proper spiritual and moral instruction. This was important enough when the subject was a lower class or black, but gallows publications printed in relation to the execution of Native Americans took extra care to establish this important ground for punishment. If these claims were taken at face value, it would seem that educating a



Native American person, or introducing her to Christianity, may have actually increased the likelihood she became a criminal. Despite some biographical details taken from criminals that show the reality of their lives – mostly servitude, poverty, desperation, mental health issues and sometimes military service – gallows publications would have readers believe that criminals enjoyed high literacy rates, even Native Americans.

Logic demands we approach these claims with some doubt and consider alternative motivations for this recurrent narrative. As mentioned above, jurisdiction over Indian subjects was often unclear and could be dangerous. Such a mistake in assuming jurisdiction over Native Americans was a significant catalyst in the start of the King Philip's War. Establishing the educational background of a Native American malefactor not only justified his or her punishment, but also established his assimilation into English culture, further supporting the propriety of the execution and logic of jurisdiction.

Another motivation for establishing a Native person's level of acculturation and education was to make the message applicable to English audiences. Ministers in particular tried to cast a broad net, showing how the message applied to the entire community, even as they targeting individual groups. Drunkenness may have been considered a particularly severe problem among Native Americans, but it also reared its bleary head among colonists, particularly in lower or servant classes. An Indian criminal who received proper moral instruction rejected the same instruction as an English Christian; both knowingly transgressed the same God, the same commandments, the same standards of community standards. The minister's or writer's task was to establish what made the subject a special case and target a particular audience (Indians/alcohol,

women/infanticide, servants/disobedience) and show how the moral instruction applied to everyone in the community.

### **Joseph Quasson: Indian and Everyman**

Joseph Quasson was just such a literate, educated, Christian Indian. Quasson died in York, Maine in 1726 for murdering John Peter, also a Native American man. Both men were soldiers as well. Following an argument, Quasson placed a gun between Peter's legs and pulled the trigger. Peter died from the wounds several days later. Reverend Samuel Moody compiled a narrative of Quasson's life and downfall, "Summary Account of the Life and Death of Joseph Quasson, Indian." The account addresses both Quasson's Christian upbringing and the role of drunkenness in the commission of his crime. An equation lies at the outset of Quasson's sad story, one that explains both his class and the source of his education. He recalls, "I lived with my Parents six years. When my Father died five Pounds in debt to Mr. Samuel Sturges of Yarmouth I was bound out to him by my Mother on that account" (Moody 2). Quasson revealed that his indenture to Mr. Sturges was equal to five pounds of his father's debt. While the intent of this information was to emphasize Quasson's moral Christian upbringing, it more poignantly reveals his poverty and low class status.

Quasson addresses his Christian education and his drunkenness back to back. After entering his master's home he "was, as soon as possible, instructed in Reading and in my Catechism" (2). He also recalls his moral state while under his master's family's tutelage, stating, "I had then a great Fear of Sin. I thought it was a dreadful Thing to tell a willful Lye, and I don't remember that I then allowed myself any external Way of Wickedness, such as Lying, Swearing, Stealing, &c, which was from the Restraints of

God upon me” (2). Restraint was a key concept that appears again and again in gallows publications. It was the belief that God helped sinners avoid sin so long as they earnestly tried to follow His laws and seek Him. Quasson shows that he not only understood this concept, but even internalized it to the point of believing it worked to prevent him from transgression. Despite being an Indian, he understood and could explain this tenet of religious belief.

After concluding his narrative of his religious education, Quasson turns to the start of his criminal career, observing, “I never drank to excess, till I (was) eighteen years old, when I was once overtaken, but I had not got an Habit of it, till my Time was out with my Master” (3). Things went downhill for Quasson from there. He claimed he sold his clothes and possessions to buy alcohol. A sign of his degradation was his move from the English meeting to the Indian meeting. He states, “when I had brought myself into a poor and ragged condition, I left the English meeting through shame, where I always used to appear well-clothed; I went to the Indian Meeting (where I understood nothing) only to save my Fine” (4). Drunkenness reversed the processes civilizing Quasson, returning him to his “native” condition. In this state he is clearly both Indian and Christian, a warning against Native drunkenness and a fallen everyman whose death stood as a warning to the entire community.

While in prison, Quasson returned to his religious studies for a time, found himself sidetracked by another prisoner who offered him alcohol and derailed his sobriety, and ultimately found spiritual rejuvenation. The narrative goes into detail about the rise and fall of his conversion. Moody quotes his last words on the gallows as, “I would have you all take Warning by me, I am come here to die a shameful Death; and I

acknowledge the Justice of God in it, 'tis Drunkenness that has brought me to it. I would have you all leave off your Drunkenness; for if you don't leave it off, it will certainly bring you to some dreadful End" (25). If Moody's account is to be believed, Quasson delivered these words before a massive audience. Moody describes the scene, writing, "The Gallows was fixed in a Valley, with Hills on one side, and on the other, so that the numerous Spectators (they were by Conjecture about three Thousand: there having been no such Example in the country for more than seventy years) had an advantageous Prospect" (25).

Considering the rarity of execution events, and the sizes of the crowds they attracted, leads us to understand the final and most important aspect of social capital invested in public executions – the opportunity to instruct many people at once with a memorable example. For the spiritual leaders and authorities in the community, this meant the opportunity to convert many people by using the execution to spread the salvation message. Gallows writing, particularly conversion narratives like Quasson's, capitalize on spectacle to offer readers detailed examples of grace, conversion, and salvation. Quasson played his role as penitent sinner well. Moody notes, "he prayed so freely, so distinctly, & so pertinently, that it was to the Admiration of the Wisest and Best" (25). Moody notes that his prayer was written down and he summarizes it for the readers before listing three pages of specific lessons reader should draw from Quasson's story.

### **Esther Rodgers: Spiritual Investment**

As we saw in Joseph Quasson's case, ministers and writers about crime invested their efforts and words in converting criminals and putting their conversion on display

before the community. It is likely that cooperative convicts appeared in print more frequently than those who rejected those efforts, though, as we will see in the case of William Fly, notably incorrigible sinners were sometimes noteworthy for the obstinacy. Cooperative criminals sometimes produced significant bodies of writing and drew attention. Their conversions were presented enthusiastically, the community was encouraged to identify with and feel compassion for them, and they became doubly examples – punished for their sin, held up for their faith. While nearly all criminals appearing in gallows publications, those who went through convincing spiritual awakenings, such as Joseph Quasson and Esther Rodgers, prompted ministers to devote more time outlining conversion than crime. The message was clear – if this sinner, so lost as she committed a capital crime and sealed her own death, can find salvation, so can anyone in the community. Esther Rodgers, a servant girl hanged for infanticide in 1701, was a poignant example, even appearing as a paradigm of penitent sinner in later crime publications.

Eight months before her execution day in July, 1701, Rodgers absconded from her master's house in Newbury, Massachusetts and set out on foot to deliver and dispose of her baby. She conceived the child months earlier from a sexual rendezvous with a black servant in the same household. This was not Esther's first infanticide; only two years earlier she had secretly suffocated and buried a child, also the product of a sexual relationship with a black servant. In "The Declaration and Confession of Esther Rodgers," a conversion narrative published after her execution and appended to three sermons by John Rogers, she recounts her second ordeal with little detail, stating simply, "I went forth to be delivered in the Field, and dropping my Child by the side of a little

Pond (whether alive, or still Born I cannot tell) I covered it over with Dirt and Snow, and speedily returned home again” (Rogers 124). This understated description of the crime that would condemn Rodgers to die steps quickly over what her true suffering must have been. Childbirth is not a quick, painless process. A young woman, around twenty years old, alone, in a field, in winter, delivering a baby she will abandon for dead, concealing it beneath snow and dirt, is nothing if not a scene of deep desperation. Her situation only worsened when she returned home. Those in her master’s house must have been aware she was pregnant and began to suspect her deed. They accused and examined her. If she slept that night, it could not prepare her for the following day. She recounts, “The Child being found by some Neighbours was brought in, & laid before my Face, to my horrible Shame and Terror” (125). After viewing her dead child, she was arrested and confined to Newbury jail for a month before being moved to the prison at Ipswich.

Contrast this scene of solitary suffering and terror with Rodger’s execution day. It’s conceivable that Esther Rodgers could have felt as alone and afraid on the gallows as she did next to the pond. However, according to Rogers, the Ipswich minister who attended Esther in prison, she died triumphantly, a woman transformed by the mercy of God. Here is his description of her death:

“The manner of her Entertaining DEATH, was even astonishing to a Multitude of Spectators, (being as was judged Four or Five Thousand People at least) with that Composure of Spirit, Cheerfulness of Countenance, pleasantness of Speech, and a sort of Complaisantness in Carriage towards the Ministers who were assistant to her, with their Prayers and Counsils, that even melted the hearts of all that were within seeing or hearing, into Tears of affection, with the greatest wonder and admiration” (137).

Far from alone, Esther died demonstrating the power and mercy of God in front of a sympathetic audience. Rogers and other ministers attended her during her eight months in prison, brought her to understand the enormity of her sin, and convinced her that, if she repented and believed, even she could attain a glorious afterlife with Christ in Heaven. As she bravely mounted the gallows, her words and actions worked together to show the strength of Christ's healing power, prove the propriety the ministers' efforts, and conquer the terror of execution. In his introduction to Esther Rodger's conversion narrative, Rev. Samuel Belcher calls her execution, "a Tragick Scene, strangely changed into a Theater of Mercy, a Pillar of Salt transformed into a Monument of Free Grace." Eight months after committing infanticide for the second time, Esther Rodgers met her punishment a double model for the community, a testament to both the destructive power of sin and to God's power and mercy.

Rodgers gave the ministers and authorities a sound turn on their investment. She supported the equity of punishment to the point of accepting the propriety of her own death. The hours spent converting her and ministering to her in prison, added to the hours apprehending, trying, maintaining her in prison, and staging a public execution were repaid by how fully she assumed the role of a penitent sinner and became a model for the community. Those invested in gallows publications in the first half of the eighteenth century could ask for nothing more than what Rodgers gave them.

Of course, she was also a woman being tried for a woman's crime. Increasing severity in infanticide laws and the continual printing of gallows publications arising from infanticide cases demonstrates the public concern with the crime at the time. As Peter C. Hoffer and N.E.H. Hull have shown, this paranoia about infanticide was most

likely imported from England after the Dominion of New England in the late seventeenth century.<sup>73</sup> However, the majority of investment and publicity surrounding her remained focused on her conversion and communicating her salvation to the wider audience.

### **Challenging Identity Value: William Fly**

The value of a prisoner's conversion was so tied up in the economics of the execution ritual that convicted criminals who failed to play their roles as penitent converts produced surprising community reactions. Many criminals seem to have either played along with their expected role as penitent sinners or were at least noncommittal enough toward efforts to convert them that ministers and gallows literature publishers could at least offer some hope for the eternal states of their souls. For the condemned, cooperation meant attention, perhaps better conditions in jail, hope that they would actually reach heaven and find peace with God, and the opportunity to die at least partially forgiven and reintegrated into the community. Rarely did a condemned man or woman outright refuse to participate in his or her conversion or react hostilely toward those investing their time and effort into the conversion process. Pirate William Fly did resist such efforts, even to the face of the indefatigable criminal converter and writer, Cotton Mather. The resultant narrative and community reaction demonstrates the social value authorities invested in a criminal, their expectations for a return on that value, and the role of the conversion script in determining the equity of execution.

In July, 1726, Fly, along with three other pirates, awaited execution for the murders of their former captain and first mate. Fly, along with fellow condemned pirates Samuel Cole and Henry Greenville, mutinied on board the slave ship they worked on and brutally murdered the captain, John Green. The pirates denied their captain his request for



a final prayer and even chopped his hand off when he tried to grab a railing as they threw him overboard. The pirates then changed the name of their ship to “Fames Revenge” and committed several acts of piracy along the eastern seaboard until eventually getting captured in New England. The conditions on slave ship were atrocious, not only for their unfortunate human cargo, but for the men who worked the ship as well.<sup>74</sup> Fly, the boatswain, resented his harsh treatment aboard the ship and cited that as his reason for mutiny. Up until his unrepentant end he repeated this claim, and Mather even echoed it in his sermon, warning ship masters to use their men well.

Cotton Mather visited the pirates in prison twice and tried repeatedly to lead Fly to repentance, but the obstinate criminal could not be swayed. Both conferences and an execution account were published together with a sermon entitled “A Vial Poured Out Upon the Sea.” Though the minister bombarded him with logic, damnation, and Christ’s mercy, Fly maintained his innocence and refused to forgive his accuser. His cellmates and co-conspirators became so disgusted that they requested relocation to another room. Still, Fly refused to give in.

When Mather attempted to get the pirates to admit to their crimes, Fly refused, claiming that as he was not the person who physically murdered anyone, he was not guilty. Astonished, Mather addressed him, “*Fly*, I am astonished at your stupidity. I cannot understand you. I am sure, you don’t understand yourself. I shall be better able, another time to reason with you.” Fly replied, “It is very strange another should know more of me, than I do of myself. There are False Oathes taken against me” (Mather 9). When Mather exhorted the pirates to forgive the man who turned them in, Fly refused: “There is one Man, that I don’t, and I can’t wish well to! It is a Vain thing to ly, if I

should say, that I forgive that man, and that I wish him well, I should ly against my Conscience and add sin to sin” (15-16). Pressed further to forgive, the pirate remained intractable, repeating, “But for all that, I cannot Forgive that Man. God Almighty Revenge me on him! ‘Tis a Vain thing – I won’t dy with a Lye in my mouth” (16). At the conclusion of the first conference, Mather left the pirates with “several books of Piety” including “The Converted Sinner,” a sermon written for other condemned pirates. Fly exclaimed, “I read that book before ever I was brought hither!”(17).

The second conference a few days later played out much the same way. Mather insisted the pirates forgive their accusers and repent and Fly obstinately refused. At the outset of their conference, Mather addressed Fly, saying “And now, *Fly*; I hope, you are come to a Better Frame, than what I lately left you in” to which Fly tersely responded, “I am where I was.” Mather eventually gave up and decided to “pass from this (forgiveness) to another matter” and asked if Fly now felt guilt for the murders. Fly’s reply is telling. He said, “I can’t Charge myself – I shan’t own myself Guilty of any Murder – Our Captain and his Mate used by Barbarously. We poor Men can’t have Justice done us. There is nothing said to our Commanders, let them never so much abuse us, and use is like Dogs” (21). When the other pirates became tired of Fly’s arguing and incorrigibility, Mather address them separately, but not before Mather delivered this final warning: “Miserable Man, you know the Word of God, That no Murderer has Eternal Life. And Murders cannot be *pardoned*, if they be not Confessed, Bewailed, and Repented of. We can do no more, but with *Tears* (which, alas, you have not for yourself!) Lament the unaccountable and unparalleled *Obduration* that you are given up unto; and Beseech you

to Consider your ways” (22). Then, turning his attention to the other pirates, Mather merely asked Fly to listen to his instructions.

On Tuesday, July 12, three days after Mather’s visit, William Fly “pass’d along to the place of execution” in apparent good spirits. He even placed the noose about his own neck. Fly’s last words were a warning to “masters of vessels to carry it well to their men.” He refused to forgive his accuser and refused prayer. Yet, Mather notes, that “in the midst of all his affected Bravery, a very sensible trembling attended him.” Mather’s last words concerning William Fly read: “Then the Execution was finished; And *Fly’s* carcase hanged in Chains, on an Island, at the Entrance into *Boston-Harbour*” (49).

Only the obstinate Fly suffered the ignominy of having his corpse desecrated after his death. In the economics of execution, this was the price for nonconformity. The conversion narrative and the spectacle of a penitent sinner upon the gallows was valued very highly, not only for the power of the spectacle or the importance of the message, but also because executions were rare and drew large crowds. One who snubbed authorities, such as Fly, posed a challenge to the system and a disruption to the ritual. He denied the ritual the value invested in him by the justice system and the ministers who attended his needs in prison and he denied the community the cathartic experience of both purging the community of a transgressor and the opportunity to forgive him.

The response – desecrating Fly’s corpse – reinstates a different value in the execution ritual. Pragmatically, his body served as a beacon to would-be pirates, a sign to steer clear of Boston lest they meet Fly’s fate. On a narrative level, desecrating Fly’s corpse became a warning to others in the community that rejection of community values meant rejection of your very humanity. Fly’s body would have no chance at resurrection;

his corpse's exposure indicated his soul was in hell. Furthermore, his body signaled that nonconformists ended in gruesome violence and rejection. The ongoing spectacle of his decomposition extended the execution ritual over a much longer period of time; a penitent malefactor died quickly with at least the semblance of dignity, but the impenitent man's body was left to rot, its value evident in how callously thrown away he could be, his value in his undignified worthlessness.

### **Conclusion**

This study of early New England gallows publications and the valuations inherent to narratives of crime and punishment merely scratches the surface of what these texts can tell us about the community values that held that society together. Examining the equation that governed all the apologies for crimes printed in sermons, narratives, and other ephemeral texts – *crime x = y pain/suffering* – reveals the multifaceted nature of the criminal justice system. The inclusion of equity as an inherent part aspect of colonial law, along with the communal elements of Puritan religion and the hardships of colonial life, discouraged authorities from enacting laws and unilaterally enforcing them without explanation to the public. High levels of literacy and printing in New England encouraged distribution of narratives explicitly arguing why a particular crime deserved a corresponding punishment and these narratives were most profound, and most likely to appear, when addressing an execution. The importance of the public stands out here. Authorities and religious leaders felt it necessary to the idea of justice that people understood the equity of punishment. While it's easy to look at the lower class, African, or Native American malefactors and see a hegemonic order punishing those they viewed as valueless, the narratives justifying their deaths show us the values of condemned

criminals. While race, gender, and class certainly played roles in how the justice system treated individuals, the dissemination of justifications for executing individuals created value, at least value as a negative example, for the malefactors who died upon the gallows and captured colonial solutions to the equity equation for perpetual analysis.

The corollaries gallows literature attempted to draw between crimes and punishment also speak to the juridical concepts that underscored justice in early New England. The inclusion of equity in the everyday workings of New England's courts created a system geared toward protecting individual rights, even if their concept of those rights discriminated significantly based on class and race. Law avoided arbitrary punishments and, in gallows publications, the community laid the variables of the equity equation out for all to read. Everyone could analyze the facts and decide for themselves if justice had been served. In this sense, we can see how gallows publications, for all their idiosyncrasies, superstitious tendencies, and dubious authorship, played an important part in laying the groundwork for American democracy.

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<sup>1</sup> For more on vernacular legal culture, see Wilf, *Law's Imagined Republic: Popular Politics and Criminal Justice in Revolutionary America*, 193-196

<sup>2</sup> Halttunen, *Murder Most Foul*, Cohen, *Pillars of Salt, Monuments of Grace*, and Bosco, "Early American Gallows Literature: An Annotated Checklist."

<sup>3</sup> Cohen, "An Overview: The Succession of Genres, 1674-1860," *Pillars of Salt, Monuments of Grace*. 3-38

<sup>4</sup> Halttunen, "The Birth of Horror," *Murder Most Foul*, 33-59

<sup>5</sup> Halttunen's "The Murderer as Common Sinner" in *Murder Most Foul*, 7-22.

<sup>6</sup> Ascertaining specific techniques or customs employed by individual executioners in early New England is difficult. Seventeenth century English executioners, such as Gregory Brandon who beheaded Charles I and John Ketch who took Lord Randall's head, published or were the subjects of broadsides and pamphlets. Frantz Schmidt, an early seventeenth century German executioner, kept a journal with detailed descriptions of torture and executions. While it's possible to glean some understanding of the early modern executioner's trade from these texts, the techniques of the executions they carried out, primarily beheading, drawing and quartering, breaking on the wheel and so on, offer little insight into the obscure men who tightened knots in New England.

<sup>7</sup> Buggery often referred to bestiality, but could sometimes also be used to describe crimes usually described as sodomy. A 1697 published set of session law included "An ACT for the Punishment of Buggery" indicates both: "And that every man duly convicted of lying with mankind as he lyeth with a woman. And every man and woman that shall have carnal copulation with any Beast or brute Creature" would be put to death. See *Acts and Laws... 1697*, page 235.

<sup>8</sup> Man stealing referred to kidnapping. Edgar McManus notes the Biblical definition specifically criminalized kidnapping men, not women. The Puritans later specified that it applied to "mankind" to include women. See McManus's "Law and Liberty in Early New England," page 29.

<sup>9</sup> Only the final injunction – "and not eaten" varies from the earliest attempts at codified laws in New England, *The Capitall Laws of New-England, as they stand now in force in the Common-wealth*, printed in England in 1642, and *The Body of Liberties*, which appeared in Boston in 1641. For more on the development of criminal laws, see Nelson *The Common Law in Colonial America* and McManus *Law and Liberty in Early New England*. The belief that bestiality corrupted the animal continued to make the crime a death sentence for the unfortunate animal consorts even after the crime ceased to be a capital offense for people. As late as 1771 the owner of the animal victimized by John Sennet chose to euthanize the creature.

<sup>10</sup> See Nelson, William E. *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825*.

<sup>11</sup> See Davis, Thomas. "The Traditions of Puritan Typology" in *Typology and Early American Literature*.

<sup>12</sup> Samuel Mather was Increase Mather's brother and a minister in Dublin. See Cotton Mather's *Magnalia Christi Americana*, Vol II., 39.

<sup>13</sup> For more on the covenant, see Scott Seay's *Hanging Between Heaven and Hell*, 108-117

<sup>14</sup> Such narratives became common appendixes for execution sermons in the 18<sup>th</sup> century, eventually developing into a unique publication type, conversion narratives. See Cohen, *Pillars of Salt* for the evolution of gallows publications.

<sup>15</sup> Dunton describes the crowd size and structural compromise of the church in *Letters from New England*, page 135.

<sup>16</sup> For more on the variance of gallows publication genres between locations and over time, see Cohen *Pillar of Salt* and Karen Halttunen, *Murder Most Foul*.

<sup>17</sup> Scott Seay offers a more complete discussion of restraining grace in *Hanging Between Heaven and Earth*, 57-59.

<sup>18</sup> Understanding the spectacular and deterrent elements of public execution has been the subject of considerable scholarly attention. Michel Foucault theorizes at length about the phenomenon in *Discipline and Punish*. Cohen and Halttunen pay particular attention to this aspect of the ritual, as does Louis Masur in *Rites of Execution*.

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<sup>19</sup> Antiquated spelling of “mulet,” which is a fine.

<sup>20</sup> For more on cruentation, see Gaskill, “Reporting Murder: Fiction in the Archives in Early Modern England,” 8-9 and McKenzie, “God’s Tribunal: Guilt, Innocence, and Execution in England, 1675–1775,” 134

<sup>21</sup> “A Brief Relation of a MURDER committed by ELIZABETH SHAW.” (New London: 1772).

<sup>22</sup> For more on ordeals and early English forensic methods, see Baker, *An Introduction to English Legal History*, 5

<sup>23</sup> Wakeman’s odd story appears in *Records of the Colony and Plantation of New Haven from 1638 to 1649*, 62-73

<sup>24</sup> Hogg’s story is also from *Records of the Colony and Plantation of New Haven*, 295-296, 378

<sup>25</sup> Middlekauf’s biography of the Mathers, *The Mathers: Three Generations of Puritan Intellectuals, 1596-1728*, discusses Increase Mather’s disposition toward natural philosophy on pages 140-143.

<sup>26</sup> Raynard’s tale appears in a sections called “Apparitions” in Mather’s *Remarkable Providences*, 162-169

<sup>27</sup> Walker and Sharpe’ story, like Raynard’s related from Webster, appears in the same section of Mather’s *Remarkable Providences*, 162-169

<sup>28</sup> For more on Quakerism and early New England law, see Nelson, *The Common Law in Colonial America*, 52-53

<sup>29</sup> *Acts and Laws of His Majesty’s Province of the Massachusetts Bay in New England*. (Boston: S. Kneeland, 1761), p. 88. Note that colonial government ordered printings of session laws periodically. The 1761 printing was a compilation of all previous session law.

<sup>30</sup> John Winthrop reports in his journal the surprising case of William Plaine, a well to do man from Guilford, Connecticut who was executed for blasphemy in 1646. Blasphemy was not Plaine’s primary offence, however; according to Winthrop, Plaine, “had committed sodomy with 2 persons in England, and that he had corrupted a great part of the youth of Guilford by masturbation, which he had committed, and provoked others to the like above 100 times.” Plaine committed blasphemy because when he was “questioned about the lawfulness of such a filthy practice he did insinuate seeds of atheism, questioning whether there were a God etc.”<sup>30</sup> Undoubtedly Plaine’s prolific sexual exploits with adolescents doomed him and blasphemy simply confounded that crime.

<sup>31</sup> For more on the secularization of gallows publications over the course of the eighteenth century, see Cohen’s “In Defense of the Gallows” *Pillars of Salt, Monuments of Grace*, 101-114.

<sup>32</sup> Godbeer writes extensively about the disunion between plaintiff expectations in witchcraft trials and the ground upon which the courts could convict a witch in “Insufficient Grounds of Convictions” in *The Devil’s Dominion: Magic and Religion in Early New England*, 153-178

<sup>33</sup> Karlsen. *The Devil in the Shape of a Woman*, 155-159

<sup>34</sup> I discuss these works from Mather’s perspective in *Wonders of the Invisible World*. Here are the citations to the original texts: Perkins, William. *A discourse of the damned art of witchcraft*. (Cambridge: Cantrel Legge, printer to the Univesity of Cambridge, 1610), Gaule, John. *Select cases of conscience touching witches and witchcrafts*. (London: W. Wilson for Richard Clutterbuck, 1646), and Bernard, Richard. *A guide to grand-iury men*. (London: Felix Kingston for Ed. Blackmore, 1627)

<sup>35</sup> See Mather’s *Cases of Conscience Concerning Evil Spirits*.

<sup>36</sup> Mather, *Wonders of the Invisible World*, 31-38

<sup>37</sup> Mather, *Wonders of the Invisible World*, 36

<sup>38</sup> Ward, Nathaniel. *Body of Liberties*. 1641

<sup>39</sup> “An Abstract of the Laws of New England.” London: 1641. Ward, *Body of Liberties*.

<sup>40</sup> For a genealogy of Massachusetts attempts at codifying law in the seventeenth century, see Botein, *Early American Law and Society :Essay and Materials in Law and American History*, 25-27.

<sup>41</sup> *The Laws and Liberties of Massachusetts :Reprinted from the Unique Copy of the 1648 Edition in the Henry E. Huntington Library*, 5

<sup>42</sup> Leviticus 30:27 - “And if a man or woman have a spirit of divination, or soothsaying in them, they shall die the death. They shall stone them to death, their blood *shall be* upon them,” and Deuteronomy 18:10-11 – “Let none be found among you that maketh his son or his daughter to go through the fire, *or* that useth witchcraft, *or* a regarder of times, or a marker of the flying of fowls, or a sorcerer, Or a charmer, or that counseleth with spirits, or a soothsayer, or that asketh counsel at the dead”

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<sup>43</sup> *The book of the general laws for the people within the jurisdiction of Connecticut, and Acts and Laws of His Majesty's Colony of Rhode Island*, 5

<sup>44</sup> *Act and Laws, Passed by the Great and General Court or Assembly of Their Majesties Province of the Massachusetts-Bay in New England*, 79

<sup>45</sup> *Acts and Laws*, 79

<sup>46</sup> *An Act Exonerating George Burroughs* was one of several attempts to bring closure to the community in the wake of the witch trials. All the condemned witches would not be pardoned until the twentieth century.

<sup>47</sup> See Godbeer, *The Devil's Dominion*, 18.

<sup>48</sup> See Hearn, *Legal Executions in New England, 1623-1960*, 110

<sup>49</sup> It is important to note that breaking on the wheel and other methods of torture killing were carried out in colonial Virginia, despite the relatively low population there. This further emphasizes ideology's influence on the New England model, perhaps even more than resources or demographics.

<sup>50</sup> Middlekauf explores the Mathers interpretations of events in *The Mathers: Three Generations of Puritan Intellectuals*.

<sup>51</sup> For a thorough explication of the Jeremiad form, see Bercovitch, Sacvan. *The American Jeremiad*. Madison: The University of Wisconsin Press, 1978.

<sup>52</sup> For more on Connecticut and the role of the supernatural in crime and punishment, see Godbeer, *The Devil's Dominion*, 164-170, McManus, *Law and Liberty in Early New England*, 151-152 and Karlson, *The Devil in the Shape of a Woman*, 281. Also, Connecticut Court Records, and Mather's *Remarkable Providences*.

<sup>53</sup> See Foucault, "The Spectacle of the Scaffold" in *Discipline and Punish*, 32-36

<sup>54</sup> See McManus, "Laws for Living Saints" in *Law and Liberty in Early New England*, 8-9.

<sup>55</sup> *Ibid* 22,174

<sup>56</sup> See Levi-Strauss, *Structural Anthropology*, 235-236

<sup>57</sup> Cohen, "A Fellowship of Thieves" in *Pillars of Salt, Monuments of Grace*, 117-142 and Wilf, "The Language of Law is a Vulgar Tongue" in *Law's Imagined Republic*, 56-104

<sup>58</sup> Habermas and Warner

<sup>59</sup> See Foucault "The Body of the Condemned," 3-31, and "The Spectacle of the Scaffold," 32-69 in *Discipline and Punish*

<sup>60</sup> These comparisons of crimes and their frequencies are compiled from Hearn, *Legal Executions in New England, 1623-1960*.

<sup>61</sup> See Hoffer and Hull, "Infanticide in New England" in *Murdering Mothers: Infanticide in England and New England 1558-1803*, 62 and McManus, "Unequal Protection Under the Law" in *Law and Liberty in Early New England*, 188-119

<sup>62</sup> Ava Chamberlain's attempts to recover Moses Paul's version of the murder poignantly reveal how gallows publications often followed predetermined narratives and the scholarly risks of taking their relations at face value. See "The Execution of Moses Paul: A Story of Crime and Contact in Eighteenth Century Connecticut." *The New England Quarterly*, Vol. 77, No. 3 (Sep., 2004), pp. 414-450.

<sup>63</sup> Under British law, a witness or accomplice could have their life spared if they admitted involvement and successfully prosecuted an accused felon. If the prosecution failed, the approver would die. Criminals put in this position were referred to as "approvers." See John Baker's work on English legal history.

<sup>64</sup> Lamenting that the burglar must hang, while murder, specifically Ebenezer Richardson's pardon, goes unavenged.

Verse of sixty-four lines; first line: Come, ye spectators, and behold.

Place and date of publication supplied by Bristol. Ascribed to the press of Isaiah Thomas by the Houghton Library.

Text in two columns; relief cut of an execution at head of title.

<sup>65</sup> THE Massachusetts Gazette: AND THE Boston Weekly News-Letter. 1770/01/18

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<sup>66</sup> See Scarry, "Introduction" in *The Body in Pain: The Making and Unmaking of the World*, 3-19

<sup>67</sup> See Baker, *An Introduction to English Legal History*, 91-115 and Nelson, William E. *The Common Law in Colonial America*, 71-72

<sup>68</sup> See McManus, "Legal Due Process" in *Law and Liberty in Early New England*, 98-104

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<sup>69</sup> For more on Hanno and Mather's sermon, see Slotkin, Richard. "Narratives of Negro Crime in New England, 1675-1800." *American Quarterly*, Vol. 25, No. 1 (Mar., 1973) p. 10

<sup>70</sup> Slotkin notes that "other slaves" entailed Native Americans and non-English immigrants.

<sup>71</sup> These figures compiled from Hearn, *Legal Executions in New England, 1623-1960*.

<sup>72</sup> *Ibid.* 117-118

<sup>73</sup> See Hoffer and Hull, "Reform" in *Murdering Mothers: Infanticide in England and New England 1558-1803*, 65-91

<sup>74</sup> See Rediker, Marcus. *The Slave Ship*. New York: Penguin, 2008.