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Else L. Hambleton

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THE WORLD FILL'D WITH A GENERATION OF BASTARDS:
PREGNANT BRIDES AND UNWED MOTHERS
IN SEVENTEENTH-CENTURY MASSACHUSETTS

A Dissertation Presented
by
ELSE K. HAMBLETON

Submitted to the Graduate School of the
University of Massachusetts Amherst in partial
fulfillment of the requirements for the degree of

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September 2000

Department of History
THE WORLD FILL'D WITH A GENERATION OF BASTARDS: 
PREGNANT BRIDES AND UNWED MOTHERS 
IN SEVENTEENTH-CENTURY MASSACHUSETTS

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by

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One of the rewards for writing a dissertation is the opportunity to thank the persons who helped. My committee has been both patient and constructive. They allowed me to work by myself for long periods of time but were ready with acute comments and timely help when needed. Barry Levy, my chairperson, took 400 pages of dissertation and provided me with a masterful overview. His iconoclastic approach to colonial American history made all of the classes I took with him interesting and rewarding and his determination to reinterpret early America through the objective use of primary source documents has been my most formative educational experience.

Joyce Berkman introduced me to women’s history through innumerable courses conducted in the comfort of her living room where I felt secure enough to venture first an opinion, and, in later years a theory. Her ability to both nurture and challenge her students has contributed in a large way to my development as a historian. Margaret Hunt led me through early modern England. I was very aware that the people I was studying, while they lived in Essex County, Massachusetts, thought of themselves as Englishmen and Englishwomen. Margaret’s wry marginal comments made me laugh when I badly needed a good laugh, her pointed questions pushed me beyond the facile analyses I had produced, and she taught me to question my assumptions. Her praise buoyed me.

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ABSTRACT

THE WORLD FILLED WITH A GENERATION OF BASTARDS: PREGNANT BRIDES AND UNWED MOTHERS IN SEVENTEENTH-CENTURY MASSACHUSETTS

SEPTEMBER 2000

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Since the 1940s historians have rewritten theories that positioned Puritans as sexually repressed and repressive. The current assumption, heralded in the foundational works of Morgan (1942), Demos (1970), Flaherty (1971), and Bremer (1976), is that married persons entered enthusiastically into their sexual relationships and that sexual intercourse between single women and single or married men was common. These historians hold that Puritan enthusiasm for marital sexual activity is reflected in sermons and didactic literature and in extramarital sexual activity, as evidenced by the large numbers of persons prosecuted for sexual offenses by the Quarterly Courts of Massachusetts Bay Colony, 1640-1692. Historians have also asserted that Puritans rejected the traditional sexual double standard, even to the extent of punishing men for sexual lapses with greater frequency and severity than women. Neither thesis can withstand close empirical analysis.
I conducted a group study of women prosecuted for fornication or bastardy, and men prosecuted for fornication or named in paternity cases in the Essex County, Massachusetts, Quarterly courts between 1640 and 1692. I analyzed prosecution and conviction rates, sentencing patterns, and socio-economic and attitudinal data.

Puritans brought the impressive machinery of the Quarterly Courts to bear, in the form of fornication prosecutions, against the small number of women who bore illegitimate children and couples whose first child arrived within 32 weeks of marriage. The official language of the courts represented sexual intercourse as "uncleanness," "filthiness," and "incontinence," hardly suggestive of a sexually approbative society. Ministers and magistrates successfully curbed the sexuality of young persons who conformed to the dominant ideology that marriage was the only appropriate venue for sexual intercourse.

The ideological conflation of femininity and chastity placed a heavy burden on the few women who bore illegitimate children. They were punished more severely than their male partners and regarded with contempt by the majority of women who made successful transitions from adolescence to marriage. Couples who married following out-of-wedlock sex faced less opprobrium. Usually husband and wife received the same punishment and were reintegrated into the Puritan community following a series of humiliating shame rituals.
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"WHAT FOR MY AFFLICTED AND ABASED FAMILY": THE REGULATION OF SEXUAL INTERCOURSE BETWEEN UNMARRIED PERSONS IN ESSEX COUNTY, MASSACHUSETTS, 1640-1685

Introduction

When Samuel Jackson's daughter, Hester, was convicted of fornication in 1662 following the birth of her illegitimate child, Jackson took a pragmatic view of her predicament. He understood why the Puritans of Massachusetts Bay Colony had made consensual sexual intercourse outside of marriage a crime: "If such uncleanness be not punishable . . ., sin will abound, sinners be encouraged, and the world fill'd with a generation of bastards which God forbid." Jackson blamed the son of his daughter's employer, Joseph Gilliam, for tempting Hester "to harlot." Jackson's 17-year-old daughter had explained, "He did tempt me often, and at last the Lord left me to the temptation; and so I was undone by him." To Jackson, this was a plausible and sufficient explanation. Hester Jackson was, after all, a daughter of Eve, corruptible, and sexually potent. She and women like her, if not punished for engaging in sexual activity unsanctified by marriage, had the potential to bring about the destruction of all the Puritans sought to achieve in their Biblical Kingdom.

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1Kenneth Silverman, The Life and Times of Cotton Mather, (New York: Columbia University Press, 1985), 308. Cotton Mather's diary entry upon hearing that his scapegrace son, Increase, had been accused of impregnating a Boston prostitute.

2Suffolk County Quarterly Court, #874.
One hundred and four women were convicted of fornication following the births of illegitimate children in Essex County, Massachusetts, between 1640 and 1685. A further 151 women whose first children were born within 32 weeks of their marriages were also convicted of fornication prior to 1685. In this dissertation I will conduct a group study of these women and their male partners to determine Puritan sexual behaviors and attitudes through direct examination of individuals who were prosecuted for sexual offenses. Sexual behaviors are evidenced by the numbers of persons who engaged in extramarital sexual intercourse, where sexual intercourse occurred, whether the sex was consensual or coerced, and the categories of persons most likely to have engaged in illicit sex. Sexual attitudes can be inferred through analysis of the class and gender of prosecuted individuals, the sentencing decisions made by the judges, and comments about sex made in depositions by the prosecuted individuals and other interested persons.

The vast majority of Puritan men and women in seventeenth-century Massachusetts did not engage in sexual intercourse prior to their marriage. Women and men who did knew that an untimely pregnancy would result in criminal prosecutions for engaging in

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3Socio-economic data, occupational status, age data, marriage data, and the date of birth of first child were gathered for an additional 62 women and 29 men who were presented for fornication between 1686 and 1692. Their trial data was not included in this study because the Essex County docket books for 1686 to 1692 no longer exist.
activity characterized by grand juries as "filthiness" and "uncleanness," and the consequent loss of honor and, for women, sexual reputation as well. Female defendants fell into two distinct categories. Two-thirds of them (151) married before the birth of their child. For the purposes of this dissertation, these women and their husbands are designated as premarital fornicators. The remaining one-third (104) of the women, who were single when they were prosecuted for fornication, and their partners, where named, are designated as illegitimate fornicators.

I cannot emphasize too strongly that the persons whose sexual behaviors figure so largely in this thesis constituted a small proportion of the population of seventeenth-century Massachusetts. Extramarital sexual activity was aberrant; it was anti-social behavior that threatened the entire colony. Puritans demanded and got sexual discipline in New England. Between 1645 and 1655, fewer than five couples per 10,000 colonists were prosecuted following the births of their first children within 32 weeks of marriage. The comparative rate of illegitimate prosecutions was less than 6 women per 10,000 colonists. While the number of premarital pregnancies and illegitimate births had increased to 18 and 13 per 10,000 respectively between 1676 and 1685, the out-of-wedlock conception rate remained very low.
An out-of-wedlock conception, if followed by marriage, was a rehabilitative event. Women and men whose first child arrived within 32 weeks of their marriage were ritualistically excommunicated and prosecuted for fornication. After the payment of a significant fine and a humiliating appearance in church wrapped in white sheets, husband and wife were reintegrated into the Puritan community. Nothing illustrates more clearly the emphasis Puritans placed on the formation and maintenance of the family unit than the difference in the treatment meted out by the Essex County Quarterly Court to couples who married after conceiving a child and to individuals who were unable to marry or who chose not to marry following the birth of an illegitimate child. Observation of the sentencing of couples who married yields the conclusion that Puritans were remarkably even-handed when it came to the punishment of sexual offenders. However, when women who bore illegitimate children and their partners are included in an analysis of sentencing patterns, it is clear that the court privileged single men who engaged in sexual intercourse as a possible prelude to marriage over their female partners.

There are observable differences not only in sentencing patterns between the two categories of defendants, but in socio-economic status. Many of the women who married within 32 weeks of the conception of their first child were older and more prosperous than women who bore illegitimate children. Male
defendants were distinguished not by age differentials, but by economic and marital status. If they were poor, indentured, apprenticed, or already married, there was no possibility of marriage, whatever they may have promised their partners before the commencement of intercourse. That the number of couples who married following an unplanned pregnancy was greater by one-third than the cohort that bore illegitimate children may be an indication of a common expectation that men would marry women whom they had made pregnant.  

The average length of time that elapsed between conception and marriage for Essex County couples between 1640 and 1685 was almost six months. Not coincidentally, single women appeared before magistrates to name the father of their baby and to initiate legal action for child support during the fifth or sixth months of their pregnancy. The appearance of the male partner before a magistrate, following a summons, became the catalyst for marriage and a premarital fornication prosecution for both husband and wife. Or, his appearance and subsequent denial of paternity, given sufficient prior status in the community, might mean an end to legal action against him.

One-third (104) of the women prosecuted for fornication were unable to force a marriage to their sexual partner prior to the birth of their children. One of every five of these women

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was 17 years of age or less when she conceived and, given her youth, she was probably not engaged in a courting relationship. A further 28% were younger than 20. Their ages, the fact that 40% were identified specifically in the court records as servants, and that 44% of the men named as the fathers of their children were 27 years of age or older, suggests that what we are seeing here is the vulnerability of female servants to sexual predators.

Women who bore bastards, and their partners, received very different treatment from the church and the court than their peers who married. Bastard-bearers could not be rehabilitated into the Puritan community with a penitent statement and a fine. They were punished more severely than their male partners in almost every instance between 1640 and 1667 even when both were of equivalent class. An amendment to the Massachusetts Bay Colony fornication law in 1668 specifically excluded men from prosecution for fornication in favor of a paternity conviction which required a lesser standard of evidence to convict and ensured taxpayer relief from the support of illegitimate children. Bastard-bearers tended to be younger than women who married before their trials; however, they came from all strata of Puritan society. The punishment meted out to these women, and the disparate treatment their male partners received, is central to a broader and more nuanced understanding of Puritan attitudes about sexuality and gender.
The punishment of sexual offenders was not static; nor did the incidence of prosecutions for sexual offenses remain constant relative to population increases. Changes over time indicate a diminution of Puritan moral intensity and a concomitant decline in support of the new ideology of womanhood Puritans sought to inculcate that conflated femininity and chastity. First, the length of time required for marriage formation after an out-of-wedlock conception increased considerably during the initial and final decades of this study. Between 1650 and 1660, 70% of couples married during the first trimester. In the final decade of the study, 1682-1692, only five percent of couples married in their first trimester. Second, the treatment of women who bore illegitimate children and their partners changed in ways that indicate as more women became pregnant out-of-wedlock, the court-assigned penalties associated with illegitimacy decreased. For women, fines replaced whipping and men escaped prosecution altogether in the final decade of this study.

Statement of the Problem

There is a disconnect between popular belief and scholarly historiography about Puritan sexuality, which started with the publication of Edmund Morgan's 1942 paper, "The Puritans and
Sex." Morgan used textual analyses of New England sermons and sampled depositions presented in trials involving sexual activity to reconstruct the image of Puritans as sophisticated men of the world, "inured to sexual offenses because there were so many of them." Other revisionist historians followed his lead, resulting in the dominant image of Puritans in the recent historical literature as men with twentieth-century sensibilities who combined piety and hard work with hearty sexual appetites epitomized in Francis Bremer's assertion: "The stereotype of the Puritan as having been prudish and condemnatory about sex has no basis in fact."

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5Henry Bamford Parkes, "Morals and Law Enforcement in Colonial New England," in The New England Quarterly, July, 1932, 431-452. Parkes analyzed the court records for selected Massachusetts Bay Colony courts and concluded, correctly, that sexual offenses were rare in the seventeenth-century. However, Parkes believed that the "educated classes seem to have been notably free from immorality," 445, and that criminals were drawn largely from non-Puritan servant classes, 435. Also, Edmund S. Morgan, "The Puritans and Sex," in The New England Quarterly, Volume XV, December 1942.

6Morgan, 595.

Puritan women were non-actors on the revisionist stage, either invisible or mirror images of their male counterparts. When, in the 1980s, the lives of colonial New England women became the subject of historical inquiry, this scholarship was not without its own problems; the focus on women often obscured or led to the vilification of Puritan men. As well, an understandable desire to find evidence of agency in the lives of early American women led some historians to conclude that in cases of sexual misconduct, New England treated men and women equally or punished men more severely than their female partners.

To date no comprehensive study of Puritan sexuality has been based on a group study of male and female fornication defendants that incorporates men and women in a gender analysis, includes recent work on religion and sexuality, and possesses a strong quantitative base. My aim in this dissertation is to

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8Morgan, Thompson.


conduct this much-needed comprehensive survey and use the results to reach some reliable conclusions about the Puritans and sex. There are two related questions, based on the current literature, that I want to address. First, has the centuries-old ideology of the Puritans as sexually repressed and repressive survived because it bears an element of truth or were unmarried Puritans as sexually active as revisionist historians believe? Second, did the Puritans develop a unique and egalitarian legal system in which male sexual offenders were treated with equal or greater severity than their female partners? I will apply recent theoretical frameworks that examine the differential impact of Puritan religious ideology on women and men, as well as current research on religion and sexuality to my analysis of defendants. Both the identification of the types of persons who were prosecuted for fornication and an examination of the role of gender in rates of prosecution and punishment will enable some definitive answers to questions about the extent and character of sexual activity outside of marriage, the socio-economic status of persons who engaged in illicit sexual activity, the attitude of the Puritan community to this sexual activity, and the effect of a fornication prosecution on the futures of those who were prosecuted. This will contribute substantially to the broader debate about the Puritans and sex.
I have a secondary goal for this dissertation. Beyond the quantitative information which forms the basis for my conclusions, I want to use the qualitative data to breathe some life into the women and men who were prosecuted for fornication in the Essex County Quarterly courts between 1640 and 1692. Often their only appearance in the colonial record is the paper trail left by their fornication trials. Richly-detailed depositions were provided by the defendants attesting to the circumstances under which sexual activity had occurred, describing their hopes and expectations, ambitions, and regrets. Midwives, employers, and neighbors also testified in these cases, providing nuanced discussions of sexual issues on an individual level. It is as important to examine the dynamics of individual cases as it is to understand the motivating ideologies or to know on a quantitative level what segment of the Puritan population violated deeply-ingrained societal sexual norms.

The traditional image of Puritans as sexually repressive and repressed is essentially correct, but it is too unidimensional. The amount of extramarital sexual activity, as measured by fornication prosecutions in the Essex County Quarterly Courts, was remarkably small but revisionist historians are correct to argue that Puritans were not inexorably opposed to all expressions of sexuality. Mutually satisfying sexual intercourse was an important component of
Puritan marriages for the laudable reason that sexual activity enhanced marital relationships and for the practical reason that Puritans believed the Biblical admonition to "be fruitful and multiply" could not be met unless both husband and wife reached orgasm. Unfortunately, in their attempt to rehabilitate the image of Puritans as sexually-active individuals, revisionist historians have overstated the amount of fully-consummated heterosexual sexual intercourse among unmarried persons and neglected to consider that the emotional import of extramarital sexual intercourse and the consequences of an unplanned pregnancy were different for women than for men.

The Puritan legal system did contain unique features. Puritans criminalized a broad range of sexual behaviors that impacted men who married their pregnant partners and some men who committed lewd acts. Couples whose first child arrived within 32 weeks of marriage were prosecuted for fornication, husbands and wives usually receiving equivalent punishments. These premarital prosecutions reflected a greater intolerance for sexual activities that went unpunished in other jurisdictions, because in Massachusetts they formed part of a ritual of punishment, redemption, and reintegration central to Covenant Theology. Certain categories of male offenders were

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punished more severely in Massachusetts and Connecticut than in England and the other British North American colonies where an explicit double standard prevailed. When lewd conduct is included in a simple count of prosecutions of men and women for general sexual offenses, the Puritans appear to hold men to a higher standard of accountability, but the features of Puritan fornication law that made it different were mitigated by the religious rationale for its creation and undermined by a gender system that measured female worth by sexual reputation.

Any presumption of gender-neutral prosecution for fornication breaks down when cases involving single women are considered. Single women who bore bastards were punished with greater frequency and severity than their male partners just as they were in England and the other British North American colonies. One hundred and four single women were convicted of fornication in Essex County between 1640 and 1685; only 35 of their male partners were convicted. Puritan religious and gender ideology guaranteed that the consequences of an illegitimate fornication conviction were graver for women in Massachusetts than in other regions.

Religion and Sexuality

In this section I will lay the groundwork for assumptions that underlie my interpretations about Puritan sexuality in succeeding chapters. Massachusetts Bay Colony was settled
between 1630 and 1640 by religious idealists intent on creating a society based on Biblical precepts far from the interference of the established Church of England and the temptations of contemporary English society. It was an ideal site for a social experiment. Its newly-arrived population was isolated, homogeneous, and committed to the religious and social goals of radical Protestantism. Puritans brought to the New World a distinctive religious ideology which had the potential to enhance the institution of marriage and, consequently, married women, because Puritans viewed their relationship with God in marital terms. This potential, however, remained undeveloped because Puritans retained standard early modern English beliefs about gender, accepting the traditional Judaic-Christian interpretation that posited women as the inheritors of Eve's characteristics. The idea that women were innately more prone to sin, in turn, affected the ways in which men and women constructed their religious beliefs and their sexual attitudes.

Puritan Clerical Attitudes to Sexuality

Sexuality and religion were inextricably linked in seventeenth-century Massachusetts. The dominant metaphor used to describe the relationship between Puritans, both male and

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female, and God was erotically charged. It depicted Christ as a bridegroom, the true believer His bride, and stressed the submissiveness due from the bride to his/her bridegroom. The attainment of grace, the goal of all devout Puritans, was described in terms of betrothal to God, and images of marriage permeated all aspects of Puritan religious rhetoric. Edward Taylor, a Congregationalist minister in Westfield, Massachusetts, wrote poetry that was sexual in nature to describe his relationship with God:

Hence, Oh! My Lord, make thou me thine that so I may be bed wherein thy Love shall ly, And be thou mine that thou mayst ever show Thyselfe the bed my love its lodge may spy. Then this shall be the burden of my Song My Well belov'de is mine: I'm his become.

Did this erotic imagery translate to ministerial attitudes about the role of sexual activity within marriage? In 1942 Edmund Morgan cited positive ministerial attitudes toward coitus between married persons. Samuel Willard, the minister of Boston's Old South Church expressed a common Puritan belief when he expressed horror at "that Popish conceit of the Excellency of

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Virginity." Morgan quoted another minister, John Cotton, regarding Puritan views on women:

Women are Creatures without which there is no comfortable Living for man: it is true of them what is wont to be said about Governments, that the bad ones are better than none: They are a sort of blasphemers then who despise and decry them, and call them a necessary Evil, for they are a necessary Good.\footnote{Samuel Willard, quoted in Edmund Morgan, The Puritans and Sex, 592.}

This phrase is clearly misogynistic. Morgan said of Cotton's assertion: "Here is as healthy an attitude as one could hope to find anywhere." Women's value, to Cotton, depended on their potential utility as domestic workers and sexual outlets. Morgan, however, in his generally positive delineation of Puritan sexuality, added two key Puritan caveats: (1) sex must not interfere with religion, and (2) marriage was the only appropriate venue for sexual intercourse.

More recently, Kathleen Verduin offered a useful counterbalance to Morgan's enthusiastic endorsement of clerical attitudes to marital sexuality:

\begin{quote}
[Among the clergy- where such attitudes as may properly be termed "Puritan" are no doubt officially and most articulately expressed- sexuality, sometimes even within marriage, is treated with wariness,
\end{quote}\footnote{Ibid.}
distaste, even horror, as a virtual invitation to damnation.18

Verduin argued that New England ministers linked sexuality with fundamental Puritan fears. Winthrop articulated this belief when he associated Mary Dyer's stillbirth, the product of her marital sexual activity, with her heresy and wrote with relish to his friends of seeing "horns and claws, the scales, etc."19 Witchcraft, which excited the imagination of Puritans throughout the seventeenth century, was associated with sexual congress with Satan. Puritan apocalyptic beliefs, articulated in Covenant theology, were triggered by thoughts of the vengeance God might wreak on a land in which sexual misconduct was left unpunished. The very terms used to describe sexual intercourse, "uncleanness," "filthiness," and "incontinence," illustrate the distaste the Puritans felt for sexual activity. Cotton Mather wrote tantalizingly of "Inexpressible Uncleannesses in the Married State."20 One wishes he had been more explicit as to whether he was referring to specific sexual practices or whether


20Cotton Mather, Warnings from the Dead. Or Solemn Admonitions unto all People, but especially unto Young Persons to Beware of such Evils as would bring them to the Dead, (Boston, 1693), 42.
he was restating the Puritan stricture on excessive marital sexual activity. Edward Taylor, a day after his wife’s death, lamented that some "strange Charm encrampt my Heart with spite/ Making my Love gleam out upon a Toy," to the neglect of God.21 As well, in a meditation of Taylor’s, "Upon the Sweeping Flood," he wrote: "Into those liquid drops that Came/ To drown our Carnall love." Taylor asked, "were th’Heavens sick?" that "they shed/ their Excrements upon our lofty heads."22 Taylor drew an explicit link between sexual intercourse and God’s destruction of everything living on Earth except for the contents of Noah’s Ark. Even if carnal love had been chosen to personify human sinfulness, it is telling that excrement was the representation Taylor chose.23

Marriage provided Puritan men and women with a legal and necessary sexual outlet. Continence was as reprehensible to the Puritans as excessive sexual activity, as the ministerial dismissals of Roman Catholic paeans to abstinence indicate. But that in itself is not a ringing endorsement of marital sexual activity.24 It is dangerous to extrapolate positive Puritan

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22Ibid., 135.

23The closeness of the genitalia to organs of elimination was often cited as proof of the carnality of sex. Margaret Hunt.

24Michael Zuckerman, “Pilgrims in the Wilderness: Community, Modernity, and the Maypole at Merry Mount,” The New England Quarterly, 50 (1977), 265, warns that the fact that
sexual attitudes from the fact that Puritans accepted sexual intercourse as an essential component of marriage. Certainly nothing can be inferred about the frequency, nature or degree of pleasure conferred by coitus from that information.

Primary sources provide the most reliable information about Puritan sexual attitudes because they articulate contemporary ideology on the sexual responsibilities of each partner and the interest of the court in seeing that these responsibilities were met. The mutual duty of husband and wife to provide sexually for each other is articulated in Catherine Ellinwood’s 1682 divorce petition. Ellinwood argued that she should be granted a divorce because her husband, Ralph, was impotent. “If the essence of marriage be one man and one woman given together in the oath of God,” then she was not married, for her marriage had not been consummated. Her statement attests to the Puritan expectation that sexual intercourse was the right of both marital partners. She was young, and if she was required to remain in her marriage, she would never have the opportunity to “new” (know) any man.” Thus, Ellinwood asserted her right to sexual intercourse and declared that she would “choose rather to die than remain in this connection. Pray pity me and set me free.”

Ellinwood also warned the court that she “had been under many temptations for a long time.” Essentially, Catherine Ellinwood was threatening the court by using the marital sexual activity was acceptable does not warrant the conclusion that Puritans “countenance(d) carnal pleasure.”

ideology of the sexually uncontrollable woman to obtain a divorce. She needed to be free in order to find another husband or she would be driven to adultery.  

Ralph Ellinwood claimed that he had been unable to consummate his marriage because he had been bewitched. Late one night, having attempted intercourse with his wife, he stormed out of the house angrily, returned, tried a second time and failed again. He sought sympathetic counsel from another resident of the household, Mary Houghton, who deposed:

he said he believed that there is witches not far off and I said why and he said he went to make use of his wife and could not do it, for he fell away like a rag. I asked him when he went about such a thing before and he said not this fortnight, and I said was your wife willing and he, yes.

Ellinwood blamed his wife for his impotence. His inability to have an erection was due to "suspicious words" from his wife and the presence of witches in the neighborhood. Catherine Ellinwood was forced to defend herself against accusations of witchcraft. Five neighbors provided depositions attesting to the virtue of his wife, declaring her to be a woman who had committed no "uncivil carriages." Further, she was subjected to a vaginal examination by three women who determined that:

26I have been unable to trace a later marriage for Catherine Ellinwood in Essex County. Her maiden name, as given in the court records, is Duarce, and I have checked all the permutations of that name that I could think of.

27Puritans believed that persons who had the best interests of the community at heart would not cross established sexual boundaries.
in the search of her body and breasts: do find her body abused; by attempt of copulation, or offers that way, as we conceive, but do judge there had not been any evil act of copulation by any man, it seeming plainly to our apprehension that her body was never so entered by any man as to perform the said act.28

The Ellinwood marriage was declared "null and void." The decision of the court is worth quoting at length for the light it sheds on the marital sexual duties of husbands and wives:

Katherine Ellinwood making her address to this Court, complaining of Ralph Ellinwood who was married to her for her husband, was not a man & had never done, nor could perform the duty of a husband to her; or enter her body as is convenient, & ought to be between man and wife: The man being called did own in Court that at present he is not sufficient or able to do the duty of a husband to her, nor could he affirm that he had ever done it to her, which the Court ordered a view to be taken of the mans body, whose return is in the court declaring his insufficiency to perform acts of generation; & that the Court might be clear in the matter, they ordered also the woman to be viewed, to know if it might be, whether her body had been entered by the said Ralph or any other must bar her obtaining what she aims at; and the women upon their search; gave account that they find the said Katherines body to have been made use of, but yet not as they can perceive & judge so far intrude as to perform the real duty of a husband in the way of copulation.29

It is clear from these depositions that marital sexual intercourse was a defining feature of marriage, but the depositions say much more. Both Ralph Ellinwood and the Court referred to sexual intercourse as "making use" of a woman's body. Both the men who examined Ellinwood and the Court referred to coitus as "the act of generation," the "work of generation," and the "real duty of a husband." The women who


29W.P.A. transcription 38-16-3.
examined Catherine Ellinwood declared there had been no "evil act of copulation." It needs to be borne in mind that depositions were legal documents and that the deponents or the clerks may have felt constrained to use a particular terminology, but the language used in these depositions suggests that while Puritans believed that sexual intercourse was an essential part of marriage, they remained suspicious of the inherent power of sexuality. Perhaps "Puritans valued and even celebrated sexual and friendly union of husband and wife" and probably "sexual pleasure could reinforce the bonds upon which the stability of Puritans male-headed households rested." Procreation and sexual pleasure were mutually compatible to Puritans. Sexual pleasure, however, was construed as an instrument of procreation because it was believed that conception would not occur unless both partners reached orgasm. The primary purpose, then, of orgasm was procreation, not pleasure.

These depositions also bear on the larger issue of gender identity. Ralph Ellinwood was "not a man" because he was impotent. His manhood lay in his ability to have an erection. For Catherine Ellinwood, the obverse was true. Her identity as a woman was posited upon her chastity. The depositions attesting to her virginity were carefully framed. She was a virgin because she had not been penetrated by Ralph Ellinwood or "any man." The Court stated that had she not been a virgin,

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whether or not Ralph Ellinwood was physically capable of intercourse, she would not have been given a divorce. Puritan gender ideology required that women who had been sexually active remain within the bonds of matrimony in order to prevent the birth of illegitimate children.

Ambivalence toward sexual intercourse was rooted in Puritan theology. First, Puritans believed that life on Earth was merely the temporal precursor to eternal life in Heaven. God had placed human beings on Earth not to enjoy its pleasures but to improve upon His creation. Coitus was necessary for procreation and to the creation of an affective bond between husband and wife, but excessive enjoyment of sensual pleasures brought with it the potential to divert one's focus from his/her primary relationship with God. Second, the doctrine of original sin convinced Puritans of the importance of self-control. From infancy, Puritans were taught submission that they might gain the strength to resist their natural inclination to sin. Sexual arousal and orgasm represented the ultimate loss of self-control and as such were regarded with suspicion. Third, Massachusetts was founded upon a Covenant. Puritans promised to refrain from sin; in return God would see that their New World enterprise prospered. Sexual desire was a powerful threat to the maintenance of this Covenant. Since it was essential to limit sexual intercourse to marriage, in order to enforce compliance
sexual activity between single women and single and married men was criminalized.

It is possible to find positive affirmations of the role of sexuality within Puritan marriage. Anne Bradstreet wrote moving poetry depicting an emotional and physical relationship with her husband strong enough to live beyond the grave. But the ambivalence inherent in marital sexual attitudes as demonstrated by the differing clerical views presented by Morgan and Verduin and the imagery in Taylor’s poetry foreshadow the difficulties their parishioners will face reconciling natural sexual desires and their hope of salvation. If sex raised troubling issues of conscience for married couples, it was even more fraught for a woman dealing with the consequences of a coerced sexual encounter or for a courting couple whose loss of control had resulted in a premarital pregnancy.

Gender and Religion

Puritan men and women interpreted their faith differently because each sex had a gendered notion of what constituted honor. The early modern world, and Puritans were clearly part of that world, viewed women as unidimensional creatures. All other facets of their personalities that might make them enviable wives— their housewifery skills, character, or beauty—were subordinated to their reputation for chastity. Women’s honor, as a study of slander suits in early modern England has
shown, depended upon a good sexual reputation. This was a patriarchal world in which women lacked property rights, with few exceptions. Men needed to be assured that their property would pass to their legitimate heirs. Women understood both the importance of chastity prior to marriage and the necessity of a good sexual reputation after marriage to protect the status of their households.

A man’s honor was multifaceted. Men were measured by a combination of factors that included birth, occupation, wealth and character. Prior to marriage, men were expected to be continent but they were not defined by their chastity as women were. A sexual double standard guaranteed that single men faced fewer consequences as a result of detected extramarital sexual activity. Practical reasons shaped this; the impossibility of proving paternity and the physical realities of conception meant that women were more likely to be prosecuted and convicted of fornication. Additionally, male honor was vested in the spoken word. A fornication conviction following a denial of paternity severely threatened male honor because it indicated the defendant had lied and that he lacked the status and power within his community to sustain his lie. If the man in question were married, it was a double humiliation, because he was

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exposed as a liar and an adulterer.\textsuperscript{32} Isaiah Wood of Ipswich, upon learning from his pregnant servant, Mary Sheffield, that she planned to name him as her child's father: "told her that before he would abide the shame thereof, he would make way with himself, for his father and wife would never receive him again."\textsuperscript{33}

Men's honor could also be impugned sexually through the sexual misbehavior of their wives. To be cuckolded was a source of immense humiliation. The shame lay in not being able to satisfy or to control female sexuality. For this reason, men were often reluctant to marry pregnant women, even if they were the fathers of the children. Marriage represented not only an admission of their own sexual misdeeds, but a possibly troubled future. Men worried that women who could be persuaded to have sex with them before marriage, could be persuaded to have sex with some other man after marriage.

Male and female definitions of honor influenced the manner in which each gender integrated their beliefs about the nature

\textsuperscript{32}Fortunately for the 19 married men (20\%) who were identified during childbirth as the fathers of illegitimate children in Essex County between 1640 and 1685, the Massachusetts Bay Colony legal code defined adultery as sexual intercourse with a married woman. Property rights, not moral considerations, were paramount. As long as married men restricted themselves to extramarital sexual intercourse with single women they faced a probable fornication conviction and neighborhood opprobrium, not the capital punishment that could legally be imposed following intercourse with other men's wives.

\textsuperscript{33}George Francis Dow, ed., Records and Files of the Quarterly Court of Essex County, Massachusetts, Volume II, (Salem: The Essex Institute, 1912), 372.
of sin and salvation. Opposing images of women prevailed. There was the "constant reiteration of an image of womanhood in which sexual virtue was the essence of femininity."\(^{34}\) To be a woman meant to be virtuous. Yet women were daily reminded that, as the daughters of Eve, they were prone to sin. This view was succinctly expressed by Hugh Latimer:

> For a woman is frail, and proclive unto all evils; a woman is a very weak vessel, and may soon deceive a man and bring him unto evil. Many examples we have in holy scripture. Adam had but one wife, called Eve, and how soon had she brought him to evil, and to come to destruction.\(^{35}\)

This created dissonance for women. Faced with the generalized anxieties of all good Puritans about salvation, they worried that an envious thought or a surge of sexual desire evidenced the carnal attributes of their gender.

Elizabeth Reis has argued that women, having internalized clerical stricture on Eve's heritage, viewed themselves as the possessors of inherently depraved natures.\(^{36}\) This belief left women excessively concerned about their state of grace. The commission of a minor sin provided confirmatory evidence of the


essential worthlessness of their natures. It may not be too
great a leap, then, to extrapolate that a woman who already
considered herself dammed might be more likely to experiment
sexually, or conversely, a virtuous woman, realizing her hold on
salvation was tenuous because of her relationship to Eve, might
be less willing to risk her immortal soul by engaging in sexual
intercourse prior to marriage.

The majority of men did not generalize damnation from a
few sinful acts as a woman might because, however oppressive
their childhood, and however limited their adult opportunities,
they were part of the cohort of rulers, even if their power did
not extend beyond the boundary of their immediate family. Sons
of Adam were not freighted to the same degree with the knowledge
of their innate corruption as daughters of Eve. Moreover, since
material success was correlated to the achievement of grace,
some men had more reason for optimism than other men and women.

Gender influenced Puritan religious beliefs in another
fashion. Amanda Porterfield has argued that women were
religious conservatives.37 Like Reis, Porterfield believes that
men and women experienced Puritan religious ideology
differently. Puritan women remained rooted in the traditionally
submissive relationship to God that had developed as a specific
offshoot of Puritan religious ideology, while men developed a

37Amanda Porterfield, Female Piety in Puritan New England,
more modern, expansive notion of their relationship to God which coincides with Reis' theory that men and women interpreted the effects of sin differently. Puritan theology equated a woman's marital relationship with her husband and her relationship with God. The submissiveness required of a good Puritan, Porterfield argues, colored women's temporal relationships with men. If, as Porterfield suggests, Puritan men modernized more quickly than women, it is possible to infer that men's sexual attitudes increasingly diverged from those of women over the course of the seventeenth century. 38

Despite a degree of conjecture involved in moving from the notion that men and women might experience religion in a different manner dependent on their gender, as Reis and Porterfield suggest, to a discussion of differing sexual attitudes and behaviors among the two sexes, my data confirm

38 My quantitative data indicate that between 1686 and 1692, illegitimate fornication prosecutions (46) exceeded premarital fornication prosecutions (30) for the first time. In the previous six-year interval, 1679-1685, premarital fornication convictions (54) had exceeded illegitimate fornication prosecutions (42) as they did in all previous six-year intervals. One-third of all illegitimate fornication convictions between 1640 and 1692 occurred in the final six years of the study. Only 16% of all of the premarital convictions came in the same time period. This would appear to illustrate an increased male unwillingness to marry their pregnant partners, perhaps because they no longer feared damnation (or because greater economic disparities had created a larger number of exploitative sexual relationships). Much as I would like to use these figures in support of Porterfield's argument, they are not reliable. I have not included cases after 1685 in my formal quantitative analysis because the court records are not complete. While I can count grand jury presentments and the married couples who appear on them, I can't be sure, since these cases were so routine that they could not be dealt with by a Justice of the Peace in private session.
that men and women experienced the religious consequences of extramarital sexual intercourse differently, especially if marriage did not follow conception. Women who bore illegitimate children prepared penitent statements in which they expressed their sense of God’s abandonment and asked for the prayers of the people to help bring about a reconciliation with Him. Men who fathered illegitimate children became more willing to live with a lie as the century progressed. Issues of paternity meant that men could not be convicted of fornication unless they confessed. Prior to 1660 most men who fathered illegitimate children gave the admission of paternity required for conviction. The 1668 amendment to the fornication statute to prioritize the collection of child support payments over the punishment was a tacit admission that men no longer felt a religious imperative to cleanse their souls through public confession.

The Religious Rationale for Fornication Prosecutions

To understand why Hester Jackson, a socially and economically insignificant young woman, presented a threat to the security of the Massachusetts Bay Colony, it is necessary first to understand the centrality and ubiquity of the Puritan religion to life in seventeenth-century Massachusetts and its impact on gender hierarchy. Puritans, like their early modern contemporaries, believed that women were inferior to men. God
had ordained this inferiority when He created Eve from Adam's rib, to be his helpmeet, not his equal. John Milton summed up the Puritan view aptly in *Paradise Lost*: "he for God only, she for God in him." Men were equipped by their greater physical and intellectual strength to be the dominant sex. Massachusetts Bay Colony was a patriarchal society in which women, children and servants were subordinate to the male head of the household. The political, religious, economic, and social structures of New England were predicated on the maintenance of male authority. If women like Hester Jackson were allowed to act on their sexual impulses, chaos, in the form of households headed by single women and their bastards, would reign.

The assumption that women and men were equal before God was positive, as was the belief that sexual intercourse within marriage was the right and the duty of both partners, each to the other, but the effect of these beliefs was mitigated by other contradictory and strongly-held Puritan positions that had negative implications for women. It was assumed that God created women as lesser individuals, skilled in the housekeeping arts and happiest when within the four walls of their homes. Protestants, and Puritans were no exception, accepted the traditional Judaic-Christian view that women had been cursed in

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40 Ibid., 27.
specific ways by God because Eve bore a greater responsibility in the Fall than Adam. Not only had Eve been created second, she had sinned first.

Womankind’s punishment, not incidentally, was linked to sexuality. Women were sentenced to bear many children in pain. Moreover, since Eve had demonstrated women’s inherent weakness and duplicity by allowing herself to be seduced by Satan and in turn seducing her husband, the secondary position of women in Western European society could be rationalized as a God-given imperative. Women needed to be placed under the authority of their fathers and their husbands for their own protection. Women who could be persuaded to yield their sexual favors could be persuaded to yield their souls.

Puritans believed they were on a mission from God as the vanguard of Protestantism, the seventeenth-century recreation of Israel, and the purest representation of God’s Kingdom on Earth:

For we must consider that we shall be as a City upon a Hill, the eyes of all people are upon us; so that if we shall deal falsely with our God in this work we have undertaken, and so cause Him to withdraw His present help from us, we shall be made a story and a by-word through the world.  

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Covenant theology promised Puritans that in return for obeying His commandments, God would see to it that Massachusetts prospered. But: "should they fail him, they would as infallibly procure losses by land and sea, defeats at the hands of their enemies, and massacre by the Indians." To fulfill their side of the contract, every Puritan was required to live by God's laws and to monitor his/her neighbors behaviors as well.

God had ensured that His terms would be difficult to meet. Puritans believed that when He created Adam in His own image, Adam had been perfect. When Eve yielded to temptation and persuaded Adam to join her in sin they became demonstrably imperfect. This original sin was inherited by all their descendants who were born in a natural state, innately corrupt and depraved. Puritans felt the full weight of Eve's transgression. Only a select group, "visible Saints," estimated by John Calvin to be fewer than one in five, was assured of eternal life. Strict implementation of laws designed to regulate every aspect of human behavior was required to save the unregenerate majority from the awesome consequences of their own corrupt natures. Thus the doctrine of original sin provided the rationale for the creation and adoption of a legal system in

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Massachusetts in which secular and moral law were intertwined. To Jackson and his fellow Puritans, the criminalization of sexual activity outside of marriage was a necessary form of social control.

The low number of illegitimate births and premarital pregnancies attests to the effectiveness of fornication prosecutions as a form of social control in seventeenth-century Massachusetts. Fornication trials, public whippings, and heavy financial penalties reinforced in the minds of the single men and women in attendance the importance of sexual continence. While Puritans sought the internalization of values through the development of a conscience that would act as an internal compass, this was still a society based on honor and shame. It mattered deeply what the neighbors thought.

Fornication prosecutions in and of themselves would not be sufficient to deter single Puritans from sexual intercourse. A number of other factors militated against such sexual activity. The most important were religious and cultural imperatives that promoted male and female chastity prior to the wedding night. The homosocial structure of youth networks, the relatively low marriage age, and the ability of most young people to marry limited the number of persons who were unable to wait for marriage or were forced to seek sexual partners outside the

prescribed structure of marriage. Practical problems existed: houses were small, with little privacy and constant supervision.

The belief that anyone would refrain from sexual activity out of fear of going to Hell might seem ridiculous to a historian steeped in the secular values of the twentieth-century, but Hester Jackson and her contemporaries believed implicitly in the physical actuality of Hell. When Jackson said God had abandoned her before she succumbed to Joseph Gilliam's sexual importunities, she was not delivering a pat excuse. The depositions in the Jackson trial, like the depositions filed for other fornication trials, express frank horror upon hearing of extramarital sexual activity. It was not something that happened every day. For a single woman, engaging in extramarital sexual activity had life-altering implications that they believed extended beyond the grave. Hester Jackson was by no means alone among women in believing that God had abandoned her.

**Comparative Fornication Prosecution Patterns**

The prosecution of women who bore illegitimate children and their partners, and couples whose first child arrived within 32 weeks of their marriage was not a process invented by Puritans in the New World to advance their moral agenda. They adapted a centuries-old system of prosecution developed in the ecclesiastical courts of England. In England, however, fornication prosecutions had selectively targeted poor women who
bore bastards since the aim was to control welfare costs. English Puritans had pressed for a broader range of offenses, uniform application of the existing fornication laws and harsher penalties for offenders. Prior to 1640 they tried unsuccessfully to use their parliamentary clout to have jurisdiction over sexual irregularities transferred to the secular courts. During the Interregnum they suspended the ecclesiastical courts in favor of civil criminal prosecutions for bastardy and fornication.  

English ecclesiastical courts had not make a practice of presenting married couples whose first child was born early, nor did they present single men or women for lewd behavior except during the Interregnum. Nevertheless, there was one area of similarity in the composition of cases prosecuted in the English ecclesiastical courts between 1570 and 1640 and in the Essex County Quarterly Courts between 1640 and 1685. Women in England were almost invariably presented by the ecclesiastical courts for bastardy when they bore illegitimate children. The majority of the these women were domestic servants who claimed that coitus had been preceded by an offer of marriage (although this may have been an exculpatory defense). One in five were too poor to pay their fines. Their male partners were less  

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likely to be presented because there was more tolerance for male sexual misbehavior and because of the difficulties inherent in assigning paternity. As in Essex County, most (80%) of these men were single.

The superficial similarity is misleading. In England the charge was bastardy, the female defendants were poor, and the primary motivating factor behind prosecution was economic. In Massachusetts, bastard-bearers from all status groups were charged with fornication, not bastardy. Their crime was not that they had produced an illegitimate child that needed support from the public purse, but that they had engaged in sexual intercourse and had not married their sexual partners. In Massachusetts prior to the 1660s, the laws governing sexual offenses were written and administered by men who had been rebuffed in their efforts to reform the English system of prosecution for sexual offenses. The initial impetus, then, behind the criminalization of consensual sexual intercourse outside of marriage was moral, not economic, although clearly Puritans saw no finite distinction between the two issues.

The moral imperative for fornication prosecutions was sustainable in New England only as long as the number of illegitimate children requiring community support was limited. Prior to 1665, fewer than one bastard per year was born in Essex County and not all required community support. The 1668 amendment that created a diminished legal standard for assessing
paternity was a recognition that bastardy was an economic as well as a moral issue. Bastardy removed a productive and youthful female worker temporarily from the labor market and it created a child who required financial support.

Massachusetts was not the only British North American colony that tried to prevent unmarried persons from engaging in sexual activity by making sexual intercourse outside of marriage a criminal offense. The types of sexual behaviors, though, that were criminalized, the motivating factors for the legislation, and the penalties assigned, varied by colony. Not surprisingly, New England sexual legislation diverged the most from that of customary English practice, the Chesapeake the least. In the southern colonies the motivation for fornication prosecutions appears to have been primarily economic. Whatever legislation existed on the books in other British North American colonies, enforcement was irregular, gender specific, and status dependent.

The Chesapeake provided a very different ideological and physical environment than Massachusetts. Unlike New England, where most settlers emigrated in family groups, the majority of immigrants to the Chesapeake were male indentured servants between the ages of seventeen and twenty-eight and single women were at a premium.48 Chesapeake planters had a profitable, but

labor-intensive staple crop, tobacco. Fortunes could be made through the exploitation of indentured servants, both male and female. Planters were more concerned about losing the services of pregnant female servants and the expenses of raising their children than they were with the moral issues involved. For this reason, judicial activity was directed against indentured servants who bore illegitimate children. These women were charged with bastardy, as in England, because their crime lay not so much in having engaged in coitus, as in producing an illegitimate child which reduced their ability to work and, temporarily, created another drain on their master's resources in the form of an infant who had to be raised to a productive age.

Cases that were tried as bastardy cases in the Chesapeake might have become premarital fornication cases in New England. The longer lengths of indentures in the Chesapeake meant that the amount of money required to buy out a pregnant woman's remaining time in order to marry her was more likely to be beyond the financial resources of her partner than in Massachusetts. Even bastardy prosecutions, however, were not routine in the Chesapeake. Norton asserts that women were not

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prosecuted for sexual offenses unless there were economic consequences. Some instances of bastardy came to light only because the woman’s employer sued the father of her child for compensation for lost labor.\textsuperscript{50}

Carr and Walsh argue that the economic implications of the withdrawal of a pregnant woman’s labor meant that the penalties women paid for bastardy might be severe.\textsuperscript{51} The traditional sexual double standard ensured that their partners would not be punished.\textsuperscript{52} Men with power and property validated their virility at the expense of two years of minimal child support payments and moderate social embarrassment. For a short period of time, until the practice became illegal, it was to an employer’s advantage to impregnate his indentured servant because it would give him a longer claim on her labor. An employer was usually assigned an additional 12 to 24 months of labor as compensation.\textsuperscript{53}

Sexual misconduct that did not have economic consequences, such as premarital fornication, which formed the largest category of offense in Massachusetts, was seldom prosecuted in the Chesapeake. In Maryland the situation was further complicated by a religious dispute between Catholic authorities

\textsuperscript{50}Ibid., 337.

\textsuperscript{51}Carr and Walsh, “The Planter’s Wife,” 73.

\textsuperscript{52}Ibid., 346.

\textsuperscript{53}Carr and Walsh, 101.
and Protestant settlers about what constituted legal marriage. Premarital fornication was essentially a victimless crime in a society based on individualism where there was no need to defend family values. In one Maryland County, one-third of all immigrant brides were pregnant when they married. When the locally-born brides, who benefitted from the protection of their families were factored in, the proportion of pregnant brides dropped to one in five.

The loss of sexual reputation inherent in bearing an illegitimate child in Massachusetts that presented an almost insuperable barrier to marriage did not entail the same consequences in the Chesapeake. Women were scarce. They emigrated in fewer numbers to the Chesapeake and died in greater numbers during childbirth because of complications caused by yellow fever. Men who wanted to marry could not afford to be too particular. Nevertheless, while the consequences of an act of extramarital sexual intercourse varied, and the types of sexual behaviors that were criminalized and the penalty for sexual misconduct varied by region, gender, and the decade in which the offense occurred, a generalized philosophical assumption existed throughout the British Atlantic world that coitus prior to marriage presented a moral and an economic threat to the survival of fledgling communities.

Carr and Walsh, 102. This was nearly twice the premarital pregnancy rate found in English parishes at that time.
CHAPTER 2

"BY REASON OF HIS GREAT AND CONSTANT FAMILIARITY"¹: ILLEGITIMATE MOTHERHOOD IN SEVENTEENTH-CENTURY MASSACHUSETTS

Introduction

In the 25-year period between 1640 and 1665, approximately one woman per year was prosecuted for illegitimate fornication. Even as the number of female defendants quadrupled between 1666 and 1685 to four illegitimate pregnancies per year, only a very small proportion of Essex County women conceived out-of-wedlock.² Clearly Puritans demanded and got sexual discipline from the majority of single women and men. The successful repression of extramarital sexual intercourse placed a severe burden upon bastard-bearers who were punished more severely than their male partners in 75% of cases in which both women and men were presented. They were also punished with isolation from the women's community which viewed the few women who bore illegitimate children with contempt. The limited ability of bastard-bearers to marry subsequent to a fornication conviction left many of them permanent outsiders in Essex County.

In this chapter I will present quantitative evidence to support my conclusions about women and men who were prosecuted

¹W.P.A. transcription, 22-68-3.
²Lawrence Stone estimates that fewer than one in two hundred New England pregnancies were conceived out of wedlock.
for illegitimate fornication. This includes the extent of sexual activity among single women and single or married men, the age of the persons, their socio-economic status, and their marital status. I will discuss the legal background to illegitimate fornication prosecutions and paternity suits; including the rationale for using the court to punish moral offenses, the course of a typical fornication trial, sentencing patterns, and child support and custody arrangements.

Quantitative Data

The amount of sexual activity outside of marriage in seventeenth-century Essex County as measured by the rate of prosecution of women and men following illegitimate births and premarital pregnancies is small, as Table 1 indicates. Only 104 women were prosecuted for fornication following the birth of illegitimate children between 1640 and 1685. Thirteen of these women were convicted twice and one woman was convicted three times. Six of the women were widows, two of whom were convicted twice. During the same time period, 151 married couples were convicted of premarital fornication. Two main factors determined whether a pregnancy would be illegitimate or premarital. One was the status of the male partner. If he were

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3Lawrence Stone, *The Family, Sex and Marriage in England, 1500-1800*, documented an illegitimacy rate in seventeenth-century New England of 0.5% or one in two hundred births.
already married, indentured, apprenticed, or very poor, marriage was impossible. The second factor was the economic status of the female defendant. If it was equivalent to or better than that of her partner and her family could afford to provide a dowry, an illegitimate pregnancy could be converted into a premarital pregnancy. This was an important consideration to parents who had aspirations for their daughters.

Table 1

Comparison of Numbers of Women Convicted of Illegitimate and Premarital Fornication in Essex County, Massachusetts, 1641-1685

<table>
<thead>
<tr>
<th>Year</th>
<th>Illegitimate Fornication (N=104)</th>
<th>Premarital Fornication (N=151)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1641-1645</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>1646-1650</td>
<td>2</td>
<td>2</td>
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<td>1651-1655</td>
<td>6</td>
<td>5</td>
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<tr>
<td>1656-1660</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>1661-1665</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>1666-1670</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>1671-1675</td>
<td>18</td>
<td>36</td>
</tr>
<tr>
<td>1676-1680</td>
<td>24</td>
<td>33</td>
</tr>
<tr>
<td>1681-1685</td>
<td>29</td>
<td>38</td>
</tr>
</tbody>
</table>

Marriage was rehabilitative and a pregnant daughter with a husband could be reintegrated into the Puritan community. Only 20% of women who bore illegitimate children between 1640 and
1692 made a subsequent marriage free from the taint of sexual scandal. Even the average female premarital defendant was almost six months pregnant at marriage; such was the strength of the link between chastity and femininity. Men were unwilling to marry women who could be persuaded to yield their sexual favors prior to marriage, even if it had been to them. The ability to control and/or satisfy female sexuality was a major facet of male honor. Puritans believed women with damaged sexual reputations were potential adulteresses and no man wanted to risk being labeled a cuckold.

Female Fornication Defendants

Table 2 shows the ages of women and men at the time of their trial. Forty-five percent of the women convicted of fornication whose ages can be established were twenty years of age or less at the time of their conviction. An additional 38% were between the ages of 21 and 26. The remaining 17% of women who bore illegitimate children were 27 years of age or older upon conviction. Within the category of women who bore illegitimate children, there are two major subgroups. The first group, comprising almost half of the women (45%), were women aged twenty years or younger. Since the average marriage age for women in Essex County was approximately 22, their sexual activity cannot be categorized as occurring within the context of a courtship relationship in which marriage would have been an
Table 2
Age Distribution of Illegitimate Fornication Defendants at the Time of Their Trials

<table>
<thead>
<tr>
<th>Age</th>
<th>Women (N=66)</th>
<th>Men (N=54)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percent</td>
</tr>
<tr>
<td>15-17</td>
<td>12</td>
<td>18%</td>
</tr>
<tr>
<td>18-20</td>
<td>18</td>
<td>27%</td>
</tr>
<tr>
<td>21-23</td>
<td>16</td>
<td>24%</td>
</tr>
<tr>
<td>24-26</td>
<td>9</td>
<td>14%</td>
</tr>
<tr>
<td>27-29</td>
<td>5</td>
<td>8%</td>
</tr>
<tr>
<td>30+</td>
<td>6</td>
<td>9%</td>
</tr>
</tbody>
</table>

expected outcome, although marriage was an appropriate remedy, if a husband could be found, for women in the upper half of this age group.

Nor can this sexual activity be categorized as adolescents having sex with other adolescents as only 13% of the men charged with paternity were twenty years of age or less, while one out of every three men whose ages at the time of their trial can be assessed were 30 years of age or older. For whatever reason

There is a bias in this sample of cases. Ages were determined, in most instances, from births registered in the vital statistics. Secondary sources of age data were court records which sometimes recorded the age of a deponent and immigration records. While the age of an indentured servant might be gained from these sources, the age sample is skewed toward women born in Essex County of established parents.

Thirty women were identified as being twenty years of age or less. The age of their male partner is known in 11 cases. Three of their partners were 10 years or more older. An
these women had sex, whether consensual because they were hungry for affection in an unpleasant employment situation or because they lost control in a petting situation or because they were coerced by someone on whom they were dependent; they were the victims of sexual predators. This was casual, opportunistic sex because, in most instances, their age precluded marriage as a serious consideration.

The second major group of unmarried women convicted of fornication is comprised of the 38% of women between the ages of 21 and 26 who bore illegitimate children. It can be reasonably assumed that many of these women hoped to marry their partners. The Massachusetts Bay Colony law code encouraged couples who were expecting a child to marry, and in no five-year interval throughout the period of this study is the number of single women convicted of illegitimate fornication greater than the number of couples convicted of premarital fornication. In each five-year interval between 1660 and 1685, the number of couples convicted of premarital fornication was significantly greater than the number of single women who were convicted. Women of marriage age who lacked a sufficient dowry may have used sexual intercourse as leverage to secure a husband whose financial

additional three of the men were five years or more older. In only one instance was the woman older. She was a twenty year old servant who engaged in sexual intercourse with the eighteen year old son of her employer.
resources may have exceeded theirs and who would not, in the normal course of events, be considered an appropriate match.

Their motives, however, for engaging in sexual intercourse need not have been calculated. Sarah Lambert of Beverly was whipped in 1667 and again 12 years later in 1679 for bearing two illegitimate child by Allister Greime, a Scottish prisoner of war who worked at the Saugus Iron Works. Whether Greime was unable to marry because of his prisoner-of-war status or because he had a wife back in Scotland, their relationship was longstanding. Elizabeth Preston and William Bingley of Newbury, both indentured servants, were charged in 1656 and 1658 after the births of illegitimate children. Their relationship persisted. They were married February 27, 1660, 16 weeks prior to the birth of their third child. A third fornication trial ensued.

Many women in the 21 to 26 age category whose depositions have survived said that their partner had promised them marriage before the commencement of intercourse. Others testified that their partner had promised that he would do them "no harm" or "no hurt." There are three plausible explanations for these phrases, which, while ambiguous today, may have referred to a specific sexual practice in the seventeenth-century (such as a promise to withdraw before ejaculation). Alternatively, it may have been a reference to cultural beliefs (that virgins would not conceive or that a mutual orgasm was required for
conception) or cultural expectations (a tacit promise of marriage should pregnancy result from casual consensual sexual activity).

Women in the 21 to 26 age cohort faced the same problems as women in the younger group. Women in both age categories fell victim to sexual predators who promised marriage in return for sex or to employers who made sex a prerequisite of employment. Neither category of women was immune to the lure of sexual desire. The most salient interpretive factor, moreover, is not contained in the details of the circumstances surrounding sexual activity, or in the identification of individual women, it is that the numbers of women in these two categories combined constituted a tiny proportion of the female population of Essex County.

Marriage Rates for Women Convicted of Illegitimate Fornication

The sexual double standard meant that the loss of sexual reputation was of greater import for women than men. Marriage, the only viable career option for a Puritan woman, became very difficult to achieve after a conviction for fornication. While four women who bore an illegitimate child married the child’s father soon after their trials, only 29% subsequently married
men other than the father of their illegitimate child. Not all of these marriages occurred under ideal circumstances. Four women married during their second pregnancy and were charged with premarital fornication. Two married men who had been convicted of fathering bastards themselves. Four more married other men between the conception of their child and their appearance in court for fornication. Only one in five of women who bore illegitimate children made subsequent marriages untainted by a previous court appearance by one or both of the partners for a sexual offense.

Six of these women married men other than the father of their child within a year. All had families living locally who could provide financial incentives to single men to marry their daughters. Rebecca Armitage of Lynn gave birth to an illegitimate son, Benoni, March 15, 1665. Armitage had been her grandmother’s sole heir in 1654. The trustees of the estate had been required to post bond of £180 so it was a sizable inheritance. Eight months after Benoni’s birth, she married eighteen-year-old Samuel Tarbox. Tarbox would not have been in

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Data are available on the length of time that elapsed between trial and marriage for the 32 women who were not married at the time of their trial and did not marry their partners. Eighteen percent married within a year, 12% married in the second year, 21% married in each of the third and fourth years after their trials, 9% in the fifth year, and a further 21% between six and 14 years after their trial. However, age at marriage is available for only 24 of the women, which renders this data, while calculable, inconsequential.
a position to marry at that age, having two older brothers, without Armitage’s money. Another woman, Mary Dane, who had been 16 when she bore an illegitimate child, married her step-grandmother’s son when she was twenty. William Chandler was 22 at the time, so money must have been forthcoming to make this marriage possible. These marriages illustrate the type of husbands available to women with financial resources and tainted sexual reputations - a teenager and a biddable grandson.

Life After A Fornication Conviction

What happened to the women who bore illegitimate children and did not marry subsequently? Information on child custody and child support provided in section two of this chapter make it clear that most were not engaged in raising their children. In many instances they disappeared into a relative’s or an employer’s household. The most positive thing that can be said about their futures is that most of them did not make a second appearance in court for fornication or the commission of a second crime. They appeared infrequently as a deponent in an unrelated suit, usually as a witness to a commercial transaction involving the household in which they were employed. They

Ironically, both women died in childbirth. Rebecca Tarbox died after the birth of her sixth child in ten years while her husband was absent during Metacomet’s War. Mary Chandler died giving birth to her eleventh child in the twenty-first year of her marriage.

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seldom appeared in probate documents because they rarely accumulated property in their own right to be transferred and men were the preferred witnesses to official documents. Women's names were recorded when they married, when they joined the local Congregational church, transferred to another church, or were excommunicated.

Deaths were not consistently recorded in seventeenth-century court records. Hannah Hayward of Ipswich, convicted of fornication at the age of 16 in 1677, died unmarried in 1725. She was described in the Ipswich Vital Statistics as "a very Antient maid." At 65, it is more likely that "Antient maid" was a reference to her marital status, indicating how remarkable it seemed to her contemporaries for a woman to reach that age unmarried. Two women, Marra Hathorne and Sarah Avery died in 1676, perhaps as a result of Metacomet's War.

Mary Sheffield provides some clues about the possible fates of women convicted of fornication but the information in her case is anomalous in that the births of her two illegitimate children were entered in the Ipswich Vital Statistics under her name in 1658 and 1662. Usually if the birth was recorded, and it seldom was, it was recorded under the father's name. It is possible that this was because she was a widow and had feme sole status; however, there is no trace of a prior marriage. At her
first presentation, Sheffield was whipped.\(^8\) In the second instance in 1662, the father was named and required to pay child support. This time Sheffield was severely whipped. She died twenty-two years later in 1684, and the following was entered into the court records:

Mary Sheifeild dying intestate in the house of John Edwards of Ipswich, he having disbursed money for her in her life time and in her sickness, court appointed him administrator and he presented an inventory.\(^9\)

There is no evidence that she was related to Edwards, or to his wife, so one possible inference is that she worked as their servant until her illness. Her son, James, would have been 26 then if he were alive; her daughter, Sarah, had died at 22 months.

Public assistance was required for some of the women who bore illegitimate children. Rebecca Outen had an illegitimate child in 1669 when she was Zebulon Hill's servant. By 1673, she was working for Samuel Williams. In 1679, she had a second illegitimate child. At this point she must have become unable to support herself because Richard Tree and his wife, Joanna, of

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\(^8\)Whippings were conducted in public, with the victim stripped to the waist and tied to a post, usually located in front of the meeting house. A whipping was ten stripes, a severe whipping, fifteen stripes.

\(^9\)Records and Files, IX, 451.
Salem agreed to support her for life and raise her illegitimate daughter until the age of 18.10

A second fornication defendant, Sarah Lambert, can be traced through the Salem town records from 1657 onward. Over a period of ten years during her childhood she lived in at least six households. She may have been mentally or physically handicapped because the town had to pay more money at each move. It should have been expected that the cost of her maintenance would be reduced as she grew older and was able to contribute her labor to the household in which she was placed. Henry Herrick had received £5 in 1657: Mr. William Brown got £10 in 1666. The following year she had her first illegitimate child who joined her on public support. A second illegitimate child was added to the rolls in 1679. She was still receiving public support in 1696. In 1691, Alister Greime, the father of both her children, was also forced to turn to public relief.

Occupational Status of Female Fornication Defendants

Forty percent of the women who bore illegitimate children were described in the court records as servants. This designation is not, in itself, an indication of low economic status. Their status was dependent on the type of service contract they had signed. Indentured servants, locked into a

10Sidney Perley, The History of Salem, Massachusetts, Volume III, (Salem: S. Perley, 1926), 140.
five- to seven-year contract, often in return for their transAtlantic passage, were at the lowest end of the social and economic scale. They were the most vulnerable, since they often possessed no male relatives in Essex County. Also, since a partner would have been required to buy out the remainder of the indenture, the pregnant servant represented a drain on the suitor’s resources which would not be balanced by a dowry.

Young women who had been orphaned or who came from large families with numerous children and few economic assets with which to dower them were similarly circumstanced. A disproportionate number of women in this category bore illegitimate children and were whipped, as were male indentured servants. While Puritan jurists were prepared to issue a fine in the period after 1660 if there had been a possibility of marriage formation, engaging in sexual intercourse while bound to a long-term indenture, usually resulted in corporal punishment for both women and men.

Approximately one-half of the women who bore illegitimate children came from families with middling or higher status. A defining characteristic of pregnant elite daughters, and to a lesser extent the daughters of prosperous middling families, was their youth at the time of their conviction. Despite their elite status, many of them were working as servants when they became pregnant. The difference between them and indentured servants is the length of their service contract, or even the
lack of a contract, and the status of the household in which they were employed. The families of these women possessed the financial resources to convert an illegitimate pregnancy into a premarital pregnancy if their partners were single and amenable.

Many of the female defendants who were designated in the court records as servants were represented by their father. Some, like Anne Chase of Newbury in 1670, whose father, Aquilla Chase, could have afforded to keep her at home, had worked for at least three families by age 22. Like many daughters of middling families, she was working in the household of a relative when she conceived. Mary Dane, a 16-year-old girl from Ipswich who was whipped for fornication in 1654, and who was described as a servant, was the daughter of John Dane, one of Ipswich's most respected citizens. Most girls, by the age of fifteen, were put out, as they would have been had their families remained in England, to a series of households, often those of relatives, usually of equivalent or higher status, to gain the requisite skills that they would be required to possess when it came time to manage their own households.

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11At the time Chase conceived, under circumstances she described as coerced, she was working in the household of her cousin, Henry Wheeler. Her partner, John Allen, was her cousin's wife's brother.
Male Partners of Female Fornication Defendants

Ninety-nine men were summoned by the judges of Essex County Quarterly Court between 1640 and 1692 to answer paternity charges. Four of these men were summoned twice. They were summoned because a woman, during labor, had told the midwife that they, and no other man, had fathered their child. Thirty-eight faced formal fornication charges. Three had their cases dismissed. Thirty-five men (35%) were convicted of fornication, either because the offense occurred prior to 1668 or they were married at the time of their trial. In selected instances, they were convicted because they were indentured servants or apprentices. The selective prosecution of men who were not in a position to marry their partners illustrates Puritan attempts to restrict sexual intercourse to procreative activity within the framework of legal marriage. Furthermore, the prosecutions targeted the weakest men. These were men who presented the least threat to the patriarchal ideal because they were not established members of the Puritan community, either because of their age or their financial conditions. Moreover, if they were indentured servants or apprentices they had violated their contracts by engaging in sexual activity in the first place, and

12 Married women who engaged in sexual intercourse outside of marriage were charged with adultery, a capital crime, not fornication, the charge married men faced.
if they were already married, they had sufficiently violated Puritan norms to make them appropriate targets.

Engaging in intercourse for sensual gratification where there was no possibility of marriage was a sinful indulgence that provoked the wrath of Essex County judges. As long as the possibility of family formation existed, the Court seems to have been more lenient with male defendants. It has been asserted that Puritans rejected the traditional sexual double standard, and this seems apparent from judicial activity in the 1630s in Massachusetts for a short period of time. But while the idea that men and women had an equal duty to be chaste prior to marriage may have survived in an ideological sense throughout the seventeenth-century, it ceased to impact the day-to-day administration of justice in Essex County after the initial decade of settlement.

The treatment of male sexual offenders in Massachusetts Bay Colony represented a departure from the traditional double standard. Societies that had a strong sexual double standard, like England or Virginia, had higher illegitimacy rates than New England because men who had property and power could seduce

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14 Plymouth Colony jurists applied a more complex set of fornication laws. They drew a distinction between couples who were formally contracted prior to the inception of sexual activity and those who had not made a formal declaration of their intention to marry.
and/or force sexually exploitable servants and slaves without fear of punishment. The low numbers of women who bore illegitimate children or married while pregnant in New England suggests that men perceived the consequences to themselves to be severe enough to depress levels of extramarital sexual intercourse. Religious and cultural strictures on extramarital sexual intercourse, the possibility of public exposure, the lack of opportunity, or a combination of these factors, inhibited most men from sexual intercourse prior to their marriages. If however, they were named during labor by unwed mothers, they were less likely to face formal fornication prosecutions and received more lenient sentences from the Essex County Quarterly Court judges; evidence of a modified sexual double standard. Social disappprobation and the temporary loss of honor were the consequences of fathering a bastard. While in seventeenth-century Massachusetts Bay Colony these were not inconsequential, they were not commensurate with the penalties paid by women.

The age distribution of male fornication defendants (see Table 2 above) follows a different pattern than the women. Only 13% of the male defendants were younger than twenty, while

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15I was able to establish the ages of 54 of the 99 men charged with paternity. I am assuming that this is a representative sample, but the nature of the record keeping is that it is skewed toward the more settled community members and may not adequately represented younger, transient men who appeared in the colony only long enough to father a child or who remained but did not accumulate property.
45% of the female defendants fell into this category. The largest group of men charged with paternity were between the ages of 21 and 26 (45%), a time at which their more prosperous peers could begin to anticipate the commencement of marital sexual activity. The second largest category were men over the age of 30 (33%), most of whom were already married. The second smallest age group of offenders, those between the ages of 27 and 29 (11%) was composed of economically marginal men, who, unlike most of their peers, had been unable to marry.

It is difficult to arrive at an estimate of the economic status of the majority of men charged with fathering illegitimate children. Assessments for town and ministerial rates, which would provide the most accurate index of economic status, survive for only a few towns and for limited time periods, and provide insufficient information for accurate identification. Eight (9%) of the defendants are listed as servants in the court records. In addition, there is one slave and one native American. The most measurable index of economic viability in seventeenth-century Essex County is the ability to marry. Four of the men married their partners within a few months of the trial, and three others married other women between the conception of their illegitimate child and the time their case came to trial. Nineteen of the men (20%) were already married when they engaged in coitus with a single woman. Thirty-five percent of the men married later, one-half of these
within two years of their trial. We can infer, therefore, that these men possessed the economic assets to marry their partner had they wished to. We must remember, too, that 23% of the women were presented unaccompanied by a putative father. In these instances, the court may have chosen not to prosecute any one individual because the female defendant had a poor sexual reputation. Also possible, the father may have been a married man who reached a private financial arrangement with the mother in order to protect his reputation. If this is the case, as seems plausible, the percentage of married men fathering illegitimate children would be higher than the 20% that could be documented. Forty-six percent of the men named as fathers do not appear to have married in New England prior to 1700.\textsuperscript{16}

Either they were transients when the child was conceived, left the colony to escape a paternity conviction, died, made an unrecorded marriage, or, most likely, never accumulated enough capital to marry.

Three conclusions can be drawn from the statistics in this and the previous paragraph about the men who fathered illegitimate children: (1) a few Essex County men chose to engage in casual sex with women who were, on the whole, significantly younger than themselves, (2) they engaged in this

sexual activity without any intention of marriage, either because they were already married or they were not in a financial position to marry, and (3) sexual activity that resulted in illegitimate children cannot be characterized simply as the outcome of servants having sex with servants.

Patterns of Punishment

Prior to 1668, 27 women and 17 men were convicted of fornication. In 1668 an amendment was passed to shift the burden of supporting bastards from local communities to putative fathers. From this point on, men were responsible for the support of their illegitimate children: "though not to any other punishment."17 Between 1668 and 1685, 77 women and 15 men were convicted of fornication. After 1668, while the established pattern of conviction remained constant for female defendants, only 19 of the men who engaged in sexual intercourse without the possibility of marriage formation were presented, and four were not convicted.

Despite the fact that enjoining marriage and fines had preceded corporal punishment in the hierarchy of sentencing in the fornication law as written in 1641, whipping was the most common punishment accorded to women and men who bore

illegitimate children prior to 1660. Seventy-five percent of the women and 53% of the men who were convicted were whipped. However, sentencing patterns prior to 1660 were not as egalitarian as the percentages suggest. There were gradations in whipping sentences. Women were more likely than their male partners to receive a severe whipping (15 stripes). After 1660, women and men were customarily given the option of paying a fine, which varied from £2 to £6, to avoid corporal punishment. However, given the more limited financial resources of many of the female defendants, paying a fine meant committing themselves to a longer term of service, since their masters paid it for them.10 Only 16 women received the less shameful sentence of a fine only. Fourteen of the 16 fines were levied between 1679 and 1685 when 50% of the female defendants escaped a potential whipping. Yet, when male and female sentencing patterns between 1660 and 1685 are compared, 20% of the female defendants and 78% of the male defendants were allowed to pay fines without the added possibility of a whipping.

Table 3 summarizes fornication convictions and punishments in five-year intervals from 1641 to 1685. It shows that women were charged and convicted of fornication with greater frequency

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10 There was an element of self-interest in this for employers. A servant who had been whipped was incapable of performing her household responsibilities for some time afterward. Added to this was the labor lost during pregnancy and childbirth which was recouped through a lengthened period of employment without compensation.
Table 3

Fornication Convictions for Women Who Bore Illegitimate Children and Their Partners in Essex County Quarterly Court (1641-1685)

<table>
<thead>
<tr>
<th>Years</th>
<th>Women (N = 104)</th>
<th>Men (N = 35)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Convicted</td>
<td>Whipped</td>
</tr>
<tr>
<td>1641-1645</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>1646-1650</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>1651-1655</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>1656-1660</td>
<td>10</td>
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</tr>
<tr>
<td>1661-1665</td>
<td>3</td>
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<tr>
<td>1666-1670</td>
<td>10</td>
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</tr>
<tr>
<td>1671-1675</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>1676-1680</td>
<td>24</td>
<td>5</td>
</tr>
<tr>
<td>1681-1685</td>
<td>29</td>
<td>0</td>
</tr>
</tbody>
</table>

than men. Nevertheless, the fact that numbers indicate women paid a disparate penalty for sexual misconduct is not, in and of itself, proof that gender was the major determinant in sentencing. Was it because most women worked as servants and judges deferred to property-owning men of higher status? Or, was it the effect of Puritan gender ideology which ascribed to women inferior status and uncontrollable sexual appetites? In order to determine the weight accorded by the judges to the

19 Those women and men who were not whipped after their fornication conviction were fined.
class and gender of the defendants during sentencing, it is necessary to look at the sentences in individual cases and compare the status of both defendants and the decision rendered by the judges in each case.

Class and gender were both important determinants of sentencing patterns, but it is difficult to determine the precise roles they played at a distance of 250 years. The sheer number of the cases and the complexity of individual circumstances make it difficult to quantify these data. Furthermore, judges were likely influenced by information about the defendants that has not survived in the records. They knew the defendants and their families personally. They were privy to local gossip and they were able to observe the defendant's demeanor in court.

Some sentencing patterns are clear. In the 1630s men were punished more severely than their female partners. Between 1640 and 1660, the court punished both partners severely. Men and women tended to pick sexual partners of equivalent rank, a pattern that was replicated in each decade studied. Where the defendants were equal in status the female partner usually received a harsher sentence. In the early years of settlement then, gender appears to be the primary determinant in sentencing patterns. Men bore the brunt of the punishment in the 1630s, women in the 1640s and 1650s. After 1665, the number of women convicted in each five-year period increased rapidly, while men
benefitted from an amended fornication law passed in 1668. From this point on only men whose sexual behavior egregiously offended Puritan sexual mores were charged with fornication.

The 1668 law that excluded men from fornication charges clearly privileged men. After 1668, if they were single, and were neither indentured or apprenticed, they were free to engage in sexual activity with no other penalty than child support payments should they be unlucky enough to get their partner pregnant. Their female partner paid child support too if the child was fostered out. In that sense they were treated equally. The female partner, however, was whipped or paid a fine as well. It would seem that gender had become an even more important factor in sentencing fornicators after 1668. In order to determine if this is so, it is necessary to analyze sentencing patterns by decade.

Sentencing Patterns in the 1630s and 1640s. During the 1630s, 17 men and two women were charged with sexual offenses in Massachusetts Bay Colony. This initial trend to hold men responsible for initiating sexual activity changed dramatically in the following decade. During the 1640s there are five cases of illegitimate fornication tried in Essex County. The first Essex County case, in 1641, hearkens back to the 1630s in its disposition. The woman, Miriam Moulton, was not charged,

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20 Karlsen, Devil in the Shape of a Woman, 195.
although her partner, Robert Coaker, was whipped. She had been contracted to Robert Coaker when they had coitus, and she had married another man, Thomas King, before the birth of her child. The verdicts rendered in the cases of the remaining four women charged with fornication in this decade placed them clearly on the other side of an ideological divide. Each was charged, convicted, and whipped. In two of the instances where the men escaped corporal punishment, they were of equivalent status to the female defendant. In one instance where neither the male nor female defendant was whipped, both were young servants.

Sentencing Patterns in the 1650s. The trend to punish female defendants more severely than their male partners is more discernable in the 1650s when the number of women convicted of illegitimate fornication increased to 16. The number of men convicted of fornication in the decade of the 1650s remained constant at one-half of the number of women convicted. The larger number of convictions in the 1650s provides an opportunity to address the issue of whether women paid a disproportionate penalty in fornication sentencing because of their class or their gender. In five of the 16 women's cases during the 1650s, no men were presented. It does not appear, however, that the court punished these women unduly for not naming their partner, because two of them escaped with a fine. In two of the 16 cases, men were punished more severely than
their female partners. In two more cases, both partners were given the same sentence. However, in 75% of the cases where the female defendant named her male partner, the female defendant received a more severe sentence than the male defendant, or the male defendant was not prosecuted. Gender was a more significant factor when determining punishment, since women were more likely than their partners to be charged with fornication, and once charged, received heavier sentences.

When class and occupational status are considered during the decade of the 1650s, the situation becomes more complex. The fact that the pregnancy which precipitated a fornication trial was illegitimate, not premarital, was an indication that the female defendant and her partner, where named, lacked the financial resources to marry. This makes class an inevitable factor in creating a vulnerable population of female servants and poor men looking for a sexual outlet outside of marriage. Fifty percent of both male and female defendants appear to be indentured servants, but, in three of the four cases where both partners can be identified as servants, women were sentenced to

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21 The two cases where men were punished more severely than their partners were exceptional. In one, a married man impregnated his servant—she was whipped, he was severely whipped. In the other, the young man involved bragged to his friends about his sexual exploits and then lied to the Court. He was sentenced to be whipped, his female partner was sentenced to watch his whipping. I think he was whipped not so much for his sexual activity but for engaging in lascivious talk with his friends and trying to persuade them to join him in perjury.
be severely whipped (15 stripes) and their partners to be whipped (10 stripes). In the fourth instance, the male partner was bound to good behavior; his partner whipped.

In only one of the 16 cases presented in the decade of the 1650s was there a clear disparity in class between the male and female defendant. Richard Brabrooke was a 39-year-old married man when he impregnated his servant, Alice Ellis. He was severely whipped; Alice Ellis was whipped and freed from her indenture. Brabrooke was treated with greater severity by the court than his servant.

Sentencing Patterns in the 1660s. In the 1660s, 13 women were convicted of fornication. Eleven of the women named a male partner, but only five of the named men were summoned to answer charges of fornication or to make child support arrangements, although all five were convicted. Four of the men were fined; the fifth, William Reeves, a servant, was whipped and fined. His partner, Susannah Durin, also a servant, was given the option of paying a £4 fine. At first glance, it seems that the court treated Reeves more severely than Durin, but Reeves "had several other misdemeanors to his account" besides fornication.22 One other pair of servants was presented. She was whipped; he was fined. It becomes more difficult to separate class and gender as determinants of punishment in this decade, but where

22Records and Files, IV, 38.
class is equivalent, as in the two cases above, all circumstances being equal, women were punished more severely.

Marguerite Dudley bore an illegitimate child in 1664. She was not charged. Her name appeared in the course of a paternity suit against the man she named as the father of her child, Francis Pafat, who fled Essex County, forfeiting a £36 bond rather than face presentation. Dudley was very well-connected. Her father was Andover’s minister and her grandfather had been Governor of Massachusetts Bay Colony. Clearly class, in the form of the desire not to embarrass the Dudleys more than necessary played a role here.

In two more instances in this decade, there was a clear disparity in class between fornication defendants. In these cases, the male partner was of superior rank since the women named their employers as the fathers of their children. In the first case, Mary Sheffield was whipped. Her employer, Isaiah Wood, was required to pay child support. But even here, a clear-cut distinction cannot be drawn as this was Sheffield’s second conviction. A good argument can be made on Sheffield’s behalf that given the difficulties her poor sexual reputation must have created in securing employment, she had little choice but to yield to Wood in order to retain her job. Clearly, from the Puritan point of view, Sheffield fit their profile of a woman who had had her sexual appetites aroused in an untimely fashion and had become dangerously promiscuous.
In the second case, 47-year-old Henry Jacques impregnated his servant, Elnor Knight. Jacques abused a position of trust because Knight was his wife’s niece and her parents undoubtedly considered the Jacques household to be secure. Jacques had been the Newbury constable three years earlier, so he was not without knowledge of the processes involved in a fornication trial. He chose to flee from Essex County, leaving behind a wife and seven children rather than face Elnor’s parents and his neighbors after he was summoned to answer charges of fornication. He returned two months later after the court threatened to seize £30 of his estate and disenfranchise him. Like Knight, who had since married Richard Bryer, he was fined. In this instance Jacques and Knight received equal treatment from the court. While Knight was a servant, it is likely that her family was equivalent in status to that of Jacques and Knight had married prior to her court appearance and established herself and her baby within a legitimate family structure.

Three trends appeared in the 1660s. First, fewer of the men (50%) named during labor by their female partners were charged with fornication than in previous decades in accord with the 1668 amendment. It is clear that while the amendment was not passed until 1668, it reflected a codification of existing practice. However, the amendment should have occasioned references to child support in the court records but child support is specifically mentioned only in the case of Isaiah
Wood. While Pafat forfeited a £36 bond when he fled, and William Reeves was required to give Salem £30 to guarantee the support of his child, no child support arrangements were recorded for the remaining ten women who bore illegitimate children in this decade. Second, the stereotypical female defendant was no longer an indentured servant. At least seven of the 13 women who were convicted of fornication were from established Essex County families. The partners they named were of equivalent status. Third, corporal punishment for fornication decreased. Only three women (one a repeat offender) and one man were whipped in the decade of the 1660s. Most paid fines, the amount varying from 50 shillings to £5. One constant remained. Women were more likely to be tried and convicted. Once convicted, they received more severe sentences.

Sentencing Patterns in the 1670s. The 1670s, like the 1650s, presented a dramatic leap in the pace of fornication prosecutions from the previous decade. The number of women convicted in the 1670s increased threefold over that of the 1660s (42 versus 13). Of note, while the number of convictions increased substantially, the class of the fornication defendants compared to previous time periods remained relatively constant. Fifty-two percent of the women presented (22) in the 1670s were servants with little or no economic resources.\(^{23}\) Fifteen of

\(^{23}\)Women who were designated as servants in the court records, had no apparent family in Essex County, or were
these 22 servants named their partners and sentencing data is available in thirteen of the cases. Five of the 13 women were whipped. (Although, in three of the five cases, the court had reason. It was the defendants’ second presentation for fornication.) Of the 13 men convicted in this decade, only two, both servants were whipped. One of them had exacerbated his crime by fleeing. The other, Joss, was black; his partner was white. His color, not his gender or status, was the major factor in sentencing. Three other male servants were fined. One was an indentured servant with one year left to serve, and his partner, who was whipped, may have been a relative of his master. Another was an 18-year-old youth whose partner had a previous fornication conviction.

Here, as in previous decades, married men were generally held to a higher standard of accountability than single men. One was ordered to be whipped or fined and to return to his wife, an equivalent sentence to that of his female partner. The second married man was Lawrence Clinton, whose troubled marriage to Rachel Hatfield brought him into court on a regular basis. He and his partner, Mary Wooden, also received equivalent sentences; both were whipped. Curiously, the whipper, Jonas presented more than once for fornication, were assigned to the category of servant.

24 Her name was Mary Duell; his master Richard Dole. Duell appears to be an alternate spelling for Dole.
Gregory, was sentenced to be whipped himself for: "not performing the duty of his office upon Lawrence Clinton."²⁵

It may be that married men are not adequately represented in the sample since six female servants did not name their partners. Three of the women, however, were repeat offenders, so it is more likely that they failed to bring a man into court because they lacked credibility. In at least one case, that of Rachel Whinnisk, who had been reduced to begging to support her child, there is evidence of coercion. In 1681, two young wives went to the magistrates to depose that they had asked Whinnisk why she did not charge Hugh Alley with paternity to get maintenance for her child. Whinnisk had answered that Alley's two sisters had threatened to burn her if she laid the child to him.²⁶

The remaining 20 women (48%) who were presented may have worked in other persons' households as servants but they were from families of middling rank. Six of the women had fathers who left estates worth more than £250, held local office, or rank in the militia. Did their fathers' ranks and probable acquaintances with the judges mean that the court accorded them special treatment? Four were given the option of paying a fine and a fifth was sentenced to be both whipped and fined because

²⁵Records and Files, VI, 338-9.
²⁶Records and Files, VIII, 103.
she named a putative father, recanted, and refused to name another. The sixth woman was a widow, Sarah Needham. Her father, Walter Fairfield was a prosperous innkeeper, and she had an illegitimate child with Mr. Philip Parsons. Neither she nor Parsons bothered to dignify the charges with an appearance at court. Each forfeited their bonds for appearance and suffered no further punishment.

**Sentencing Patterns in the 1680s.** Twenty-six women were convicted of fornication between 1681 and 1685. Three more women were summoned, but they, like Sarah Needham, did not appear at court. Three men were presented for fornication during this same period. One, John Tucker, was an eighteen-year-old who had sexual intercourse with his family's servant, Ann Gilbert. This type of sexual activity, where there was no possibility of marriage formation, was just what the court wanted to discourage. Both were sentenced to be severely whipped but their sentences were reduced to fines after Tucker and his mother petitioned the court for a reduction in sentences

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27 Needham was fined for fornication in 1681. No partner was named in this instance, so either she committed fornication with another gentleman who was not presented or the court caught up with her for her 1679 offense. Parsons had a business relationship with Needham's father. He was also named a second time as the father of an illegitimate child.

28 Conviction data is not recorded with enough regularity between 1686 and 1692 to be used for quantitative purposes.
and begged their: "honors prayers for all that god would show up
the evil of our ways and turn our hearts to him." 29

The other two men presented between 1681 and 1685 had
their cases dismissed. In the first instance, the dismissal was
justified because the female defendant, an eighteen-year-old
servant, vacillated in her testimony. While she had finally
named Ralph Farnum, the son of a substantial farmer, there was
reason to belief that her illegitimate child had been fathered
by her employer's married son. However, in the second case,
that of Priscilla Willson and Mr. Samuel Appleton, there was a
considerable amount of evidence against Appleton. Appleton
denied the charges and was dismissed on his word as a gentleman.
In this instance it is clear that the status of the male
defendant was the primary sentencing factor, but this was an
anomaly. Appleton was the only male defendant presented between
1640 and 1685 who bore the prefix "Mr" designating him to be a
gentleman. That he was presented in the first instance,
attested to the influence of the female defendant's grandfather,
Oliver Purchis. Three other married men fathered illegitimate
children between 1681 and 1685 but none were presented.

Between 1685 and 1692, the court records are incomplete,
and in many instances there is no clear disposition of the
cases. However, some inferences can be drawn. The trend to

hold women more responsible for illicit sexual activity became more pronounced. While at least 34 women were presented for fornication and, where the sentence is known, they were usually fined 40 shillings, only one man, Robert Roe, was convicted of fornication. Roe was prosecuted for the same reason that other men had been singled out for prosecution prior to 1685. His partner, Mary Payne, had a prior conviction for fornication, so the court acted on the assumption that Roe had sexual gratification, not marriage, in mind when he had intercourse with Payne.

Comparative Conviction and Sentencing Rates

Comparative data on fornication convictions and court-ordered child support was obtained by looking at change over time using percentages. Table 4 below illustrates that, in general, as the conviction rate for male fornication defendants decreased, the rate at which court ordered child support arrangements were assigned increased, although it never rose above 55% in any decade. At best, during the decade of the 1670s, little more than half of the fathers assumed financial responsibility for their illegitimate children. Between 1681 and 1685, the last period for which convictions and child support agreements can be counted, both convictions of male defendants and court-ordered child support agreements decreased.
Table 4
Conviction and Court-Ordered Child Support Rates for Men Accused of Fathering Illegitimate Children in Essex County, 1641-1685

<table>
<thead>
<tr>
<th>Years</th>
<th>Number Women Convicted</th>
<th>% Men Named</th>
<th>% Men Convicted</th>
<th>% Paying Child Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>1641-1650</td>
<td>4</td>
<td>100%</td>
<td>75%</td>
<td>25%</td>
</tr>
<tr>
<td>1651-1660</td>
<td>16</td>
<td>69%</td>
<td>100%</td>
<td>18%</td>
</tr>
<tr>
<td>1661-1670</td>
<td>13</td>
<td>77%</td>
<td>50%</td>
<td>20%</td>
</tr>
<tr>
<td>1671-1680</td>
<td>42</td>
<td>79%</td>
<td>33%</td>
<td>55%</td>
</tr>
<tr>
<td>1680-1685</td>
<td>26</td>
<td>77%</td>
<td>8%</td>
<td>35%30</td>
</tr>
</tbody>
</table>

Of course, child support may have been arranged in private through negotiation, so this is not a reliable statistic. The 1668 amendment that required men to pay child support and allowed them to escape punishment compromised the moral intent of the original law passed in 1641. It is to be hoped that it was an economic success. While child support may have been collected assiduously from that point on, the Essex County court clerk's summaries of individual cases do not reflect an increased incidence of support payments.

A second manner of comparing the punishment of female and male fornication defendants is to look at the cumulative

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30This figure is skewed. Three of the ten fathers paying court-ordered child support were ordered to pay only charges incurred between the birth and the death of their baby. The court knew, when it was levying the child-support requirement that the costs would be minimal. If they were eliminated, the court-ordered child support would be reduced to 30%.
sentences assigned by the court to each sex. Men were more likely to receive the most extreme sentence, a severe whipping (20% to 9%), but 74% of the female defendants were subjected to potential corporal punishment compared with 54% of the male defendants. Given men's greater financial ability to pay fines in the first instance, the penalties are more weighted against women than the percentages, skewed as they are, suggest.  

Thirty-one per cent of male defendants and 20% of female defendants were allowed to pay fines without the alternative threat of corporal punishment. It also needs to be borne in mind that the men who were prosecuted were the most egregious offenders of Puritan so it should not be surprising that in the aggregate their sentences were more severe (see Table 5).

Three conclusions can be drawn from the sentencing data:

(1) women paid a disproportionate penalty for bearing illegitimate children, being more likely to be charged and more likely to be convicted. Only one-third of the men who were named as fathers of illegitimate children were prosecuted for fornication, (2) where class was equivalent, women were punished with greater severity than their partners, and (3) men were more likely than women to be fined and, since they received higher

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31 Between 1630 and 1674 women earned 45% less than male farm workers. In the years 1674 to 1694, the wage disparity increased to 52%. Gloria L. Main, "Gender, Work, and Wages in Colonial New England," The William and Mary Quarterly, 3d Series, Volume LI, (January 1994), 48.
Table 5

Sentences Issued by the Essex County Quarterly Court to Male and Female Fornication Defendants, 1640-1685

<table>
<thead>
<tr>
<th>Sentence</th>
<th>Men (N=35)</th>
<th>Women N=102</th>
</tr>
</thead>
<tbody>
<tr>
<td>Severely Whipped and Fined</td>
<td>3%</td>
<td>0%</td>
</tr>
<tr>
<td>Severely Whipped</td>
<td>17%</td>
<td>9%</td>
</tr>
<tr>
<td>Severely Whipped or Fined</td>
<td>0%</td>
<td>9%</td>
</tr>
<tr>
<td>Whipped and Fined</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>Whipped</td>
<td>14%</td>
<td>18%</td>
</tr>
<tr>
<td>Whipped or Fined</td>
<td>20%</td>
<td>37%</td>
</tr>
<tr>
<td>Fined</td>
<td>26%</td>
<td>19%</td>
</tr>
<tr>
<td>Bound to Good Behavior</td>
<td>6%</td>
<td>0%</td>
</tr>
<tr>
<td>Watch Partner’s Whipping</td>
<td>0%</td>
<td>1%</td>
</tr>
<tr>
<td>No Penalty Recorded</td>
<td>9%</td>
<td>1%</td>
</tr>
<tr>
<td>Did Not Appear</td>
<td>3%</td>
<td>5%</td>
</tr>
</tbody>
</table>

wages, a fine represented a lesser burden to men in terms of the work-hours required to pay it.

Conclusions from the Quantitative Analysis

Five broad conclusions about Puritan sexuality can be drawn from the quantitative data. First, the very low number of convictions does not indicate the existence of a sexually charged atmosphere in seventeenth-century Massachusetts if a sexually charged atmosphere is defined as one in which
provocative behavior or sexual innuendo is acceptable behavior.\textsuperscript{32} David Hackett Fisher says that relationships between men and women were "highly charged with sexual tension" because the courts assumed that if "healthy" men and women were alone together they would engage in coitus.\textsuperscript{33} Unmarried people were carefully watched, as he suggests, but the community oversight suggests not the expectation that unsupervised persons would engage in sexual activity but the depth of Puritan fears about sexual activity between unmarried persons. The old stereotype of Puritans as joyless ideologues may be outdated, but even Edmund Morgan, while depicting Puritans as enthusiastically embracing the delights of marital sexuality, stated that they were "frankly hostile" to sexual intercourse prior to marriage.\textsuperscript{34}

It is anachronistic to assume that Puritan men and women possessed and expressed the same sexual appetites as late twentieth century youth who are bombarded by sexual imagery in every aspect of their lives. In a society in which coitus

\begin{footnotesize}
\begin{enumerate}
\item[32] Roger Thompson, \textit{Sex in Middlesex}, argues for the existence of a New England society in which parents were unable to control their children, teenagers gathered in barns to read sex manuals and men and women bantered openly about sexual activity, but over the fifty year period of his study, there were only 161 cases of illegitimate and premarital pregnancy combined. As well, \textit{Sex in Middlesex}, predates much of the recent very good work on gender ideology in early modern England which allows for a more nuanced interpretation of male-female relationships in seventeenth-century New England.

\item[33] Fischer, \textit{Albion's Seed}, 91.

\item[34] Morgan, "The Puritans and Sex," 594.
\end{enumerate}
\end{footnotesize}
interruptus was the only viable birth control measure and herbal remedies the only abortifacients, 126 illegitimate pregnancies over a 52-year period do not represent a large amount of sexual activity. Moreover, this was a society that actively sought to dampen youthful sexual appetites, placed a high premium on female chastity, and provided few opportunities for engaging in private sexual experimentation away from community oversight. One should not underestimate, either, the religious idealism of the Puritans and their commitment to the creation of a Biblical commonwealth in New England that would serve as an example to the rest of the world. Prior to 1670, fewer than one woman per year had an illegitimate child in Essex County, and while the numbers increased substantially over the last 22 years of this study, the population increased as well.

Second, women who worked as servants were vulnerable to sexual exploitation. About 40% of the female defendants were servants, indicating that in the normal course of events, most Puritan women spent some part of their adolescence and early adulthood living in other people's houses. While community oversight was effective in public spaces, and courting activities were bound by accepted rituals, the type of relationships that produced illegitimate children occurred outside the normal course of events. When young women worked away from home learning housewifery skills, doing field work, or serving as household helps either on a short-term employment
contract or a long-term indenture, they were in a space removed from both family and public oversight and the very factor that should have ensured their protection, their presence within a well-governed household, made them vulnerable if the household into which they had come was not well-regulated.

While one cannot assume that the 45% percent of women who were twenty years of age or younger were the victims of sexual predators, their age and their acculturation to Puritan religious norms and gender ideology, make it a reasonable assertion in most instances. The remaining 55% percent of the women, those who were 21 years of age or older, who bore illegitimate children were subject to similar conditions as the younger women. Their motives for entering into a sexual relationship, however, were probably more mixed, and their greater maturity may have allowed them to resist undesired sexual contact more assertively.

Third, bastard-bearing was not limited to the poorest segment of Puritan society. Women from all strata of Essex County bore illegitimate children. In each decade, approximately half of the women presented were of middling or elite rank. In most instances where their partners were identified, the male defendant was of equivalent rank to the female defendant. There is little evidence for the existence of a bastardy-prone sub-population of families, although some produced more than their share of illegitimate children.
Nevertheless, they were not drawn exclusively from the lowest level of Puritan society. Three Rowlandson sisters were prosecuted for fornication between 1684 and 1687. Their aunt, Mary Rowlandson, had become an authentic New England heroine when an account of her captivity during Metacomet’s War had been released in 1682. Three Bridges brothers, the sons of Mr. Edmund Bridges, were convicted of fornication between 1657 and 1667. In neither instance was bastard-bearing replicated in a previous or future generation.

Fourth, in a period in which marriage represented the only female career opportunity, only about one-third of women who had borne an illegitimate child married. The loss of their sexual reputation severely impaired their ability to make a match. Women were thought to be the possessors of insatiable sexual appetites, once aroused, and a pregnancy provided irrefutable evidence this had occurred. How could they be trusted to be faithful wives?

Fifth, women were sentenced more severely than men when the male and female defendants were of equivalent class. Moreover, even when male and female defendants were fined an equivalent sum, it required more work-hours for women to pay their fines than men. This is the most convincing evidence that Puritan statements that posited women as the lustful daughters of Eve, capable of the most egregious sexual offenses was more than popular rhetoric or Biblical cant. Puritan justices
carried this belief system with them into the real-life world of the Essex County Quarterly Court.

**Legal Aspects of Fornication Prosecutions**

**Fornication Legislation**

The idea that sexual activity between unmarried persons could be controlled through criminal prosecution of those who bore illegitimate children and those whose first child arrived within thirty-two weeks of marriage did not originate in Massachusetts. English authorities had used ecclesiastical courts to control sexual activity for centuries. In England, however, the primary purpose had been the reduction of welfare costs, and, as such, the courts selectively targeted the poorest members of the community for prosecution. English Puritans had pressed for a uniform application of the fornication laws and harsher penalties, and they had tried unsuccessfully to use their Parliamentary clout to transfer jurisdiction over sexual irregularities to the civil courts.35 The New World offered Puritans a chance to create a civil court system in which moral offenses could be prosecuted as crimes prior to the Interregnum.

In the first decade of settlement, when it was discovered that a single woman was pregnant, her male partner was assumed

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to have initiated the sexual activity, and he was punished. Between 1630 and 1639 seventeen men and only two women were charged with sexual offenses.36 A typical entry in the Court of Assistants docket book records that: "John Jones, for defiling his wife before marriage was fined 20s8d."37 Judicial leniency was predicated on the fact that the couple had married by the time of their court appearance. Another Court of Assistants entry shows the length to which the Court went to ensure that the couple married and their desire to preserve the anonymity of the woman:

John Vaughn, having defiled ____ and refusing to marry her was committed to prison til he should give sufficient security to provide both for the mother and the child, or marry her whom he hath defiled.38

If the couple, however, had not married or were unable to marry for some reason, the woman faced the same punishment as her partner. Since Robert Huitt and Mary Ridge were not married at the time of their court appearance in 1632, they were both ordered to be whipped.39

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36 Karlsen, Devil in the Shape of a Woman, 195. In Plymouth Colony, I found that while women were charged with fornication along with their husbands, they received a lesser sentence during this first phase.

37 Noble, John, Records of the Court of Assistants of the Colony of Massachusetts Bay, 1630-1692, Volume II, 87.

38 Records of the Court of Assistants, II, 91.

39 Records of the Court of Assistants, II, 30.
A case in 1638 foreshadows the Court's treatment of single women who admitted to having engaged in sexual intercourse. Alice Burwood, a Boston servant, went to the authorities and told them that John Bickerstaff, also a servant, had raped her. Despite the coerced nature of the intercourse as Burwood described it, she was whipped for: "yielding to John Bickerstaff without crying out and concealing it for nine or ten days." It cannot have been much of a comfort to her that Bickerstaff received fifteen lashes to her ten. Her employer was so affronted by her sexual activity and the subsequent stain on her character that a court order was required to force him to receive her back into his house after the whipping.

The first fornication case tried by the Essex County Quarterly Court began with the presentation of Robert Coaker and Miriam Moulton of Newbury in December 1641. They had engaged in sexual intercourse together and then had married other persons. It was as Miriam King of Hampton that Moulton was presented for fornication. The Court punished Coaker, not King, in coy terms when it rendered its verdict in December 1642:

Robert Cocker betrothed himself too securely to one maiden, and then contracted with another woman. To be severely whipped, and to pay to Thomas King, who subsequently married the first maiden, five pounds.\(^41\)

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\(^40\) Records of the Court of Assistants, II, 79.

\(^41\) Records and Files, I, 44.
Besides no mention of fornication in the Court's verdict, Moulton was not named; she was categorized as a maiden, and her husband, Thomas King, was compensated.

This case contrasts sharply with Essex County's second fornication prosecution less than three years later which involved a married man, Edward Flint, whose wife had remained in England, and his servant Alice Williams. Flint's case was referred to the Court of Assistants where he was fined £20 for "having gotten a slut with child." Ten pounds of his fine was given to the town of Salem to ensure that the child would never become the financial responsibility of Salem taxpayers. Williams was fined £5 and whipped. While Moulton had been regarded as a "maiden" and not punished, Williams was called "slut" and punished both corporally and financially. It is true that Moulton was contracted to Coaker and expected to be married to him when they had sexual intercourse, and Williams was a young servant who had sexual intercourse with her older, married, master whom she could have no expectation of marrying.  

42 Flint was prosecuted the previous year for not living with his wife. He testified that her mother had not been willing to see her come to New England. He brought at least two children with him. Records and Files, I, 50.

43 Records of the Court of Assistants, II, 137.

44 At some point, Flint was granted a divorce from his wife in England and he married Williams. Williams died in 1700. Flint died in 1673, leaving an estate of £911.15s. Alice and the Flint children were still arguing about the validity of Flint's will and the disposition of the estate in 1694.
The conditions under which the sexual activity occurred should have accorded some sympathy from the court for Williams. Williams was in a dependent relationship: her master was a sexual predator. Flint was forty-one, the brother of Mr. Thomas Flint, a magistrate and deputy to the Court of Assistants. Williams was a teenager, the daughter of a gentleman, Mr. William Williams, who had removed from Salem to Watertown in 1641. Williams, however, was branded a "slut," whipped, and fined. Flint was tried by the Court of Assistants, not the Essex County Quarterly Court that Williams faced, and, unlike his partner, avoided the shame inherent in a public whipping.

This case illustrates the difficulty of separating class and gender when assigning causality to the jury's decision to whip or fine defendants. Did Flint escape a whipping because he was a gentleman, or, at least the brother of an influential gentleman? Probably. Was Williams whipped because she was a young servant or because she was a woman, a "slut?" Probably both factors played a role. Governor Winthrop's reaction to the child abuse case involving the daughters of John Humphrey (below) had demonstrated the Puritan belief that even girls were capable of behaving in a sexually provocative manner. Given the general trend of Essex County jurists to hold women to a higher standard of blame in fornication cases over the course of the seventeenth-century, the gender of the defendant mattered.
Why did the greater share of the blame for initiating sexual activity switch from men to women at the end of the first decade of settlement? A number of reasons seem plausible. Ann Hutchinson introduced the Puritan authorities to a new kind of woman. Charismatic, independent, ultimately heretical, her activities challenged their notion of Puritan womanhood and backlash was inevitable. Also, from a legal standpoint, it was clearly inappropriate to punish her husband for her heresies because from the Puritan point of view he was incapable of controlling her. This may have opened the door to punishing women for sexual misdemeanors.

Another possible cause: The details of the child sexual abuse case involving the daughters of John Humphries showed that even young girls could be a source of temptation. When Dorcas Humphries was seven, her sister, Sarah, five, they were abused by their father's servants for a period of two years, after which Winthrop reported, "[Dorcas] was grown capable of man's fellowship and took pleasure in it." When her father left the colony, the girls were sent to live with Jenkin Davis, a former servant of Humphrey's in Lynn. Davis was "a member of the church there and in good esteem for sobriety and piety" whose wife was pregnant and "scrupulous of having fellowship with her husband in that condition." Winthrop reports that Davis fought

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45Richard S. Dunn, Savage, James, and Laetitia Yeandle, eds., The Journal of John Winthrop, 1630-1649, 370.
against temptation but "he was hurried by the strength of lust" and abused the elder daughter for a year. Modern psychological theory suggests that Dorcas may have acted in a provocative manner while in the Davis household because of the prior abuse. Winthrop articulates the Puritan belief that women were innately lustful and that their sexual appetites, once aroused, were uncontrollable. He believed that Dorcas had been the instigator of the sexual activity with Davis. If a ten-year-old child could tempt a church member, what might a fully grown woman be capable of?

Further, the population of Massachusetts Bay Colony increased from 1000 fully-committed Puritans who arrived in the Winthrop fleet of 1630 to 20,000. Likely, communal cohesiveness lessened as the settlers moved out of their dugouts and wigwams into more traditional permanent structures. New towns were established at a distance from the original settlements, and non-Puritan settlers moved into the colony in greater numbers. Winthrop wrote in his journal in 1640 that:

[a]s people increased, so sin abounded, and especially the sin of uncleanness, and still the providence of God found them out. 

In addition, there had been no written code of laws in the initial decade of settlement in Massachusetts Bay Colony and the

\[46\] Journal of John Winthrop, 370.
\[47\] Journal of John Winthrop, 374.
Court of Assistants had made their decisions based on the circumstances of individual cases. If the lack of an official legal code had allowed flexibility in their treatment of female sexual offenders, it was lost.

The authorities wanted to execute the Boston servants who had initiated the sexual abuse of Dorcas and Sarah Humphrey, but they lacked the legal authority. This impelled them to write the first formal law code, the The Laws and Liberties of Massachusetts, issued in December 1641. The fornication statute stated that:

> It is ordered by this Court and the Authority thereof; That if any man Commit Fornication with any single Woman, they shall be punished, either by enjoying Marriage, or Fine, or Corporal punishment, or all, or any of these, as the Judges as the Judgement of the Court that hath Cognizance of the Cause shall appoint.\(^48\)

The formulators of the Laws and Liberties encouraged fornicators to marry. Where marriage was impossible due to unfinished indentures or a lack of financial resources essential to the establishment of an independent household, or a prior marriage on the part of the man involved, the law provided for public corporal punishment or the payment of a five pound fine.

Karlsen argues that the relative scarcity of women during the 1630s ensured that the court would treat them more

\(^{48}\) The Laws and Liberties of Massachusetts, 1641-1691, Volume II, 280.
leniently.\footnote{Karlsen, 195.} Perhaps, however, the court is making a legal distinction. Since the couples who were charged were married by the time of their court appearance, the women were femes covert and their husbands responsible for their actions. Still, there is a definite rhetorical and attitudinal shift at the end of the first decade of settlement. The onus for initiating sexual activity switched from men to women after the decade of the 1630s.

During the 1640s there were only four cases of illegitimate fornication, and while all four women were convicted and whipped, only two men were convicted, and one, Robert Coaker, was whipped. In two of the instances where the men escaped a whipping, they were of equivalent status to the female defendant. This shift is clearly revealed in the 1650s when the number of women convicted of illegitimate fornication quadruples to sixteen. The number of men convicted of fornication in the decade of the 1650s remains constant at one-half of the number of women convicted.

Clearly, as early as the 1640s the Court believed that women bore the greater responsibility for engaging in illicit sexual activity and deserved the more rigorous punishment. For example, Mary Dane, a pregnant sixteen-year-old servant, was sentenced to be whipped in 1654 after the birth of her
illegitimate child. She was also ordered to pay for its upbringing. Her partner, Jeffrey Sknelling, had been fined in 1649 for "defects in watching" and whipped for "divers lies and bound to good behavior for suspicion of filthiness" in 1650. In spite of these previous convictions and the age of the female defendant, he was fined rather than whipped and not required to pay child support.

In 1665, the Court was obliged to address: "the seeming contradiction between the Laws titled Fornication and titled Punishment as written in the Laws and Liberties." The punishment section of the Laws and Liberties had placed restrictions on corporal punishment. The law said that "gentlemen" could not be whipped. As well, corporal punishment was only to be used in cases where there was no other applicable punishment: "unless his Crime be very shameful, and his course of life vicious and profligate." Apparently some felt that the crime of fornication did not rise to the level required for the imposition of corporal punishment.

50 Her father, John Dane, was one of the moral exemplars of the town of Ipswich.

51 In 1650, when Sknelling had been bound to good behavior for suspicion of filthiness, his partner, Elizabeth Symonds, had been whipped. Symonds did not marry. Dane married her stepmother's son, William Chandler.

52 Records and Files, I, 280.

53 Records and Files, 355.
The 1665 revision stated that fornication was such a grievous offense, "a particular Crime, a shameful Sin, much increasing among us," that nothing in the Punishment section of the law code prohibited the Court's ability to impose corporal punishment. Even gentlemen were to be whipped if the court deemed the circumstances of their case to be egregious. To reinforce the seriousness of fornication as a crime against the Commonwealth an additional clause was added threatening disenfranchisement as the result of a fornication conviction, although it does not appear that this penalty was ever enforced.

In 1668 the legislature issued a new fornication law. In order to relieve local communities of the support of bastards a procedure was established under which an assignment of paternity could be made. Any man named by a woman during childbirth was held to be the true father and liable for support payments. The assignment of paternity, however, would not be followed by a fornication charge. In this way, men who denied paternity might

54 The Salem town records detail annual payments made to specific householders who contracted with the town to raise illegitimate children in cases where no father had been named or the father had fled and the mother's situation did not allow her to raise the child herself. The contract, usually for seven pounds, was awarded to the lowest bidder, who, in some cases, returned to town meeting to ask for an increased sum to meet additional expenses.

55 Normally the child support payment did not exceed three shillings per week, payable by the father in cash or produce, usually corn, but the child support payment was adjusted up or down in reference to the financial resources of the father.
be assessed child support payments but would escape a fornication conviction. There was no equivalent judicial relief from prosecution for women. Between the passage of this law and 1685, while 77 women who bore illegitimate children were convicted of fornication, only 15 of their partners were found equally guilty.

A typical case is that of Sarah Wait in 1685. She was fined for fornication, and Joseph Burnam, whom she had accused of fathering her child while she was in labor, was assigned child support payments, the: "court having great grounds to fear he was not so innocent as he pretended." Prior to 1668, the Court might have charged both Wait and Burnam with fornication, but if Burnam had denied the fact, it would have been difficult, if not impossible, to secure a conviction, and the town of Ipswich might have found itself liable to support the infant. After 1668, despite Burnam's denials, the court could compel him to pay child support and in return Burnam could escape a fornication charge. The 1668 amendment that relieved men who did not marry their partners from fornication prosecutions was an important watershed. Massachusetts chose to prioritize the financial support of bastards over the punishment of men who engaged in sexual intercourse outside of marriage.

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56 Records and Files, VIII, 531.
One could argue that the decision to go after child support showed Puritan respect for the laws of evidence and their unwillingness to convict an innocent man. A lesser standard of evidence, the woman’s childbirth statement, was enough to legally assign child support payments. One might ask why, if a childbirth statement was credible enough to assign paternity, it could not be used to prosecute men for fornication. Whatever the intent of the amendment, the effect was to place single women at the center of fornication prosecutions and to reinforce in the public mind the popular belief that women, not men, bore the ultimate responsibility for the initiation of sexual intercourse.

On paper, prior to 1668, the fornication laws appear to be equitable. Marriage was officially encouraged, equal punishments were assigned to men and women, a procedure for establishing paternity was outlined, and child support was mandated. In practice, as was demonstrated in the quantitative section of this chapter, the system was weighted against single women, particularly propertyless single women, from the beginning. After 1668, most single women who bore illegitimate children faced a fornication prosecution alone.

The Course of a Fornication Prosecution

Female defendants fell into two groups in regard to the course of their trials. The first group was composed of women
who could afford to post a bond during their pregnancy to guarantee their appearance at Essex County Quarterly Court after delivery. Women with financial resources were able to take a pro-active stance, which was to their advantage since they would be presented by the local grand juryman in any case. Once a pregnancy had become visible and it was apparent that it would proceed to term, the pregnant woman, accompanied by a male relative or employer if possible, made an official complaint before one of the judges of the Quarterly Court who also served as local magistrates. At this time, usually in the fifth or sixth month, the pregnant woman and her male representative would be required to post a bond, usually £10, promising to appear in court after the birth of the child to press their complaint against the man they named as father. Within days, the magistrate summoned the putative father, asked him to confirm or deny the charge, and bound him over to appear in court after the birth of the child. This summons may have forced a marriage in some instances since, of 177 premarital fornication cases between 1640 and 1692, the average length of time elapsed between conception and marriage was six months. However, in cases of illegitimate fornication, the man who had been named invariably denied the charge. After the baby’s birth, the grand jury presented the woman for fornication, and both parties were summoned to the next session of the Essex County Quarterly Court. Testimony would be presented by the
midwife and the female defendant would be sentenced to be whipped or fined for fornication. Child support payments, and occasionally a penalty for fornication, would be assessed against the man deemed to be the child’s father.

This was the procedure followed by Hannah Adams, the 29-year-old daughter of a prosperous planter. On May 14, 1678, accompanied by her brother, Jacob Adams, she charged that Joseph Mayo had gotten her with child on December 26th last. Mayo denied Adams’ claim and was given two weeks to disprove it. In July, Jacob Adams paid £10 to guarantee his appearance to prosecute Mayo on paternity charges, and Joseph Mayo paid £10 to guarantee his appearance in court. Mayo was also ordered to pay 3 shillings per week child support from the birth of Adams’ child until his appearance at the next session of the Essex County Quarterly Court.

Adam’s assertive stance worked. She had child support payments from Mayo arranged before the birth of her child and before her fornication trial. But it took money, it took her brother’s assistance, and it did not alleviate, in any way, her conviction and sentencing. It was Jacob Adams, not Hannah, who initiated legal action, and it was Jacob Adams, who, in the preliminary skirmishing over posting bond, put up £20, and sent Mayo to jail until he could raise £30. Mayo was at sea, however, when Hannah Adams appeared in court to answer the fornication charge. She was ordered to be severely whipped or
fined for fornication. Adams chose to pay a fine, as did her step-sister, Sarah Short, who was presented following Adams at the same session, also for fornication with Joseph Mayo. Short, however, had married Mayo, so there was no question of her being whipped. Mayo forfeited the bonds that Adams’ and Short’s brothers had forced him to take out to guarantee his appearance. It may have been simpler for Mayo to forfeit his appearance bonds than to face the sisters he had seduced and their irate brothers in court.

Poor, propertyless women, who lacked the money to post a bond to guarantee their appearance at the next quarterly court session and to force their partner to appear before a magistrate to confirm or deny paternity, were subject to a different procedure. While in some cases the court records mention postponement of the whippings of convicted female defendants until after the birth of their child, most poor women had to wait passively until childbirth to make a formal assertion of paternity to the midwife and then had to rely on the combined forces of the midwife and the grand juryman to bring their partner to court. Grand jurymen monitored immoral and criminal activity in their town and forwarded along to the court the names of single women who were pregnant or who had given birth to an illegitimate child. The woman, along with witnesses such as her employer, neighbors, and the women present at the birth of her child who could attest to the identity of the father,
would be summoned to appear at the next session of the Quarterly Court where she would be inevitably convicted of fornication. If she had made a declaration of paternity during labor, her partner would be summoned too in order to make financial arrangements for the child.

Women who fell into this second category were often in desperate straits. Hannah Sterling, for example, was eighteen when she became pregnant by Robert Cham, a local servant who was suspected of burglary at the time they engaged in coitus. There was not enough evidence to put him in prison for burglary and he "slipped" away from Essex County. Sterling was the sixth of twelve children, at least nine of whom lived into adulthood. The family moved frequently, living in Haverhill, Rowley and Andover before leaving Massachusetts for Connecticut, suggesting that the family was economically marginal, although an alternative reading of upward mobility is possible. Sterling failed to appear in court to answer her 1686 presentment for fornication and Constable James Davis reported that she "is so pore in clothing she is not fitt to goe to cort." That Sterling lacked sufficient clothing to attend court suggests that she had been cast off by her family and her employer. Hannah Sterling, and women like her, even if given the option of paying a fine to escape the pain and humiliation inherent in a

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57 Records and Files, IX, 612.
public whipping could not afford to exercise it. While a
whipping could not be avoided, it might be postponed. In 1645,
Marie Chandler was ordered to be severely whipped: "but having
sore breasts and boyles her punishment was respitted until next
Lecture Day."\(^{58}\)

It is possible that employers occasionally paid their
female servants' fines. There would be an element of self-
interest involved in seeing their servant returned to productive
labor as quickly as possible and if the servant was indentured
they had a considerable investment as well as a possible
contractual relationship that committed them to room and board.\(^{59}\)
Yet, it may not have been necessary to pay their fornication
fines to gain additional service. In 1672, Mary Parker was
ordered to serve her master, Moses Gilman, for three more years
after the expiration of her indenture. Further, her child was
to serve Gilman and his heirs as their servant until he/she
reached the age of 21.\(^{60}\) In 1675, Mary Talbut was ordered to
serve her master, Samuel Hunt, two extra years for the time he
had lost during her pregnancy.\(^{61}\) It is not clear from the

\(^{58}\)Records and Files, I, 80.

\(^{59}\)In the 1630s, two indentured servants, one in Boston, the
other in Plymouth Colony became pregnant. When their employers
tried to turn the pregnant women off, the courts in both
colonies ordered them to retain the women in their households.

\(^{60}\)Records and Files, V, 103.

\(^{61}\)Records and Files, VI, 20.
surviving court records that either Parker or Talbut escaped corporal punishment because their employers paid fines for them.

Usually fines were due on the day of conviction. In 1686, a fornication defendant, Sarah Savory, told a young friend that:

> when she was at Ipswich Court Major Saltonstall spoke privately and asked her father if he had the money about him, for the Major said it would be less disgrace to his daughter to pay the money beforehand or before the money was passed publicly.  

Sometimes a fine could be paid in produce. In 1671 Ruth Bowin was given the option of paying £4 in money or wheat. In at least one instance, the judges gave the convicted female defendant until the next session of court to pay her fine.

In one case the court agreed to remit a fine. In July 1657 Martha Lemon was ordered to be whipped or fined following the birth of her illegitimate child, Benjamin Lemon. Her mother appeared in court with her and agreed to pay her fine. That November: "Robert Lemon's daughter's fine [was] remitted at his request." Robert Lemon was a substantial Salem farmer and no partner had been presented with the sixteen year-old Martha Lemon. The judges must have been aware of extenuating circumstances in Lemon's case that have not survived in the record, but whatever it was that convinced the judges to return

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62 Records and Files, IX, 601.

63 Records and Files, IV, 439.

64 Records and Files, II, 60.
the fine paid by Lemon's mother to her father six months later, it was not a common occurrence.

Child Custody and Child Support

Child support is mentioned specifically in only 38 of 126 fornication trials. Seven of these cases make no mention of the amount to be paid. Fourteen men paid between two and three shillings each per week. There were various other payment options. In three cases the male partner paid a lump sum to the mother's father or husband. Four men paid bond to the town in which their child resided to guarantee its support. Two babies were indentured: three were raised by their fathers, in one instance payment was made by a master, in another payment was made to the master, and in two instances the existence of a private arrangement is mentioned.65 It is likely that in the majority of cases where no specific sum was assigned by the court, the parties had come to a private arrangement prior to...

65 The future of one of these infants can be uncovered through a series of entries in the court records. Mehitabel Brabrooke was born in 1652. Her father, Richard Brabrooke was married; her mother, Alice Ellis, was Brabrooke’s servant. Mehitabel was raised in her father’s household by his wife. When 16, Brabrooke was declared unmanageable by her stepmother, convicted of burning down her employer’s house, ordered to be severely whipped, and fined £40. She married John Downing, 12 years her senior, the same year with a dowry consisting of half of Brabrooke’s farm. Subsequently, Downing was convicted of drunkenness after she was found passed out in the road. It is probable that other illegitimate children experienced similar emotional problems. Both Mehitabel Downing and her stepmother were jailed for witchcraft in Salem in 1692.
their court appearance. A mention of child support payments in the court records, however, is not a reliable indicator that the mother of an illegitimate child was actively engaged in raising her child. Massachusetts courts regularly removed children from households when they felt that the parents were unfit and who was more unfit, in Puritan eyes, than a woman whose sexual behavior violated standards of femininity. There were also practical issues. It was impossible to work as a servant and raise a child at the same time.

It is ironic that women who lost their opportunity to advance themselves economically through marriage also lost the illegitimate children that might have served as a comfort. Again, from the Puritan point of view, authorities did not want to reward women for bearing illegitimate children. William Reeves described in a touching manner the circumstances in which Susanah Durin and her baby were separated:

Debarred as she is from coming to see her poor babe, ever since it was stripped and turned naked from her, which according to the bond of mere humanity and nature would be thought impossible, were there not extraordinary restraint and fear. Can a woman forget her sucking child?^{66}

^{66}Records and Files, IV, 39. Reeves deposition is illustrative for what it says about the mother/child bond in seventeenth-century Massachusetts. It suggests that Puritans believed in the strength and immediacy of the mother/child bond, and that legal restraints were necessary to keep Durin away from her child.
Durin obviously loved her child; it took legal restraints to keep her away from it. The image of the baby stripped of the clothing that Durin had provided for it and reclothed by a new mother is telling. Even William Reeves understood the strength and immediacy of the mother/child bond. At the same time that Durin was prohibited from approaching her child, Reeves was required to support it financially.

Not all mothers of illegitimate children would have shared Durin's experience of an immediate maternal bond. Added to the natural fears of any Puritan woman facing childbirth, was the realization that the baby they were carrying evidenced to all that they had transgressed community sexual boundaries, that they were not one of God's Elect, and that they had severely limited their future options. The pregnancy would have been burdened by stress as they faced their own feelings of shame, worried about the future, and faced harassment from their neighbors. Deposition after deposition attest to demands to know who the father was. In 1682, four women and one man formally deposed to questioning Elizabeth Gould about "how she came by her big belly?" To one inquisitive 40 year-old matron, Gould retorted that "it was the sticke behind the fier." Hannah Adams faced taunts from young men who bet on whether or

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68 W.P.A. transcription, 38-81-1.
not she was pregnant and told her that Joseph Mayo, who had bragged of having sexual intercourse with her, had been captured by Turkish pirates. These factors would have complicated the development of an affective maternal bond. In addition, the knowledge that they would have to give up the child after birth may have led the pregnant woman to steel herself against maternal urges when the baby stirred within her.

Depositions concerning the support of Sarah Warr's illegitimate child confirm that women who worked as servants regularly lost custody of children born out of wedlock. Warr and her partner, Josiah Clarke, a recently married man, were presented for fornication in April, 1671, and Clarke was ordered to give the town of Ipswich a security bond guaranteeing that he would pay weekly child support of 2 shillings. He was back in court in September, petitioning for a reduction in support payments. Since at this time, his payments were reduced to 18 pence a week, and Warr was assessed a fee of 12 pence a week at the same time, both sums to be paid to Mr. Baker: "for the bringing up of the child of Sarah Warr," it appears that Warr's guardian, Mr. Baker, had legal custody of the child. The following May Clarke asked the court for permission to: "put (the child) out to some honest man until it be twenty-one years

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70 Records and Files, IV, 424.
of age." In April, 1673, shortly after the child's second birthday, Clarke appeared in court with Henry Greene to apprentice the child to him, and Clarke was freed of any further financial responsibility for his child by Sarah Warr. Once the child reached two years of age as Warr's had, it could be indentured by the father without the mother's consent, although if she did not consent, the court had the option of freeing the father from further support payments. Richard Woolery had been ordered to pay three shillings in corn per week toward the support of his daughter by Abigail Morse in 1676. Two years later he indentured the child, relieving himself of financial responsibility. Other men sued to have the child support payments reduced at age two. Isaiah Wood's father-in-law went to court to have the payments made to the keepers of Mary Sheffield's child reduced by one-half in 1662.

In 1672, Mary Parker was required to sign her first illegitimate child over to her employer, Moses Gilman, in a 21-year indenture ("unless the father should choose to redeem it") as well as to serve Gilman an additional three years after her

71 Records and Files, V, 38.
72 Records and Files, V, 157. Warr was convicted a second time of fornication in March, 1676. This time, however, the father of her child, Henry Gould, married her.
73 Records and Files, VI, 206.
74 Records and Files, II, 384.
own indenture had expired. The following year Parker was pregnant again, but this time Parker named a father, Teague Disco. The court took a £40 mortgage on Disco’s land to insure that child support payments of three shillings per week would be made. Thus Mary Parker had two illegitimate children, and while she lived in the same house as at least one of them, she had lost the right to exercise control over them or to make decisions about their futures.

Some women struggled to pay the child care expenses themselves. Part of Samuel Sewall’s indignation at the rich Coddington family was that Elizabeth Thurston, the mother of an illegitimate child, was struggling to pay two shillings a week:

for its diet in a good family at Medfield; which charge takes up her whole Wages, and leaves nothing to furnish either of them with clothes

while its father paid nothing toward its costs. In the rare instance where a mother was able to retain custody of her child, the father was able to use the threat of indenture or the threat to take the child into his own home to force her to accept a reduction in child-care expenses. The Widow Stickney had eight legitimate children between the ages of one and fourteen and one illegitimate child when she declared that John Atkinson, a Newbury feltmaker, had fathered her tenth child, born January 20, 1681. She waited eleven months before charging him with

75Letter Book of Samuel Sewall, 270.
paternity. Over Atkinson's protestations of innocence, he was ordered to pay £8 for the past eleven months and 2s6d per week in the future for child support. At the same session, Atkinson was ordered to pay a fine of 20 shillings for striking Stickney. He asked the court to reduce the payments since he had a wife and nine children to provide for and would end up in prison since he could not make the payments. If the court would not rebate part of his payments, he asked that:

in case I must be reputed the father of it, I may have the Liberty that all father have to dispose of their own children (giving sufficient caution that it shall be fairly provided for) to take it from her & dispose of it, and not be kept as a Continual Slave to her who hath injured me, and impudently and scoffingly insulted me.

The court agreed to let Atkinson find a suitable home for his illegitimate daughter, Mary, but the court added the stipulation that Atkinson could not take the child into his own household. Stickney was determined to maintain her daughter in her own household, and refused to allow Atkinson his right as a father

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76 Records and Files, VIII, 279. Sarah Stickney had a local reputation for promiscuity. It was rumored that Stickney had drawn lots to decide whom to name as her child's father. Atkinson's name had been chosen. However, Atkinson's wife had been seven months pregnant when Stickney conceived, so it is not impossible that Atkinson had gone to her for sexual intercourse.

to put out his child. She was required to give up further child support payments after this offer was received.\textsuperscript{78}

Prior to 1668, child support assignments were uncertain. We have seen that sixteen year old Mary Dane in 1654 was required to support her child herself.\textsuperscript{79} Or, as in Sarah Warr's case, both father and mother might be required to make payments to a third party to pay for their child's expenses. In 1668, the law was passed requiring child support payments, usually between two and three shillings per week, be assigned by the court to the putative father in lieu of a fornication conviction. Evidently child support payments were made, just as the 1668 law attested, to guarantee that the child would not been a burden on the town's tax rate. It was certainly not to provide financial assistance to a young mother struggling to raise her child alone outside of the secure structure of the traditional two-parent family.

What happened to the illegitimate children who were placed in the care of the town of their birth? Since they were assigned by an annual contract to whatever household agreed to maintain them for the least amount of money, they faced an unsettled future. The Salem town records indicate a difficult and insecure passage for Sarah Lambert's child, who at no point

\textsuperscript{78} Records and Files, IX, 433.

\textsuperscript{79} Records and Files, I, 237.
in the record is accorded the dignity of a name, sex, or age. It was likely six years old in 1673. Francis Skerry had been keeping both Sarah Lambert and her child prior to that time, but in April, 1673, the child was given to Thomas Greenslet's wife. In August, the town of Salem agreed to give the Greenslets half an acre of land in return for keeping Sarah Lambert's child until it was eighteen. The following March, however, Sarah Lambert's child was taken from Thomas Greenslet's wife and placed with Thomas Green's wife.\(^8^0\) The Greens also agreed to maintain Sarah Lambert's child until it was 18 in return for up to 40 acres of land. At the same time, the Salem selectmen were trying to find passage to Virginia for Sarah Lambert. They did not succeed because she had another illegitimate child in 1679. In March 1679 Sarah Lambert's child was still with the Greens, but its position in the family was tenuous, because the Greens were asking for more money. In 1680 the Greens were given 50 shillings, "the better to enable him to keepe {Sarah} Lambert child, hee being poore & in wante." Thomas Green's financial position makes it likely that taking in bastards was a strategy for supplementing marginal family incomes. This could not have been a future eagerly sought by pregnant women for their children.

\(^8^0\)Two years later in 1676, Mrs. Green took in another illegitimate child, one fathered by her own husband.
Conclusions

Coitus between unmarried persons was rare, reflecting both Puritan religious ideology that postulated marriage as an essential precondition to sexual intercourse as well as gender ideology that placed chastity above all other female attributes. Puritans valued self-control. It was proof that the individual lived in a state of grace. An orgasm outside of marriage was its antithesis. It is not surprising that the Puritans feared sexual desire and sought to limit its expression to marriage. That the rate of illegitimate and premarital births remained low throughout the seventeenth-century indicate Puritan success.

Two composite but overlapping portraits can be drawn of women who bore illegitimate children in seventeenth-century Essex County. The first young woman, representing 45% of the whole, was 20 years of age or less, worked as a servant, and had family in Essex County. Her partner was older, often married, and many of the relationships were probably predatory (in that they did not occur within the context of courtships). The second woman was 21 years of age or older, but also worked as a servant. She was less likely than her younger counterpart to have financial resources and family living in Essex County. She may have expected matrimony as an outcome of her pregnancy but her partner, usually of equivalent rank, either because of poverty, disinclination, or a prior marriage, failed her.
There were commonalities as well in the experiences of these two groups of women. All were prosecuted and convicted, and most lost their children. As well, most lost their ability to make an appropriate marriage elsewhere. Most were sentenced to be whipped prior to 1660, and in subsequent decades most received the option of corporal punishment or paying a fine. Money, the age of the female defendant, and the ability and desire of the male partner to marry, determined whether an unplanned pregnancy would be illegitimate or premarital.

Men named as partners by female defendants also fall into recognizable categories. As many as one-half of the men who fathered illegitimate children probably never possessed the economic resources necessary for marriage. These men may or may not have been optimistic about their ability to marry when they engaged in sexual intercourse. That four of them married their partners within a few months of the baby’s birth indicates that a few had reason for hope. The second largest category was composed of men of marriage age who married elsewhere soon after their conviction. One of these men married between the conception and birth of his illegitimate child and within three years almost one-third of the men named during labor as the father of an illegitimate child had married. This group of men made a deliberate choice not to marry the women they had impregnated. The third group, at 20% of the men who fathered illegitimate children, were already married. Clearly the
majority of men who fathered illegitimate children, and some of their female partners, engaged in sexual intercourse without the expectation that marriage would follow.

One hundred and four women and 35 men were convicted of illegitimate fornication between 1640 and 1685. Prior to 1665, fewer than one Essex County woman was presented each year. This is an extraordinarily low illegitimacy rate. Fewer than one out of every 200 Essex County births was illegitimate. For every three women who was convicted of fornication following the birth of an illegitimate child, one man was presented. Once convicted, women were punished more severely than their male partners. The Essex County Quarterly Court held women to a higher standard of sexual accountability than their male partners.

The quantitative analysis reveals a contradictory feature of New England "sex ways." Male sexual behavior was privileged by the court when it came to the decision to prosecute, convict, and sentence. This type of privileging is usually associated with societies with a flourishing traditional double standard, such as that of seventeenth-century Virginia or Restoration England and characterized by a high rate of illegitimacy. Yet the illegitimacy rate in seventeenth-century Essex County was extremely low. This strongly suggests that Puritans punished women with greater frequency and severity because they believed that women were more at fault than men for the initiation of
extramarital sexual intercourse. Nevertheless, this low illegitimacy rate also suggests that male sexual activity was inhibited by the same factors that deterred women from premarital intercourse.

There are two possible ways in which Puritans may have rationalized their treatment of women who bore illegitimate children more severely than the men who fathered their children. One is that Puritans accepted the implicit Judaic-Christian belief, deeply ingrained in the communal psyche, that posited women as possessing a powerful sexuality which made them naturally lascivious, and, once aroused, insatiable. The second interpretation suggests that Puritans were anxious to promote their new, upgraded version of women as helpmeets, fit mates for the new Puritan patriarch. Very few women failed to achieve the required standard of chastity, but those who did, whether they were the victims of sexual predators, poverty, or human weakness, had to be punished severely because their illegitimate pregnancies provided visible evidence of sexual irregularities that undermined the physical and spiritual foundation of their "City Upon a Hill."

These rationales are not mutually exclusive. Rather, they are complimentary. The first, the "lustful daughters of Eve" argument satisfied those in New England who retained traditional, implicit beliefs about women. As well, it provided justification to the employers who had sex with their female female
servants and emboldened men who promised marriage in return for sex and then reneged on their promises. The low numbers of women who evidenced through illegitimate pregnancies, however, that their actions were driven by uncontainable lusts, is convincing evidence to the contrary. Most women successfully controlled their own sexual behaviors and effectively policed the sexual behaviors of other women.

The second rationale offered, that women were punished more severely than men because a new standard had been set for them that conflated chastity and femininity and an illegitimate pregnancy offered irrefutable proof that they had failed this essential test of womanhood, offers more promise. The ability to remain chaste until marriage was predicated on the assumption that Godly young women who had been educated to Puritan values would not engage in premarital sex. Women who had illegitimate children not only placed themselves outside the pale of the Puritan community by having coitus before marriage, they had shown that they were not true women. Both rationales placed the onus upon women to protect their chastity. Both blamed women for their failures. Both justified punishing women more severely for sexual offenses than men.
CHAPTER 3

DISHONORING GOD AND MASSACHUSETTS: SOCIOLOGICAL ASPECTS OF ILLEGITIMACY

Introduction

In Puritan Massachusetts, where favorable economic conditions existed in combination with religious and cultural ideology that stressed premarital chastity and a law code that criminalized out-of-wedlock sex, the illegitimacy rate was low. In this chapter I will discuss theoretical frameworks that attempt to explain fluctuations in illegitimacy rates, examine sociological aspects of extramarital sexual intercourse, and analyze the circumstances surrounding three typical trials and one atypical trial.

Sociological Aspects of Fornication Prosecutions

Theories of Illegitimacy

Historians of early modern England have constructed elaborate theoretical frameworks to explain illegitimate births. These studies generally take two forms; (1) long-term analyses focusing on peaks and valleys in the illegitimacy cycle to determine contributory factors or (2) the community study. Levine and Wrightson, in a community study of Terling, Essex, concluded that the root cause of illegitimacy was economic
instability. Couples initiated sexual intercourse after contract or spousals and then economic disruption forced them to part prior to the marriage ceremony. Wrightson and Levine provided a comprehensive definition of illegitimacy as a "compound phenomenon" that subsumed the activities of a core of repetitive delinquents, predatory masters, couples whose marriage was delayed, women seeking marriage partners, and transients fathering bastards. The range of persons involved in producing illegitimate children, however, suggests that economic insecurity is not a broad enough conceptual framework.\(^1\)

In Terling, moreover, the illegitimacy rate dropped precipitously from a peak of nine percent of births in the 1610s when the traditional culture, centered on the alehouse, flourished to less than two percent of births between 1641 and 1660, not coincidentally during the period in which Puritans were ascendant. The illegitimacy rate continued to decline until 1685. Wrightson and Levine argue that the Puritan drive to control illegitimacy rose not from a general moral impetus but from the desire to limit demands on the public purse. Economics, then, remained the primary factor even for Puritans. As more substantial members of the community abandoned traditional cultural values in favor of Puritanism which

stressed self-control and sexual restraint prior to marriage, bastardy became more and more an artefact of the poor. I would agree that economic factors played a major role in determining illegitimacy rates, but cultural factors are also important. When the substantial residents of Terling imposed Puritan sexual discipline the illegitimacy rate decreased fourfold.

Peter Laslett's courtship intensity model seems to hold more promise for explaining illegitimate births in Essex County. Though the model is not a perfect fit, key aspects of it can be replicated. Laslett looked at fluctuations in the illegitimacy rate over time and concluded that when the marriage rate went up, the illegitimacy rate increased correspondingly. Also, the age at first marriage decreased. In Massachusetts, where 94% of women and 98% of men married, as opposed to a 73% marriage rate in early modern England, courtship intensity was at a constant peak.² It must have seemed as if every young person was engaged in courtship and, once married, procreation.³ There would be an inevitable spillover of illegitimate births. Laslett, however, correlated illegitimacy with the fact that younger, poorer women

²Fischer, Albion's Seed, 77.

³In chapter 2 I disputed the notion that a sexually charged atmosphere existed in seventeenth-century Massachusetts. If a sexually charged atmosphere is characterized by open sexual byplay, provocative dress and behavior, and sexual innuendo, then this assertion is correct. However, if a sexually charged atmosphere is defined by the general expectation of marriage and positive rhetoric about the joys of marital sexual intercourse, the presence of courting couples, and evidence of marital fertility, Essex County possessed a sexually charged atmosphere.
entered the marriage market in prosperous times, engaged in sexual intercourse after contract, conceived, and then the marriage market failed for some reason, not necessarily economic. Laslett also emphasized the importance of locality persistence (cultural factors, including courtship expectations, which, in Essex County, included premarital chastity) to explain illegitimacy rates. The part of the courtship intensity model that posits a positive correlation between marriage rates and illegitimacy rates can be used to explain the existence of illegitimacy in Massachusetts, while locality persistence can be applied to explain why the rates remained so low.

In early modern England the processes of marriage formation and the defining moment at which a legal marriage had been concluded varied by class and region. In some regions, at some times, and in some status groups sexual intercourse customarily began after spousals and before the church ceremony.\(^4\) In 1549, for example, as a clergyman, John Cotgreve, walked with a group of friends from a midsummer festival to Alice Gidlowe’s house, Cotgreve asked Alice to have sexual intercourse with him in an empty house along the way. She agreed; Cotgreve promised her marriage in front of their friends, and they went into the empty house together, telling the others they would catch up with them. The public promise of

\(^4\)Gillis, *For Better, For Worse*, 38.
marriage was enough to legitimize their sexual intercourse prior to the actual ceremony. It took the passage of the Hardwicke Marriage Act more than two hundred years later in 1753 to systematize marriage practices in England. There was no comparable ambiguity in Massachusetts. Sexual intercourse was allowable only after permission to marry had been officially granted by both sets of parents or a magistrate in lieu of parents and the completion of a civil ceremony conducted by a licensed official.

Puritan New England needs a theory of illegitimacy that incorporates the economic, religious, and cultural realities of life in the New World. Given the low rate of illegitimacy in seventeenth-century Massachusetts, any theory advanced should be couched in positive terms. In Puritan Massachusetts, where economic conditions favoring marriage formation existed in combination with religious ideology that stressed premarital chastity and a secular law system that punished sexual offenders severely, the illegitimacy rate was low.

Male sexual exploitation was the major engine for illegitimacy in Massachusetts. Fifty-five percent of men prosecuted for fathering illegitimate children in Essex County were either already married or married another woman within three years. They chose to have sex although they were unable, in the case of married men, or unwilling, in the case of the men who married elsewhere soon after. The remaining 45% never
married in Essex County, indicating that they were too poor to marry or transient. Women knew that an illegitimate pregnancy would mean public shame, financial and/or corporal punishment and reduced marriage opportunities. Consequently, the incentive for women to engage in sexual intercourse outside of marriage was small. This is not to say that every one of the relationships that resulted in illegitimate children was exploitative or that women never sought out or took pleasure in extramarital sexual intercourse. Some relationships were motivated by feelings of love or sexual passion and in these instances couples usually found a way to marry later.⁵ The expectation in early modern England and New England was that if a courtship resulted in pregnancy the couple would marry.⁶ In Massachusetts, where there were few economic barriers to marriage, most did. Of course, every society has its core of delinquents, predatory masters, lusty widows, transients looking for a temporary relationship, young men willing to promise marriage in return for sexual intercourse and young women hoping that sexual intercourse will bind a man to them, and seventeenth-century Essex County was no exception. As in Terling, Essex, these categories of people bore or sired

⁵Of 99 couples presented for fornication, two had more than one child together, and four married after the birth of their child.

bastards. As the population of Essex County increased and the religious fervor of successive generations decreased the illegitimacy rate gradually rose. More of the women presented were poor, or servants, or both during the last two decades of the seventeenth-century, but for 50 years, between 1630 and 1680, the illegitimacy rate in Puritan Massachusetts reached an unparalleled low.

The Seasonality of Extramarital Sexual Activity

I was able to determine the date of birth for 130 Essex County children who were conceived outside of marriage between 1640 and 1642. From this, I calculated the approximate date on which these children were conceived. Additionally, I was able to determine from the Newbury, Massachusetts Vital Records, the dates of birth for 1616 legitimate children conceived between 1640 and 1685. Their dates of conception were graphed and compared to the dates of conception for the children who were conceived outside of marriage. These data are represented in Figure 1.

Figure 1 shows modest fluctuations in the months in which married women conceived. From a low in February, marital conceptions rise through the spring and summer months, falling

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The date of conception was determined by subtracting 39 weeks from the date of birth.
Figure 1. Time of Conception: Married and Single Women in Essex County Massachusetts, 1640-1685

again in the autumn and reaching a secondary peak in December and January. Fluctuations in the cycle of extramarital

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conceptions are more dramatic. The first peak comes in April at thirteen percent, not coincidentally the month in which it became warm enough for couples to escape the confines and oversight of the Puritan household to engage in sexual intercourse out-of-doors. Extramarital conceptions continue to occur at a higher rate than marital conceptions until August. In September as harvest gets underway, extramarital conceptions peak again at the same high level observed in April.

Two obvious conclusions can be drawn from this pattern. First, opportunities for illicit sexual activity were limited in the winter months, while marital sexual intercourse became more frequent as evidenced by the secondary peak in conceptions in December and January. Two, much of the extramarital sexual activity occurred in the open air or in barns and other outbuildings that were not heated in the winter or the conception rate would not increase so dramatically when the weather got warmer. The April and September peaks are not unexpected. April offered the first real opportunity to find comfortable privacy out-of-doors or in outbuildings removed from direct supervision. By August, when the rate of married women who became pregnant exceeded that of single women for the first month since March, the population that was ready to become sexually active had had four months in which to conceive. The September peak may be related to a combination of factors. Harvest activities brought women into the fields to work. This
placed them in the male sphere and may have made them more vulnerable. Also, most Puritans married in the winter months, the most popular being November and December.⁹ Many of these weddings represented the culmination of courtships begun that summer, and, perhaps, with a commitment to marry made or expected by some women, some couples engaged in sexual intercourse fueled by alcohol and harvest-time exuberance prior to their winter wedding or in the expectation that a winter wedding would occur.

The two months of the fewest recorded number of extramarital conceptions are November and December. Since these were the two most popular months for marriage, possibly extramarital conceptions that occurred in these months were masked by subsequent marriages. There are, however, at least two alternate explanations. One is that the populations most likely to engage in extramarital sexual intercourse were marrying in these months and chose to wait until after marriage to initiate sexual intercourse. Two, women who might have been persuaded to engage in sexual activity by a promise of marriage or to secure a promise of marriage knew by October that unless financial negotiations were already underway between their

families and their suitors' families, a marriage that winter was unlikely.

The Locus of Extramarital Sexual Activity

An examination of the locus of extramarital sexual activity reveals more than just information about where it took place. It provides important information about parental oversight, employment patterns, workplace conditions, employer/employee relations, ideas about privacy, and male/female sexual dynamics. It can also tell us something about the quality of the sexual activity that occurred. Information that is absent from the record tells us something too. What is most apparent is that extramarital sexual intercourse took place in a variety of locations that attest to the inventiveness and fortitude of Puritans determined to engage in coitus.

Consensual intercourse was most likely to occur within the well-defined parameters of women's territory when parents and employers were temporarily absent or busy. Seventeen-year-old Hester Jackson testified that she and her master's son had had intercourse first when she was making up a bed in an upstairs chamber in the late afternoon, and that they had repeated the act the following week at approximately the same time of day while his parents were absent. She added that although he had approached her many times after that, once while she was
milking, and "tempted her to lie with him for money," she refused because she had developed a guilty conscience.

Non-consensual intercourse occurred after dark and out-of-doors in men's territory; barns, pastures, fields, and in the woods. On a March evening in 1669, 22 year-old Anne Chase was raped by the roadside. She testified that John Allen had:

met her by the way as she was going to her lodging and suddenly laid hands on her...and forced her against the Rails, and she being in a sore fright was unable to call out.  

In 1680, 19 year-old Sarah Lambert testified that:

she was going home in the evening about 8 o'clock on a moonlit night and in Mr. Nathaniel Roger's pasture she met John Hunkins coming toward the town where he discoursed with her and he overcame her by persuasion that he would do her no hurt and then and there lay with her.  

Both women were convicted of fornication. John Allen was neither prosecuted nor ordered to pay child support, but John Hunkins, who was already maintaining one bastard, was ordered to pay child support for Lambert's baby.

The level of detail available in the two cases above is lacking in most fornication prosecutions, either because it was never collected, or, more likely, it has not survived. Information about where and how often intercourse occurred is

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10W.P.A. transcription, 15-128-1.

11W.P.A. transcription, 34-8-3.
lacking in all but 26 of the 136 cases. Not surprisingly, the most commonly cited location in which sexual intercourse took place, in seven of 26 cases, was an employer's household, exemplified in the account of Hannah Souter of Marblehead when she was presented in 1690 for fornication. Although she refused to name the father of her child, the local constable and the requisite second witness testified that when they arrived with an arrest warrant they had discovered her "lying under the bedcloths" with her employer, Mr. Philip Parsons, "the said Hannah Souter’s arms under the head of the said Mr. Philip Parsons." Souter was fined and Parsons was required to pay child support and lost his license to keep a public house in Marblehead. Souter and Parsons were not unique. In the seven instances in which the employer's household was cited, the master himself was the most frequently named partner, followed by his son and fellow servants.

In only one instance does a single woman state that she had been sexually active in her parent's house, and she claimed to have been raped by a neighbor's son after offering to show him her parent's new bedchamber. Women who lived at home with their parents, like Susanna Bowden of Marblehead in 1688, attested that sexual intercourse occurred not in their parent's

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12 W.P.A. transcription, 49-63-3.
13 W.P.A. transcription, 49-63-1.
14 W.P.A. transcription, 47-4-1.
house but out-of-doors and that it had been preceded by a promise of marriage. Bowden said:

that time which she judges he got her with child was sometime in the latter end of August last past in the upper end of the pasture where her father dwells.\textsuperscript{15}

One possible benefit of engaging in sexual intercourse in a field in April, as Mary Rowlandson did, or in August, as Susannah Bowden did, is that it offered privacy, an attribute lacking in seventeenth-century Puritan Massachusetts where community oversight was expected and where households were crowded and one room opened into the next. The degree of acceptable oversight is indicated by a deposition supplied by fifty-year-old Clement Coldham of Gloucester, bearing in mind that the sexual intercourse he went to such great lengths to uncover was that between a 52-year-old widower, John Pearce, and a 42-year-old widow, Jane Stanwood. Coldham deposed:

hearing that John Pearce did use to fetch the widow Stannard to his house at nights and in the morning she was seen to go home and hearing that he had to fetch her to his house that night whereupon I went to see what they did there. I heard them go to supper and sitting a little time the sd John Pearce sd love let us go to bed for we shall have but little sleep tonight because it is late and hearing them go to bed I looked in at the window to see him strip himself stark naked but for his shirt and go into the bed to her. And then I plainly perceived his back was toward me I standing toward the foot of the bed against the house and so far as a man can testify by his hearing he did commit the act. Then I went and

\textsuperscript{15}W.P.A. transcription, 47-135-1.
called Anthony Day & Deacon Stephens and when we came we found them fast asleep.\textsuperscript{16}

Constable Anthony Day called, "Fire! Fire!" and asked John Pearce if he wanted to be burned in his bed. When the couple emerged from the house, Coldham deposed, Stanwood was only half dressed. No one accused Coldham of being a peeping Tom; he was being a good citizen. Pearce and Stanwood were ordered to be whipped or fined 20 nobles for fornication.\textsuperscript{17} They married a week later, thus enabling the continuation of their sexual relationship.

Widows and widowers had more privacy in which to engage in illicit sexual activity than other people. Although some widows' households still contained young children, it is apparent from the depositions in Sarah Stickney's case that her suitors were not inhibited from approaching her bed by the presence of children already in it. Stickney testified that her children were frightened and cried out when Samuel Lowell

\footnote{\textsuperscript{16} W.P.A. transcription, 20-96-1.}

\footnote{\textsuperscript{17} Clement Coldham spent a lot of time watching the Stanwood family. In November, 1673 Coldham testified that he had seen Stanwood's son, John, kissing Christian Marshman after Marshman had claimed that she was pregnant by John Stanwood. Marshman was whipped immediately, Stanwood was put in prison until he could raise a £50 bond. It was later determined that Marshman was not and never had been pregnant. Records and Files, V, 250. Coldham testified against the Stanwood family again in 1674 when he reported that Stanwood's daughter, Jane, had a child eighteen weeks after she had married Timothy Somes. Records and Files, V, 258. When another Stanwood daughter, Naomi, was presented for premarital fornication in 1681, Coldham was not involved in the presentation.}
approached her bed. Nor was Samuel Appleton deterred by the presence of two other women in the room in which he engaged in coitus with Priscilla Willson in 1683. He gained sufficient privacy by shutting the bed curtains.

As the depositions in Mary Talbut's fornication case illustrate, servants employed subterfuges to create private time in which to engage in sexual intercourse. They pretended illnesses to stay home alone and unsupervised. Sunday morning was a popular time to court young female servants left at home to tend to their master's young children. With attendance at Sunday meeting compulsory, it was one of the few times couples could find privacy in which to conduct illicit relationships.

In 1676 a sexually-active widow, Remember Salmon, took advantage of her parents' absence to meet with a married man, Thomas Greene. Her niece and a neighbor, entering the house immediately after the lecture, found her in bed and Thomas Green sitting by the bedside smoking tobacco.

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18 W.P.A. transcription, 46-11-1.


21 W.P.A. transcription, 25-50-3. Salmon was convicted of fornication three times. She and her husband, George Salmon were fined £5 each in 1664. In 1676 she was whipped for fornication with Thomas Greene. Salmon was charged with fornication again in 1679. In this instance, her partner, Philip Veren fled, and the town of Salem was concerned that Salmon and her child would be "a burden to the town." Records and Files, VII, 318.
Putting out adolescent children for employment in the houses of acquaintances and hiring unrelated adolescents to serve in one’s own house in return were common in seventeenth-century New England. An analysis of the financial status of female fornication defendants in Essex County indicates that while some female servants were poor, or orphaned, or both, or were recent immigrants, other women with documented work histories had prosperous parents living in the same community, as did their partners. Martha Rowlandson’s sexual experience is typical of that of economically vulnerable young women who lived away from home. Her father had died four years earlier when she was sixteen and her mother had remarried. She was employed as a spinster by Philip Rowell of Amesbury in April 1687 when she described the circumstances under which she had conceived to her midwife, Lidia Mackrest:

There being a meeting of company at night at John Prouse’s house & the said Samuel George going home with her he desired her to lie with him and promised her marriage if she would lie with him & so she consented and lay with him near Wm. Barns’ house: between it and Rowells & that she lay with him twice at the same time upon the ground.\(^{22}\)

Samuel George, 16 years her senior and not officially courting her, denied that he had fathered the child who died ten days after its birth. Rowlandson’s sister, Elizabeth, had been tried for fornication three years earlier, naming a local doctor as

\(^{22}\)W.P.A. transcription, 47-53-1.
the father of her child, and her twin sister, Mary, had been tried for fornication the previous summer. Her sisters' known sexual activities, combined with her lack of a dowry limited her marriage opportunities and left her susceptible to a false promise of marriage from George in return for sexual favors.

Four years later Rowlandson married. This might have been a coup, given her family's sexual reputation, but she married Ralph Ellenwood, her sister Elizabeth's brother-in-law who had been divorced for impotence in 1682. Since medical testimony presented during the divorce proceedings had declared Ellenwood physically incapable of intercourse, it seems likely that the marriage was one of mutual convenience.

Given that the house was also the workplace in seventeenth-century Massachusetts, it is instructive to examine the conditions under which young women lived and worked. With unrelated adults living in many Essex County households, and in some instances sleeping in the same bedrooms, the potential for illicit sexual relationships to develop was considerable.23 It was essential that domestic order be maintained, but clearly some employers did not exercise the same oversight over their young male and female employees that they applied to their own children. Depositions given during the fornication trial of Susanah Durin and William Reeves in the Salem Quarterly Court in

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23 Hannah Gray was convicted of lascivious behavior in March, 1674, for "laughing and giggling at the boys bed which was in the same room." Records and Files, V, 290.
June, 1668, illustrate the vulnerability of young women to sexual pressure from their fellow servants in unregulated households. Reeves and Durin both worked in the Cromwell household. Part of the problem, in this instance, lay in the gendered division of labor. Reeves worked for Mr. Cromwell, Durin for Mrs. Cromwell and Mrs. Cromwell was unable, or unwilling, to prevent Reeves' pursuit of Durin. Two neighboring women testified that whenever the Cromwells were away, she would beg one of them to come over and sit with her, because "she could not abide to be with him alone." A friend of Reeves', Thomas Ives, testified that Reeves had asked him: "What aileth our maid, for as soon as I come in at the door, she either runneth into the other room or into the chamber?" Ives further testified that Reeves had procured a love potion to slip into Durin's drink.

The frequent absences of the Cromwells from their household, the inability of Mrs. Cromwell to assert authority over her husband's servant, and Reeves's persistence exposed Durin to what would be considered today as sexual harassment in the workplace. Nevertheless, in a seventeenth-century context, Reeves was engaged in an aggressive courtship which he hoped, his deposition stated, would culminate in marriage. The onus was on Durin to protect herself from his overtures. That she

24Records and Files, IV, 39.
failed is apparent from her pregnancy and subsequent fornication conviction.25

Durin’s experience was not unique. While only 104 Essex County women bore illegitimate children between 1640 and 1685, the majority of these women were servants who lived away from the parental household. In a case like that of Hester Jackson, or a prolonged pursuit, as in the case of Susanah Durin, the sex must often have been coerced. Some servant-on-servant sexual activity that took place in an employer’s household can be characterized as manipulative, in that it involved a broken promise of marriage, as in the case of Mary Talbut. Overtly coercive sexual relationships (i.e., rape) took place in men’s territory, at night, in fields or along roadsides as in the cases of Sarah Lambert and Anne Chase.

Puritan Attitudes to Sexual Activity Among Unmarried Persons

Depositions filed in fornication cases offer the opportunity to read what the ordinary citizen of Essex County had to say about sexual activity between unmarried persons. This section treats the circumstances under which Puritan women were prosecuted for sexual misdemeanors and what young women had to say to the court and to their friends about their sexual

25That Durin had only one other room or an upper chamber to escape to, is evidence of the close quarters in which unrelated servants worked and lived and seems to be the standard two rooms downstairs with an unpartitioned chamber or loft above.
activity. While they might be flippant or defiant when speaking to friends and inquisitive neighbors, they spoke to the court of their remorse and shame. A group of young men talked about sex; an elderly woman warned a young man away from her servant; and a 46-year-old man lied to his shocked neighbors about the circumstances in which his servant had become pregnant. All illustrated with their words what Puritans said and thought about illicit sex.

Puritans assumed that when people of the opposite sex were together alone it was to have sexual intercourse. In 1654 William Holdred’s wife was presented for unseemly carriage. The court clerk’s summary of the case indicates the degree of suspicion Puritans felt and the amount of exculpatory evidence required to prove innocence:

William Holdred’s wife’s presentment for unseemly carriages with John Chator, etc., referred to Mr. Symonds and Maj. Daniel Denison. Proved not to be lasciviousness, he being sick and she his only nurse, and her own husband present in the house. She was troubled with fits, and they found no censure on her.26

Isabel Holdred was a married woman in her late thirties; John Chator had been an invalid for almost two years, but the court still felt impelled to prosecute Holdred. The fact that she was presented in the first place for ministering to a sick man in the presence of her husband attests to Puritan fears of female

26Records and Files, 1, 388.
promiscuity. That the court summary mentions that she was troubled with fits suggests that she may have fallen across Chator’s bed in a fit and been discovered in that position.

The Holdred prosecution had an interesting genesis that makes it a remarkable testament to Puritan fears that if persons of the opposite sex were alone together they would engage in sexual intercourse. In December 1653, William and Alice Holdred complained to the court that they had uncovered a sordid neighborhood tale.27 Alice Chator, John Chator’s wife, they had learned, had committed adultery with her husband’s servant, Daniel Gun, and had agreed to marry him if her husband died. The accusation against Isabel Holdred, under circumstances that make it certain it was Alice Chator who complained, should have led the court to assume that the charges were retaliatory and unfounded. That they dignified the charge with a court proceeding indicates the strength of Puritan ideology about power of female sexuality.

The attitudes concerning their sexual activity expressed by young women charged with fornication indicate an acceptance of personal responsibility for the situations in which they found themselves. None blamed their partner, or stated that they had been coerced; all stated they believed themselves to be wicked. Three penitent statements were filed during the March

1682 session of the Essex County Quarterly Court meeting at Ipswich. The first penitent statement was presented by Mary Redy, who sought to have her sentence to be whipped reduced to a fine:

Honored Sirs, now sitting in this Court I Humbly Intreat & beseech your Honors, that you would be pleased to show mercy to me respecting my sentence that your worship hath Justly passed upon me, I humbly desire that you would be pleased to free me from whipping & that I might suffer my sentence, by your taking a fine which I desire your worship to be as favorable as you can for I am a poor destitute Creature & far from all my near friends, though I hope I have some here in New England, I desire that your Honors would be pleased to show mercy to me, and I desire your prayers for me, that I might reform and leave of all such wickedness through Gods help who is able to save me.\footnote{W.P.A. transcription, 37-101-1.}

Following this petition, Redy’s sentence was reduced to a 50 shilling fine and court costs.

The same year Joannah Smith was sentenced to be whipped or fined for fornication with William Smith. An abject Smith also asked to be fined rather than whipped. Her plea was successful. Smith was fined £3 and court costs:

The humble petition and request of Joannah Smith that the Hon’d Court would be pleased out of their Lenity to have compassion upon an unworthy poor wreck that hath deserved the rigor and extremity of the law. I am, in some measure sensible of my great sin in provoking God, the eyes of a jealous god, and humbly beg your prayers of the people for me. I am young, besides my natural wicked inclination, being subject to the temptations of the adversary, and his wicked suggestions. Poor wreck that I am, I have dishonored
God, disgraced myself, and my poor friends, I humbly lie at the feet of your mercy, near to god, that you would be pleased to take off that corporal punishment which I acknowledge my sinful body hath deserved and to say what your pleasure is, as to a fine, I beg of you and I will see it performed.  

A third penitent statement was presented at the same session:

The humble petition of Elizabeth Gould to this honored Court. I confess I have sinned against god and my own Conscience and thereby have dishonored god and the country and have brought shame upon my self and Relations and therefore my humble petition to this honored court is that your Honors would be pleased to alter or mitigate the sentence as your honors so meet.

Gould also had her sentenced reduced to a fine and court costs.

Mary Redy, Joannah Smith, and Elizabeth Gould were each presented at the same session. Their depositions bear a common

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29 W.P.A. transcription, 37-114-1.


31 These depositions raise some interesting issues. I haven’t seen the originals. Probably none of these women could write, so my first question is whether or not they were written by the same person, and how much input into the wording did the person have who prepared the documents for them. My second question is related to their survival. I could only find four penitent statements in the court records. Three of the four depositions were located in the same folder. Since there is copious documentation for cases involving land transactions and business disputes, I think that archivists in the 18th and 19th centuries who undervalued women’s documents and likely found the subject matter distasteful, did not retain them. As an archivist myself, I understand issues of storage space, preservation, and the systematic culling of documents deemed less important. Church records were edited periodically to remove material descendants considered damaging or the church fathers deemed unseemly, and it is possible that the court records were subjected to a similar editing process. It seems entirely possible that these documents were overlooked when the remainder were removed from the collection. Documents continue to disappear from the court records. Some of the depositions
pattern. Each stated they deserved their punishment, that they had sinned, that they had brought dishonor on themselves and their friends. They described themselves as the most debased of women. Whether or not they truly believed their rhetoric, it is obvious that it was what the court expected to hear. Their statements reflected official Puritan beliefs about women and sex. While Joannah Smith mentioned that she had been tempted by the Devil, none of them state that they were seduced by a man. Tellingly, none of them even mention their partner. They accepted their society’s dictum that they had been responsible for the sexual activity.

In 1691, Elizabeth Batten of Salem was presented for fornication with her employer’s son, John Dolbear:

The humble petition of Elizabeth Batin to this honored Court here humbly acknowledge her great sin against god & desires & begs gods pardoning grace in christ Jesus for her great sin & humbly begging your honors clemency to me so far as your honors can extend mercy in such a deplorable a case I being a poor distressed creature & humbly beg that he whom if guilty of the same transgression that I have may not add to my great sin daily affliction but may be obliged to bear part of the charge with me I being

excerpted in the printed volumes of the Essex County Records and Files published in the 1910s were no longer available when the W.P.A. prepared their transcriptions in the 1930s.

32 These penitent statements make no mention that these women considered the characteristics they attributed to themselves to be gender-specific. I am inferring that they believed this was too self-evident to mention, but to be fair, penitent statements filed by men on behalf of themselves and their wives express similar sentiments.
very weak to this day thus handing my self in to the arms of your Mercy begging your honors pardon.\textsuperscript{33}

Essentially the rhetoric was the same with one major exception. Batten wanted her partner to accept some responsibility. Batten may have been trying to force a marriage, but other depositions in the case suggest that Dolbear’s parents vigorously resisted child support payments, and it is equally likely that Batten was trying to ensure that the court order Dolbear to meet this financial responsibility. While the number of surviving penitent statements such as Batten’s is limited, there is another way to determine whether or not they represented a heartfelt expression of the defendant’s remorse. Depositions filed by midwives often indicated that the female defendant expressed penitence during labor, when, Puritans believed, women spoke the truth.

Outside the courtroom different attitudes might be expressed. In 1674 two young women described the pregnant Mary Talbut as:

\begin{quote}
laughing much in the time of her speaking, as merry as if she were not in such a condition as she is judged to be.\textsuperscript{34}
\end{quote}

They were incensed that Mary Talbut did not appear to have a proper appreciation of her plight. However, as they had been taunting the nine-months pregnant Talbut as the three gathered

\textsuperscript{33}W.P.A. transcription, 50-120-4.
\textsuperscript{34}W.P.A. transcription, 22-70-5.
at the public well to collect water about the supposed father's refusal to marry her, Talbut's defiance was a natural response.

Not all women were appropriately deferent to the court. In 1690, Hannah Souter ignored her first summons and demanded to know her accusers. They were the selectmen of Marblehead who, "judging it the duty of the Select men to take notice of such wicked facts," formed a deputation and went to see her."35 Souter refused to name the father of her child, "however it pleased God to deal with her."36 Sarah Stickney also indicated her contempt of the court process. She told a neighbor in 1681, following one of her two fornication trials in which she had been fined both times that "the Court did not regard the sin so they could get the money."37

Given the court's focus on female sexual activity, it is difficult to locate documentary evidence of male sexual attitudes. Thirty-year-old James Mirrick reported that Samuel Lowell had claimed fornication to be:

a sin no more than to smoke a pipe of tobacco in the street, for that was a breach of the Law, and the other was no more.38

However, he was anxious to deflect blame onto Lowell because he was suspected of being one of Stickney's sexual partners. He claimed that although he had been solicited by Stickney, he told her that he "darest not do it."\(^{39}\) It is even more difficult to locate cases in which the men involved were punished more severely than their female sexual partners. The interrelated cases of two brothers, Edmund and Hackaliah Bridges, are singular in this respect. It is notable that they were tried in 1657, a time when the court was more even-handed in its assessment of responsibility for the initiation of sexual intercourse. It is difficult to imagine an equivalent prosecution occurring even ten years later.

Edmund and Hackaliah Bridges were the sons of Mr. Edmund Bridges of Ipswich.\(^{40}\) They had previously been convicted of petty theft and lying and Hackaliah Bridges had been acquitted of fornication with Sarah French the previous year.\(^{41}\) In depositions supplied by their friends, the brothers bragged

\(^{39}\)Ibid.

\(^{40}\)Neither man led a charmed life. Edmund Bridges died about 1682. His widow, nee Sarah Towne, was accused of witchcraft in Salem, 1692, as Sarah Cloyse, along with her sister Mary Easty, and her sister, Rebecca Nurse, who was hanged. Hackaliah Bridges, still unmarried, was lost at sea in 1671.

\(^{41}\)Hackaliah Bridges was sentenced to be fined or whipped for lying and stealing a pair of gloves in April, 1657, Records and Files, Volume II, 41. Sarah French named him as the father of her illegitimate child, but a Scottish indentured servant, John Fargason, was convicted in his stead. Records and Files, II, 2.
about their sexual activity and indicated their willingness to share their sexual partners with their friends who expressed surprise and disbelief, but not disapproval. All of these men were young, which may explain the unguarded nature of their conversations. Edmund was 20, Hackaliah probably eighteen. Their friend, Samuel Younglove, also aged 20, testified that:

Edmund Bridges mowing with him the last mowing time he told me that he had frogged Mary Browne divers times & also Mary Quilter. I told him I could not believe it and he vowed John Allen had seen him frog Mary Browne. He also said he had frogged divers others else where I told him again I did not believe it that he should do so for fear it would come to light. He said that he could do it so it should never take effect and he was very earnest with me to go to Mr. Hubbard's house & and he vowed also earnestly to have me do the same and he would teach me to do it so it should never come to light. He further told me he had told the same to others & had been persuading Thomas Gittin & divers others to frog Mary Browne.  

John Allen testified to the sexual activity he had observed:

This deponent saieth that he saw Edmund Bridges at Mr. Hubbard's house 2 or 3 times this summer and he saw him put his hand under Mary Brown's apron and also he pulled out his prive members and bid her feel of them and she said she would not and also Edmund Bridges being very desirous that we should go to bed I asked him what it was to him how long we stayed up and he said nothing but that he had something to say to Mary Browne in private and after we went up to bed I came down and looked in at the door and saw them go to the table and there Edmund flung her down and got upon her and then I making a noise they both came to the fire and I went away. 

42 W.P.A. transcription, 3-137-1.

43 W.P.A. transcription, 3-139-3.
Edmund’s brother, Hackaliah Bridges, was equally informative about his sexual activity. Another young man, John How, testified against him:

One evening about last Michaelmas going over the new bridge I overtook Hackaliah Bridges who asked me to go with him to Mr. Roger's. I asked him for what. He said he had a wench there that he could do what he would with, & he had frogged her divers times. I asked him who it was. He answered Mary Quilter and that she was brewing that night & he had appointed to meet her. . . .I spoke to him about this business in the prison, & he bid me hold my peace for he was resolved to deny it and knew they could not whip him unless [he confessed] they can prove it or I confess it.\footnote{W.P.A. transcription, 3-140-2.}

Some basic conclusions can be drawn from these depositions. First, Browne and Quilter were interchangeable objects in the minds of the Bridges brothers. There are no protestations of affection. They were willing to share both the women and their expertise with their friends. The young men who testified against them did not raise religious objections, nor did they express the view that the Bridges brothers were exploiting Mary Quilter and Mary Browne by offering to share their sexual favors. When John Allen crept down the stairs to watch, he was motivated by curiosity or voyeurism, or both, but not moral outrage. First the young men expressed disbelief, an indication that the Bridges brothers' sexual activity was not the norm. Then they expressed fear of detection, that their
activities would "come to light." This could not have been
religiously based, since God was all-knowing and would have been
aware of the sin as soon as it had been committed. They were
afraid that they would be exposed by an unplanned pregnancy as
fornicators, unable to control their sexual appetites, and out
of conformity with community sexual mores. While they might
have been intrigued by the Bridges brothers' conversations, and
they were curious, shame was a powerful deterrent. Parental
wrath, perhaps the loss of their patrimony, and the costs
associated with a court prosecution and child support also
deterred these youths.

John How's deposition shows why, in many instances, men
were able to escape the consequences of extramarital sexual
activity. When Mary Quilter got pregnant, her fornication
conviction was inevitable. Hackaliah Bridges hoped to escape a
conviction by refusing to confess. If he did not confess and no
one testified against him, he could not be whipped. However,
Bridges had told too many people, and public opinion had become
so aroused against him, that had How wanted to remain silent, he
could not. It indicates, though, that men knew if they did not
admit to paternity they could not be convicted of fornication.

It is obvious from these depositions that young men talked
about sex. Edmund and Hackaliah shared their sexual experiences
with four of their friends and, as attested, "divers others."
All of them understood the meaning of a colloquial and
descriptive term for sexual activity, "frogging." Of course, the boasting of the Bridges brother, while it must have made the time spent mowing or walking from place to place pass faster, possessed a large element of braggadocio. Their claims that they knew how to avoid pregnancy were wishful thinking and their attempts to proselytize the youth of Ipswich failed.\textsuperscript{45}

The Bridges brothers were sexual predators. Neither was old enough to seriously consider marriage. Both of the women were young servants, and vulnerable. Quilter was seventeen. Her father had died three years earlier, and her mother had to mortgage her dower interest in the family home to pay the Quilter share of the money paid to the town of Ipswich to put the child out.\textsuperscript{46} Both Mary Quilter and Hackalah Bridges were severely whipped for fornication.\textsuperscript{47} Edmund Bridges was also severely whipped for fornication.\textsuperscript{48} Mary Browne received a mild

\textsuperscript{45}None of the youths who provided depositions or who were mentioned in the depositions figure in any contemporary fornication trials. However, John Allen was acquitted in a fornication case in 1669. The acquittal was based on the unwillingness of the court to accept the word of the female defendant, Anne Chase, because the circumstances under which she claimed that she had conceived were coerced and the court thought she lied, \textit{Records and Files}, IV, 244. Allen and his wife, Mary Andrews, were convicted of fornication in 1674, \textit{Records and Files}, V, 408. Thomas Gittins and his wife were convicted of fornication in 1678, \textit{Records and Files}, VI, 424.

\textsuperscript{46}I have not been able to identify Mary Browne or to determine her date of birth. Quilter married a widower, Michael Cressie, in 1660.

\textsuperscript{47}\textit{Records and Files}, II, 54.

\textsuperscript{48}\textit{Records and Files}, II, 52.
sentence by the standards of the Essex County Quarterly Court. She was required to "stand by and see him whipped." Browne's moderate punishment indicates that there must have been mitigating factors that do not survive in the court record.

The depositions related to the youthful sexual activities of Edmund and Hackaliah Bridges provide the clearest evidence of the existence of an adolescent culture in Essex County in which youthful sexual experimentation occurred. Still, there is no evidence that this activity was widespread. Earlier in the decade of the 1650s, another series of prosecutions suggest group sexual experimentation might have occurred, but no depositions survive. In 1654, Elizabeth Osgood, the daughter of William Osgood, who operated a mill in Salisbury that employed local youths, was sentenced to thirty lashes for fornication with Barnabas Lamson.\(^49\) At the same time, James George was fined for "wanton dalliance and lascivious carriage with a young wench," and John Ash was whipped for "filthy, lascivious carriages divers times with a wench."\(^50\) Both men were employed by Osgood's father. Given that women were regularly sentenced to ten lashes in the 1650s, a sentence of thirty lashes may indicate three offenses. This is slim evidence on which to mount a theory that there was a viable oppositive adolescent

\(^{49}\)Records and Files, I, 347.

\(^{50}\)Records and Files, I, 347.
culture in Essex County as Roger Thompson, in Sex in Middlesex, maintained existed in Middlesex County.

Thompson discovered in Middlesex County a "youth culture which took an earthy interest in sexual matters and spurned the models of obedience, reverence and continence advertised by their elders." He views their activities as "passing phases" and suggests that economic independence, marriage and parenthood conferred sober adulthood upon rebellious youth. Further, the perils of childbirth brought women, and through them their husbands, into a nearer communion with God. He states that "sexual curiosity and experimentation may have been the precursors, even essential precursors, to spiritual stocktaking and rebirth."51 In Thompson's Puritan world, teenagers rebelled, and then voluntarily chose to accept their parents' values as they entered adulthood. This is a necessary conclusion for Thompson, because he discounts the body of historical evidence that concludes that New England's social organization was patriarchal in nature.

Essex County depositions, while identical in nature and content to Middlesex County depositions (some individuals recur in the depositions filed in both counties during the seventeenth-century), do not document the existence of a similar

51 Thompson, Sex in Middlesex, 104, 105.
widespread adolescent culture in Essex County. On the contrary, most parents, with the exception of Mr. Edmund Bridges, Sr., seem to have maintained control of their adolescent children. It needs to be remembered, too, that Hackaliah and Edmund Bridges were not merely rebellious teenagers acting upon healthy sexual appetites but convicted petty thieves and liars who had violated other Puritan standards of morality. The depositions in the Bridges cases do not indicate an "earthy" interest in sex. The tone of the depositions is surprise, disbelief, and prurience. The predominant reaction of the Bridges brothers' confidants is not admiration, or a desire to emulate their activities, but fear of discovery.

Testimony presented in cases involving older men engaged in fornication clearly illustrates three facets of Puritan sexual attitudes: (1) the Puritan disapproval of extramarital sexual activity, (2) the general inclination of the Puritan community to act as inquisitor in cases of suspected sexual misconduct and (3) the loss of male honor involved in a paternity charge. Forty-eight year-old Henry Jaques of Newbury

52 I suspect that the apparent differences between Middlesex County and Essex County in terms of evidence of a viable oppositive youth culture lie in the interpretative biases of the researchers. Thompson wants to conclude that there were few patriarchal curbs on adolescent sexual activity: I want to prove the opposite.

53 A third son, Obadiah, was convicted of fornication in 1669.
was accused of fathering a child on his wife's niece, Elnor Knight, who worked as a servant in his household. He asserted his innocence by mouthing the general view that such an act would be "filthiness" and by proclaiming his fidelity to his marriage vows, even as his own son, also named Henry, came under suspicion:

God knows I am clear from any temptation to such filthiness, much more from such an act: saying farther that he durst challenge all the women and maids in the country upon that account saying moreover that he never touched any woman or maid (meaning in that kind) more than his wife.54

Jaques also spoke to the propensity of Puritans to insert themselves into fornication investigations. In a defense of his innocence he told his neighbors, Francis and Ann Thorla:

he understood by some that they would have him be the father of the child, saying further that he was at supper at neighbor pettingalls & there was a bold woman whispered him in the ear saying I hear that your maid is with child & you got it: is it true? Or is it not true? And that he answered it is not true but said he it was indeed such a trouble to me that I could not eat my supper, but said he I afterward asked her who told her the news or story: & that she refused to answer him but bade him ask Goody Swett, but she would not speak one word until I promised not to take advantage upon her words.55

The "bold woman" felt she had the right to interrogate Jaques, but she also knew the propensity of Puritans to resort to the court if they had been slandered so she was careful not to tell

54W.P.A. transcription, 11-95-3.
55W.P.A. transcription, 11-95-3.
Jaques directly who she had heard the story from unless she had his promise not to sue either herself or Goody Swett.

Jaques was so concerned about the loss of honor involved in a paternity conviction that he claimed the mention of the possible association of his name with extramarital sexual activity left him unable to eat. Even the rumor, he told Anthony Moss:

had damaged his name exceedingly. That which most troubled him: was because of some of the servants of God (as he perceived) unsatisfied about it. Whereupon this deponent said if it be so that you know yourself clear in this business you should do well to clear yourself in the public meeting or before some Grave Godly person.  

Moss suggested a remedy. If Jaques felt his honor had been threatened, he could restore his reputation by responding to the charges publicly. That Moss thought such a course to be necessary indicates the importance Puritans attached to possessing a good name and the damage a paternity charge could inflict on a man's reputation. Francis Thorla also deposed to Jaques' feeling that his name had suffered. Since Jaques had touched Thorla's baby's head and sworn that he was no more the father of Thorla's baby than he was of the child "his servant was then big with," Thorla was inclined to be sympathetic. He reminded Jacques that "he might have more peace to suffer unjustly than justly." How much more Jaques would suffer,
Thorla implied, if he were truly the father, not just the reputed father, of Elnor Bryer’s baby.

Jaques was not the only substantial citizen who feared the effect of a paternity conviction on his reputation. In 1681 John Atkinson said that an assignment of paternity would "disgrace him and his family."\(^57\) Both men were convicted, and both men took desperate measures to avoid their fates. Jaques fled Newbury in 1666 when faced with an arrest warrant, leaving behind his wife and children. When he learned that the court was prepared to seize £30 of his estate and disenfranchise him, he returned and was fined. Jaques could afford to pay the fine; he did not flee because he feared financial ruin. He fled because his loss of honor rendered him temporarily incapable of facing his family and his neighbors. John Atkinson spent years in court trying to clear his name, consumed by a public vendetta against Sarah Stickney, the mother of his illegitimate child, because she had impugned his honor.

On December 15, 1687, Samuel Sewall reflected in his diary on the sermon that Increase Mather had preached earlier that day on the topic of fornication. Mather had:

\(^{57}\)W.P.A. transcription, 37-49-4. Atkinson and Jaques had significant commonalities. Both were in their forties, they had been married for seventeen and twenty years respectively, and both had wives who were in the final stages of pregnancy when they became involved sexually with other women.
Shewed that Good Men might fall into such scandalous Sins as might bring temporal Wrath and ruin upon themselves and upon their posterity.  

The "temporal wrath and ruin" mentioned by Sewall was why Jaques and Atkinson were so anxious to avoid fornication prosecutions. From Sewall's viewpoint, the inherent shame affected not only the man involved, but his descendants. The implications were serious. Moreover, Sewall seems to be suggesting that any "Good Man" might fall victim to the lure of female sexuality.

Another type of attitudinal data was presented by neighbors and other interested persons who testified at fornication trials. In 1674, 70-year-old Ann Reading was forthright in her opinion about what happened to unmarried persons who engaged in sexual activity; "whoremongerers and adulterers God would judge." In 1683, Elizabeth Willson's neighbors attested that Willson had never displayed "any Immodest or Uncivil behavior or wantonness" prior to the time when she had "greatly dishonored god and her relations together with herself by Committing fornication." Willson's fornication conviction was so heinous that her neighbors no longer perceived her as a virtuous young woman but as a disgrace to her family.

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58 M. Halsey Thomas, The Diary of Samuel Sewall, Volume I, 155.


60 Records and Files, IX, 64.
It is clear from the depositions that Puritans mistrusted female sexuality. The most virtuous woman, such as Isabel Holdred, discovered in spuriously suspicious circumstances might be presumed to have betrayed her husband. Young women like Joannah Smith and Elizabeth Batten expressed shame at their trials. While it may have been feigned or a rote expectation of the court, they also expressed penitence during labor which can be taken as an honest expression of their feelings. Young men, as a group, avoided coitus, although for some the major motivation for abstaining may have been fear of getting caught. For older men like Henry Jaques and John Atkinson, a paternity conviction brought with it a loss of honor. Members of the Puritan community as a whole expressed their disapproval when unmarried persons engaged in sexual intercourse and believed that persons who engaged in sexual activity were hell-bound.

Summaries of Selected Fornication Cases

After 1650 witnesses in fornication cases were required to provide written depositions of their testimony prior to the trial. These depositions survive only in a minority of cases. They provide documentary evidence on a person-by-person basis of the relationship between the defendants, the circumstances in which illegitimate pregnancies occurred, childbirth rituals, and details about work routines. The most common surviving document is the magistrate's paperwork prior to trial in which he
recorded the female defendant’s complaint and the accompanying denial (in the majority of cases involving an illegitimate pregnancy) of paternity by the male defendant. Depositions filed by midwives are the second most common surviving record, reflecting the legal role the midwife played in recording the female defendant’s childbirth declaration of paternity. The third most common survival, and the most detailed in terms of describing sexual activity, is the female defendant’s deposition recorded during her pregnancy at the time she visited the local magistrate to lay a charge of paternity.

The rarest type of deposition, probably because it never existed in most cases, is a detailed statement from the male defendant explaining why he believed he was innocent or discussing the circumstances under which the sexual act occurred from his point of view. The lack of surviving documentation from male defendants supports my contention that they were not the major targets of fornication prosecutions. The fact, however, that very few men appear to have filed depositions may be a case of least said, soonest mended. Beyond denying paternity there was no need for them to make a statement to the court, and since the whole procedure, for them, was so freighted with situations in which loss of honor was implicit, the incentive would have existed to leave the least record possible.

In the remainder of this section, I plan to discuss three representative fornication cases in detail. Mary Talbut is the
prototypical servant who engaged in a sexual relationship with another servant following a public courtship and a promise of marriage. Priscilla Willson represents young women who were the victims of older, sexual predators under possibly coerced circumstances, and Sarah Stickney is the stereotypical lusty widow. A fourth case will be discussed, that of Sarah Kenney, whose pregnancy resulted from an incestuous relationship, because it is so atypical and at the same time does suggest the range of Puritan sexual behaviors.

Mary Talbut: Sexual Activity During Courtship

The depositions in this case provide evidence of courting behavior which included spending time together, paying joint visits to other households, and bundling. As in most fornication cases where the male defendant denied paternity, there are two irreconcilable versions of the relationship. What is clear is that 24 year-old Obadiah Wood was enamored of Mary Talbut. One witness deposed that he had heard Wood say "he would have Mary Tarball dead or alive. This I heard him say more than once."  

According to 19-year-old Mary Talbut, their sexual relationship began when they were fellow-servants in the Ipswich household of Daniel Hovey in January of 1674. That June, after

she had commenced service with Samuel Hunt, she went to Magistrate Daniel Dennison and told him that she was six months pregnant by Obadiah Wood. Wood was summoned, denied Talbut's accusation, and was required to post bond of £40, later raised to £50. Samuel Hunt posted a £5 bond on Talbut's behalf which was later raised to £10. Talbut described many instances of sexual activity in her deposition. She claimed that:

She is by child by Obadiah Wood, jr., who lay with her sometime in January last as she thinks it was the same night that the said Obadiah and she the said Mary were at Goodman Frinks & came home together about by the bridge and her master and dame were asleep when they came home it being about 11 o'clock at night. Another time on a sabbath day when she stayed at home with the children he came to her in the forenoon and lay with her, and another time he pretended to be ill on Saturday night & rose not till master and dame were gone to meeting and that sabbath day also he lay with her and since she lives at Goodman Hunts, he came to her into the barn in the evening while she was milking and would have lain with her but she refused, and further saieth that he did several times while they lived at Goodman Hoveys come in the night to her bedside which was at the foot of her mistresses bed to talk with her and she prayed her master to put him or her away but she told him not the reason. Further, she saieth that he hath often assured her and promised her marriage & drawn her to promise him. Since she has been with child she has acquainted him with it and he did not disown it.62

Talbut documented a private sexual relationship and a public courtship in her deposition. They had engaged in sexual intercourse at least four times. It is not clear where the

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first act of sexual intercourse occurred. It may have been out of doors, beside the bridge Talbut describes, but it was January and the master and mistress were asleep when they came home, so it may have been in Wood's bed. It was not in Talbut's bed, since she slept at the foot of her mistress' bed. The couple then engaged in subterfuge to gain time alone in the Hovey household until Talbut wished to discontinue the relationship and asked her master to sell either her indenture or Obadiah's indenture to another employer. After Samuel Hunt had purchased her indenture from Hovey, she said, she had refused to have intercourse with Wood although he had sought her out.

Wood had also courted Talbut publicly. This public courtship, by Talbut's account, included coming to talk to her as she lay in her bed at the foot of Mistress Hovey's bed. A neighbor testified that Talbut and Wood had visited her house twice together in the evening and gone away together. A second neighbor, twenty-one year old Elizabeth Foster, testified to an occasion when Talbut had encouraged Wood to join them in bed:

She said she would lie with me and so we went to go to bed. And locked the door and Mary before she went into bed she went and unlocked it again and after we were abed Obadiah he came up and put out the light and I asked Mary where Obadiah was and she said on the bed by me and I told him several times that I would complain to the Major and bid him keep clear of us. He said he did not fear us and after a while he went from the bed.

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64 W.P.A. transcription, 22-69-1.
The initial phases of a seventeenth-century courtship were conducted in private until acceptance was certain. When a couple went public with visits to neighbors, it signaled an intention to marry.

Wood continued to visit Mary Talbut after she went to work for Samuel Hunt:

The testimony of Anne Reading aged about 70 years saith that Obadiah Wood did constantly frequent the company of Mary Talbot from the time she came to live with my son Hunt, till it was discovered that she was with child which we feared would be, by reason of his great and constant familiarity with her notwithstanding all of our warning of him and forbidding him and telling him whore mongerers and adulterers god would judge.\(^{65}\)

Hunt's mother-in-law was not the only person to warn Wood away from Talbut after she had gone to work at the Hunts. Her mistress, Elizabeth Hunt, was very explicit about her reasons for wanting Wood to stay away from Talbut. She did not want to lose any of her servant's labor to pregnancy. She testified:

one lords day night in May last he came and was in her company when I saw them in the evening and I saw such familiarity between them I was forced to speak and bid him go home and keep out of her company unless he thought he could pay for her time and forewarned him of coming any more in such a way but he still stayed with her and seemed not to regard me nor what I said. At length I saw him sit astraddle her over her leg and chuck her under the chin and so he sat a good interim of time then I spoke to him again as much as I could say with modesty but he

\(^{65}\)W.P.A. transcription, 22-68-3.
regarded me not til his own time served him to be gone.\textsuperscript{66}

Elizabeth Hunt's deposition is remarkable for what did not happen. She had no authority over Obadiah Wood. He did not respond to her orders that he leave. Nor did he respond to the request or the threat of Elizabeth Foster when she asked him to leave her bedroom, nor did he pay attention to Talbut's employer's mother's "warning of him and forbidding him." It would seem that there were limits to female authority, even within the household. Moreover, Hunt feels these limits. She said "as much as she could say with modesty." This suggests that in male/female discourse, despite the fact that Wood was on her land and acting in a sexually provocative manner with her servant in front of her, she could not displace Wood without departing from appropriate Puritan norms of femininity. Nor does Talbut reject Wood's advances. At this point, though, she was five months pregnant and dependent on Wood to buy out her indenture and to marry her.

Thirty-year-old Judith Browne testified to Obadiah's attitude toward premarital sexual intercourse. Her testimony, suggesting as it did that Wood considered premarital sexual intercourse to be a prerequisite of any woman he planned to marry, placed her in Mary Talbut's camp:

\textsuperscript{66}W.P.A. transcription, 22-68-4.
The same night Samuel Griffin was married she heard Obadiah Wood ask him if he never lay with his wife before he was married which the said Samuel denying by rebuking him. The said Obadiah said he would never marry while he lived unless he had laid with his bride before and said it was no sin, for they were married in heaven before & it was only to please men they were married here.  

Wood’s statement brought a rebuke from the bridegroom, Samuel Griffin.

Another defendant, a rival of Wood’s, 26-year-old Seth Story, attested as well to Wood’s belief that he and Talbut were married in the eyes of God. He deposed:

Some time last winter Obadiah Wood and I wrought together about the time that Obadiah Wood was in love with Mary Talbut, I the said Seth Story heard Obadiah Wood often say that he was resolved that he would have Mary Talbut dead or alive. None should hinder him of having her for he said that he was married to her [ ] enough from any body else. Moreover Obadiah bade me remember how John Leigh fared at court for meddling with other folks.  

John Leigh had conducted an adulterous affair with Sarah Roe while her husband was at sea. The strict standards required for an adultery conviction, since it was a capital crime, could not be met so Leigh was severely whipped and fined five pounds and Roe was sent to the House of Correction for thirty days for "unlawful familiarity." Wood’s suggestion that Story’s attentions to Talbut were adulterous since she was married to

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Wood in the eyes of God is a further indication Wood had fathered Talbut's child.

Talbut's side of the case, then, was that Wood had pursued her, promised her marriage, threatened off her other suitors, and declared to people that he considered himself to be married to her. He had openly courted her, and during this courtship, and while they were mutually employed at the Hovey's, she had engaged in sexual intercourse with him. At the same time, she had asked Daniel Hovey to sell her indenture, and when she had moved to Samuel Hunt's house she had broken off her relationship with Wood. Unfortunately, she later discovered that she was pregnant. When she told Wood of the pregnancy, he fell out of love abruptly and broke his promise to marry her. It is likely that Wood's rhetoric about spiritual marriage was not strong enough to survive the inevitable shame of disclosure with the attendant trial, parental opposition, and community disapproval.

Wood presented an alternate version of events. He had loved her, but she had scorned him and engaged in sexual activity with other men. His friends, whose approval was an important part of seventeenth-century match-making, opined that she was making a fool of him. The child she carried, he claimed, was not his. His statement is lengthy but worth quoting in full for the insight it gives into the mental world of a male fornication defendant. First he proclaims his innocence:
Ye poor petitioner cannot but be deeply sensible of the Righteous hand of God against him in bringing such a great trouble and affliction upon him by the accusation of Mary Talbet laying that to his charge, which he knows in his heart that he is totally innocent of, and does not doubt, but one day he shall be so found, before the Righteous Judge of Heaven & Earth for that he did contrary to the advice of all his friends and especially his father (whose counsel and command he ought to have attended in matters of this nature) setting his affections upon one, who has thus requited him for the good will he sometimes bore to her. Your petitioner cannot deny but that by his familiarity with her formerly during the time he made love to her, he has given opportunity to her, the said Mary, to accuse him as well as others to suspect him as guilty, yet he most humbly requests so much favor from you that you would be pleased to consider of such allegations that he is able to produce in his own defense, which he humbly engages shall be as free from reflecting on others as the circumstances of the thing will bear. And if upon a view of what shall be alleged against him, and for him the Honored Court shall see meet to determine anything that may be matter of suffering to him, he shall with all humility quietly submit thereunto & endeavor to improve himself. 

He admitted to courting Mary Talbut, said that he should have listened to his father and his friends, and promised to be a better person even if the court found him guilty. He mounted a typical defense. He blackened Mary Talbut's character and named a number of other potential fathers:

No witness can be produced of his frequenting her company at any unseemly time, place, or manner otherwise than is usually found by such as are making love to single persons of her sex. During her abode in this town she has been known to be much given to the company of young men. And did affect the company of some others more than my self although it is not

my desire to leaven suspicion of them, as if they were guilty of that which I am charged with.

That about the time when this fact was done I was earnest suitor to her, and was always contemned and scornfully used by her as many can witness therefore it cannot be supposed that I was admitted to unlawful familiarity, when I desired lawful marriage with her and could not obtain it, until the estate she was now brought into put her in a necessity to seek that as a cover to her folly where she hopes her attempt will be most successful, by former advantages given to her by my familiar carriage with her & living awhile in the house with her. She has sometimes been known to have been out all night without the knowledge of her master & Dame, when I can prove I was not in her company, as was in feb. last when her master Hovey searched his barn and cow house, but could not find her till morning, and I only was seen to come along with her from John Dane’s house and was at my lodging within a quarter of an hour and kept there all night. She was out of Samuel Hunt’s house all one night in harvest time when I was at my master’s house at home all that night. She has used sundry expressions before sundry persons that might render her accusation of me in all probability to be false, as to Ann Cotton, Elizabeth Haraden, Sarah Hely.

It is known that one night about the 12th of January, when Seth Story walked with her near the river to Steven Cross his house when she was there all night, Samuel Bowden that sojourned at the said Crosses the very next day told me that he could get her away from me and a dozen such men as I was, and said at last that she was a common whore, and I was a fool if I did bear any affection to her. Many such expressions as these were used at my brother John Frink’s house by the said Bowden the very next day, which, with other things I observed, were the reasons I took of my affections wholly away from her ever after that time.70

Wood claimed that he had ceased to court Mary Talbut in January, the month her child was conceived, when he learned that she was

70W.P.A. transcription, 22-67-1.
seeing other men, not later, as Talbut said, when he learned she was pregnant. The Hunts, her current employers, however, had testified that he had been making a nuisance of himself as late as May, hanging around their house in pursuit of Talbut. Clearly his deposition is not as frank and open as he claimed.

Damaging testimony was presented against Mary Talbut. It is difficult to determine credibility at this distance, but some qualifications can be made. First, a common defense was to connect the female defendant with another man who might plausibly be accused of fathering the child. In this instance there were two credible candidates. The first was Seth Story, who deposed above that Wood had warned him off. Two young men, perhaps friends of Wood, deposed that they had seen Talbut and Story engaged in, if not intercourse, heavy petting:

The deposition of Thomas Burnam, jr., and Thomas Waight, jr., aged about twenty years. These deponents testieth and saieth that about the last Indian harvest in ye 73 as we were coming in the way from Thomas Burnam’s on Saturday in the evening at the twilight by the way side in Daniel Hovey’s cowyard which was about fifty or sixty rods from any house we saw Seth Story and Mary Talbut lying on the ground she on her back & Seth Story lying on her breasts & when Seth Story saw us he turned off from the said Mary Talbut & rose up and shook her coat & her clothes were loose and unbraided & these

71Talbut was an ambitious outsider. Talbut’s changing attitudes to Wood when they were in and out of the company of others may have indicated that she was sizing up the unmarried men of Ipswich. Seth Story had more to offer. His father, William Story, owned a ninety acre farm and a mill in Ipswich as well as other Essex County lands. Abraham Hammatt, The Hammatt Papers, Early Inhabitants of Ipswich, Massachusetts, 1633-1670, (Baltimore: Genealogical Publishing Company, Inc. 1980), 352.
deponents further testify that we have seen the aforesaid Seth and Talbut together several times since in several places before the said Talbut came to live at Goodman Hunt’s and after she came to live at Goodman Hunt’s.\textsuperscript{72}

Since, however, the sexual activity they referred to occurred approximately three months before Talbut conceived it was not even relevant to her pregnancy. Both Talbut and Wood, at that time, were working for Daniel Hovey. The cowyard would have been Wood’s territory. It is unlikely, given Wood’s assiduous courtship at that time that she would have been petting with Story in that location. Additionally, a distance of fifty to sixty rods, or more than 800 feet, at twilight, would make identification difficult, if not impossible.

A second strategy was to accuse the female defendant of having intercourse with someone who had a reputation for sexual immorality, as Martha Woodin, a probable relative of Wood, did. She claimed that:

about the middle of January last (torn) my master Wainwrights’ house one morning Samuel Bowden said that the night before he had been at Hovey’s with Mary Talbut and that he had her maidenhead that night and that if she had had nine more he had had taken them all. These very words he used to the best of my remembrance further she the said deponent testified that [ ] had observed the said Bowden to be of very light behavior among maids upon all occasions.\textsuperscript{73}

\textsuperscript{72}W.P.A. transcription, 22-69-3.

\textsuperscript{73}W.P.A. transcription, 22-70-6.
Her testimony provided evidence of an alternative sexual partner at the time that Talbut conceived, so on the surface it was credible. However, Samuel Bowden did not corroborate her testimony, although, to be fair, it was not in his interest to do so. No other deponent though linked Talbut to Bowden.\(^{74}\)

The most damaging set of depositions about Talbut was supplied by other women who make it clear that Obadiah Wood’s affection for Mary Talbut was commonly known and that Talbut’s contempt for Wood was equally well known. They had no compunctions about chiding Wood for setting his affections on Talbut, but Wood continued to insist that Talbut behaved affectionately to him when they were in private. Mary Fuller testified that:

Obadiah Wood came to our house one time and I asked him what the matter was; I heard that he was about to hang himself for Mary Tarball. He asked me who told him that lie. I told him that he was a fool to go about any such thing for she thought she would never have him, which said Obadiah, why. Because Goody Fuller she does not love you I think she did not love him. Oh said he it’s no matter for she does love me well enough when we are alone together. Obadiah said that he had spoke to Goodman Hunt to forewarn Seth Story of the house and Hunt said he would; Seth will leave [bravely:] Obadiah told me she was as loving to him when Seth was gone as she was to Seth when he was there; and Obadiah and Mary came to my house twice in

\(^{74}\)Bowden was not suitable husband material. He did not establish a lasting presence in Ipswich and does not appear in biographical collections of seventeenth-century Ipswich inhabitants. Martha Woodin’s mention of him was likely malicious.
the evening together and they went away together again.  

Fuller's testimony is ambiguous. It is clear that, in public, Talbut did not always treat Wood well, but Wood defended Talbut's actions toward him.

Sarah Healy also testified to Talbut's feelings for Wood:

Being in company with Mary Talbut and Jonas Grigry being present & we talking concerning Obadiah Wood and Seth Story the aforesaid Talbut said that she did not care a straw for Obadiah Wood but only kept his company to make a fool of him and that she would make a fool of him before she had done: And that Seth Story was worth a hundred of Obadiah Wood & the aforesaid Helly further said that Seth Story and Mary Talbut was very frequently together & I told Seth Story that I wished all ended well & I wished Seth Story to have a care what he did.  

Hester Hovey, Talbut's mistress, added:

I observed by her actions that she never loved Obadiah namely Mary Talbut. She would often threaten Obiadiah if he did not what she would have him she would say she would be even with him. This I observed that though she seemed to love Obadiah yet if other young men came in then he was cast off and made a fool of the play.

There is one more deposition attesting to the relationship between Mary Talbut and Obadiah Wood. This deposition is the most credible, because it was supplied by John Dane, sr., a respected Ipswich resident. Since Wood went to live with Dane

\[^{75}\text{W.P.A. transcription, 22-68-2.}\]

\[^{76}\text{W.P.A. transcription, 22-70-2.}\]

\[^{77}\text{W.P.A. transcription, 22-70-6.}\]
when he left the Hoveys, Dane had the opportunity to observe the relationship first hand. However, that Wood was residing with Dane may have colored his testimony. His testimony may have been influenced as well by the fact that 16-year-old Mary Dane, his daughter, had been convicted of fornication in 1654.  
Despite the fact that the father of Mary Dane’s illegitimate child had a local record for promiscuity, Dane received a severe sentence. She was whipped for fornication and required to support her infant by herself. John Dane testified:

Obadiah Wood boarded at my house when he came from Daniel Hovey’s and he carried himself very well and unblameable so far as I could observe though Mary Talbut often sought to allure him he seemed constantly to be averse to her though she used much means to prevail with him in his company. She would seem to show much respect to him and when some other were present then she set light by him. This I speak after he came to my house. Formerly he loved her but she always carried it so at last it so exasperated his spirit as that he could not give her a good word.

However, Dane’s testimony, as he admits, is limited to behavior observed after Wood and Talbut had left the Hoveys, by which time Talbut knew she was pregnant and had informed Wood of the fact. It is not surprising, then, that from Dane’s point of

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78 John Dane was the author of John Dane’s Narrative, New England Historical and Genealogical Register, Volume 8, April 1854.

79 Records and Files, I, 337.

80 W.P.A. transcription, 22-70-3.
view, Talbut appeared to be pursuing Wood. She needed a husband to legitimize her baby.

The women's community of Ipswich performed the oversight role theoretically assigned to them by Laurel Ulrich: "Women needed protection, not because they were innocent but because they were not." Three generations of women from Samuel Hunt's family, his mother, 70-year-old Anne Reading, his wife, 37-year-old Elizabeth, and his daughter, 14-year-old Elizabeth, all warned Wood off. Other women performed the inquisitory function of the midwife, questioning Talbut about the father of her child. Sarah Healy presented a second deposition, no less favorable to Talbut, in which she reported the content of a conversation about the baby's paternity:

That on the 22nd of September last being at the well, by the riverside near Goodman Hunt's Mary Talbut came to them. Sarah Hely asked her the said Talbut when she thought she should be delivered. She answered she did not know when, but counted it would be sometime this month. Sarah Hely told her that Obadiah Wood said that he did not know anything of these things she accused him with, adding further that she believed the said Wood would not own the child. Mary Talbut replied that he was a fool if he did own it, adding that if it were her case, she would not own it herself, laughing much in the time of her speaking, and was as merry. As if she were not in such a condition, as she is judged to be. Even a 13 year-old, Anne Cotton, weighed in with a deposition. She had spoken with Mary Talbut at Samuel Hunt's well in August.

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81 Ulrich, Goodwives, 97.

82 W.P.A. transcription, 22-70-5.
She had taunted Talbut, asking her who would support her child, for Obadiah Wood would not. She deposed that Talbut had told her that Seth Story would support both her and her child.⁸³

In all, 19 neighbors presented depositions in this case. Much of the evidence presented would have been declared inadmissible by today's standards, but Ipswich's citizens, from John Dane, sr., to 13-year-old Anne Cotton, felt it their duty to bear witness where community moral standards had been violated.⁸⁴ Obadiah Wood was an Ipswich native, the eldest of ten children of a baker, also named Obadiah Wood. Everyone who deposed knew the Woods and shopped at his father's bakehouse. Talbut was a newcomer to town and had no local family.⁸⁵ It is likely that local sympathies rested with Wood, because while the deponents stated the obvious, that Wood had claimed to be "in love" with Talbut and had courted her publicly, they seemed anxious to exculpate him of paternity.

One important deposition is missing. There is no testimony from the midwife. Nor is there reference to a

⁸³W.P.A. transcription, 22-70-1.

⁸⁴Nineteen witnesses was not an unusual number. In the adultery case involving John Leigh and Sarah Roe, thirty-five people presented evidence against them. Fischer, Albion's Seed, 88.

⁸⁵The name, Talbut, is alternately rendered as Talbot, Tarbell, Tarbull, Tarbox and Cabbutt. I have been unable to connect her to nay Essex County families or find evidence that she married after her fornication trial and the completion of her extended indenture.
midwife’s testimony in the magistrate’s paperwork. In the majority of cases, the midwife’s testimony is at the heart of the prosecution, and its lack, in this instance, is puzzling. It is likely that this deposition existed at the time, because Obadiah Wood, although he was not convicted of fornication, was assessed child support payments by the court.\footnote{Obadiah Wood later moved to Hartford, Connecticut where he married.}

Mary Talbut’s legal problems were just beginning. There is no official record of her conviction for fornication, but in October, 1674, a month after her child’s birth, Obadiah Wood was ordered to pay her employer, Samuel Hunt, 40 shillings in corn for Hunt’s loss of Talbut’s labor during her pregnancy.\footnote{Records and Files, V, 356.} He was further required to pay Talbut 12 shillings a month toward their child’s support. Samuel Hunt was back in court the following April, seeking damages for the "loss he had suffered by his servant Mary Talbut’s being with child" beyond the 40 shillings in corn he had been paid by Wood for the loss of Talbut’s time. Talbut was ordered to serve a further two years beyond the time her current indenture with Hunt ended.\footnote{Records and Files, VI, 20.} Two years later, in 1677, Talbut sought a clarification of the court’s ruling. Apparently Samuel Hunt had sold her indenture to someone else, and Talbut hoped that the extra two years the court had assigned...
Hunt because of the time lost during her indenture, were not transferrable. The court declared otherwise. She was bound to Samuel Hunt and to "his assigns." \(^9^9\)

Perhaps the most interesting aspect of this case is the repeated references to love. \(^9^0\) Obadiah Wood said he was in love with Mary Talbut. Many of his neighbors also used the phrase, "in love." Wood appears, in their descriptions, to be remarkably similar to a twentieth-century adolescent in the throes of a crush. The seventeenth-century onlookers regarded Wood's repeated assertions of love with derision. It was an emotion not to be trusted, and that Wood's "love" was so transient is a salient reminder that twentieth-century conceptualizations of love cannot be reliably used to assess seventeenth-century relationships.

**Priscilla Willson: Coerced Sexual Activity**

Priscilla Willson, while younger at her conviction than most fornication defendants, is representative of the single women who appeared in Essex County Quarterly Court between 1640 and 1685 as victims of coerced sexual activity who, because they had conceived or their circumstances did not fit the narrow legal requirements to merit a rape prosecution, were tried for

\(^8^9\) Records and Files, 278.

\(^9^0\) I will consider Puritan ideology about love at greater length in the following chapter on pregnant brides.
fornication. Willson was a 16-year-old orphan under the guardianship of her grandfather when she got pregnant: her partner, Samuel Appleton, was 29, married and active in the business and social affairs of Essex County. The character reference supplied by 16 of Willson’s neighbors indicates that they had perceived her to be a virtuous young woman who must have been seduced by Samuel Appleton. They said that they had been:

the nearest neighbors unto Priscilla Wilson of Lyn, who hath greatly dishonored God and her relations together with her self by Committing Fornication: yet we make bold to signify to the Honored Court: That it was a matter of great admiration to us to hear of it: because from her childhood she behaved herself so modestly and Civilly all her time before this transgression as that none of us ever saw or heard of any Immodest or Uncivil behavior or wantonness and that we believe she was overcome by some subtle slights and temptations of one that beguiled her to yield to his lust and we are all persuaded that she doth not wrongly accuse him who she doth lay the charge upon: and so much we present to the Honored Court hoping god will return her by repentance and help her to deal truly in the case.91

Evidence supplied during the trial, which took place a week after Appleton’s first wedding anniversary, indicated that the sexual intercourse, which Appleton denied had occurred, might not have been consensual.

91W.P.A. transcription, 39-139-1.
The first two witnesses testified that Appleton had had the opportunity to father Willson's illegitimate baby. Hester Witt, Willson's 18-year-old friend said that:

one night when I the deponent lived at the old Iron Works with my father Stocker, in the room that my father Stocker lived there was a bed on which Priscilla Willson lay down saying she was not well and Mr. Samuel Appleton came into the room and went and lay down upon the bed and drew the curtains and the said Priscilla desired him several times to let her go forth, but he kept her in when she desired to come away and so he hindered her and they tarried there a considerable time.\(^92\)

Naomy Flanders, a 24-year-old servant, presented even more damaging testimony. She claimed to have questioned Appleton about his treatment of Willson and to have been rebuked by him. Her testimony was that:

Mr. Appleton of Lyn came into the room and went and lay down upon the bed where she was. And the said Priscilla Willson desired him to let her go forth: but he kept her in until Mrs. Purchis came and called for her and then in a little time after he let her go. And a little while after this deponent asked Mr. Appleton why he did so: viz: stop her and keep her at that time: when she was so desirous to go away. And Mr. Appleton told me I was a fool and knew nothing.\(^93\)

More witnesses followed the next day. Both Sarah Hathorne, the 58-year-old midwife who had delivered Willson's baby, and Experience Tarbox, testified that Willson, after much

\(^92\)W.P.A. transcription, 39-140-2.

\(^93\)W.P.A. transcription, 39-139-3.
persuasion, had named Appleton during labor as the father.

Sarah Hathorne deposed that:

by the Providence of God it was her lot to be midwife to Priscilla Willson of Lynn when the time of her travell came; before I entered upon performance of anything, though her pains came upon her, this deponent said Priscilla deal truly and plainly with me and tell me truly who is the father of the child and do no body any wrong, she the said Priscilla answered no more she would not. In the instant of time her grandfather Purchis came into the room and said to this purpose oh my child, thou hast not god's fear before thee when thou didst this evil but now let the fear of god be upon thee and doe no person any wrong but as thou knowest not but thou mayest dy. I charge thee in god's fear deal truly and declare truly who is the father of ye child and so spake to this purpose-left the room. Immediately her pangs came upon her and still this deponent and the rest present pressed her to tell truly and in her extremity she said she did & Mr. Appleton of Lyn was the father of it and that there was never no other man had to do with her.\textsuperscript{94}

Despite character testimony from Willson's neighbors, evidence of coercion, the considerable age disparity, and a childbirth statement, the charges against Appleton were dismissed while Willson was convicted and fined.

Appleton had a special relationship with the judges. One of them was his father; the rest were business and social acquaintances. For this reason, the court issued a compromise decision. While dismissing fornication charges against Appleton, the judges required him to pay one-half of the infant's expenses prior to its death, and one-half of the court

\textsuperscript{94}W.P.A. transcription, 39-140-3.
costs. This was a tacit admission that the court believed him guilty. Appleton retained his reputation and was accorded a series of honorific titles upon his death in 1725. Willson disappeared from view. Her only appearances in the seventeenth-century record are her birth notice and her fornication conviction.

This case illustrates the disparate penalty paid by male and female fornicators, the imbalance of power that often existed between men and women who engaged in extramarital sexual intercourse, and the coercive nature of much of the sexual activity. This type of sexual behavior will be revisited in Chapter 5 in a discussion of coerced sexual activity.

Sarah Stickney: The Stereotypical Lusty Widow

Sarah Stickey, nee Morse, was married at 22 and widowed in 1678 at 37. Her husband left her a prosperous farm, an estate valued at almost £300 pounds, six sons, one of whom was only nine months old, and two daughters. Little more than a year later she was in court, charged with fornication. She presented herself as a defenseless widow who had suffered repeated sexual assaults at the hands of a sailor, Samuel Lowell. The first time, she deposed, Lowell came with a pint of alcohol and a friend who quickly fell into a drunken stupor. She testified that:
when she saw she could not be rid of them she went to bed & being fast asleep with four children in bed with her, Samuel Lowell undressed himself & came into her bed, which when she awakened and perceived, she cried out, and would have awakened the sd Stevens who was fast asleep in the chimney corner: and could not awake him but with striving the best she could, he at last went away and said he would come no more.  

Stickney claimed that after this she had locked her doors securely at night to no avail. After Lowell had made two more attempts, "breaking open the doors & coming into the bed," frightening both herself and her children in the process, she had gone to her brothers for advice. They advised her to make sure that a man slept in the house each night to "bear witness" to the harassment. At this point she reported an incident so implausible that it raises questions about her veracity:

One night he came and keeping a noise at the door to come in and one of Rowley being in the house, she called to him, who in rising saw a man run away but could not tell who it was- when he came into the bed she persuaded him and spoke resolutely to him, yet could not prevail to make him cease his attempt, but that with her struggling and striving with him, he made her sick almost to death.

How Lowell got into her bed with "one of Rowley" in the house is not explained. She claimed that Lowell had gotten into her house, undressed, and climbed in bed with her yet again one night when her brother, Joshua Morse, was on guard duty. While

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95W.P.A. transcription, 46-11-1.
96W.P.A. transcription, 46-11-1.
they had been unable to catch Lowell, she deposed, they had one of his shoes as evidence.

It does not seem likely that Sarah Stickney was subjected to repeated sexual assaults from Samuel Lowell. In her version, Lowell was remarkably adept at getting through locked doors and avoiding her protectors. Moreover, there was overwhelming testimony to the contrary. A neighbor testified that Stickney hoped to marry Samuel Lowell, but that he had refused on the grounds that he did not have enough money.97 Lowell claimed that Stickney had often invited him to visit and to bring friends.98 Further, the neighborhood apparently believed that Joshua Morse had acted as Lowell's "pimp" rather than in defense of his sister's virtue.99

In March, 1681, Stickney was charged with fornication a second time. She named no father, and Lowell presented depositions proving he was at sea when this child was conceived. A year after this fornication conviction, she claimed that John Atkinson, a 46-year-old father of nine, was the father of this latest child. Her accusation unleashed a series of bitter and acrimonious court battles. She claimed she had not named him before because he had paid her to remain silent, and one of her sons provided convenient testimony that Atkinson had visited her

97W.P.A. transcription, 37-91-3.
98Records and Files, VII, 317.
99Records and Files, 317.
at night. Atkinson's wife was six month's pregnant at the time Stickney's child was conceived, so he has to be considered as one of the potential fathers. Atkinson was convicted of paternity and required to pay child support. From then on, he and the Widow Stickney were stock figures at the Essex County quarterly court sessions as he sought to have the fornication conviction overturned. At no point was he ready to concede that he had fathered the child, and he fought vigorously to have the child support payments first reduced and then discontinued. Even Mrs. Atkinson entered the fray, physically attacking Stickney, and petitioning the court to have the child support payments discontinued because of the hardship it was causing Atkinson's legitimate family. In 1682, this curious court order was entered:

Court being informed that the clerk of the writs of Newbury had entered the bastard child of Sarah Stickney of Newbury in the record of births as the child of John Atkinson, upon whom she charged it, although he did not own it, it was declared to be an irregularity, and the clerk was ordered to appear at the next Ipswich [unless] he give satisfaction to said Atkinson before that time. The clerk was ordered to erase the entry from the book of records and cause it, if it be returned to the county records, to be altered or erased from those records.¹⁰⁰

Atkinson had been judged to be the father of Stickney's child, he was making child support payments, and yet he was able to

¹⁰⁰Records and Files, VIII, 43.
prevent his name from being officially recorded as the father of the child.\textsuperscript{101}

It seems clear that Sarah Stickney, in her widowhood, was sexually active with multiple partners and that this was a problem for the Essex County Quarterly Court. Testimony indicates that John Atkinson lost a lottery cynically conducted by Sarah Stickney: "They did draw lots and the lots fell upon John Atkinson to father the child."\textsuperscript{102} Further, Stickney had told 48-year-old Robert Savory that the father was a "young man of the town that came to my house with a bottle of liquors & I was fasting and I prayed him that he would not abuse me and he said he would not but did."\textsuperscript{103} The following year the child support payments were discontinued and the Widow Stickney married Stephen Ackerman. Ackerman had not been mentioned in any of the depositions relative to Stickney as a possible sexual partner in either of Stickney's fornication prosecutions. He was too poor to have made a desirable marriage partner and I postulate that Stickney's ability to live in peace in Newbury depended upon the mantle of respectability cast by marriage to Ackerman.

\textsuperscript{101}Long after Atkinson stopped making child support payments, he was still active in court trying to clear his name. He and Stickney and her husband Stephen Ackerman engaged in extensive litigation which included multiple physical assaults and a disputed miscarriage.

\textsuperscript{102}W.P.A. transcription, 46-10-1.

\textsuperscript{103}W.P.A. transcription, 46-9-1.
Sarah Stickney's sexual activity appears to be alcohol-related. It may be that local men knew that if they brought Stickney alcohol they could get sex in return. That would explain why so many men were potential fathers of her two illegitimate children. It would also explain why Stickney depicted herself as a victim. Her mention that she had been fasting at the time of her second conception may exhibit a sophisticated understanding of the effects of alcohol on an empty stomach. Her claims of abuse could also be predicated on a desire to be perceived as conforming to the Puritan ideal of womanly chastity despite her circumstances. She may have resented the reputation she had gained for sexual availability. Certainly she was cynical of the court's attitude toward sexual malefactors. Upon her return from sentencing for her second presentation she told a neighbor that, "The Court did not regard the Sin so they could get the money."  

Sarah Kenney: An Atypical Sexual Relationship

The only permissible form of sexual intercourse from the Puritan point of view was heterosexual man-on-top coitus between persons who were married to each other for the purpose of procreation. If, at the same time, this sexual intercourse promoted mutual affection and marital harmony, that was a side

\[104\] WPA transcription, 46-9-4.
benefit. Seventeenth-century sexual taboos reflected the values of a Biblically-oriented agricultural society in which sodomy and bestiality were capital crimes. Women were largely exempt from charges of homosexual activity or bestiality because the legal requirement of penetration defined them as male acts.\textsuperscript{105} Father-daughter incest, so heinous to twentieth-century sensibilities, was regarded as adultery.\textsuperscript{106} The victim was the wife, who had been deprived of her rightful sexual activity, not the daughter who had been abused. In 1688, when Sarah Kenney told the magistrates that her father was the father of her illegitimate child, she was charged with fornication.\textsuperscript{107} It was her sexual misbehavior, not her father’s, that concerned the court.

The first deposition filed in Sarah Kenney’s case is a unique document because it appears to be the only document related to a fornication case in a question and answer format. In February 1688, 64-year-old Henry Kenney of Salem Village was

\textsuperscript{105}John M. Murrin, "'Things Fearful to Name': Bestiality in Colonial America," \textit{Pennsylvania History: A Journal of Mid-Atlantic Studies}, Special Supplemental Issue, Vol. 65 (1998), 9. Only two cases, both in New England, that involved women in cases of sexual play, were tried as lewd and lascivious behavior.


\textsuperscript{107}I found one incest case in Salem in 1682. Nicholas Manning and his sisters were charged with incest. Manning fled before trial, his sisters were sentenced to be whipped but had their fines remitted by the payment of £5. The penalty for incest was the same as that for fornication. \textit{Records and Files, Volume VIII,} 88-89.
summoned to appear before Major Bartholomew Gedney and Major William Browne, two members of "His Majesties Honorable Council here" and Justice of the Peace, John Hathorne in order to tell them the whereabouts of his 30-year-old, pregnant, unmarried daughter. That three justices were in attendance for a preliminary hearing is in itself extraordinary; proof either that they believed something serious might have happened to her, or that removing a suspected fornicator from their jurisdiction was a serious offense:

Question: Where is your daughter Sarah Kenney
Answered that there had been many reports he had carried her away.
Q. Where have you carried her?
Ans. To the house of one Thwaites a considerable distance from Dedham, towards Secunk.
Q. Why did you carry her away?
Ans. She was with child I verily believe & according to her relation near six months gone and there being many reports concerning it I was willing for my own peace & the peace of my family to carry her away.
Q. What reports are there concerning it?
Ans. To tell you the truth I have heard she saieth that I am the father of the child although she has often said that Mrs. Putnams Negro is the father of it & I have good ground to believe it is so.
Q. If there be such reports & you know yourself clear, why have you done so imprudently as to carry her away privately & nobody knew but yourself, which has caused everybody to suspect there is something further in it?
Ans. I am clear of any such thing. & I doubt not but times will clearly manifest it.\footnote{W.P.A. transcription, 47-147-1.}

\footnote{W.P.A. transcription, 47-147-1.}
The three magistrates ordered Kenney to post a £20 bond to bring a certificate to them within two weeks from the Justice of the Peace where Sarah Kenney was boarding which stated that his daughter was well and being provided for in a manner suitable to her condition. Further, within six weeks to two months of her delivery Sarah Kenney was to appear before them to answer charges of fornication.

Kenney returned two weeks later as ordered with proof that his daughter was living in Henry Thwaite’s "public house of entertainment." On July 23, 1688, Sarah Kenney appeared herself before the Justice of the Peace, John Hathorne, accompanied not by her father but by her brother and her brother-in-law who said they had come on Henry Kenney’s behalf. Sarah Kenney said that in her travails with the Child Mrs. Buxton the midwife Examined her who was the father of her said child, unto which She then Answered that it was her Own father, Henry Kenney that was the father of her child she then was in travail withal.110

Sarah Kenney was ordered to post bond of £20 and to appear at the next session of the Essex County Quarterly Court to answer charges of fornication. Henry Kenney was freed of his recognizance at this meeting. He had done all that was required of him by the court. He surfaced next in the court record during the Salem witchcraft trials as a deponent. Unfortunately the docket book containing the final disposition of this case is

110 W.P.A. transcription, 47-148-1.
lost. There is no reason to think, however, from the existing paperwork, that Henry Kenney suffered any further repercussions. Probably Sarah Kenney appeared at the next session of the Quarterly Court, pled guilty to fornication, was fined, and had the remainder of her £20 appearance bond was remitted.

Conclusions

The aim of this chapter has been to provide a human dimension to the quantitative data presented in the previous chapter. The numbers provided insight into the incidence of extramarital sexual activity in seventeenth-century Essex County, the limited degree to which unmarried women and men shared prosecution for fornication, and the imbalance in the severity with which men and women were punished. The depositions filed in individual cases clarify the attitudes and behaviors that the numbers indicated existed.

The details of the Mary Talbut/Obadiah Wood fornication trial are replicated again and again in seventeenth-century Essex County depositions. Wood was not the only servant who pursued a fellow servant until he caught her and then used a defense of female promiscuity to try to evade child support payments. The depositions filed in the Talbut case make clear how critical it was that women marry. Marriage was "basic to
survival for many New England women." Their identity, their future standard of living, their status in the community, literally their whole way of life was dependent upon the men they married. Mary Talbut did not have much to offer. She had no dowry, and she had sold her service for an unknown number of years. Obadiah Wood had offered her marriage, and whether she engaged in sexual intercourse because it was his expectation, as some of the depositions indicated, or because she wanted to cement their relationship, she still thought she might be able to do better. Seth Story represented a step up economically and socially, but when she became pregnant her options were foreclosed. Talbut had to make do with Wood, but she found that he did not want a pregnant bride. Talbut had tried without success to manipulate the Puritan marriage system.

Women such as Mary Talbut engaged in sexual intercourse as part of a strategy to marry. Others, like Priscilla Willson, were victimized by sexual predators who were already married or did not plan to marry. Widow Sarah Stickney epitomized the stereotypical lusty widow, but for the consumption of the court she sought to recast herself as a victim. Women in seventeenth-century Massachusetts bore illegitimate children for diverse reasons and under different conditions, but they shared the common experience of bastard-bearing which limited their

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111 Koehler, A Search for Power. 113.
marriageability, confirmed the traditional understanding of women’s innate lustfulness, and earned them the contempt of the Puritan community for violating the standard of female chastity.

Men felt the effect of a fornication or a paternity conviction differently. It did not affect their marriageability, but it did affect, at least for a time, their standing in the community. The lengths Henry Jaques went to in order to keep his sexual relationship with his servant secret and John Atkinson went to in order to clear his name after a paternity conviction indicate the strength of Puritanism’s negative attitude toward extramarital sex. It was not the wrath of their wives or the potential burdens of child support which they feared; it was the public exposure of their extramarital sexual activities. Their standing in the Puritan community depended on the public perception of their characters. The highest aspiration of Puritan men was to be recognized as a member of the Elect. Living sainthood in Puritan Massachusetts brought with it the respect of one’s neighbors, material well-being, and eternal life. Men (and women) might know in their hearts that they fell short of the ideal, but appearances were important to the maintenance of honor. Fornication convictions and judicial assignments of child support payments brought public awareness to private sexual behaviors the community considered shameful. Puritans thought of themselves as parts of a larger, Godly, community. The exposure of sexual activity that violated
community standards, that was commonly described through the use of terms like "incontinence" and "filthiness" by a society that expected conformance to community values, was a source of great shame and an experience to be avoided if at all possible.
"TO THE GREAT GRIEF OF OUR AGED PARENTS": PREGNANT BRIDES IN SEVENTEENTH-CENTURY MASSACHUSETTS

Introduction

The choice of a marriage partner was the single most important decision young women in seventeenth-century Massachusetts made. Women derived their identity from their husbands; they accepted his authority; and they placed confidence in his ability to provide for their children. This would make the choice of a mate stressful enough in this life, but in Puritan Massachusetts, women’s hope of heaven might be dependent upon their choice of an earthly partner, for Puritan religious ideology linked marriage and grace. Anne Bradstreet made that link explicit in a poem dedicated "To my Dear and loving Husband," in which she described marital love as the means of election: "(T)hen while we live, in love lets so persever,/That when we live no more, we may live forever."²

The choice of a marriage partner was important to men as well. The ideal was a virgin with a substantial dowry, equivalent or moderately superior socio-economic status, and marketable housewifery skills. If she was part possessor of

¹Penitent Statement of Isaak and Sara Bayley

resources which would enhance her potential husband's assets, such as a bordering farm or male relatives with similar or complementary business interests, that helped. But for men, the decision when to marry was as important as whom to marry.

Marriage represented a man's entry into adulthood through the establishment of an independent household. It could not be undertaken until they could afford the transition from dependent son to patriarch. Their choice, and the conditions under which that choice was made, could influence parental disbursement of property upon their entry into marriage. An attempt was made to balance the contributions of both partners' families. If one family was unable to contribute much because pregnancy had forced an unequal match, or unwilling to contribute anything because of its anger and shame, it might limit the amount the other family felt obliged to provide. An untimely pregnancy followed by a hasty marriage could have long-term ramifications. Limited parental financial support and a pregnant partner who lacked a dowry, an estate, or commercial connections and housewifery skills would materially affect a man's future prosperity and domestic comfort.

Marriage was a common expectation in New England where 98% of men and 94% of women married. However, romantic love and marital companionship were considered less important than a

3Fischer, 77.
status-appropriate match. In England prior to the Interregnum, judges honored marriages based on mutual consent. While parents could try to control their children’s choice of a marriage partner through inheritance, the courts honored marriages that had been made without parental consent as long as three conditions had been met. Couples had to have reached puberty; each partner had to have given verbal consent to the marriage; and the marriage had to have been consummated. In Massachusetts, parents asserted legal control over all aspects of their children’s lives. Not only did marriage require the written consent of both families, or, in cases where no parents were available, that of the local selectmen, courtship required parental consent. Massachusetts gave parents legal control over courtship, with enforceable legal remedies in 1647.

For religious and cultural reasons men did not want to marry pregnant women. To yoke themselves to a woman who had been unable to control her sexual appetite meant a possible forfeiture of grace and a certain loss of honor. Marriage represented the admission they had been unable to refrain from

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Ibid., 206.

"uncleanness," or "filthiness," and while male virginity did not carry the same import as female chastity, having a wife who lacked a good sexual reputation meant a loss in status. There was the fear that if their wives had been incapable of controlling their sexual appetites prior to marriage, even if they had been the temporary beneficiary of that loss of control; they could not be trusted to control themselves with other men after marriage. Marriage brought with it an inevitable fornication conviction and certain punishment, a humiliating series of shame rituals in church and court, loss of status, and financial penalties.

These consequences might be worth the price if the couple had used pregnancy to force a marriage. With status-appropriateness a primary criterion for marriage formation, a visible out-of-wedlock pregnancy represented a compelling argument in favor of an unequal match. Differences of rank could be overcome when fond parents were confronted by pregnant daughters and their ineligible suitors. It is possible, in some instances, that men used the knowledge that to fond, or proud, parents any husband might be preferable to a daughter with no husband and an illegitimate child. Whether the motivating factor behind the pregnancy was an ambitious man willing to trade temporary opprobrium and a fornication conviction for a beneficial alliance or a couple who saw no other way to marry, it presented a viable marriage strategy with one caveat. It
only worked if it was the woman who possessed superior economic and social status.

Romantic love, perhaps the precursor to premarital coitus in some instances, was not an emotion to be trusted. In Chapter 3, I introduced Obadiah Wood, who swore he would have Mary Talbot in marriage or die—until he learned she was pregnant. In this chapter, I will examine the marriage formation processes of 179 Essex County men who married their pregnant partners between 1640 and 1692. That many of the men were reluctant can be inferred from the fact that the median length of time elapsed between marriage and the birth of a couple's first birth was 16 weeks. In some instances, however, couples may have used a pregnancy to force parental permission to marriage that would not otherwise be forthcoming.

This chapter is arranged around three major issues. First, I will identify the types of persons who engaged in premarital sexual activity to determine the ways in which they differed from women and men who were prosecuted following the births of illegitimate children and from the majority of Essex County couples who began their sexual relationships after marriage. This material will be presented in the quantitative section. Second, I will examine the marriage formation processes that couples who initiated sexual activity prior to marriage were engaged in.
A number of questions beg answers. Was impending marriage the cause or the effect of an unplanned pregnancy? Did the pregnancy result from an uncontrolled moment of passion between committed persons as their parents or guardians haggled over the financial terms of the proposed union? Did economic downturns force couples who had initiated intercourse in expectation of imminent marriages to part, as has been asserted for early modern England. These questions are inter-related because they presuppose committed partners who expected to marry soon. Was marriage an expected outcome if a woman conceived as a result of casual sexual intercourse between persons where there was no bar to marriage, such as a pre-existing marriage, an indenture, apprenticeship or poverty? Did some couples use a pregnancy to force marriage when they knew that parental permission to marry would not be forthcoming? Was there the cultural expectation that men would "do the right thing." Was community pressure applied to assure that they did? Was the community interested in protecting errant young women in this manner. Or, were these "shotgun" marriages? How great was the incentive for the woman's "friends" her family, employer, and interested neighbors to ensure that marriage occurred? Did the willingness of men to marry change over time? And, a related and even more basic question, did the amount of premarital sexual activity increase relative to the population as the century unfolded?
Third, I will examine the aftermath of a premarital fornication prosecution. What were the procedures couples engaged in to reknit themselves into the social fabric of the Puritan community? Why was the outcome of this type of prosecution more rehabilitative than an illegitimate fornication prosecution? Why were men who married their pregnant partners punished more severely than men who fathered illegitimate children? Is the assumption of reintegration in itself flawed? The answers to these questions combined with comparative data from illegitimate fornication prosecutions will enable us to come closer to some definitive conclusions across the complete range of Puritan sexual attitudes and behaviors.

Quantitative Analysis of Premarital Fornication Cases

The judicial course of a premarital fornication case was relatively uncomplicated compared to that of an illegitimate fornication prosecution. No complicated issues of paternity were contested since marriage was a tacit admission of fatherhood. Both husband and wife were summoned to appear at the session of the Essex County Quarterly Court that followed the birth of a child within the first 32 weeks of marriage. For example, Thomas Verry of Salem married Elizabeth Proctor, also of Salem, March 28, 1681. A son, Thomas, jr., was born eight weeks later. The following month, at the June session of the Essex County Quarterly Court meeting in Salem, "Thomas Verry and
his wife, for fornication before marriage, were fined.⁷ Verry's wife was not named, and the amount of their fine was left unrecorded. From the point of view of conducting a detailed quantitative analysis of premarital fornication cases, the Verrys' experience is all too typical. Most premarital prosecutions were conducted with similar dispatch. Given the uncontested nature of the cases, few depositions were filed and few cases required more than one court appearance.

It is difficult to develop financial and occupational information on couples who were prosecuted for premarital fornication from court records, since the handling of these cases is so matter-of-fact. The amount of genealogical and occupational data available in the Essex County docket books for women and men prosecuted for illegitimate fornication is missing in the cases of couples who were prosecuted for premarital fornication. Bastard-bearers were identified in terms of their relationship to a male in a position of authority over them, a father or an employer. Women who appeared as co-defendants in premarital fornication cases had become femes covert, subsumed in the legal identities of their new husbands. While there is less information on these persons in the court records, the very fact that they could afford to marry meant that they, or their

⁷Records and Files, Volume VIII, 146.
families, had a financial presence in the community and they are easier to locate in genealogies and probate records.

One hundred and fifty-one couples were charged with fornication following the birth of their first child within 32 weeks of their marriage in Essex County, Massachusetts, between 1640 and 1685. In 1651 John Putnam was fined 40 shillings "for his relations after contract," following the birth of his first child 35 weeks after his marriage to Rebecca Prince in 1651. Their prosecution is the exception that makes the rule, coming as it does in 1651 when the court was particularly intolerant of sexual irregularities as evidenced by its rigorous punishment of bastard-bearers during the same decade. This is one of the few Essex County prosecutions that specifically mentions that coitus had occurred after a marriage contract had been formalized and the only conviction in which the pregnancy went longer than 32 weeks. Plymouth Colony routinely fined couples who engaged in sexual intercourse prior to a marriage contract twice as much as contracted couples. A second Essex County case, tried seven years later, clarified the court's position on the length of time allowable between marriage and birth: "Hanah, wife of Nehemiah Howard, presented for suspiciousness of uncleanness,

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8I did not include premarital fornication trials between 1686 and 1692 in the quantitative analysis because, as stated in Chapter 2, these records are incomplete.

9Records and Files, Volume I, 286.
being delivered of a child about thirty-two weeks after marriage, was discharged.\textsuperscript{10}

**Patterns of Punishment**

The nature of the court clerk's recording of the sentences is such that it is difficult to draw hard-and-fast conclusions about sentencing patterns. In some instances there is specific mention of a couple being assigned the same fine: "Georg Samon and his wife were fined £5 each for uncleanness before marriage."\textsuperscript{11} The sum assigned was often a combined assessment. For example, in April 1673: "Joseph Chase and Rachell Chase, his now wife, presented for fornication, confessed and were sentenced to be severely whipped tomorrow morning or pay a fine of £6."\textsuperscript{12} Some husbands and wives were fined different amounts. In October 1668, Henry True was fined £3: his unidentified wife was fined 40 shillings.\textsuperscript{13} There is also no way of telling how many of the couples, given the option of being whipped or fined, chose to be whipped, or had a whipping forced upon them because

\textsuperscript{10}Ibid., Volume II, 101.

\textsuperscript{11}Ibid., Volume III, 221. Remember Salmon was widowed in 1673. She was convicted of fornication in 1676 and 1679 following the births of illegitimate children.

\textsuperscript{12}Ibid., Volume V, 152. A second couple who were presented for a 32 week pregnancy in 1675 was also discharged.

\textsuperscript{13}Ibid., Volume IV, 64. Henry True's wife, Jane Bradbury, was fined two-thirds of the sum her husband paid.
they lacked the money to pay a fine. In October 1674: "John Heriman and his wife, convicted for fornication and confessing, were ordered to be whipped, he twenty stripes and she fifteen, or pay a fine of £8." Given the size of the fine and Heriman's age (22) it is probable Heriman and his wife were unable to pay their fine.\textsuperscript{15}

A couple might be offered a range of alternatives. While the number of cases in which there is a specific mention of a promise by the court to reduce the severity of the sentence if the couple married is limited, marriage had been listed as the first remedy for fornication in the Massachusetts Bay Colony law code issued in 1641.\textsuperscript{16} A decision rendered by the court in November, 1669, presents the most complete range of alternatives as well as providing evidence of the seriousness with which the court regarded the crime of fornication since it makes reference to the fact that the couple had been jailed prior to trial:

William Sanders and Mary Vocah were sentenced for fornication, he to be whipped or pay 4li. And she to be whipped or pay 40s unless they agree to be married, when their sentence was to be abated one

\textsuperscript{14}Ibid., 409.

\textsuperscript{15}Heriman was killed at Bloody Brook, September 18, 1675 while serving in the militia during Metacomet's War. I have been unable to locate any reference to a will or an inventory which would allow a financial analysis. His father, Leonard Heriman, was prosperous enough to be appointed to Essex County grand juries twice during this decade.

\textsuperscript{16}John D. Cushing, The Laws and Liberties of Massachusetts, 1641-1691, Volume II, 280.
half. They were to remain in prison until the payment be made. 17

Since they were to be imprisoned until their fines were paid, it may be that the common expectation was that a couple would pay to avoid whipping. Sanders and Vocah married that day, so they received an abatement of half of their fines.

As Table 6 illustrates, 83% of premarital fornication defendants received the option of paying a fine. This is likely reflective of two factors: class was always a determinant in the decision to fine rather than to assess corporal punishment, and judges viewed couples who legitimated their relationship marriage more leniently than women who bore illegitimate children. Only 56% of women who bore illegitimate children were given an equivalent option. 18 Ironically, while women prosecuted for illegitimate fornication received more severe sentences than women who married, men who abided by the letter of the Massachusetts Bay Colony fornication law which enjoined marriage as the first remedy for fornication paid a more severe penalty than their male peers who fathered illegitimate children.

17Records and Files, Volume IV, 200.

18Only 46% of the men who fathered illegitimate children were given the option to pay a fine. The 35 men who were convicted of fornication, however, were prosecuted prior to 1660 when penalties were generally severe or represented the most egregious offenses.
Table 6

Sentences Issued by the Essex County Quarterly Court to Married Fornication Defendants, 1640-1685

<table>
<thead>
<tr>
<th>Sentence</th>
<th>% Defendants Receiving (N=131)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Admonished</td>
<td>1%</td>
</tr>
<tr>
<td>Fined</td>
<td>46%</td>
</tr>
<tr>
<td>Whipped or Fined</td>
<td>37%</td>
</tr>
<tr>
<td>Whipped</td>
<td>2%</td>
</tr>
<tr>
<td>Severely Whipped or Fined</td>
<td>11%</td>
</tr>
<tr>
<td>Severely Whipped</td>
<td>2%</td>
</tr>
</tbody>
</table>

The likelihood of a fornication prosecution following marriage was 100%: following an illegitimate birth it was only 28%.

Specific child support payments of between two and three shillings per week were reported for only 13 of the 99 men who had been named as the fathers of illegitimate children. As it was only necessary to make child support payments for two years, men convicted of illegitimate fornication, if they were given the maximum fine of £5 and paid child support of £6 a year for two years, paid a maximum financial penalty of £17.

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19Seven couples, all after 1679, forfeited their bonds when they did not appear. In the remainder of the cases, the verdict is unknown.
Time Elapsed Between Marriage and Birth

The average length of time that elapsed between the wedding ceremony and the birth of the first child was sixteen weeks. In other words, one half of the women convicted of premarital fornication were six months or more pregnant at the time of their marriage. There are five plausible explanations for this time lapse: (1) the five to six months that elapsed between conception and marriage represented the length of time required for the young woman to realize she was pregnant, for the families to negotiate a marriage settlement, and for the couple to assemble the wherewithal to establish an independent marital household, (2) couples who knew they had conceived a child waited to marry in November or December, the traditional New England marriage months, (3) the five to six month lapse between conception and marriage meant that in many instances the groom had to be persuaded to marry the woman he had impregnated, (4) legal action initiated by a pregnant female, usually in the fifth month of her pregnancy, focused judicial and community pressure on the putative father to marry, or (5) women and men used a premarital pregnancy to force parents to give permission to an unequal marriage.

Significantly, it would not require six months for a couple who already had parental permission to court to realize they had a child on the way and to complete their marriage arrangements. An incipient birth lent urgency to marriage
negotiations. Given the sentences issued by the Essex County Quarterly Court to women who bore illegitimate children and their diminished opportunities for marriage after a fornication conviction, women's families had an incentive to press for quick marriages. Once the pregnancy was visible, the expectant mother was harassed by neighbors who felt it their civic duty to determine paternity and encourage marriage. In many instances the identity of the father would be patently obvious since the couple were openly courting.

A comparison of the months in which pregnant and non-pregnant women married will indicate whether the time lapse can be explained in terms of the second posited explanation; adherence to customary marriage patterns. Puritan marriages occurred within a clearly defined curve that followed the agricultural calendar. The months with the lowest percentage of documented marriages were July, August, and September (at five percent each) and October (at six percent). Thirty-nine percent of non-pregnant women married in November (17%) and December (22%). The months of marriage for pregnant brides do not fit this pattern. The percentage of pregnant women who married in

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20One hundred Ipswich and Salisbury marriages were selected at random from the vital statistics in order to arrive at a sample that represented both urban and agricultural Essex County. The established pattern matches that developed for New England by David Cressy, "The Seasonality of Marriage in Old and New England," Journal of Interdisciplinary History, XVI:I (Summer, 1985), 5.
the months of August (10%), September (10%), and October (12%),
was twice as high as the non-pregnant cohort for the same
months, and higher than the percentage of pregnant women who
married in November (nine percent) and December (nine percent).
The first two hypotheses cannot be sustained. Premarital sexual
intercourse that led to a fornication prosecution did not begin
after contract and before marriage, nor did couples delay their
marriages to adhere to the customary New England marriage
pattern.

The conclusion, then, that up to one-half of the men
prosecuted for premarital fornication were initially unwilling
to marry a woman who could be persuaded to engage in sexual
activity without marriage is warranted. Whether because of
traditional Puritan beliefs about women, because women who
conceived out of wedlock had violated the new Puritan standard
of womanliness, or because of the disproportionate legal penalty
paid by men who married their pregnant partners, it is not
surprising that it took time to persuade some of them to marry.
The first two factors meant that in some instances there may
have been more male loss of honor and status involved in
marrying a pregnant woman with a doubtful sexual reputation than
in denying paternity to escape a fornication prosecution. Since
the mean time that elapsed between marriage and birth was a
surprisingly short 16 weeks, fewer than half of the couples,
then, can be characterized as engaged in a committed
relationship before they commenced sexual intercourse. For some couples, the problem was money. Three men married their partners after the birth of an illegitimate child. They might have been willing to marry sooner, but needed more time to save enough money to make a home. While it has proved difficult to develop financial information on male co-defendants due to the limited number of available seventeenth-century Essex County tax assessment lists and their lack of detailed identifying information, five of the 36 men in the lowest Salem tax bracket (which comprised only seven percent of the taxable male population) were convicted of premarital fornication within ten years of their assessment. Insufficient financial resources also impeded marriage formation.

The time elapsed between conception and marriage (see Table 7 below) varied considerably between the first and final decades of this study. Between 1650 and 1660, which is the first decade in which date of marriage and date of birth information is available for seven of the couples, five of them, (70%) married in the first trimester of their pregnancy. It is possible they were married even before they realized that the female partner had conceived. In the final decade of the study, 1682-1692, only one of the 21 couples (five percent) for whom date of marriage and date of birth information is available were married in the first trimester. The percentage of couples marrying in the first trimester plummeted dramatically. This
Table 7

Frequency Distribution: Number of Weeks Elapsed Between Marriage and Birth

<table>
<thead>
<tr>
<th>Number of Weeks Elapsed</th>
<th>Number of Couples (N=88)</th>
<th>Percent of Couples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-4</td>
<td>10</td>
<td>11%</td>
</tr>
<tr>
<td>5-8</td>
<td>9</td>
<td>10%</td>
</tr>
<tr>
<td>9-12</td>
<td>12</td>
<td>16%</td>
</tr>
<tr>
<td>13-18</td>
<td>15</td>
<td>17%</td>
</tr>
<tr>
<td>17-20</td>
<td>16</td>
<td>18%</td>
</tr>
<tr>
<td>21-24</td>
<td>7</td>
<td>8%</td>
</tr>
<tr>
<td>24-28</td>
<td>14</td>
<td>16%</td>
</tr>
<tr>
<td>28-31</td>
<td>5</td>
<td>6%</td>
</tr>
</tbody>
</table>

supports the conclusion that many couples who married following a premarital conception were not engaged in a committed courting relationship at the time they had intercourse.

Prior to 1660, when the number of individuals prosecuted for sexual offenses was in the single digits annually, if marriage did not follow conception, it was because the father was already married, still indentured, or had left Essex County. Otherwise, community pressure or legal action initiated by the pregnant woman was enough to bring him to marriage. In the period 1682 to 1692, the situation was very different. The population of Essex County had grown to the point where

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21I did not include the 35 week prosecution of John Putnam and Rebecca Prince in this tally because it was anomalous.
community pressure was no longer sufficient to force men to marry their pregnant partners. Justices no longer advised defendants that if they married before the end of the day their whippings or, more likely, their fine, would be cut in half or commuted, and the religious argument was no longer convincing to many men. Fewer men were willing, in the final decade of this study, to marry their pregnant partner in the first place, and when they did marry them, the marriage no longer occurred in the first trimester of the pregnancy.

Ages of Premarital Fornication Defendants

I calculated the mean age at marriage of women and men who were prosecuted for premarital fornication. Pregnant brides married at 22 years of age: their husbands were 27 years old. Other early American historians have found that couples who married without the unpleasant incentive of an out-of-wedlock pregnancy married at similar ages. Kenneth Lockridge found that women and men in Dedham, Massachusetts, between 1640 and 1690, married at the ages of 23 and 25 respectively. John Demos documented a slightly different situation in Plymouth Colony. While age at marriage for women was lower than in Dedham, 21.3 between 1650 and 1675, and 22.3 between 1675 and 1700, the mean

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age at marriage for men was very similar, at 25.4 between 1650 and 1675, and 24.5 between 1675 and 1700.\textsuperscript{23} Philip Greven looked at marriage age in Andover, Essex County, and found that second generation women had an average marriage age of 22.8 years and second generation men married at 27.1 years of age.\textsuperscript{24} Greven's marriage age data for one Essex County community parallels my data for premarital couples in Essex County as a whole, and I conclude from this that couples who engaged in premarital sexual intercourse were in the same age cohort as their more continent, or fortunate, peers.\textsuperscript{25}

Table 8 below shows not age at marriage but age at the time of trial. There was not a significant difference between the two (although a year could elapse, in some cases, between the date of marriage and date of trial), but since in every instance the date of the trial was known, I was able to match dates of birth in cases where the date of the marriage was unknown. Seventy-five percent of the women were between the

\begin{itemize}
\item \textsuperscript{23}John Demos, \textit{A Little Commonwealth: Family Life in Plymouth Colony}, (London: Oxford University Press, 1979), 193.
\item \textsuperscript{25}I did not break my age data down into monthly intervals because I think there is too much uncertainty as to whether the dates of birth given in the published Vital Records represented birth or baptism although baptism usually occurred on the Sunday following birth if the parents were church members.
\end{itemize}
Table 8
Age Distribution of Premarital Fornication Defendants at the Time of Their Trials²⁶

<table>
<thead>
<tr>
<th>Age</th>
<th>Women (N=96)</th>
<th>Men (N=88)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Frequency</td>
<td>Percent</td>
</tr>
<tr>
<td>15-17</td>
<td>6</td>
<td>6%</td>
</tr>
<tr>
<td>18-20</td>
<td>26</td>
<td>27%</td>
</tr>
<tr>
<td>21-23</td>
<td>30</td>
<td>31%</td>
</tr>
<tr>
<td>24-26</td>
<td>19</td>
<td>20%</td>
</tr>
<tr>
<td>27-29</td>
<td>8</td>
<td>8%</td>
</tr>
<tr>
<td>30-32</td>
<td>1</td>
<td>1%</td>
</tr>
<tr>
<td>33+</td>
<td>6</td>
<td>6%</td>
</tr>
</tbody>
</table>

ages of 18 and 26. This places them within the age group that could have expected marriage as the outcome of sexual intercourse. Seventy-four percent of the men were between the ages of 21 and 29 which places them in an age range where they could reasonably hope to be able to offer marriage following an unplanned pregnancy. However, 43 percent of the women and 53 percent of the men were older than the mean marriage age at the time of their trial. There is a strong correlation between male marriage age and economic independence. Men who had inherited

²⁶There is a bias in this sample of cases. Ages were determined, in most instances, from births registered in the vital statistics. Secondary sources of age data were court records which sometimes recorded the age of a deponent and immigration records. While the age of an indentured servant might be gained from these sources, the age sample is skewed toward women born in Essex County of established parents.
their patrimonies were more likely to marry at a younger age.

It is clear that the converse was also true and not unexpected. Couples were more likely to engage in sexual intercourse if they were older when they commenced their courtship. Or, having conceived a child together, their relative maturity compared to couples who bore illegitimate children, had enabled them to assemble more financial resources during the period of time that they had been working.

The ages at trial of persons convicted of illegitimate fornication and premarital fornication was also compared in Table 9. Eighteen percent of the women who bore illegitimate children were 17 years of age or younger. Six percent of the female premarital defendants fell into this age category. These data support my conclusion that sexual activity involving women in this age category was opportunistic. Three times as many of these women bore illegitimate children.

Three factors influenced the ability of women on the 15-17 age category to marry: 1) they were more likely to have had sex with married men, 2) they were not in the age cohort that would have been engaged in serious courtship, and 3) they had not worked a sufficient number of years to make a material contribution to their dowry.
Table 9

Comparative Age Distribution of Illegitimate and Premarital Fornication Defendants By Percent in Essex County, 1640-1692\textsuperscript{27}

<table>
<thead>
<tr>
<th>Age</th>
<th>Women</th>
<th>Men</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Illegitimate (N=66)</td>
<td>Premarital (N=96)</td>
</tr>
<tr>
<td>15-17</td>
<td>18%</td>
<td>6%</td>
</tr>
<tr>
<td>18-20</td>
<td>27%</td>
<td>27%</td>
</tr>
<tr>
<td>21-23</td>
<td>24%</td>
<td>31%</td>
</tr>
<tr>
<td>24-26</td>
<td>14%</td>
<td>20%</td>
</tr>
<tr>
<td>27-29</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>30-32</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>33+</td>
<td>8%</td>
<td>6%</td>
</tr>
</tbody>
</table>

Table 10 below provides a frequency distribution of women convicted of illegitimate and premarital fornication in five-year intervals. Prior to 1660 the number of couples convicted of premarital fornication and individuals convicted of illegitimate fornication is very low and the conviction rates are comparable. But in each succeeding five-year interval between 1661 and 1685 the number of couples convicted of premarital fornication increases markedly. The number of convicted couples is significantly larger than the number of

\textsuperscript{27}There is a bias in this sample of cases. Ages were determined, in most instances, from births registered in the vital statistics. Secondary sources of age data were court records which sometimes recorded the age of a deponent and immigration records. While the age of an indentured servant might be gained from these sources, the age sample is skewed toward women born in Essex County of established parents.
women convicted of illegitimate fornication. There are two possible explanations. Either these figures confirm the expectation that when a pregnancy occurred during courtship, men married their pregnant partners if possible, or the number of committed couples who believed that premarital sexual intercourse was appropriate when marriage negotiations had commenced increased. As the average time elapsed between marriage and birth remained constant at 15 to 17 weeks for each five-year interval between 1661 and 1685, it is clear that many couples who were prosecuted for premarital sexual intercourse married because of the pregnancy. There is no way to know if

<table>
<thead>
<tr>
<th>Year</th>
<th>Illegitimate Fornication (N=104)</th>
<th>Premarital Fornication (N=151)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1641-1645</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>1646-1650</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>1651-1655</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>1656-1661</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>1661-1665</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td>1666-1670</td>
<td>10</td>
<td>16</td>
</tr>
<tr>
<td>1671-1675</td>
<td>18</td>
<td>36</td>
</tr>
<tr>
<td>1676-1680</td>
<td>24</td>
<td>33</td>
</tr>
<tr>
<td>1681-1685</td>
<td>29</td>
<td>38</td>
</tr>
</tbody>
</table>
they might have married later had the female partner not conceived, but given the premium Puritans placed on female chastity, women who had sex under these conditions were putting their futures at risk. The only factor, and it was a major one, that distinguished them from their peers who had illegitimate children was that their partners married them, even if belatedly, before the births of their children.

The five-year interval 1671-1675 is particularly interesting. The number of couples prosecuted doubled from the previous five-year interval. The number of couples prosecuted was also double the number of women prosecuted for illegitimate fornication in the same five-year interval. If sexual irregularities are an indicator of deeper societal problems, it appears that the period prior to Metacomet's War was particularly unsettled. The ramifications of Metacomet's War extended into the following five-year interval when the number of couples prosecuted for premarital fornication decreased slightly while the number of women prosecuted for illegitimate fornication rose by 25%. A probable explanation is that fewer marriageable men were available as a result of Metacomet's War. If the presumption that men were expected to marry their pregnant partners is correct, women may have used a pregnancy as an attempt to force a marriage.
Table 10 showed a rise in the numbers of couples charged will premarital fornication from three between 1641 and 1645 to 67 between 1681 and 1685. At issue is whether the increased number of prosecutions for premarital fornication can be explained in terms of population increase or whether the numbers of persons engaged in extramarital sexual activity increased relative to the population. Population data for Essex County is incomplete, but population estimates have been developed for seventeenth-century Massachusetts as a whole. The rates of illegitimate and premarital pregnancies per 10,000 persons were calculated using this population data. As Table 11 illustrates, the number of illegitimate and premarital fornication prosecutions relative to the population increased with each interval.

Table 11

<table>
<thead>
<tr>
<th>Years</th>
<th>Illegitimate Fornication Rates/10,000 persons</th>
<th>Premarital Fornication Rates/10,000 persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>1645-1655</td>
<td>5.70</td>
<td>4.99</td>
</tr>
<tr>
<td>1656-1665</td>
<td>6.47</td>
<td>9.96</td>
</tr>
<tr>
<td>1666-1675</td>
<td>9.33</td>
<td>17.67</td>
</tr>
<tr>
<td>1676-1685</td>
<td>13.33</td>
<td>18.36</td>
</tr>
</tbody>
</table>

Some preliminary conclusions can be drawn from the quantitative data which will be reinforced by a close reading of information presented in the depositions presented by the defendants, their parents, and their neighbors. First, it needs to be reiterated that persons who were prosecuted for premarital fornication constituted a tiny portion of Puritan society. The act of engaging in coitus, despite Puritan strictures against extramarital sexual intercourse, set them outside the mainstream of Puritan society. On the other hand, the age range of couples who married following an extramarital conception is within the same range as their more continent peers who waited until after marriage to engage in coitus. The greater license allowed couples in this age group to court increased both the opportunities for intimacy and the confidence of the female partner that marriage would be the likely outcome of a pregnancy. That marriage followed is an indicator that many of these couples were better placed financially than their peers who fathered and bore illegitimate children.

While 45% of the men who had fathered illegitimate children made no recorded marriage in Essex County, and a further 30% of them were already married, nearly half of the women who bore illegitimate children had been from established Essex County families. The limited amount of tax data available suggest that some couples reached the age at which they could have hoped to be able to marry and enter into a legitimate
sexual relationship without the necessary financial resources. Not willing or able to wait on an indefinite future, they engaged in sexual intercourse and after a pregnancy, were forced to scramble to find enough assets with which to marry. The vast majority of Essex County couples could afford to adhere to the dominant ideology that conflated sexual intercourse and marriage because for them there was a straightforward path through courtship to marriage.

The degree of commitment in extramarital relationships prior to the initiation of sexual intercourse changed over time. Prior to 1660, couples married during the first trimester of their pregnancy, an indication they had commenced sexual intercourse at or near the time they had been contracted. By the final decade the character of the sexual intercourse had changed. That most of these couples married in the final trimester indicates that the marriage was probably the outcome of the pregnancy, not, as earlier, that the pregnancy was the outcome of an anticipated marriage.

The number of couples who engaged in premarital sexual activity increased over time while the length of time that elapsed between marriage and birth decreased. This suggests diminishing willingness on the part of the male partner to legitimize the pregnancy. The religious ideals that had militated against premarital sexual intercourse and proved so influential prior to 1660 had waned. At the same time, the
social mechanisms that brought pressure to bear on men to marry their pregnant partners lost their effectiveness as communities increased in size and differences in wealth became more pronounced.

Legal Aspects of Premarital Fornication Prosecutions

Although a full-term pregnancy requires 270 days, or between 39 and 40 weeks, Puritans established 32 weeks as the cut-off point for premarital fornication prosecutions. They did so not because they accepted that couples would have intercourse between contract and marriage, but because they wanted to allow for prematurity. The testimony of midwives was critical in premarital fornication cases because they had the power to provide legally acceptable testimony of prematurity. However, even midwives disagreed about the length of time that constituted a normal pregnancy. In April 1684 Sarah White testified that:

I being made use of as a midwife for several years past I am desired by some to declare my knowledge and experience & by my knowledge I have delivered a child of a woman that went but two and thirty weeks & the persons were approved persons both for honesty and godliness, & this womans husband was a seaman he went to Barbados three times a year. I this deponent do declare she herself went but 35 weeks herself with her first child, and by this deponants declaration Martha Rowlandson was cleared at Ipswich court above 40 years ago which was delivered of a child at 35 weeks and also Mr. Prince of Charlestown his eldest
daughter was cleared at the court by this deponents affirmation.29

Humphrey Devereaux and his wife, Elizabeth were presented for fornication in June 1681. The charges were dismissed upon testimony from the midwife, Wiborough Gatchell:

(B)eing called as a midwife to Elizabeth Devereaux, whom according to the best of my judgement, came before her time occasioned only by the stroke of a cow upon her body when she was a milking, and my self and the women that were assistant there did Judge that the child was born before its time, rather do I think considering its weakness that it would have lived had it been born in the winter as it was in the heat of the summer.30

Gatchell's professional opinion was backed up by that of Dr. Knott, who was called in to attend to the dying infant and agreed that "the child was born before the full time."31

Humphrey Devereaux died nine years later leaving his "dear wife Elizabeth sole executrix" of a meager estate worth £54 with which to raise five children. When John Devereaux, her father-in-law died in 1693, he left one-third of his land and a house to his three grandsons and £10 to his two granddaughters with the proviso that Elizabeth Devereaux:

29W.P.A. transcription, April 1683.

30W.P.A. transcription, 36-10-1.

31Ibid.
the mother of these three sons shall have nothing to do with the house or land or ever live on them at any time.32

While no direct connection can be drawn between John Devereaux's animosity toward his daughter-in-law and the fact that her marriage had begun with a fornication trial even though the charges had been dismissed, it was not an auspicious beginning.

A midwife's testimony, however, was not always sufficient to secure a dismissal of fornication charges. John Garland appealed to the Court of Assistants in Boston after he and his wife, Elizabeth Robinson, were fined five pounds for fornication in October 1674. Garland and Robinson married December 24, 1673; their child was born 27 weeks later, "about eleven weeks before the usual time."33 The midwife in this case, Mary Wall, testified that:

when I came John Garland's house his wife was in strong travill & I asked her if she had her linen ready & she said no for I am not come to my time, for I have received some hurt by a fall upon a log and she was delivered, and the child was a very poor child.34


33Records and Files, Volume VI, 23.

34All of the depositions in this case are taken from the Suffolk County Court records, #1413, 7 papers numbered 103 to 109.
Three more women attested to the baby’s condition at birth. Two of them, Elizabeth Roby and Elizabeth Robinson testified jointly that:

being very often at John Garland's house when his wife laid in, the child was a very poor child as we saw and was so weakly we were forced to feed it with a feather being the nurse of Elizabeth Garland and it having no nails to our apprehension upon hand nor foot & being a fortnights time before it could take the breast, or a month, and had very little skin upon it when it was born.

Forty-seven-year-old Mary Jones also testified:

(S)he saw the infant two weeks after birth. I never saw so little a child in my life and I think it came before the time.

These women appeared to have made a good case. Elizabeth Roby thought so, for she created such an uproar after the guilty verdict was rendered that she was ordered to prison for "contemptuous carriages. The charge was remitted "upon her confession that she was very sorry."\(^{35}\) Since Elizabeth Roby was John Garland's mother and Elizabeth Robinson was Elizabeth Garland's mother, the Essex County Quarterly Court considered their testimony to be suspect.

John Garland had to raise a bond of £150 to appeal his case to the Court of Assistants. The Essex County Quarterly Records and Files, Volume V, 410. This had been a humiliating day in court for Elizabeth Roby. In an earlier case that day, her husband had successfully sued the father of Elizabeth’s stepdaughter's illegitimate child for back child support payments.
Court hired Henry Dow to represent them. Both prepared lengthy depositions which are abstracted and interposed below. The crux of Garland’s argument was that his daughter had been born prematurely. Garland prefaced it by explaining that he was not a litigious man:

(It is not because I would be troublesome or that I delight to go to Court, especially upon such a dishonorable account as this is; I spoke before God and his people, had I and my wife been guilty, I should have submitted and have owned my sin with all readiness of mind, but being clear and innocent I can not take so great a wrong without further seeing Gods mind in appealing to so serious a Court as this is. I never was in court before. It sits the more on our spirits knowing that the holy ghost saieth that a good name is a precious ointment therefore we think we are bound to preserve our names.

Henry Dow responded that Garland had not been so eager to defend his name when he appeared before the court in Salisbury. Dow implied that Henry Roby, Garland’s new step-father, had shaped Garland’s plea and that Roby had pressed him to appeal. Given that Garland was 20, and that Roby had become his stepfather three weeks after Garland’s marriage, it is not surprising that he looked to Roby to speak for him. Dow wrote in his response to Garland’s preface that:

when the honorable court was pleased to ask John Garland if he did own his presentment he stood silent then said his father Roby, no, from thence John Garland took courage to deny it also which did occasion the court then to reprove him: I humbly conceive (it) is not allowable by law that (any) man should answer before another in a criminal case every man being to answer for himself by the law.
Garland then listed four reasons for appeal:

The first reason of our appeal is taken from the clearness of our consciences.

Dow responded:

(I)t were wished that John Garland understood what conscience meaneth: it is a vain thing for John Garland to plead (innocence) when his life speaks the contrary as is manifest by his conversation: his own and his wives friends taking notice of and bewailing his folly in that for which he was presented and not a word of excuse until about half a year after that we know of. John Garland’s second reason for appeal was that:

(F)irst in all the time that I went to my wife in order to marriage that no man can say that he saw any uncivil carriage by us, secondly, she had parents consent to marry and legally published and stayed after publication a considerable time: that had any such act been committed by us we could have prevented it by marrying sooner, thirdly, consider the chastest of all man kind may come before their time, and not condemnable whom god by his providence causeth untimely birth and yet retain their chastity, the which Elizabeth Garland hath and doth professed that she running after some creature in haste, stumbled and fell over a log of wood and hurt herself so that she feeleth the bruise to this day, which was pleaded at Salisbury Court. Besides Mary Wall the midwife said that Elizabeth Garland in her travail said that she was altogether unprovided for the child. Then we think if our sentence be just all young women goeth in peril of their first child.

Henry Dow was not impressed:

(H)e pleadeth he might have married sooner if he had been guilty. I answer that he and his wife lived in one house together in the woods near a mile from the town many months before they were married and therefore had opportunity to be uncivil and naught and nobody take any notice of it. & what is said by the witnesses (of the) child to be a poore child, it
doth not withall take off the charge of his being guilty of fornication before marriage for first the women that giveth (the testimony) are relations, the one his own mother the other his wives mother & Mary Jones a woman of no great credit. (T)he pretense of feeding it with a feather to blind the world. (I)t might have been proven by plentiful testimony that it was come to full maturity or so near as could not be disguised & the child living to this day which had it come eleven weeks before the time it would have been (dead).

Garland and Dow presented two very different versions of events. Dow implied that the Garlands had lived together prior to marriage and had then deliberately withheld their baby from the sight of impartial neighbors. Garland’s mother, however, did not marry Henry Roby until three weeks after Garland and Robinson married. Since it is unlikely that the residents of Hampton would have allowed Garland and Robinson to live alone together in an isolated household as Dow suggested, it is probable that the widow, Elizabeth Garland (Roby), sr., lived in the house too, since her son was only 20, and that Elizabeth Robinson was employed as her servant.

Garland’s third ground of appeal was based on contemporary scientific understanding of prematurity:

(T)he best authors and approved of speak much to this purpose being skillful on these accounts. Serious phisikal books in folio chapter 91 saieth that children born in the seventh month may be born legitimate and may be more subject to live than those that are born in the eighth month, gives several reasons to evince the same beside several authors that are of his mind as Aristotle and others.
Dow derided Garland's intellectual attainments and used a legal argument to try to exclude the evidence:

(W)here he calleth authors to prove that a child may come in the seventh month: to which I answer that if this honored court please to cast an eye upon John Garland the appellant they will judge him to be no: but these authors according to law ought not to have been mentioned there by reason: that they were not speake of at Salisbury and no new evidence and no new pleas to come in on appeal by law. I shall not multiply words in a case so plain and so dishonorable as he himself own it to be in his preface to his reasons.

Garland's fourth reason is a polemic against what he considered to be his unjust treatment. He argued that he and his wife should never have been presented in the first place:

The fourth and last reason is taken from the nature of the presentment. The which presentment is for coming eleven weeks or there about before the usual time of women. the which I do humbly conceive do not admit of a presentment much less a punishment of the same, except circumstances with more than here appears. To this end considering these grounds first that any woman after quickening is subject to miscarry then and before: until that time that they call the usual time of women then all liable to be fined if this be right for Elizabeth Garland is fined five pounds for coming in the seventh month. The honestest woman may do the same; and no grand jury hath ground to present them, and we conceive no court can legally find them. This is my case. My wife came in seventh month for which I am sentenced to pay five pounds, nothing proved circumstantially or substantially but to the contrary much to clear our innocency. Consider, the law saieth there must be two witnesses to condemn any man, and that no mans estate shall be taken away under cover of law.

Dow's response was to take umbrage at Garland's criticisms of the Quarterly Court. Then, he outlined the Biblical precedents
upon which thirty-weeks had been established as the cut-off point for determining prematurity. So here, finally, is the crux of the Court's argument. It illustrates how the Puritans used the Bible to order their lives. The only argument with any real validity from the point of determining prematurity was the citation from Luke, which involved counting the months between the conception and birth of John the Baptist. It serves as a timely reminder that the mentalité of New England Puritans was closer to the Renaissance than to the twentieth-century:

(I)t was well known to the court at Salisbury that the usual time of a woman was a set time as in Genesis the 18 and the 10: compared with 2 of Kings the 4th to the 16th verses the honorable court likewise know that that time was above seven as in the first of Luke the 36th verse compared with the 37 to 40 & 56 & 57 verse of that chapter. The honorable court knowing this and it being evidenced by the records how long they were married before the child was born it did plainly appear to the court that both parties were guilty of fornication the owning of the child and so were rightly sentenced whatever is or can be said to the contrary. but all that he do say of it might avail to illustrate the court process it would embolden and encourage others to make use of his authors and take occasion thereby to come at all times and in all months as he saith.

---

36. And behold, Elizabeth thy kinswoman also has conceived a son in her old age, and she who was called barren is now in her sixth month; 37. For nothing shall be impossible with God." 38. But Mary said, "Behold, the handmaiden of the Lord; be it done to me according to thy word." And the angel departed from her. 39. Now in those days Mary arose, and went with haste into the hill country, to a town of Juda. 40. And she entered into the house of Zachary and saluted Elizabeth. 56. And Mary remained with her about three months and returned to her own house. 57. Now Elizabeth's time was fulfilled that she should be delivered, and she brought forth a son.
Garland prevailed in the Court of Assistants, which reversed the Essex County Quarterly Court conviction. I believe that the Garlands won because the Court of Assistants believed the testimony of the midwife and the other women, despite the familial relationship. Mary Wall had applied contemporary medical knowledge to assess prematurity, as did other midwives, and the Court of Assistants considered her testimony credible. That the baby was born 28 weeks after marriage, a full month before the time allowable by law, attests to a degree of ambiguity about what constituted prematurity as well as to the weight assigned by the courts to midwives' testimony. The Court of Assistants accepted the mothers' testimonies because it was customary for close relatives to be present at birth, and they did not feel that this necessary led to biased testimony.

Nevertheless, the Essex County Quarterly Court knew the individuals involved and suspected that there had been a conspiracy to prevent outsiders from viewing the baby after her birth. All three families involved were aware how damaging fornication convictions could be to the reputations of the person involved and their families. Elizabeth Robinson's brother, Jonathan, had been convicted of premarital fornication in April, 1670.37 Henry Roby's daughter, Judith, had an

37Records and Files, Volume IV, 236.
illegitimate child in December, 1671. Also, John Garland's step-brother, Joseph Chase, had been convicted of premarital fornication in April, 1673. At the very least, the parents were lax in their supervision. Since all of these individuals lived in Hampton, Garland's and Robinson's fornication conviction may have been more than the families' reputations could handle. That they raised £150 to appeal the case to the Court of Assistants reveals that they felt strongly about the conviction.

Whether John and Elizabeth Robinson and their parents engaged in a conspiracy to avoid further tarnishing their families names' or they felt that their families' poor sexual reputations had led to an unjust conviction is impossible to know, but two facts can be stated on behalf of a conspiracy. First, although Garland claimed that he and Robinson had been contracted and could have married earlier had she been pregnant, Garland was 19 at the time of the baby's conception, not an age at which he normally have been expected to be able to marry. Second, the previous fornication convictions indicate that other family members had not refrained from sexual intercourse prior to marriage. Fornication prosecutions seem to run in families.

38Judith Roby, like other women who bore illegitimate children, had a difficult time finding a husband. She married a widower, Samuel Healey, when she was 43.

39Records and Files, Volume V, 152.
Once one family member has been convicted, the likelihood of a second individual in the same family also facing a fornication prosecution increases. Whether this indicates a propensity within some families to flout the moral precepts of Puritanism, or if one child, having transgressed and survived parental disapproval and a fornication prosecution, other children become less intimidated by the notion of the consequences of premarital sexual activity, or because, as I think most likely, a fornication prosecution impacted the sexual reputation of all the family members and women became more vulnerable to sexual solicitation is unknowable. It is also unimportant. What matters about this case, besides the information provided about Puritan attitudes to premarital sexual intercourse, is that the Court of Assistants, when faced with two conflicting sets of evidence, chose to accept the midwife, Mary Wall’s, assessment of prematurity instead of supporting the legal judgment of the Essex County Quarterly Court.

Qualitative Analysis of Marriage Formation Processes

Despite economic opportunities that limited parental power, Puritan parents had not wrested their children loose from a presumably permissive Anglican society to lose control of them
in the New World; they instituted legal controls over courtship and marriage entry that mandated parental permission by 1648. 40 Parents invoked the law against courting without permission when they felt their child was in danger of making an inappropriate match. In 1649, Mathew Stanley was fined £5 "for drawing away the affections of the daughter of John Tarbox his wife without liberty first obtained of her parents." 41 In 1660, Daniel Black was fined £5 for "making love to the daughter of Edmund Bridges, without consent of her parents." 42 However, both sets of parents were fighting the inevitable. John Tarbox's step-daughter was already pregnant and she married Stanley. Edmund Bridges had no control over his daughter, Faith's, activities. She let Black into her parents' house while they slept and met with Black in empty houses to drink with him. Moreover, other persons helped Black to subvert the authority of Bridges' father:

Having taken William Danforth from his master Pritchett's work to go with him to Rowley, they carried a bottle of wine to the house of Edmund Deere in Ipswich; and being there, he employed the said William as his messenger and instrument to draw the said wench to him at Deere's house, from her father's house, her father and mother being absent from home;

40 Brewer, Constructing Consent, 206.

41 Records and Files, Volume I, 180.

42 Ibid., Volume II, 242. Mr. Edmund Bridges' ability to control the sexual activity of his children was limited. His sons, Edmund, jr., Hackaliah, and Obadiah were each charged with fornication.
that she stayed at Deere's house half an hour, when Deere and his wife were not at home.\footnote{Ibid.}

Though Faith Bridges married Daniel Black; her marriage was unsuccessful. It might be deduced from this that Thompson is correct to state that parents had little control over their children. Bridges, however, came from an anomalous household. Edmund Bridges sr., had proven equally incapable of controlling his three sons, Edmund, jr., Hackaliah, and Obadiah, all of whom were charged with fornication.\footnote{Obadiah Bridges' widow, Elizabeth, was charged with fornication herself following her second marriage to Joseph Parker in 1681. Records and Files, Volume VIII, 100.} Moreover, other testimony indicates the common expectation that both sets of parents would be approached for permission to court. John Dodge testified against John Haskell in 1665:

\begin{quote}
He still came to see her, whereupon deponent told him that he was a transgressor of the law in coming to her without her friend's consent. He answered that he had spoken to his father and he promised to go down to her father.\footnote{Ibid., Volume III, 235.}
\end{quote}

Parents were not always consulted in the first phase of a courtship, which could lead to problems once a couple's affections were fixed. John Hopkinson testified in 1675 at the age of 28 that:
divers years ago myself and Hannah Palmer being drawn into society one with another by some of her relations, our affections in time being set upon each other, it was discovered to my mother whose consent I labored to gain but she still remained opposite & the reasons was she said we were childish, and our beginnings was contrary to the ways that gods people went in; but her chief reason was because she would not be so near related to the Acies.  

Hopkinson’s mother remained opposed to the match and Palmer and Hopkinson did not marry. His mother’s opposition to the match was the determining factor. The secret courtship, conducted with the permission of the Palmer family, was advanced; the couple had exchanged tokens of affection, and Hopkinson may have hoped that if he had committed himself too deeply to withdraw honorably before he apprised his mother of it, her consent would be easier to gain. But from Goody Hopkinson’s point of view, the young couples’ conduct was "contrary to the ways that god’s people went in." John Acie, Hannah’s uncle, the promoter of the match, forced a reluctant Hannah to return the small gifts Hopkinson had given to her to seal their betrothal, gave her a new coat, and promised her £10 for her dowry to assuage her grief.  

Hopkinson married another woman when he was twenty-three, but Palmer did not marry. I conjecture that her

46 Ibid., Volume VI, 15.

47 Unfortunately, the depositions concerning this secret betrothal were given as part of a slander suit against John Acie in 1675, and they provide no information about the ages of Hopkinson and Palmer at the time. It is impossible to know if either or both parties were over 21 and the time they courted.
reputation was damaged by her entry into a courtship that lacked the approval of both families.

Parental consent was also required for marriage. If no parent was available, a magistrate acted as surrogate parent and granted permission.\textsuperscript{48} Secret marriages were prohibited; banns had to be posted for three weeks prior to the marriage ceremony. Thomas Rowlandson was fined 10 shillings in 1648 for "marrying without being published three times" and his marriage to 16-year-old Martha Bradstreet was annulled.\textsuperscript{49} There was, however, resistance to the Puritan assertion of control over marriage formation. Seven years after Bradstreet's marriage to Rowlandson was annulled, Bradstreet married William Beale. Twenty-two years later a neighbor, the wife of Mr. William Hollingsworth, was forced to pay a £5 fine for defaming Beale by calling her an adulterer. That the wife of a gentleman was prosecuted in the first place emphasizes the seriousness with which the court regarded her accusation because, as they said in their judgment, her claim reflected on "civil justice and the church."\textsuperscript{50} Hollingsworth had 10 shillings of her fine rebated in return for reading this statement in church:

\begin{quote}
Whereas I Eleanor Hollingsworth was convicted to have spoken to the wife of William Beale railingly that
\end{quote}

\textsuperscript{48}McManus, Law and Liberty, 40.

\textsuperscript{49}Ibid., 142.

\textsuperscript{50}Records and Files, Volume IV, 269.
she was an adultress & hang you jade, many times repeated, & and that she made the church a cover for her rogery & that she had another husband alive to the dishonor of God, the church and court & to the great reproach of the parties and evil example to others: I do humbly declare I am sorry for the same, and desire al good people that may be offended, to forgive me, & take warning by me of such evil practices.\textsuperscript{51}

Later that year William Beale was threatened by men engaged in a traditional charivari who stood before his house and shouted: "come out, you cuckoldly cur: we are come to beat thee. Thou livest in adultery."\textsuperscript{52}

While these actions occurred within the context of an extended neighborhood dispute, more than two decades had elapsed since the annulment. When neighborhood tempers were aroused the circumstances surrounding the Beale marriage could be resurrected and used against them. Fortunately for the Beales, questioning their marriage also meant questioning the right of the civil authorities to make or break marriages, so the court was willing to intervene on their behalf.

Puritans instituted a second legal control over marriage entry. As well as the consent of both sets of parents or a magistrate, banns were required to be publicly posted for three weeks prior to the marriage to ensure that any person who might have reason to object to the marriage knew it was about to

\textsuperscript{51}Ibid., 269.

\textsuperscript{52}Ibid., 282.
occur. At least two magistrates were fined and had their licenses to perform marriages temporarily suspended for performing illegal marriages. In November 1679, Mr. John Woodbridge married John Sandy to Elizabeth Peters after they and their friends who accompanied them said that they had been legally published. Sandy was legally published, as required, but to another woman, Mary Starkweather. Their wedding was scheduled to occur on the day following that on which Woodbridge married Sandy and Peters. Peters was barely seventeen, pregnant, and the daughter of a prominent Andover publican and distiller, Mr. Andrew Peters. Since Woodbridge was a magistrate with a keen sense of his legal responsibilities Peters’ father must have been present at the marriage. Mary Starkweather, like Hannah Palmer, having been contracted but not married, had entered into an ambiguous arena, neither married nor single, and found herself unmarriageable.

A second father tried to intervene to annul an unsuitable marriage contracted by an underage son. When Simon Wainwright, an Ipswich resident persuaded Mr. Edward Woodman of Newbury to marry him to Sarah Gilbert in 1681, a month before his twenty-

53 Starkweather was one of eight children whose father had died five years earlier leaving an estate of £20. Each child received 5 shillings from the estate. Peters was in a much better position financially and Sandy stood to benefit from marrying her rather than Starkweather.

54 In rape cases, women who had been contracted had the same legal status as already married women.
first birthday, his father, Mr. Francis Wainwright, sued Woodman for performing the marriage without his consent.\textsuperscript{55} Again, in this instance, the marriage was allowed to stand.

These cases show that parents expected to have a say in their child's choice of a marriage partner. Whether their opposition was based on something as serious as the character of the suitor and the unequal assets brought by each partner to the match as in the case of John Tarbox's step-daughter, or as frivolous as Goody Hopkinson's dislike for Hannah Palmer's uncle, John Acie, parental consent was necessary for marriage formation. And, when parental persuasion was not sufficient to prevent young persons from keeping company, they used the court, with mixed success, to reinforce their authority.

It is clear from the testimony that the rules of courtship and marriage were well-known and generally accepted. John Dodge had forthrightly informed John Haskell that he was a "transgressor of the law" since he had not approached the parents of the young woman he sought to court for formal permission.

In the following section I will apply this information about accepted courtship and marriage practices to the information provided by premarital fornication defendants in the course of their trials. At issue is whether the 151 couples who

\textsuperscript{55}Ibid., Volume VIII, 216.
were convicted of premarital fornication between 1640 and 1685 engaged in sexual intercourse because they planned to marry or they married because they had engaged in sexual intercourse which had resulted in the conception of a child.

**Sexual Activity Between Contract and Marriage**

I advanced as the first possible explanation for premarital pregnancies the theory that couples engaged in sexual intercourse between contract and marriage. Since Plymouth Colony had established a dual system of fines in which the amount was determined by whether or not the couple had been contracted prior to conception and since intercourse between contract and marriage seemed to be an acceptable practice in early modern England among non-Puritans, it seemed logical to assume, as Norton suggested, that there might be a variance between the expectations of civil authorities and customary practices.\(^5\)\(^6\) The quantitative data did not support that conclusion, nor do the qualitative data. Only one presentment, that of John Putnam and Rebecca Prince in 1653, specifically mentions that conception occurred between contract and marriage.\(^5\)\(^7\) Other couples claimed as an exculpatory factor that

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\(^5\)Norton, *Founding Mothers*, 66.

\(^6\)Ibid., Volume I, 286. Their child was born 35 weeks after marriage indicating that conception had occurred after the couple had been contracted.
sexual intercourse had been preceded by a marriage contract. William Randall and his wife, Elizabeth, were fined 40 shillings for "suspicion of uncleanness before marriage," in 1651. The couple had married in mid-October, 1649, and their first child was born five months later. Randall admitted that they had commenced intercourse after contract but he claimed that the child was not his:

John Emery further testified that I heard Randall and his wife Mary say that they did not know each other till after they were contracted and furthermore I heard him say that of his wife came before this time of their contraction he would take his oath upon a book that the child was none of his.

William Randall was not sure, however, how much time should elapse between conception and birth so he asked Mary Emery her opinion:

This deponent witnesseth that upon some difference between William Randall and his wife this deponent being present at his house being sent for after she was delivered William Randall denying the child to be his because she was delivered before her time [10 weeks] he asking this deponent being present how long a woman might come before her time this deponent made answer that a woman might a month before her time as I had heard. The said Randall made reply that from six or seven weeks before marriage he would own the child to be his.

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58 Ibid., Volume I, 220.

59 W.P.A. transcription, 2-5-1.

60 Ibid., 2-5-2.
Whether or not the child was his, the Randalls had admitted to premarital fornication and their fine was commensurate with those of other couples fined during the same time period.

Elizabeth Randall lost her sexual reputation not only because she had been sexually active prior to her marriage but because her husband questioned whether or not the child was his. The following year she was presented for "evil language" after calling Goody Silver a "base lying devil, base lying toad, base lying sow, and a base lying jade." Fortunately for Randall, Goody Silver did not appear in court to testify against her, and she was discharged, but it is probable that the quarrel had arisen because of accusations made by Goody Silver about Randall's sexual reputation. Twenty years later, Randall was still concerned about public opinion. When the Newbury church was reseated in 1669, Randall felt that she had been allocated a less prestigious location. She was admonished for disorderly carriage, "behavior altogether unbecoming her sex," after she tried to force her way into her former pew.  

Peter Cheney and his wife, Hannah Noyes, both of Newbury, also claimed that they had begun intercourse after they had been contracted. Cheney appeared at the May session of the Quarterly Court meeting at Ipswich in 1664 and was fined for fornication.

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61 Records and Files, Volume I, 251.

62 Ibid., Volume IV, 136.
His wife, Hannah, did not appear with him. She was sentenced to pay a £3 fine unless she came to court before it adjourned. A petition was presented on her behalf by Thomas Parker and William Gerrish explaining that she was subject to fits which a court appearance would exacerbate. Parker and Gerrish mounted a defense of the Chenys:

If you shall please to take notice that the parties concerned she and her husband have ever been of unblameable conversation never offending in this kind, except in this one particular; and having been published according to law, and the time of marriage appointed, but unexpectedly delayed by their parents by reason of extraordinary accidents.63

The quantitative evidence indicated that the number of couples who married in the first trimester dropped dramatically between the first and last decades of this study. Few defendants after 1664 used the claim that sexual intercourse had commenced after contract. In 1681 Thomas Verry argued that he had made amends for engaging in sexual intercourse by marrying the woman he had impregnated:

Let me pray your honors to consider that my wife and I that now are did commit a folly after solemn engagements of marriage and the consent of parent and I have made the parties amends by marrying the party now my wife.64

63Ibid., Volume III, 151-2.

64W.P.A. transcription, 16-11-1.
Verry's response is typical of men accused of premarital fornication in the later period of this study. I infer that Verry did not feel the same sense of obligation to marry his pregnant partner as was evidenced by men in the first two decades of this study. Yet Verry also provided the most concrete link between Puritan religious ideology as it bore upon sexual intercourse prior to marriage when he deposed that he and his wife had chosen to "gratify our corrupt nature rather than to attend to our observance to the law of god and man." As to the impact of a fornication prosecution, Verry lamented the financial and emotional cost to himself and his wife. He said that it had proved "a great grief and trouble to me and my wife." Thomas Verry's case makes an apt segue to consideration of premarital fornication cases in which couples married sixteen weeks or less prior to the birth of their child. Most post-1660 premarital fornication prosecutions fall into this category.

Sexual Intercourse as an Aspect of Marriage Formation

Cases in which couples married less than 16 weeks before the birth of their child are the most difficult to document. The bare facts can be determined through the court docket records and vital records, but since there was no exculpatory

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65Ibid.
66Ibid.
evidence to be presented and no issues of paternity, few of the
cases are supported by depositions. My presumption is that two
factors brought the fathers of these children into marriage.
The first factor was the community expectation that men would
"do the right thing." The second factor was the initiation of
formal paternity proceedings initiated by the woman in the fifth
or sixth month of her pregnancy.

Stone (1992) argued that the common expectation in early
modern England when a pregnancy occurred during courtship was
marriage. McManus (1993) stressed the amount of pressure
applied to create legitimate families in order to lessen the
burdens of public support of illegitimate children and to
prevent the perceived social chaos inherent in the presence of
incomplete families in a society predicated on the patriarchal
household. Respected community elders like Samuel Sewall were
in a position to apply pressure. Sewall described an instance
in which he tried to use moral suasion on a young man who had
impregnated his fellow-servant. He advised 20-year-old Sam
Haugh, the brother of his ward, Atherton Haugh, to marry:

(I) spake to Sam as to his mistress' maid being with
child, and that she laid it to him, and told him if
she were with child by him, it concerned him
seriously to consider what were best to be done; and
that a father was obliged to look after mother and

67 Lawrence Stone, Uncertain Unions, 11.

child. Christ would one day call him to an account and demand of him what was become of the child: and if [he] married not the woman, he would always keep at a distance from those whose temporal and spiritual good he was bound to promote to the uttermost of his power. Could not discern that any impression was made upon him.  

Sewall spoke movingly of Haugh’s responsibilities to his child that could only be met through marriage and his continued presence in the life of his child.

The direct approach was used by Caleb Boynton. He used physical intimidation, if not to force a marriage, to exact revenge for a dishonored sister-in-law. Since the date of the marriage is not recorded, it is impossible to reconstruct the exact sequence of events. In March 1678, Samuel Perkins of Ipswich was fined for fornication. On his way to court accompanied by a deputy, he was attacked by Caleb Boynton, a Rowley blacksmith, who was the brother-in-law of the woman he had impregnated:

Boynton proceeded to abuse him by laying violent hands upon him, pulling off his hat, taking him by the neckcloth and shoulder, challenging him and calling him vile names.  

The following month he had married Hannah West, and her father, Twiford West, paid her £3 fine for fornication.

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69M. Halsey Thomas, The Diary of Samuel Sewall, Volume I, 346.

70Records and Files, Volume VI, 425.
The three cases for which the most documentation survives involve unequal relationships. That these cases generated the greatest amount of paperwork is an indication of the importance Puritans placed on status-appropriate marriages. In the first two instances the relationships were based on sexual attraction in which women resisted parental control in favor of the unsuitable men, both landless servants, to whom they were attracted. The third case, in which a sexually-experienced older man impregnated two step-sisters and eventually married the younger, wealthier woman, is almost a parody. Their parents were torn between their hopes of an equivalent partner for their daughters and the realities of insuring that their daughters not give birth to illegitimate children.

These three cases represent the difficulty of finding common analytical ground because each family reacted differently when faced with the problem of a pregnant, unmarried daughter. In 1664 Robert Cross waffled about whether or not he wanted his pregnant daughter, Martha, to marry her propertyless fellow-servant, William Dirkey. His ambivalence created a rift with his daughter and endangered the marriage. The Canterburys allowed their daughter, Rebecca, to marry, but after the marriage Goody Canterbury harassed her new son-in-law so bitterly that the Essex County Quarterly Court was forced to intervene. In the third instance, Henry Short forced his sister’s suitor, Joseph Mayo, into marriage, despite the fact
that Mayo had also impregnated Short's step-sister. While Short may have salvaged some family honor, it is difficult to imagine that his actions promoted long-lasting happiness for his sister.

Evidence provided in the premarital fornication case of William Dirkey and Martha Cross indicates the reluctance of prosperous parents to agree to marriage when the suitor lacked equivalent resources. It also demonstrates the role neighbors played in conciliation, an event that must have occurred frequently during marriage formation following a pregnancy. Martha Cross and William Dirkey both worked in the household of Thomas Bishop. Cross was the 20-year-old daughter of Robert Cross, a substantial Ipswich planter: Dirkey was a 30-year-old Irish servant who had arrived in the Bishop household via the Barbados. It is unlikely that Robert Cross would have given Dirkey permission to court or marry his daughter, had he been asked but by April 1664 Martha Cross was pregnant. It is possible that the pregnancy was a deliberate attempt to force a marriage. There was a ten-year age difference between Dirkey and Cross, and in terms of experience they were literally worlds apart. That summer, her employer, Thomas Bishop, was deputized to speak to her father to get his approval for the marriage. She told Bishop that: "she would have William Dirkey and no other while she lived."71 In an undated letter to Bishop, Robert

71W.P.A. transcription, 10-31-2.
Cross spoke of his and his wife's feelings about the match: "our hearts are sore oppressed: we are as full of sorrow." He assented to the marriage although he would have no part of it:

We leave your servants to your disposal & for their marriage you may put it to any period as soon as you please: we shall no ways hinder it.72

The marriage was set for September 18, 1664 and Martha Cross told her employer's daughter, Mary, how much she was looking forward to it:

It was her greatest comfort that she now had that her father had given his consent that she should be married to William and that she did often desire that the time appointed for them to be married would come.73

However, shortly before September 18, Robert Cross turned up at the Bishops' and demanded his daughter. Martha Cross was in a dilemma. Her father and the traditional "friends" were there not to see her married but to take her home: William Dirkey didn't want her to leave the Bishops. She asked her mistress, Margaret Bishop what to do:

I being asked by Martha whether or no she should go home with her father I told her it was left for her to do so, at that, William being discontented, she desired me in the presence of god to bear witness that she would have no other man but he, furthermore she said why will you not trust me as well as I have

72Ibid., 10-31-3.

73WPA transcription, 10-31-6.
trusted you hitherto, and hereupon she went away with her father.\textsuperscript{74}

Martha Cross had asked a good question. She had placed her trust in Dirkey when she had sex with him. Now it was his turn to trust her. She promised William that "she would not forsake him."\textsuperscript{75}

William Dirkey and Robert Cross both turned to the court. Dirkey sued Cross for withholding his daughter from him after Cross had given his reluctant consent to the marriage. Cross countersued Dirkey for abusing his daughter. The court, in a verdict worthy of Solomon, found in favor of both parties. Martha Cross was nine months pregnant by this point. Her father, a formidable man, having removed Martha from the Bishops, now threw her out of the family house because she refused to give Dirkey up. She found refuge with a married sister, Margaret Nelson, who seized gratefully upon the offer of a neighbor, Goodman Story, to serve as an intermediary. Goodman Story described his efforts:

Martha being in sore distress of mind in the consideration as she confessed she had been cast out of her father's favor & family; was so harried and distressed in mind that her sister Nelson came down to me much affected lamentation with tears that much affected my heart to hear her. Woe she said I thought my sister would have died tonight: but she thought she could not live another in that condition: I being

\textsuperscript{74}Ibid., 10-31-4.

\textsuperscript{75}Ibid., 10-31-5.
much affected with their condition: said why do you not go to your father & make your condition known to him: to which she answered Oh I dare not go to speak a word on her behalf. Then I said will you go if I go down with you, then Goody Nelson said I, with all my heart. So we went down to Goodman Cross' & then we found them in a very sad and sorrowful condition, very much harried in their spirit not knowing which way to turn and what to say: and as my apprehension then led me: did treat with them about the suffering them to marry, the which he did & that was the way then that we thought to be the best.\(^{76}\)

Then, now that Robert Cross had consented to the marriage, William Dirkey had second thoughts. Martha Cross' brother-in-law, William Nelson, testified that:

When William Dirkee was at my house after Goodman Story had been at my father's & had what he had from him William Dirkee said he wished he had never spoke as he had done in owning of the child to be his but he had 18 meals in a week but he would spare 6 of them to keep the child.\(^{77}\)

At that point, Dirkey grudgingly agreed to marry Cross:

This is to testify that I heard William Dirkee say that he had rather keep the child than keep her but he presently said that if he kept one he would keep the other upon which they presently agreed to be married the next day following moreover she did solemnly say that nothing would part them but death.

Their son, John Dirkey, was born four days after the marriage.

Martha Cross was the loser in all this. While working away from home as a servant, she had been vulnerable to the

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\(^{76}\)Ibid., 10-32-2

\(^{77}\)Ibid., 10-32-3.
sexual advances of a fellow-servant ten years her elder who had no assets beyond the 18 meals a week his employer was obliged to give him. She opposed the will of a formidable parent. Even her married sister, Elizabeth Nelson, was reluctant to approach Robert Cross on Martha’s behalf without the support of Goodman Story. Cross alienated her parents and found herself the object of efforts by the court, her sisters and their husbands, and their neighbors to ensure her marriage prior to the birth of her child. Then, having finally secured parental consent, she discovered that Dirkey was wavering. Dirkey lamented he had ever "owned" the child. If he had denied paternity, as so many of his peers did, he could have escaped prosecution. Martha Cross’ dilemma illustrates how much more a woman who entered into an extramarital sexual relationship had to lose than her male partner. If she had not conceived, her father’s status meant that she could have found a more prosperous husband than Dirkey.

The 1660 premarital fornication prosecution of Rebecca Canterbury and Benjamin Woodrow illustrates the bitterness that could result when an untimely pregnancy led to an unequal marriage. Benjamin Woodrow, a servant, was not the husband William and Beatrice Canterbury would have chosen for their daughter. Not only did Woodrow possess neither money nor prospects, he had already angered his future mother-in-law three years earlier by testifying against her and the Canterbury’s
only son, John, following a neighborhood quarrel in which John and Beatrice Canterbury had beaten Woodrow's employer's wife, Goody Rowden. As a result of this altercation, Beatrice and John Canterbury and Goody Rowden were fined, and Woodrow was placed in the stocks for perjury.\textsuperscript{78} The following year Woodrow and a second indentured servant had conspired to run away from their masters.

Faced with a pregnant daughter over 21, the Canterburys were unable, had they wished, to prevent the marriage. Rebecca, her father, and Benjamin Woodrow appeared together before Magistrate William Hathorne, February 6, 1660.\textsuperscript{79} She admitted she was pregnant; Woodrow that he was the father. By the time they appeared at the next session of the Essex County Quarterly Court to be sentenced, they were married. The Canterburys did not, however, provide Rebecca with a dowry or pay her share of the fornication fine as many parents did.

Woodrow was sentenced to pay two 40 shilling fines for himself and his wife. His employer, John Rowden, agreed to pay one of the 40 shilling fines, and Woodrow promised to pay the second fine within a year. When payment was due the following summer, Woodrow pled extreme poverty:

[I] entreat your worships to take the cause of your poor petitioner into your serious consideration, who

\textsuperscript{78}Records and Files, Volume II, 11.

\textsuperscript{79}W.P.A. transcription, 5-116-1.
having with much difficulty paid the first 40 shillings, cannot see any possible way how he could be able to pay the other in regard of his poverty, having a wife and 2 small children & nothing wherewith to relieve them but my daily labor.\textsuperscript{80}

It is clear that the Woodrows were living in penury, even as Rebecca tried with difficulty to maintain a relationship with her parents. At the following court session in December 1661, Beatrice Canterbury was fined "upon her presentment for wicked and reviling speeches toward her son-in-law."\textsuperscript{81} Elizabeth Buxton testified that:

\begin{quote}
the wife of William Canterbury & her daughter Woodrow being at her house, she heard her say to her daughter that her husband was both a rogue and a thief, her daughter said she must prove it. She said he was a thief for that he had stolen the best flower in her garden, & a rogue because he had brought her body to shame saying she did think the devil would pick his bones this deponent said on to her that she did not do well to speak so to her daughter against her husband. But you should do him the best good you can & give him good counsel for now he is your son. She the said Canterbury's wife answered that the devil should pick his bones before she would own him to be her son.\textsuperscript{82}
\end{quote}

Samuel Ebourn testified to the effect Canterbury’s animosity had on her daughter and to the general Puritan expectation that Canterbury show some respect for her son-in-law but Canterbury was obdurate:

\begin{quote}
...\textsuperscript{80}\textsuperscript{81}\textsuperscript{82}
\end{quote}
Being at the house of William Canterbury his daughter Woodrow came into the house and her mother asked her where her husband was and she answered he was gone to the doctor for physicke for her father, she used many reviling speeches against her husband and said he was no man: whereupon this defendant being much grieved desired her that she would forbear such opprobrious terms & seeing by god’s providence they were united together she should endeavor to maintain love and unity between them. She denied that it was by god’s providence but that it was by the devil, her daughter wept bitterly & prayed her mother to forbear & charging her husband with such untruths but still she went on in a bitter reviling him & wondered how she could love such a wretch.83

While Beatrice Canterbury maintained a running feud with Woodrow, William Canterbury, in a will drawn up in April 1661, left equal amounts of money to his daughter, Rebecca and her children and to his daughter, Ruth. Ruth was to receive a farm as well, and to pay Rebecca a further £30. William Canterbury died June 1, 1663. Rebecca Woodrow did not benefit from her inheritance because she died herself the following day. Evidence indicates that after Rebecca’s death, Woodrow turned their son and daughter over to his mother-in-law, Beatrice Canterbury, to raise. Canterbury received her husband’s entire estate, valued at £470, and subsequently married two more times. When Canterbury died intestate 20 years later, Rebecca’s sister, Ruth, and her husband claimed the entire estate.84 Rebecca

83W.P.A. transcription,

84Since Beatrice Canterbury left no will, it is impossible to know if she would have left part of her estate to her Woodrow grandchildren. She was involved in their lives as in 1676 her
Woodrow's children, Joseph and Mary, asked for half of William and Beatrice Canterbury's estate. While Ruth and her husband were willing to share a portion of the estate with Rebecca's daughter, they refused to give anything to her son, Joseph Woodrow. The court ordered the estate to be split into half, with Joseph Woodrow and his sister, Mary, each receiving a quarter. So finally, after 25 years and extended litigation, the Woodrow children received their mother's inheritance.

The third case provides the clearest evidence of a "shotgun" marriage. As in the case of Rebecca Canterbury, marriage was precipitated by the appearance of the pregnant woman, Sarah Short, and her brother, Henry Short, before a magistrate to lay a charge of paternity. Again, the man involved, was not a desirable marriage partner. Short and Mayo had met while Mayo visited Short's stepsister, Hannah Adams who was herself carrying Mayo's child and hoping to marry him. Sarah Short was only 19 and a considerable heiress when she conceived; her father had left an estate of £1842 to Sarah and her brother, Henry, six years earlier. Mayo was 29, not a

then husband, Edward Berry witnessed the will of Christopher Waller in which Christopher Waller left £10 to Joseph Woodrow to receive at the age of 21 if he continued to live with Waller's wife until then. This makes it clear that Woodrow, aged 16, was not living with his father and had not been for some time. Neither Joseph Woodrow nor his sister, Mary, despite their eventual inheritance, are recorded as marrying or having children in Essex County.

85Records and Files, Volume IX, 300-1.
native of Essex County, and the possessor of a poor sexual
ten of his spiritual duties. Again, he was not the husband that Henry Short
would have sought for his sister, but once she became pregnant, it was imperative that she marry him. Even Joseph Mayo was better than no husband at all. Mayo received Short’s dowry of £150 and used it to establish himself in Newbury.86

Martha Cross, Rebecca Canterbury, and Sarah Short all had sex with men who would not make status-appropriate husbands. Two of the men were servants, the third a visiting sailor with a poor sexual reputation. Sarah Short left no depositions but both Martha Cross and Rebecca Canterbury attested that they had been in love and both remained steadfast in their choices.

There is the possibility that Cross and Canterbury used their pregnancies to force parental approval, but this cannot be proved. What can be stated, is that daughters did not always follow their parents’ dictates and that all of Massachusetts laws to control courtship and marriage could not prevent a few deviant couples from engaging in sexual intercourse. In these three instances, the men involved could have hoped to benefit materially from their marriages. Parents, when their only options were a daughter with an illegitimate child and limited

86Hannah Adams conceived a second child out-of-wedlock in 1682. This time the father, William Warham, married her. Family gatherings must have been fraught. Robert Adams, Hannah’s father and Sarah’s stepsister died on the fourth birthday of Hannah’s daughter by Joseph Mayo.
Some men were persuaded to marry through the initiation of formal court proceedings against them for paternity. In 1689, Margaret Batten of Salem used this method to bring Edward Welch to marriage. She appeared before John Hathorne and swore that:

she is now with child, & it is by Edward Welch and no other body and the place he lay with her was in Thomas Beadles garden and he never lay with her but that time.\footnote{W.P.A. transcription, 49-65-1. Margaret Batten fits the profile of extramarital sexual activity presented in Chapter 3. She conceived out-of-doors in April, which was the month of peak extramarital conception.}

Margaret Batten was accompanied by her mother, Joanna Batten and a second woman, Elizabeth Whitefoot, who said that Welch had admitted paternity and agreed to marry her. Whitefoot testified that:

she heard Edward Welch say he had lain with Margaret Batten and told her if she would say no other man had to do with her that then he would marry her this night and said to her he would have her go up to Magistrate Gedneys & get him to come to her house & there he would be married privately.\footnote{Ibid.}

Welch, however, had not honored his grudging agreement to marry and his failure had brought Batten to Hathorne who immediately issued a warrant for Welch’s appearance. Welch could not be found for two months. When Batten’s baby was born 12 weeks
later, she and Welch were married. However, when the couple were summoned for their fornication prosecution, Welch was gone again. This time his failure to appear was involuntary. He had been captured by the French. The Salem magistrates had cooperated with Margaret Batten to forcibly encourage Welch to marry her but her plight following her husband’s capture in no way mitigated the court’s intention of punishing her for fornication. She was ordered to pay 40 shillings or to be whipped 10 stripes.

At the opposite end of the economic spectrum were those for whom help in marriage formation was not what the defendants sought. They wanted to avoid the shame of an appearance for fornication, and they could afford to forfeit their bonds. In 1682, the court was forced to issue the following order:

Court ordered warrants to be issue for all persons presented who had not appeared, Mr. Eben Gardner, Mr. Packer’s wife, Mr. Duncan’s daughter or any other.89

Each of these parties had been presented for fornication; none of them appeared in court. While the men provided no excuses, Mr. Ebenezer Gardner’s wife, Sarah Bartholomew, sent her sister to court to say she was too sick to attend.90 Bartholomew died three months later.

89Records and Files, Volume 8, 437.

90Ibid., Volume VIII, 372.
In the majority of premarital fornication cases, where depositions are lacking, quantitative evidence is the only measure of marriage formation processes. The willingness of men to marry their pregnant partners declined over time. While five of the seven couples convicted of premarital fornication between 1650 and 1660 married in the first trimester, of the 49 couples whose marriage date and date of birth of their first child can be established between 1676 and 1692, only three of them married in the first trimester of the pregnancy. The median length of time elapsed between marriage and birth for the remainder of the couples was less than 15 weeks. Something had obviously changed. Since parents appeared anxious to see their daughter married, and women had a vested interest in marrying as quickly as possible, it must be have been the men who were dragging their feet.

A combination of factors may account for this male reluctance. First, the religious fervor of the first generation of settlers which impelled most of them to refrain from sexual intercourse prior to marriage was impossible to sustain. The amendment to the fornication law in 1668 that absolved men from fornication prosecutions and emphasized the collection of child support payments from them is an indication that extramarital sexual activity had become a pocketbook issue. Second, the population of Essex County was no longer homogeneous as status differences became more pronounced. Puritans had always
insisted on the importance of status-equivalent marriages. While they were willing to bend the rules to marry a daughter off, parents of sons, and those sons themselves, must have seen child support payments as a viable alternative to marrying a woman who had been willing to have sex without marriage and who might lack financial resources. A third factor was that the pool of marriageable men had been depleted by losses in King Philip's War and by out-migration from Essex County communities to the frontier. Competition to secure a husband might have led a few women to engage in sexual intercourse in the hopes of cementing a relationship. These factors combined meant that time and considerable pressure were required in many instances to seal a marriage once a woman had conceived.

The Process of Rehabilitation

Marriage entry was belated for many couples, despite couples having legitimized their sexual activity and rectified the aberrant behavior that placed them temporarily outside the Puritan fold, now they were ready to be reintegrated into the community. It required ritual shame punishments and expressions of penitence. The couple, if they were church members, were excommunicated until they had appeared before the congregation garbed in white sheets, whereupon the husband read a penitent statement. This statement served a double duty. It was also read to the court and a few examples remain in the court files.
These statements are similar in content to those filed by the mothers of illegitimate children with one striking difference: two of the three surviving penitent statements present exculpatory defenses. Men needed to retain a snatch of honor in the midst of a generally degrading experience.

In 1674, William Barber, a fisherman, and his wife, Elizabeth Ruck, were sentenced to be fined or whipped following the birth of their child 24 weeks after their marriage. While expressing all the correct sentiments, Barber also flattered the court, used his youth as an excuse, and questioned the right of the court to charge him since more than a year had elapsed since his marriage. He said:

I do confess my presentment and do acknowledge I have sinned against god and trespassed against this commonwealth and do humbly entreat the favor of this honored court. I hope your honors may be likened unto the kings of Israel of ancient time, (to be known to be merciful men) and I hope you may be known to be like our blessed lord himself who although he is just against sinners, yet he is merciful unto the penitent and unto the reforming sinner. I did ever own and acknowledge my offense and do from my heart desire to be ashamed of it & humbled for it & I hope in the mercy of god that he will do me good by it. I beseech your honors show me some favor, I am a young beginner in the world, and what I have is at your honors command. I lie at your foot do as god shall guide you in the case. I have but a word to say for myself and that is in regard of the law here established that any crime not complained of within the year, the law taketh not notice of. I was married the first week in May last was a twelvemonth. I speak it not to excuse my sin god knoweth but that
your honors may understand the verity of it, and do
humbly entreat your honors candid construction.⁹¹

While Barber’s wife appeared in court with him, he made no
mention of her in his petition which was written entirely in the
first person. Three years later Barber was dead. He left his
wife a meager estate valued at only £17. While the sums paid in
fines by premarital fornicators between 1674 and 1677 are not
recorded, couple usually paid a minimum of 40 shillings each.
Even this £4 would have represented a substantial portion of
Barber’s resources. It is understandable that Barber was
anxious to placate the court, especially when he had been given
reason to think he and his wife might escape conviction given
that a year elapsed between the marriage and the prosecution.

Thomas Very, in June 1681, also mingled penitence and
poverty with an exculpatory statement:

The presentment I own and must to my shame, and hath
proved a great grief and trouble to me and my wife:
that we should gratify our Corrupt Nature rather than
to attend to our observance and obedience to the law
of god and man, and from a deep sense and
apprehension of our great folly I desire to cover our
faces with shame and desire god and the authority of
this Land would forgive my so great a miscarriage and
that your charity may be extended to so poor a worm
both in respect of estate and till let me pray your
honors to consider that my wife and I that now are
did commit a folly after solemn engagements of
marriage and consent of parents and I have made the
parties concerned amends by marrying the party now my
wife: yet I own myself a debtor to the law for my
miscarriage but do not know how to pay but what

⁹¹Records and Files, Volume V, 376.
justly may be required in justice but I hope and trust in your honors favor and in hope of which I make bold to subscribe myself your honors humble servant in all great affliction.\textsuperscript{92}

Thomas Verry and his wife, Elizabeth Procter, were fined. They probably escaped a sentence that included whipping as an option due to the status of Elizabeth's prosperous father, John Proctor of Salem. Two facts, however, cast doubt on Verry's assertion that they had been contracted when they had coitus. Elizabeth Proctor was only 18 when they married, and their child was born 8 weeks after their marriage. The claim that a contract had preceded sexual intercourse was an attempt to salvage a bit of respectability that cannot have fooled many of their neighbors.

In 1684, Isaac and Sarah Bailey told the court that:

(i)t has pleased god to leave us to commit folly and to sin against god, and to the dishonor of his name, the scandal of the gospel, and to sin against our own souls, the breach of law, and offense to this honored court and to the great grief of our aged parents, the consideration of which we desire humbly to fall down before god to implore and by his mercy through Jesus Christ for the pardon of our sins and a true sight of the evil of our ways, and we do heartily acknowledge our sin and our fault before god and the honored court, humbly declaring your honors prayer to god for us, and also your honors favor to us in this cause.\textsuperscript{93}

Isaac Bailey was 29, his wife, Sarah Emery, 23, when they married. Their child was born 26 weeks later. Both came from

\textsuperscript{92}W.P.A. transcription, 36-11-1.

\textsuperscript{93}Records and Files, Volume IX, 202.
established Essex County families, all four of their parents were living, and they were in the age cohort that would be expected to have the resources with which to marry. Their statement presents the expected mix of sentiments. They had committed "folly," shamed their parents, the community and God.

Bailey and Emery, both of Newbury, are representative of the majority of couples who were convicted of premarital fornication. Isaac Bailey was the fifth of seven surviving children of a Newbury weaver and husbandman. With three older brothers and an elder sister already married and established, Bailey had reached the age of 29 unmarried. Sarah Emery was the fifth of twelve children of John and Mary Emery. While her father had more children to establish than Bailey, he also appears to have had more resources. John Emery held the rank of sergeant in the local militia and was a church member. There were no financial impediments to marriage and nothing in the record indicates that either Bailey or Emery had been in any trouble before this time. Like the majority of fornication defendants they did not engage in any aberrant behavior after marriage that brought them back into court again. Isaac Bailey was identified as a yeoman and in the ten years prior to Sarah's death they had five children together.94

94The timing of Sarah Bailey's death suggests that she may have died during her sixth childbirth.
The Aftermath of a Premarital Fornication Prosecution

Most couples survived their premarital fornication prosecutions without apparent long-lasting repercussions. For most couples, their fornication prosecution represented their only brush with the law. Those who began their marriages with few resources remained poor. Rebecca Gault was a 20-year-old servant when she married John Bly of Salem in November 1663. Gault’s father had died in 1659, his widow had remarried and the house the family lived in was sold to pay his debts. John Bly was not better circumstanced. He was in Salem by 1653 at the age of 14, and identified as a laborer at the time of marriage, but he does not seem to have been accompanied by parents who could assist him materially. Seven weeks after their marriage their child was born. The circumstances surrounding the baby’s birth are questionable. The Blys may have been trying to abort the baby as the midwives were called in the day after the birth to examine its body at the request of the magistrate, William Hathorne. They reported that the baby’s thigh bones had been broken and that the child had been six weeks premature at most.95 The Blys were prosecuted for fornication only, though, not because of the child’s injuries but because an examination of its body indicated that sexual intercourse had preceded marriage. They were fined £4 for fornication. He and Rebecca

95Ibid., Volume III, 118.
had at least seven more children between 1665 and 1676 when Bly was identified as a brickmaker. In 1673, the selectmen of Salem threatened to remove the Bly children from the household and place them with other families unless their parents looked to their education and disciplined them. In 1683, when John Bly’s name appeared on a Salem tax list, his tax rate placed him in the bottom seven percent of Salem ratepayers.\footnote{Perley, History of Salem, Volume III, 420. There are 36 men in this tax category. Five of them were convicted of premarital fornication. A sixth married man in this group fathered an illegitimate child.} Their daughter, Mary, while working as a servant in a Salem household, was convicted of fornication following the birth of an illegitimate child in 1690.

Middling daughters who married because they were pregnant shared the financial fate of their husbands. Ann Devorix was the daughter of a prosperous Marblehead fisherman when she married Walter Boaston. He was sentenced to be severely whipped or fined £4. Devorix did not appear with him and was ordered to attend the next Salem session of the Quarterly Court. There is no record that she appeared, and her father may have posted her bond and allowed her to default to save her the shame of a court appearance. Six years later, Boaston was dead, and his inventory indicates the dire poverty in which they were living.\footnote{The Probate Records of Essex County, Volume II, 421.} His estate was valued at £11. Almost every item in it is
prefixed with the word, "old." The family possessions included "one canvas bed filled with cattails, three old chairs, and one cradle." There is no mention of a house or land in Boaston's inventory, however, so her father, John Devorix, may have been supporting the couple to the extent of providing them with housing.

Middling sons and daughters, while they may not have shared equally in the material status of their siblings, if they made an unequal marriage usually received equivalent inheritances with siblings who had not been prosecuted for fornication. For instance, although Ruth Hewes had been convicted of premarital fornication in 1683, she and her two sisters each received £20 in her father's will probated in 1690.\(^9\) Hewes was 20 when she was prosecuted, her husband, John Browne, only 18, so the impetus for their marriage was undoubtedly the pregnancy, yet her father did not penalize her for it when he drew up his will.

Marriages that began with an unplanned pregnancy were not always successful. One of the bitterest was that of Samuel Perkins and Hannah West. Perkins had been attacked by his erstwhile brother-in-law on his way under guard to court for his presentment in 1678 and nine years and at least four children later the acrimony was open. While Samuel and Hannah Perkins each blamed the other for the failure of their marriage, it is

\(^9\)*W.P.A. transcription, 49-99-1.*
clear that Samuel Perkins' honor was threatened by his inability to control his wife. It was important to him that his wife deferred to him, at least in public. Perkins sued his wife for abusive carriages, claiming that she refused to do housework, hindered him in his employment as a shop-keeper, and made excessive demands upon him for material goods. The precipitating incident was described by a customer, Mary Peters:

I was at Sargeant Waites shop where Samuel Perkins was at work. After some discourse he bid me set down and told me his wife was now so loving that she could not keep from him and presently after she did come to him and said to him give me my thread to make my clothes. He answered he had none but she said he had and that he had a great many other things ...and then she broke out into very bad expressions and provoking him told him that she had lived twenty years a maid and then her mother had married her to a fool.  

Two days after this incident, Hannah Perkins had returned to her widowed mother's house and Samuel Perkins had gone to the Essex County Quarterly Court to force his wife to return to him and to treat him respectfully. Part of the dispute revolved around their bed. The matress-ticking was torn and needed to be refilled. Hannah Perkins refused to mend it, saying that she needed to sell her feathers for food. If the duty of each partner to a marriage was to engage in sexual intercourse, then Hannah Perkins was making a statement about her willingness to

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\[99\]W.P.A. transcription, 47-50-4.
engage in sexual intercourse by not fixing the marriage bed.

She said:

You may fill the bed yourself...if you had a bed
yourself you would not trouble me...I had as lives
lie on the ground as any where.\textsuperscript{100}

Hannah Perkins apparently returned to her husband as they had a
fifth child in 1692.

Thomas Hobbs went to court in 1672 to force his son-in-law
to return to his daughter. Martha Hobbs and Richard Prior were
convicted of fornication in 1666. In 1672, Prior was presented
for living apart from his wife for four years. He was jailed,
and an order was issued prohibiting anyone from providing him
with food, lodging, or employment. Three men presented
testimony on Prior’s behalf.

Sometime the last summer they heard Thomas Hobbs say
that Richard Prior should not come within his doors
nor come near his daughter and that there should be
no more of the breed of them, and threatened him if
he did come.\textsuperscript{101}

However, for the majority of couples who married following
an unplanned pregnancy and who received enough money from both
sets of parents to establish themselves respectably in the
community, rehabilitation was possible. For example, Henry True
of Salisbury and his wife, Jane Bradbury, both aged 23, were

\textsuperscript{100}W.P.A. transcription, 47-49-1.

\textsuperscript{101}W.P.A. transcription, 18-139-3.
fined £3 and £2 respectively for fornication in 1668 when their first daughter was born 10 weeks after their marriage. Subsequently, however, Henry True was elected to the rank of captain in the militia which his father-in-law also held, and True became a deacon of the Salisbury church. Nothing in the court records indicate why it took them so long to marry, but the conviction did not impede True’s promotion. Rehabilitation was possible because Henry True was an eldest son who had already inherited his father’s estate and his wife, Jane Bradbury, was the daughter of a gentleman.

Conclusions

The court established 32 weeks as the cut-off point for a premarital fornication prosecution, allowing eight weeks leeway between marriage and birth, not because sexual intercourse was customarily initiated between contract and marriage, but because a premarital fornication conviction had such serious personal and financial ramifications. It was not a charge to be levied lightly. Three conclusions, nevertheless, can be stated with a degree of certainty. 1) Most Puritan couples waited until their wedding nights to initiate sexual intercourse. Only 151 couples were convicted of premarital fornication between 1640 and 1685.\(^{102}\) This illustrates the strength of Puritan hostility to

\(^{102}\)Number of Rowley couples.
sexual activity between unmarried persons and the degree to which the majority of Puritans adhered to community sexual mores. 2) The length of time elapsed between marriage and birth indicates that men were reluctant to marry women who were willing to give up their virginity prior to marriage, even if it had been to them. The ideology about women that was applied to women who bore illegitimate children applied to women who conceived prior to their marriage. What saved them from the same ignominious fate as bastard-bearers was their ability to force an often reluctant partner to marry. 3) Some couples used pregnancy to force parental consent to and financial support for a marriage parents would have been unwilling to allow otherwise. 4) Couples convicted of premarital fornication fall into four categories. In the first category are the couples who planned to marry and were prevented, for some reason, from marrying when they had planned. This is the smallest category because couples whose marriage was actively being planned by their parents or guardians could were socialized to wait for their wedding night, which was expected to occur within a month of the contract, to initiate sexual activity. These couples were able to marry within the first trimester of the pregnancy. The second category comprises uncommitted couples who engaged in sexual activity on the spur of the moment, whether it was fueled by alcohol, by sex play that went too far, or the willingness of the man to engage in coercion. Marriage formation in these
cases was possible because the women's families were able through financial inducements and community pressure on the man in the case to "do the right thing." The third category of premarital sexual offenders is composed of young persons who used pregnancy to force parental consent to an unequal marriage. The fourth category of defendants took the longest to marry. Having reached the age where they could normally expect to marry and engage in legitimate sexual activity, they were precluded by poverty from engaging in the formal processes through which they could have hoped to enter marriage. Sexual restraint was more difficult to maintain if marriage could not be plausibly hoped for in the near future. These couples engaged in sexual intercourse and hoped for the best. When the worst happened, they scraped together enough money to marry, but it took time, and most of these couples spent their entire married life in the same impoverished state in which they had entered it.

For women, marriage was a rehabilitative event. It established potential bastard-bearers and their children within a family unit with a temporarily weakened patriarchal head. For men, the punishment was more severe, having married their pregnant partner, than it would have been if they had abandoned them because they linked their fate with that of women who had lost their sexual reputations. These men could be legitimately prosecuted for fornication because marriage was an admission of paternity. There was no question but that they had engaged in
fornication. Moreover, there was no permanent loss of male status and authority involved. Men could be shamed through presentation in church and court because they had redeemed themselves through marriage. As the heads of their own little family, they assumed the status of Puritan householder. Thus, the couple who engaged in sexual intercourse and then married could be used as an example of retribution and rehabilitation to the community without permanently impairing the position of men in general. Given that premarital fornication defendants represented two-thirds of prosecuted individuals, prosecuting husbands represented a powerful reinforcement of Puritan sex discipline.
CHAPTER 5

PLAYING THE ROGUE: RAPE AND ISSUES OF CONSENT IN SEVENTEENTH-CENTURY MASSACHUSETTS

Introduction

There are constants in the female experience of sexual violence. The stereotypical victim of sexual violence in the seventeenth-century, as today, was unmarried, employed, knew her attacker, and was unlikely to report the assault. Her assailant, in the unlikely event of prosecution, offered a defense as effective in the early modern world as today: The sexual activity had been consensual; there had been no struggle; and, he would assert, her sexual reputation was such that no reasonable man could have expected to meet with a refusal.

These constants, however, mask significant differences. The characteristic effects of rape were exacerbated by seventeenth-century conditions. The most important external practical consideration from the victim's point of view was that public knowledge of loss of virginity materially affected her marriageability. Shame, too, was a powerful incentive to silence. She had little to gain and much to lose by reporting a sexual assault. Other difficulties existed. First, the Puritan belief in female inferiority led to conflicting notions about

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1For the purposes of this chapter, rape is defined as heterosexual sexual intercourse by force or by threat of bodily injury.
the seriousness of the crime of rape. Grand jurymen had the power to ignore a complaint, or they could lay a charge along a continuum of criminality from fornication, which penalized the victim too, through assault, or lewd or lascivious behavior, to attempted rape or rape. Grand jurymen were influenced by the class, the age, the marital status and the reputation of the female victim and the man she accused. Second, the ideological construction of women as lustful daughters of Eve imbued everyday female behavior with sexual meaning. A smile while mutually engaged in field work could be construed as an invitation. Third, the language of sexuality, the discourse of intercourse, privileged male aggressiveness over female submission. In consensual sexual intercourse, women 'submitted,' or 'suffered' men to 'use' or 'occupy' their bodies for the purpose of 'begetting children upon' them. Fourth, rape was difficult to prove. Two witnesses and an outcry were required. Even in cases where the rules of evidence appear to have been satisfied, a guilty verdict was not certain. Fifth was the narrow legal definition of rape. The judges of the Massachusetts Bay Court of Assistants relied on an English jurisprudence manual, Michael Dalton's, The Countrey Justice to assist them in their interpretation of rape law in 1641 and again in 1648. Dalton stated that conception implied that the

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woman had consented to sexual intercourse, so that any woman who conceived during a rape was victimized a second time with an appearance in the local quarterly court charged with fornication. All of these factors meant that a decision to lay a rape charge was never cut and dried, and a verdict of guilty was never a foregone conclusion.

Rape was a capital offense, but men were reluctant to hang other men for engaging in heterosexual sexual activity including rape. Only fourteen men were tried for rape and three men for attempted rape by the Massachusetts Court of Assistants between 1630 and 1692. One might conclude then that sexual violence against women was limited, but in this chapter, I will argue that these low numbers are evidence not that sexual violence was rare in seventeenth-century Massachusetts. Rather, women were reluctant to report incidents, and that those responsible for administering criminal justice, from the grand jurymen of the local quarterly courts to the justices of the Massachusetts Court of Assistants were predisposed to see the use of force as an extreme, but not necessarily illegal, expression of normal male sexual activity. Men charged with attempted rape by local


4Catharine Baker, "Sexual Assault in Seventeenth-Century Massachusetts" (unpublished seminar paper, Brandeis University, 1974) also counted fourteen rape prosecutions in the Massachusetts Bay Colony Court of Assistants.
grand juries were not consistently sent for trial to the Court of Assistants which had jurisdiction over crimes involving life, limb, or banishment.\(^5\)

A close reading of depositions presented in Essex County Quarterly Court prosecutions indicates a pervasive pattern of hidden and unpunished sexual violence against women. It is most commonly found in illegitimate fornication case depositions in which the female defendant described coerced sexual activity. These incidents did not fit the legal definition of rape because conception had occurred and Puritans did not believe that conception was possible unless a woman was a willing participant to sexual intercourse and had achieved an orgasm. A second source for descriptions of coerced sexual activity is slander suits launched by men anxious to reclaim their honor in the face of neighborhood disapprobation following the discovery of an illegitimate pregnancy. A third source is women’s depositions in support of a lesser charge such as lascivious conduct or assault also report incidents of a sexually threatening nature.

This chapter is divided into three major sections. First I will examine the cultural assumptions underlying issues of consent and the development of rape laws in Massachusetts. I will test the assumption that men who committed rapes were inevitably prosecuted to the full extent of the law. The second

\(^5\)Records and Files, Volume I, v.
section will contain an analysis of rape prosecutions in the Massachusetts Bay Court of Assistants and will show that while Massachusetts rape laws functioned effectively when the victim was under the age of twelve or married, rape laws proved woefully inadequate to protect single women. In the third section I will examine cases involving single women who were prosecuted for fornication following the births of illegitimate children under coerced circumstances to understand how Puritan ideology about women as sexually-receptive combined with an incorrect assumption about the mechanism of reproduction to ensure that women who had been the victims of rape were victimized a second time by the Puritan courts.

**Puritan Cultural Assumptions About Rape**

The depositions filed in the fornication prosecution of Elizabeth Emerson of Haverhill in 1686 open a door into the past that allows us to listen to a disparate group of seventeenth-century women discussing sexual violence and their understanding of the conditions necessary to conception. The discussion is heated: it is during the course of an argument that the diverse viewpoints are presented. The participants are twenty-one year old Elizabeth Emerson, who is in labor, her mother, Hannah Emerson, her sister, Hannah Dustin, the midwife, Johanah Corliss, and at least three neighbors, Liddia Ladd, Mary Neff,
and Johanah Hasletine. The quarrel began when Corliss assumed her legal role and asked Emerson to name the baby's father. The required paternity statement had taken on increased significance because when Emerson and her father had gone to the magistrate during her pregnancy to lay formal charges against Swan, she had claimed that Swan, a neighbor's son, had raped her in her parent's new bedchamber, which Swan had asked her to show to him. The neighbors greeted this claim with skepticism. They wanted to know why she had not cried out as was required. Timothy Swan's arm was across her throat, she explained. Then they wanted to know why she had not resisted. They told her how they would have reacted in the same situation:

Goodwife Corliss said to her, why did you not scratch him or kick him and she said she could not, her breath was stopped. Then Goodwife Haseltine said if she were served so she would make ye town ring of it before ye morning.

6 Eleven years later, Hannah Dustin became 'the most famous woman in New England.' She and Mary Neff were taken captive during a Native American raid on Haverhill in 1697. Despite the fact that she had given birth five days earlier and been marched a hundred miles into the wilderness, Dustin, with the assistance of Neff and a young boy, killed ten of her captors and returned with their scalps to Boston. Laurel Ulrich, Goodwives, (New York: Oxford University Press, 1983), 167.

7 Records and Files, Volume IX, 306.

8 An outcry was not just required, it was expected. Roger Williams had stated "a woman that [is raped] can not but cry when she is forced or ravished: she that cries not, she is a whore before God and men." Mary Beth Norton, Founding Mothers and Fathers, (New York: Alfred A. Knopf, 1996), 352.

9 W.P.A. transcription 46-131-1.
Mrs. Emerson sprang to her daughter's defense, adding details that unfortunately conflicted with her daughter's version. Elizabeth had remained silent, Mrs. Emerson claimed, because she feared public disgrace. Goodwife Ladd retorted that it would have been to her credit, not her disgrace, if Emerson had exposed Timothy Swan's behavior.

A reading of this deposition alone suggests that they were giving Emerson good advice and that there was a community expectation that rape victims should struggle vigorously and call out. However, a cumulative reading of depositions describing similar incidents indicates that most young women lacked the necessary confidence in the system to test the strength of the neighborhood belief in their chastity by making a charge. Emerson had gained notoriety in her community as a teenager when some unspecified act on her part had provoked her father to beat her so severely that he had been prosecuted by the quarterly court of Essex County for assault. In the eyes of her neighbors she had already violated the Puritan ideal of femininity.

10Ibid. Elizabeth Emerson's response at this point is so timeless, so human. The deposition reports that she "muttered." Emerson told the assembled women that Swan had been silent during the rape. Her mother corrected her, reminding her that she had previously said that when Swan had his arm across her throat he had said, "Now cry you out, Gade." The women seized upon this discrepancy.
This deposition also provides evidence of the Puritan expectation not only that conception would not occur unless the intercourse was consensual, but that it would not happen if the young woman had been a virgin before intercourse:

Then Goodwife Corliss did ask her, Whether said Timothy Swan lay more times with her than once, and she said he never laid with her but once. Then Goodwife Hazeltine replied that it was impossible or very unlikely for a maid to be with child at ye first, being forced, and her mother answered and said why might she not be with child as well as Mary Starlin; she did not understand that any man lay with her but once.11

These women were not informed solely by some simple folk belief about the origin of babies. Early modern English medical texts advised that good food, wine, a relaxed atmosphere, foreplay and female orgasm promoted conception. It is hardly surprising they believed that conception would not occur as the outcome of rape.

The depositions in the Emerson case also confirm that claims of rape might be met with disbelief if the claimant had a damaged reputation and a weak story. She had failed to cry out, she had not made a timely accusation of rape, and her mother had contradicted details of her story. Swan was not charged with rape, although he was required to pay child supports for

11Sterling was convicted of fornication in September, 1684. Unfortunately no depositions survive in this case to indicate the circumstances. It is interesting that the general perception was that there had been only one act of intercourse, perhaps the result of a rape, but Osgood was charged only with fornication because Sterling conceived.
Emerson’s daughter, whom she named Dorothie after Swan’s sister. Six years later, in 1691, Emerson committed infanticide after giving birth secretly to illegitimate twin daughters rather than face a second inquisition. She was hanged in June, 1693.

There was no chance that grand jurymen would have indicted Timothy Swan for rape. He was young, and the expectation was that men would be sexually aggressive. Emerson had a damaged reputation and she agreed to show him her parent’s bedroom, behavior that constituted an invitation to sexual intercourse. However, on fourteen occasions between 1630 and 1692 men were charged with rape and tried in the Massachusetts Court of Assistants. It remains to be seen what circumstances convinced grand jurymen to lay a charge of rape and send the case on to the Court of Assistants, under what circumstances a guilty verdict was rendered, and what punishment a convicted rapist was given. It is necessary, first, to examine the legal assumptions under which the local grand jurymen, the judges and the jury appointed by the Court of Assistants operated.

She named Liddia Ladd’s husband, Samuel, as the father of her child. Liddia Ladd had been one of the women in attendance when she had accused Timothy Swann of rape. Given the likelihood of Liddia Ladd’s presence again this time, it would have been awkward, at the least, to name Samuel Ladd as her lover. There would have been economic, as well as social and emotional ramifications since Samuel Ladd, like Swann before him, would have been required to make child support payments.
Rape Legislation

Puritans looked not to traditional English common law, in which heterosexual rape was a capital crime, but to the Bible when they drew up their first law code for the Massachusetts Bay Colony. Mosaic law was the more complex of the two systems, the penalties for rape differed according to the marital status of the victim. The Bible prescribed death by stoning for rape in cases where the victim of rape or attempted rape was either married or engaged. The rationale for making the rape of a married or engaged woman a capital offense was rooted not in the egregious nature of the act but in the fact that if a woman was married or engaged, sexual intercourse with her was an injury to her husband and threatened the integrity of the patriarchal family. Further justification for the death penalty for the rape of a married or engaged woman was rooted in adultery law. This was a convenient way of getting around issues of consent. Whether coitus had been consensual or not, the penalty was death for both parties.

Mosaic law enjoined marriage between the victim and her rapist in cases where the young woman had no prior attachment.¹³

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¹³Deuteronomy 22, 29-30. If a man find a damsel that is a virgin, which is not betrothed, and lay hold on her, and lie with her, and they be found; Then the man that lay with her shall give unto the damsel's father fifty shekels of silver, and she shall be his wife; because he hath humbled her, he may not put her away all his days. The Holy Bible Containing the Old and New Testaments (Oxford: Oxford University Press, 1900), 224.
The Puritans, to their credit, given their devotion to the idea of establishing a Commonwealth governed by Biblical precepts, did not think that marrying a rape victim to her rapist was an appropriate or fair remedy. Nor did they think that capital punishment was appropriate in the case of the rape of a single woman because of the issue of consent. They were caught between Mosaic Law which was inadequate in this instance and English common law which was too secular for their religious Commonwealth. Further, there was no Mosaic precedent to follow in cases of the sexual abuse of a child or statutory rape.¹⁴

The first rape case tried in New England reflects this judicial uncertainty. In 1636, an indentured servant, Edward Woodley, broke into a neighboring house and assaulted a female servant. He was charged with "attempted rape, swearing, and breaking into a house," and sentenced "to be whipped 30 stripes, a year's imprisonment at hard labor with coarse diet, and to wear a collar of iron."¹⁵ Four months later, the Court ordered him released to his master who required his labor, if the woman he had assaulted would declare herself to be free of fear from


¹⁵John Noble, Records of the Court of Assistants of the Colony of Massachusetts Bay (Boston: Suffolk County, 1904), 64-65. It is instructive that swearing ranked as a more serious crime than housebreaking.
him. There is no suggestion in the court record that marriage was considered as an alternative to the court-ordered punishment.

The Court was forced to include a law specifically addressing the issue of rape in 1641 when they issued their first formal law code because they wanted to execute three men accused of sexually abusing two young girls, Dorcas and Sarah Humfrey. They discovered that nothing in the colony's current law code prohibited either consensual or nonconsensual sexual activity between adults and children. The Court of Assistants moved swiftly to close this loophole. They revised the rape statute in 1642 to make the rape of a child under ten years of age or consensual intercourse with a child under ten years of age a capital crime.

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16 The abuse began when the elder, Dorcas, was six and ended when she was nine and told a recently married sister about it. Her father, Mr. John Humfrey, a prominent member of the Court of Assistants, had frequently left his children in the care of servants. They became even more vulnerable when he left Massachusetts Bay Colony. The Court punished the offenders as best they could within the constraints of the existing law. One of them was severely whipped and had one nostril slit and seared at Boston. This process was repeated at Salem and then he was restricted to one neighborhood, upon pain of death if he left it, and required to wear a noose around his neck. Winthrop makes specific reference to the fact that this man had a "lusty young wife" and I infer that his punishment may have been greater not only because he had been the one who had initiated the abuse but because he had a legitimate sexual outlet in his wife. This inference is strengthened by Winthrop's mention that of the other two defendants who received lesser sentences, one was unmarried and the other had a wife whose pregnancy constrained coitus. Dorcas Humfrey was also punished. Richard S. Dunn and Laetitia Yeandle, eds., The Journal of John Winthrop, 1630-1641, abridged version, (Cambridge: Harvard University Press, 1996), 193-197.
age capital crimes. The rape of an engaged or married woman was also a capital crime, but the punishment for raping a single woman was left to the discretion of the judges. It could be capital punishment, but "some other grievous punishment" could be levied, depending on the circumstances.\textsuperscript{17}

The Court rationalized its decision to levy the death penalty in cases where the victim was under ten years of age in two ways. Mosaic Law ordered the death penalty for sodomy and bestiality. As with sexual intercourse between men, or with animals, intercourse with children under the age of ten could not possibly be fruitful and was therefore unnatural. John Winthrop articulated their reasoning, saying:

\begin{quote}
\textit{it should be death for a man to have carnal copulation with a girl so young, as there can be no possibility of generation, for it is against nature as well as sodomy and buggery.}''\textsuperscript{18}
\end{quote}

This logic cut two ways. Dorcas also accused two of her brothers, but since neither of them had reached puberty, they were not charged. The second rationale was that children under the age of ten were incapable of giving informed consent. But the Court was not comfortable with this line of reasoning, and when a new law code was issued in 1648, The Laws and Liberties

\textsuperscript{17}Ibid., 21.

\textsuperscript{18}Koehler, 95.
of Massachusetts, the only rape law that remained in force involved married and single women over the age of ten.

This law sufficed until 1669, when Patrick Jeannison raped eight-year old Grace Roberts. The judges wanted to hang Jeannison, but they found that there was no provision in the law to execute Jeannison since his victim was under ten years of age. They referred the case to the General Court which decided that since the rape of a child was an even more heinous crime than the rape of a single woman, the judges could infer that capital punishment was legal in this case and in other similar cases involving children.19

It is not enough to know only the letter of the law to draw conclusions about the incidence of sexual violence in seventeenth-century Massachusetts. Rape is not defined in any of the law codes that the Puritan legislators wrote, so it is necessary to look at other precedents to find out what constituted rape to the justices of the Massachusetts Bay Court of Assistants. In 1647, as the Court of Assistants began its extensive revision of the legal code, it ordered some law books from England. Included in the order were two copies of Michael Dalton's, The Countrey Justice.20

19Records of the Court of Assistants of the Massachusetts Bay, 200.

Dalton defined rape and/or ravishment as violent nonconsensual sexual intercourse. The issue of consent was paramount to Dalton. If a woman consented after the fact, or if she consented to intercourse out of fear for her life, her attacker was to be charged with rape. Even "to ravish a harlot against her will [was a] felony." However, if the rapist could prove that he had had consensual intercourse in the past with his victim, it was not rape because the victim had given her inferred consent to a continuing sexual relationship. Another caveat for Dalton was conception:

[if] a woman at the time of the supposed rape do conceive with child by the Ravisher, this is no Rape, for a woman cannot conceive with child, except she doth consent.  

This presumption of consent upon conception made a world of legal difference to young women in seventeenth-century Massachusetts.

Dalton stated that in England a woman had forty days in which to lodge a charge of rape, which should have allowed her to assess whether or not she was pregnant, but Dalton also stated that the woman should raise a "hue and cry" as soon as possible and levy a complaint with "some credible person." It would be extremely difficult to secure the evidence sufficient to bring about a conviction if forty days had been allowed to

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pass between a rape and an accusation. This created an impossible situation for women. If they discovered they were pregnant, they had no case; if they were not pregnant and reported the rape, their reputation would still be irretrievably lost, because they had waited too long to make an accusation.

The Prosecution of Rape Cases

Colonial historians have often assumed that once an accusation of rape was laid against an individual the case proceeded swiftly to trial. Koehler states that "(r)ape was considered so serious that a woman could not lie about it," and that charges were inevitably brought when a woman complained to the authorities. The assumption is also made that once the rules of evidence had been satisfied, a guilty verdict would be invariably rendered. "Throughout New England the victim's testimony sufficed to convict a man of attempted rape." However, these conclusions are not borne out by the evidence.

Sarah Smith lived in the frontier settlement of Deerfield in 1693. Recently married to a widower, Martin Smith, who had been captured and taken to Montreal by the French and Indians, and a relative newcomer to Deerfield, she lacked her husband's


23Koehler, 96, Lindemann, 66.
protection and financial support. Smith claimed that a local man had attempted to rape her and she lodged an official complaint with the Justices of the Peace in Hatfield. John Evans, she said, had come to her house near the palisade ostensibly to chat before he went on guard duty. Finding her alone, he had thrown her to the floor and attempted to rape her. She had resisted him physically and had screamed, whereupon two young men who were on guard duty came to her aid. Despite the testimony of these two young witnesses that:

\[(w)e\text{ hastened down to the house where we saw (the door being open and the stars giving light) Goodwife Smith lying upon the floor and John Evans upon her. We heard Goodwife Smith say let me alone or else I would call out. Said Evans replied if you do call no one will hear you. She said the watch would hear but Evans said they are gone to the other gate. She had almost got from him but he got new hold of her and said I will see it, but by her striving she withstood his evil intent so he was getting up, whereupon we ran away from the house surprised with fear and from trembling at such actions that we darest not go into the house to the woman's assistance.}\]

John Evans was not charged with attempted rape. It is possible that the Justices of the Peace did not charge Evans because

\[24\text{Original deposition at the Pocumtuck Valley Historical Society, Deerfield, Massachusetts. We can only speculate about the number of similar depositions that were never acted upon and did not become part of the public record. This affidavit survives due to the personal notoriety Smith achieved a few years later when she committed infanticide and became the first woman to be executed in Western Massachusetts. That the boys were so frightened by what they had witnessed that they ran away is a testament to the psychological prohibitions that the Puritans placed on extramarital sexual activity. However, it could be too that they were afraid of John Evans.} \]
Sarah Smith may have been engaged in prostitution at the fort. It is also possible that since Sarah Smith was a relative newcomer to Deerfield and lacked the protection of a male relative in the community, there was no one to pursue a case on her behalf. Perhaps the lack of action in her case is due additionally to the fact that her community was engrossed in defending itself against French and native American attack. But according to the letter of the law, we might have expected Evans to be charged with attempted rape, especially as Smith was a married woman.

Sarah Smith had gone to the Justices of the Peace immediately, but to no avail. The experience of Susanna Reade in 1669 has parallels. She, too, had no senior male relative to speak for her, for her father, Captain Thomas Reade of Salem, had died the previous year. She, too, was unable to sustain a charge of attempted rape. Instead she found herself convicted of slander. On February 2, 1669, Reade told a Salem magistrate, William Hathorne, that Ephraim Herrick, who had contracted for her labor for a month, had attempted to rape her three times the

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25 When Reade died intestate June 25, 1667, he left an estate valued at approximately 75£ and a wife and seven children between the ages of 1½ and 19. Susanna Reade, at seventeen, was the eldest girl. The family's financial situation made it imperative that Reade hire herself out to Herrick. Reade had only a nineteen year old brother, Aaron, who was killed in a shooting accident the following summer, to speak for her.
previous autumn. His first attempt had occurred on her second
day of employment:

[H]is wife being gone from home he made fast the door
and pulled me in his lap and put his hand under my
apron but with my striving I got from him.

His second attempt came four days later as they worked in a
field together with Herrick's 19-year-old brother, John,
gathering corn. He insisted that they move to a different
field. When she resisted leaving John's company, she claimed,
he told her that either they gathered corn in the other field or
they would not gather corn at all:

[W]e gathered down into a valley and then he pulled
me on his lap and pulled out his preve members and
tore me about and would have me go into the bushes
but with God's help I withstood his temptations.

She claimed that there had been a third attempt:

[A]fter this his wife was gone to Salem and there was
none but he and I at home and he came to me and took
up my coats and pulled out his member and would have
forced me and many other words he used to persuade me
to yield to him his desires that is not fit to be
spoke.

Her conscience troubled, but understandably reluctant to make
these incidents public, Reade had complained privately to a
committee from Herrick's church. They advised her to go to the
magistrates. She delayed until the beginning of February. The
severity of the winter weather had prevented her, she said, from
going to Hathorne earlier. More likely she was constrained by embarrassment and reluctance to make the matter public.

Hathorne must have gone to Herrick immediately to learn his side of the story, for the following day Herrick filed a slander suit against Reade. Six days after Reade’s official complaint, John Hill, the Beverley constable arrived at her door with a summons to answer Ephraim Herrick’s suit for slander and required her to post bond of twenty pounds. The following week Hathorne filed charges of uncleanness against both Reade and Herrick.

Both parties appeared in court. Reade presented evidence that Herrick’s behavior was part of a pattern. Two more women testified that Herrick had acted improperly with them. One of them, Elizabeth Whiteheare, claimed that when she was riding horseback with Herrick to his house to help his wife with her laundry, Herrick had pulled up her skirts and speculated about her thighs and who had been between them. In response Herrick produced brothers, sisters, and sisters-in-law who described a labor dispute, with Reade determined on revenge because Herrick would not give her food and tobacco. His 20-year-old sister, Elizabeth, who had been Reade’s confidante, gave evidence that

\[26\] This part may have been true, but Herrick may have been motivated to withhold food and tobacco by Reade’s resistance to his advances, rather than by displeasure over the quality of her work.

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supported the other women's estimates of Herrick's character, but she also provided a motive for Reade's charges. She said:

[H]e often fell out with Susanna Reade for his uncivil speeches and idle actions & Susanna did say that if she had power in her hands she would handle him as never poor rogue was handled.

Elizabeth Herrick also repeated on the witness stand an extremely bawdy and damaging anecdote about the sexual activity of two neighbors she claimed to have heard from Reade. Reade denied having told the story, but a Herrick sister-in-law supported Elizabeth's statement. The aim of this testimony was to impugn Reade's character by showing her to be a liar and far from the feminine ideal.

Herrick won his lawsuit. Since he had "proved" that Reade was lying and the incidents she described had never occurred, the charges of uncleanness against both of them were dropped.

There was a considerable status differential between the married Herrick whose extended family lived locally and his orphaned servant. The most likely explanation for Reade's failure to get the court to believe her story was that she had not quit her job

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27The anecdote concerned an incident in which an elderly man, Richard Haines, had masturbated to orgasm by rubbing himself against Goodwife Balch. Balch was afraid to tell her husband about the incident for fear that if her husband knew, he wouldn't love her anymore. Its recitation in public court by Elizabeth Herrick rather than by the older, married sister-in-law who could have more appropriately reported it casts doubt on the story's veracity and on Elizabeth's judgment. It also illustrates how dirty the infighting could get.
and charged Herrick immediately after the first incident. Herrick’s behavior, while regrettable, was within the parameters of expected male behavior. Reade, however, needed her job, and she didn’t have a male advocate to accompany her to a magistrate and speak for her. She may have hoped that the members of Herrick’s church would act for her.

The experiences of Sarah Smith and Susannah Reade demonstrate the many factors that went into the determination to charge a man with rape and send him on to the Massachusetts Court of Assistants for trial. In Sarah Smith’s case, her reputation, her lack of available male family members to advocate for her, the pressing military situation on the frontier (and the need for manpower), precluded a charge of rape although she had cried out and provided the requisite witnesses. Susannah Reade lacked male defenders, too, and she was hampered by the length of time that elapsed between Herrick’s attempted rapes and her visit to the magistrate. While we might be sympathetic to her need to retain her job, the fact that she went back to work with Herrick after the first attempt made her charge less believable to the Essex County Quarterly Court. These cases cast doubt on Koehler’s assertion that all charges of rape or attempted rape were followed up by the authorities. It should not be surprising then, that so few cases involving sexual violence were referred to the Massachusetts Court of Assistants for prosecution.
Fourteen men were prosecuted for rape and three men were prosecuted for attempted rape between 1636 and 1692 in the Massachusetts Bay Court of Assistants (Appendixes A and B). The prosecutions occurred in two clusters. The first cluster occurred between 1636 and 1642 when three men were tried for rape and two more for attempted rape. The second cluster occurred after a 25-year interval which saw no recorded prosecutions for rape or attempted rape in the Court of Assistants. Twelve of the 17 cases tried by the Court of Assistants between 1636 and 1692, or 70 per cent, occurred in a fifteen year period between 1667 and 1683. During the 25-year hiatus between the two clusters of Court of Assistants rape and attempted rape prosecutions only eight men were tried for attempted rape in the Essex County Quarterly Court.

In the first cluster of rape prosecutions, between 1636 and 1642, both the assailants and their victims were unmarried young persons. Four of the men were indentured servants; the age of the fifth, Jonathan Thing, 17, suggests he was too. Three of the women they assaulted were teenaged servants. The fourth, Mary Greenfield, was a seven-year-old who lived with her family. The punishments levied by the court during this period were consistent. Two attempted rapes in 1636 and 1639 were punished by a whipping and a short prison term. In the 1639
case the attempted rapist was ordered to compensate his female victim with five pounds. In 1641, Jonathan Thing, Mary Greenfield’s rapist, was whipped, and ordered to pay the victim’s father 20 pounds in three years. Had he committed this offense a year later, when the rape of a child under the age of ten was, for a brief period of time, a capital crime, we might have seen a young man executed for rape in Massachusetts. Two more indentured servants, Robert Wyar and John Garland, were charged with rape as the result of an outing they took with two young female servants. There are no surviving depositions from these early cases, so it is impossible to determine if penetrative sexual activity occurred on this instance, but Wyar and Garland pled guilty to filthy dalliance, which left their partners exposed to fornication prosecutions. Wyar and Garland were whipped in both Boston and Cambridge and required to pay

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28William Hackett, a youth of similar age, who may have been developmentally-impaired, was executed for buggery in 1642 under the new Body of Liberties. Dunn & Yeandle, Winthrop, 197.
five pounds to their masters.\textsuperscript{29} Their partners were also whipped in Cambridge where they lived.\textsuperscript{30}

This initial cluster of rapes and attempted rapes, though it presents a limited number of cases, provides the first opportunity to assess the attitudes of the elected representatives to the Court of Assistants to sexual violence. All five of the men were whipped, but so were two of the women who reported rapes. Compensatory payments were made on four of the five occasions, but in only one case was the payment made to the victim. None of the rapists or attempted rapists suffered a penalty more severe than that paid by a man who fathered an illegitimate child during consensual coitus. Even in the early years of colonial settlement, while men received harsher punishments than women for premarital fornication, the ideology of the lustful woman and issues of consent made it impossible for woman who had been raped or sexually assaulted to secure a conviction. Given the penalties paid by women who reported

\textsuperscript{29}When Thomas Boise was ordered to pay his victim £5 in 1639, that seemed to be a sensible attempt by the court to provide compensation and a cash sum that could be used to augment a dowry since his victim, Sarah Jusall, would find it more difficult to acquire a husband after this incident. I cannot find evidence that she married although some marriage records from this period are lost.

\textsuperscript{30}The women were 17-year-old Sarah Wythes and 14-year-old Ursula Odle. Odle is the only woman in this group of five whose marriage I can trace.
rapes even in the period most favorable to women, it would not have been in their best interests to do so.

No rapes or attempted rapes were prosecuted by the Court of Assistants between 1643 and 1667, though eight attempted rape cases were tried by the Essex County Quarterly Court. All involved young single women who fought their assailants. Sixteen-year-old Dorothy Pray, a servant in John Hardman’s house in Ipswich provided an almost comic description of her struggle against John Bond in 1650:

John Bond took her up in his arms and carried her out of the kitchen into another room upon the same floor where there was a bed standing and that this deponent bid him leave her alone and withall hung upon one of the door posts & called for Goodwife Loose, but John Bond carried her forcibly into the room and having there put her down he put forth his hand and shut the door after them in which interim this deponent took her[self] upstairs (there being in that room a little short ladder of about 4 or 5 rungs that went up into a room overhead) to run up that ladder and being got overhead the boards not being laid on the upper story, she this deponent got down into the room out of which John Bond first carried her & she left him in the room where he had set her down.31

At this point her employer came into the house and remonstrated with Bond, telling him: "This must not be so on a Lords day." Hardman may have had more to say that went unrecorded; but he appears to have been more troubled that the attempt was made on a Sunday than that the attempt was made on Pray. Bond’s

punishment for this frightening assault on a 16-year-old servant was to sit in the stocks for one-half hour.

As noted in Chapter 2, Sunday, while the master and mistress were at church and female servants were left at home to tend infants and sick children, was a time of special vulnerability for servants. A 1656 deposition by Rebecca Black of Ipswich is ambiguous because it gives no clue to her eventual fate. A rape may have occurred as her deposition ends with her "penned" in, but William Linkhorn, also a servant, was charged only with abusive carriages and sentenced to be whipped in Black's presence. Having ascertained that her employers were at meeting, Linkhorn:

rose from his stool and sat in my lap and kissed me and I strove with him and could not get him off from me & then he rose up and looked out of doors and came in again 4 times and would not let me go forth. Then I went to the cradle to see how the child was to get from him. Then he took me by the shoulders and thrust me against the table board and put his hand under my coat to my shift and put his other hand into his breeches. I strove so with him that made me sweat and I had much ado to keep myself from him and I did as much as I could for my life to get away: and there was a chest stood by and he took me about the middle to throw me upon the chest and I said to him, you ought to be at home and not to play upon the Sabbath day but go home and read the book and just let me go and look to our children and would not let me go so I strove with him and pinched and scratched him and kicked him and he would not let me go forth but shut the door and penned me in.\(^\text{32}\)

\(^{32}\text{W.P.A. transcription, 3-60-4.}\)
We have only Black's version. It appears that she used three strategies, two of them passive, before meeting Linkhorne's violence with increasing physical assertiveness of her own. Her first strategy was evasion. She went to the baby's cradle to get away from him. She tried persuasion, suggesting he go home and read his Bible. Finally, she fought him vigorously.

The minimal punishments applied to assaulters indicate clearly that Puritan jurists did not regard male sexual violence as a serious crime. John Bond was sentenced to sitting in the stocks for half an hour for his attack on Pray. A half-hour of humiliation is not a severe penalty. In 1652, John Dawson was "fined for abusing the daughter of his master in a foul manner. Ordered to serve his master one year longer." In 1654, James Harmon was presented for "quarreling and attempting the chastity of Damaris Laskins and Bathsuah Ramand." For these offenses Harmon was bound to good behavior. At the previous court session, Cornelius Hulett had been sentenced to be whipped ten stripes for fornication. The court considered Hulett's consensual sexual activity that resulted in marriage to be a more serious crime than Harmon's attempted rape of two women.

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33Records and Files, Volume I, 275.
34Ibid., Volume I, 380.
35Ibid.
The second cluster of rape and attempted rape cases occurred after a 25-year interval with no recorded prosecutions at the superior court level which had jurisdiction. Twelve of the 17 cases tried by the Massachusetts Court of Assistants between 1636 and 1692, or seventy per cent, occurred in the 15-year period between 1667 and 1683. The five men who were hanged for rape were executed during this 15-year period. In one quarter of the cases, the female victim was also declared culpable, and these cases were referred back to the Quarterly Courts and tried as fornication cases. There were no further rape or attempted rape prosecutions prior to 1692 by which time the population of New England had reached 90,000.36

Four of the defendants in this second cluster were non-white. Three of them, Tom Indian, Twenty Rod, and Samuel Indian were tried in the four-year period prior to King Philip's War. All of them were convicted. Twenty Rod brutally raped a nine-year-old native American child while drunk. He was ordered deported to the Caribbean and sold. Tom Indian raped a married native American woman and was hanged. Samuel Indian was found guilty of the attempted rape of a 52-year-old Puritan woman, Mary Bacon. His fate is unrecorded. The fourth was an African American, Basto Negro, who raped his master's three-year-old daughter in 1676. His master, Robert Cox, petitioned the court

to have Basto, who had been sentenced to hang, released to him.  

In each of these cases, the victim was either a child or a married woman so the cases clearly came under the jurisdiction of the Court of Assistants where they were tried.

No young man, whether white, African American, or native American, was ever executed for raping an unmarried woman, although jail terms, fines, and, in Peter Croy's case, the wearing of a symbolic noose, were imposed as punishments. The law allowed judges discretion in sentencing unless the victim was either married or under the age of ten and the judges exercised this option. The judges, whatever the depositions stated, assumed that the victim had consented, had provoked her rape through seductive behavior or that coitus had resulted from consensual petting that got out of control. Such rationalizations were not possible in the case of the last man to be convicted of rape prior to 1692, William Cheney, a middle-aged, married and prosperous Dorchester planter. He was convicted and executed for the rape of his unmarried maidservant in 1681. (The Cheney case will be discussed below.)

There had always been a dissonance between Puritan religious ideology that ascribed spiritual equality with men to women and popular cultural beliefs about women. In the first cluster, between 1632 and 1642, a conviction was secured in each

37There is no record of Basto's fate.
instance, although the sentences were not severe. The adoption of the Halfway Covenant in 1662 to make church membership more inclusive was symptomatic of a general decline in religious fervor. Massachusetts had been increasingly drawn into the Atlantic community, and early modern English economic and social values competed with the Puritan ideal. Fornication prosecutions increased in number. This increase resulted not from any intensification of already strenuous efforts by the Puritans to control sexuality in the face of a changing moral climate; rather a greater numbers of couples were engaging in extramarital sexual activity, despite the social controls long in place in the Puritan community. Prosecutions for rape at the superior court level, as evidenced by the second cluster of rape prosecutions between 1667 and 1683, also resumed.

The sample is too small to draw definitive conclusions about the prevalence of sexual violence in seventeenth-century Massachusetts but some inferences can be drawn. First, the very fact that the sample is so small indicates that the likelihood a woman who was raped would report it to the authorities was low. We can infer that the consequences of a public admission of loss of virginity were severe. Only three of the ten girls or young

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38 In the three five year periods prior to 1671, 10, 11, and 12 married couples were prosecuted for fornication. Between 1671 and 1675, despite the fact that there were no prosecutions in 1671, the number of prosecutions for the following four years more than triples to 37.
women who were unmarried at the time of their rape can be definitively proved to have married. One of them, Urula Odle was fourteen when she was raped in 1642. Grace Roberts had been eight at the time of her assault, so in both these instances, considerable time elapsed between their rape and their marriage. A third woman, Elizabeth Holbrook who was nineteen when she was raped, did not marry until she was 32. A loss of chastity, however involuntary, apparently represented an obstacle to future marriage.

Second, there was a risk to accusing a man of rape. Six of the eight single women of marriageable age found that when they made a charge of rape or attempted rape that was prosecuted in the Court of Assistants they were subsequently charged with fornication themselves. For example, Elizabeth Pierce's rapist, Benjamin Simonds, was tried for rape and convicted of attempted rape by the Court of Assistants. Despite this verdict, Simonds was retried three months later for "wanton dallying with Elizabeth Pierce tending to uncleanness" by the Middlesex

\[39\] Clarence Almon Torrey, New England Marriages Prior to 1700, (Baltimore: Genealogical Publishing Company., Inc., 1985). The 30% marriage rate is comparable to that of women who were convicted of illegitimate fornication. Ninety-eight percent of Essex County women married.
Quarterly Court. As a result of this, Pierce and Simonds were convicted of fornication and each fined two pounds.

Efforts were also made to intimidate witnesses. A 27-year-old married woman, Mary Ash, was harassed by her rapist and his brother. In an attempt to frighten her and confuse her about which brother had been the actual rapist, Samuel Guild and his brother, John, appeared repeatedly before her at her house wearing identical clothes. This behavior did not help Samuel. He was hanged because the woman he had raped was married. There were no issues of consent to muddy the waters: Guild was guilty of adultery, also a capital offense.

Third, the justices followed the letter of the rape law in all but two instances. A married tinker, Thomas Waters, who was found guilty of raping 19-year-old Bethiah Johnson, was sentenced to banishment. This is an aberrant decision because Johnson had admitted to drinking beer with Waters and acquiescing to a degree. Waters, however, was a "lawless vagabond, in trouble for lying, cheating, theft, and swearing." The authorities may have welcomed an excuse to expel him from Massachusetts. William Cheney, as mentioned above, was hanged,

40Thompson says that "somewhere along the line, evidence, now lost, probably came out that she was a less unwilling victim than she appeared." Sex in Middlesex, 80. The timing of the trials suggests that after the attempted rape conviction in the Court of Assistants, it was discovered that Pierce was pregnant.

41Ibid., 80, 81.
but he had compounded the rape with an escape attempt and his age and status precluded returning him to the community unpunished. All of the rapists except Cheney who were executed had attacked either a child or a married woman.

My contention that men were privileged by the courts when it came to their sexual behavior is well-illustrated in the November 1670 case of Hannah and Elizabeth Hebbard of Beverly. Two young men, John Rayment and Thomas Chubb, knowing the women's parents were absent, disguised their voices, knocked on the door, and stated that they were cold and lost and just wanted to come in to light their pipes and then they would be gone. Once in the house, they went to the room in which Hannah and Elizabeth slept, and:

coming to their bedside after many debased speeches one came rushing upon the beds feet the other upon the bed side and being both upon the bed using much debased behavior tearing of the curtains and pulling of the bedclothes and pulling and hauling of her in a most barbarous manner til she was quite spent and tired out with striving with them which was an hour and a half at least if not two hours as they verily thought til she, namely Hannah, was in a dripping sweat though in a cold winter's night, as though she had newly come out of a river, yet she used all loving entreaties with them to refrain such horrible

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42 If Rayment and Chubb had not disguised themselves, an argument could be made that the court was lenient because it assumed that the young men were merely engaged in vigorous courting. This was not their sole brush with the law for sexual misconduct. Thomas Chubb married in May, 1672 and was presented for premarital fornication the following year. Records and Files, Volume V, 221. Rayment was cited for uncivil carriage to Hannah Goldsmith and fined in November 1679. Goldsmith was whipped. Records and Files, Volume VII, 239, 314.
attempts to the dishonor of God and both her and their undoing: she told them for they both set on Hannah: that so long as she had breath in her body she would never yield to them: she blessed God that kept her by His grace that they deflowered her not in that cruel barbarous assault: furthermore they smelled so strongly of drink she could not endure their breath: so when they saw they could not prevail they went away.⁴³

An hour later, Thomas Chubb returned. Maybe he had sobered up enough to be concerned about the possible repercussions of his behavior. The room had been dark; he and Rayment had disguised their voices, and he was anxious to know whether or not he had been recognized. Or, angry at his rejection, he may have returned to renew his assault. He slipped into the house a second time, stood at the foot of the bed, and whispered to them that they did not know his identity:

Hannah said yes but we do: Stand away get you gone, Tom Chubb. You are Tom Chubb. So with that he seemed to be like a mad fellow and put one of his elbows on Hannah’s stomach the other on Elizabeth’s stomach lying on them with all his weight til they were almost dead groaning hard for life. He laughed at them and mocking them groaning as they groaned: but then God would not suffer him any further in that kind: so then he took away his elbow and took Elizabeth by the heels and pulled her. . . . Hannah across the bed then he laughed in a mad and furious way swearing divers oaths and vowing that he would have his will of her telling her that he was stronger

⁴³W.P.A.transcription, 18-35-1.
than she: but when he saw all would not do for as she saith God was her keeper and deliverer from the abominable act attempted by these sons of Belial: he went his way slamming the door after him."'

Hannah and Elizabeth had not been alone in the house. Their 84-year-old grandmother testified that she had heard them "prancing with their horses to the door" and beating on the side of the house. They had blundered into her room in error, while searching for Hannah and Elizabeth. Her failing eyesight and the fact that she was responsible for a young child who was sleeping with her prevented her from going to her granddaughters' aid, she testified, although she had heard a "great lumbering" in the other room and "lay trembling."

The following day, Hannah and Elizabeth complained to a grand juryman. Immediate pressure was placed on them to recant. First came John Rayment, who slapped Hannah for reporting the assaults. Then Thomas Chubb's mother appeared and reminded Hannah, that, as in other similar cases, it would go worse for her than for him. John Rayment came back again, this time accompanied by his cousin, Mary Cook, and insisted that Hannah sell them some cider. Hebbard refused, saying she dare not sell them cider, but eventually she did: "When he had thus caught her he bragged that now he had as great a matter against her as she had against him and that he would have her presented for

"Ibid.

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selling cider." Rayment alternately threatened and cajoled. After a third visit, he promised to go to the grand juryman before her parents returned and make an arrangement for reparations. They obviously came to an agreement because Rayment was never charged.

Matters could not be resolved so easily for Thomas Chubb because the horse he had ridden to the Hebbard’s house that night had been stolen. Stealing a horse was a much more serious crime than attempted rape. He was sentenced to pay eight pounds to the horse’s owner and a five pound fine to the Essex County Quarterly Court for horse theft. For the assault on Hannah Hebbard he was whipped and required to pay her 40 shillings.

The Hebbard sisters endured a night of terror during which they fought their attackers aggressively. But yet again, the behavior of Chubb and Rayment was construed to be within the acceptable parameters of male behavior. Had Chubb or Rayment

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45W.P.A. transcription 18-37-1. The cider contained alcohol which Hebbard did not have a retail license to sell. Her parents may have been running an inn which could serve travelers but not locals. I’m trying to flesh out their identity. I think the name "Hebbard" may be a corruption of Hubbard.

46During the course of Rayment’s visits that day he had said that if she (Hannah) expected to get two cows from him out of this, she was mistaken. His insistence on making arrangements with the grand juryman before her father returned, suggests that the formal complaint had to be laid on Hannah’s behalf by her father. It also suggests the possibility that this type of case could be resolved informally with a financial settlement.
proved successful, however, and had one of the sisters become pregnant as a result of rape, she would have been labeled complicit and convicted of fornication. This case, and those that precede it, dispel the notion that rapists and attempted rapists in Puritan Massachusetts were brought to account for incidents of sexual violence committed against unmarried women.

**Selected Rape Cases**

In this section I will examine two rape cases that were prosecuted in the Court of Assistants in detail in order to illustrate the circumstances in which sexual violence occurred and to determine the reasoning processes of the Puritan juries. In the first instance, the victim was a 13-year-old Ipswich servant. Her assailant was 20, and in common with other male defendants of similar age he received a nominal sentence. The second case also involves a young female servant. Notably, her rapist was her married master, William Cheney, and he became the only Puritan man in seventeenth-century Massachusetts to be executed for the rape of a single woman. It should not be surprising to learn that Cheney had more offenses to his account than the rape of a young servant.

**Sarah Lambert**

Sarah Lambert’s rape trial demonstrates the difficulty of securing a rape conviction given the rules of evidence and the
reluctance of the Court of Assistants to punish youthful male defendants to the full extent of the law despite a preponderance of evidence and the youth of the victim. Lambert was a 13-year-old servant when she was raped in 1673. She and her 15-year-old sister, Mary, had gone to collect their mistress' cattle at dusk from Ipswich's day pasture. Her assailant was a 20-year-old French servant, Peter Croy, who was searching for his master's cows in the same darkening field.

Lambert provided a graphic description of sexual violence.

She testified:

Peter Croy came to her and took her by the middle and threw her on the ground and took up her coats and lay upon her belly. She cried out to her sister that was not far off and he stopped her breath with his hand on her throat. He lay upon her a long time and she felt his member in her body which did hurt her and afterward she felt wet upon her shift and that her privy parts did burn.

Her sister, Mary, added that:

when my sister cried out he took her by the throat with his hand and stopped her breath. I bid him come off her and he said he would presently and bid me hold my tongue or he else he would cast my coats. I saw his naked privities and the agitation and thrashing of his body upon my sister and after a considerable time he rose from my sister and went

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47Lambert's date of birth is recorded as 1660. She would have turned 13 some time during the year she was raped. However, given the fact that Croy was not convicted and that the rape occurred October 31, 1673, it is likely that Lambert had reached her 13th birthday.

48Suffolk County Court record #1254.
away and afterward I saw the prints of his nails on my sister's throat.49

John Divan, Croy's 13-year-old companion, reported:

I stood still and heard one say, you french cur, let me alone. Soon after I went toward the place I heard the voices and I saw Peter Croy brushing his cuff with his hand and Sarah Lambert was rising from the ground and went away homeward. When I came to Peter I said to him you have been playing the rogue with Pods girls. He said no I swear I have not but as we came home Peter Croy bid me say nothing.50

The testimony of Mary Lambert and Peter Croy met an important Puritan evidentiary requirement. Both could attest that Sarah Lambert had cried out. Only Mary Lambert, however, could provide direct eyewitness testimony because Divan had arrived as Croy straightened his clothes. The testimony of two eyewitnesses or a confession was required to convict in capital cases.

The sequence of events over the next few days can be learned from Peter Croy's testimony. Sarah and Mary Lambert did not tell their employer, Mistress Pod, about the rape until the following morning. This was not the timely disclosure hoped for by the court. Mistress Pod waited a further four days before informing a magistrate. Whether she was inhibited by the harm that public awareness might cause Lambert's sexual reputation,

49Ibid.

50Ibid.
or by fear that the news might place her household in a negative light is unknowable. Croy claimed that Mistress Pod had gone to the magistrate: "for fear that she should prove with child and then she should be undone forever."

Two panels were assembled eleven days after the supposed rape. Lambert’s body was examined by a committee of women who determined that she had been penetrated by "this or some other man." Croy and the other witnesses were questioned by a grand jury. Croy provided a statement which allows a unique insight into his actions. He pled not guilty and requested a jury trial. He admitted that his intent was to have sexual intercourse with Sarah Lambert:

I confess I would have been naught with wench whether she would or no but was hindered from carnal knowledge of her body by reasons John Eyres came and called to me which made me rise up before I could complete the act. Nor could it be conceived that I could easily in that time commit the act
1. Because of my clothes were all up and I was not naked with her nor did I fully enter her body.
2. Her sister might easily have hindered.
3. There were no signs of her being deflowered that were seen or observed.
4. If I had committed the act I humbly conceive I could not legally be charged with it by Sarah or her Dame Pod
   1. Because Sarah never spake of it either to John Eyres when he came to us or any else
   2. Nor did she speak of it to her Dame until next morning & her Dame did not complain to any officer until 4 days after and that was only for fear she should prove with child & then she should be undone for ever as she said.\(^{51}\)

\(^{51}\)Ibid.
This statement was sufficient to bind Peter Croy over to the Massachusetts Court of Assistants on a charge of rape. It contained internal inconsistencies. While Croy said he didn’t get his clothes off, Mary Lambert contradicted this assertion and Croy admitted he had partially entered Lambert’s body. What is most striking about his deposition is that he admitted he had intended to have sex with Lambert whether she was willing or not. The lack of respect is chilling -- he called Lambert, a 13-year-old, a wench.

Croy recanted this statement. While he could not prevent its being read in court, he said he would not stand by it. In a second deposition, he denied pulling up her "coat" and stopping her cries. When he was asked the crucial question, whether or not he had sought Lambert’s consent, he refused to reply.

Croy admitted that he had met Lambert and her sister, Mary, in the field:

and that he was with Sarah. Being asked whether he did not throw her down and lie on her or lie with her he made no answer. Being asked whether he did not pull up her coats he said no, whether he did not stop her breath when she cried he said no, being asked whether he asked her to lie with him or whether she consented he said nothing.

The prosecution was at an impasse. The requirements for conviction in a capital crime were strict and they had not been met. Lambert was no longer a virgin, but there was only one eyewitness, reporting had been delayed, and Croy refused to
confess and withdrew his statement in which he had admitted to intent to rape. He could not be convicted. An ambiguous verdict was issued:

The Jury finds by evidence the body of Sarah Lambert deflowered by Peter Croy or some other: and the party affirming it to be by the said Croy; one positive evidence expressing the beholding actions tending to the same and hearing Sarah Lambert to cry out; with other circumstantial evidence, which if all amount to two legal evidences; or equivalent thereunto. Then we find Peter Croy guilty according to the tenor of this indictment; but if not not guilty.  

Croy had a poor reputation locally. The previous year he had been convicted of stealing wine and other foodstuffs from his master and partying with a group of similarly-placed young male servants. Since Croy was charged with not wearing his noose around his neck at the Essex County Quarterly Court in Ipswich, May 1674, it appears he was convicted of rape, but given only symbolic capital punishment. Wearing a noose served the dual function of shame punishment for Croy and warning for the community that there was a convicted rapist in their midst.

Two factors need to be considered in order to determine why the jury ruled as it did. First, in 1657, "Richard Lambert's daughter" was placed on the welfare rolls in Salem.

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52 Records of the Court of Assistants of the Colony of Massachusetts Bay, Volume III, (Boston: Suffolk County, 1928), 258.

Another Sarah Lambert was convicted of fornication when the Sarah Lambert under consideration here was seven, in 1667. From 1657 to 1713, various Sarah Lamberts and assorted children appear on the welfare rolls, and it is likely that a local negative perception of the Lambert family may have contributed to Croy's light sentence. Given the reputations of the other women in her family Sarah Lambert may not have been able to generate much sympathy for her case. The second factor is that Croy's employer, Mr. William Hubbard had a vested interest in securing the return of Croy to his service, since Hubbard had paid eight pounds in fines to the court on behalf of Croy for his thefts, and in consideration of this the court had ruled that Croy was to serve Hubbard an additional two years after the completion of his indenture. A third factor that might have influenced the court was that Croy neither confessed nor denied the rape. Any analysis, too, is based on surviving documents. There may have been other unrecorded considerations, such as a penitent attitude, or a plea by Croy that influenced the court's decision.

Seven years later, on a cold, moonlit January evening in 1680, the same young woman, now 19, was accosted by John Hunkins

54 The family appears to be very poor. More than one Sarah Lambert was boarded out to local families who were paid approximately 7 pounds per annum for keeping them. They changed households frequently so it may be that they were difficult to look after. At least three generations of Lamberts were kept in this fashion. Salem Town Records.
as she crossed Mr. Nathaniel Roger's pasture. He "overcame her by persuasion that he would do her no hurt and there lay with her." It is impossible to measure the degree of coercion implied in this statement. The "no hurt" may have referred to a shared assumption that intercourse without affection or a mutual orgasm would be necessarily sterile. The phrase may have represented a physical threat. Despite Hunkin's assurances, Lambert became pregnant. She was convicted of fornication and given the option of paying a fine or being whipped. John Hunkins denied being in Mr. Roger's pasture that night, let alone having sex with Sarah Lambert. Since he was already supporting one illegitimate child, the judges did not find him credible and bound him to pay 2s. 6d. per week in corn to Goodwife Pod, still Lambert's employer, who was given charge of Sarah Lambert's child.

Sarah Lambert aptly illustrates the dilemma faced by victims of sexual violence in seventeenth-century Massachusetts. As a girl of twelve, she was raped undisputedly but was unable to secure a meaningful conviction against her attacker who was returned to her community. She was victimized again in 1680 by John Hunkins, a sexual predator who had already impregnated another young woman, Hannah Hayward, three years earlier.

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55 Records and Files, Volume VIII, 12.

56 Statement in Chase deposition, Emerson case.
Because she conceived on this occasion, she was charged and convicted of fornication.

A rape victim was perceived not merely as a woman who had been deprived of her virginity by force, but as a woman who had had her sexual appetite aroused in an untimely manner and who could not be trusted to act in a chaste fashion in the future. Extrapolating from modern psychological research it seems likely that Sarah Lambert, in common with up to 80% of rape victims today, suffered from depression and low self-esteem.\(^\text{57}\) The justices of the Essex County Quarterly Court were not surprised by Lambert’s later sexual behavior. They had no way of comprehending its link to psychological trauma; their understanding was linked to their heartfelt belief that women were innately carnal, a belief shared by John Hunkins.

**Experience Holbrook**

Experience Holbrook was the only unmarried woman whose rapist was executed. William Cheney was a prosperous, married middle-aged planter who owned farms in Dorchester and Medfield. In August 1681, Cheney entered the bedchamber of his 20-year-old servant, Experience Holbrook, and raped her. This was the

culmination of an escalating spiral of harassment and violence. He had beaten her violently at least once in the previous year.58

In August of 1681, Cheney had been married for at least 20 years, and his wife, Deborah, was six months into her ninth pregnancy. At least five of their previous children had died, and it is probable, given the Puritan taboo against sexual intercourse during pregnancy, as well as Deborah Cheney’s medical history, that they were refraining from sex.59 The situation was exacerbated by the presence of Elizabeth Holbrook in the household. Sixteen-year-old Elizabeth Treslott, who lived next door with her parents, testified that Holbrook had told her that Cheney had:

offered her a new gown to lie with her & would ride to Medfield with him and stay for a whole week. She said she would not be whore for a new gown.

Holbrook had "cried out lamentingly" to Treslott, and asked her to accompany her to the loft to get some flax so that Cheney would not catch her alone. Treslott quite sensibly asked Holbrook why she had not complained of Cheney's activities to his wife, Deborah. "She said her dame would tell her she lied

58A neighbor testifies at Cheney’s rape trial that she had seen Cheney hit Holbrook so hard that she had fallen to the street. He kicked her as she lay there, and when she struggled to her feet, he followed her into the house brandishing a stick. Suffolk County Court microfilm #2024.

59Deborah Cheney was no luckier this time. A son, Abiel, was born after her husband had been executed. He died three weeks later.
and not believe her." Later Holbrook told Treslott that "her
dame was angry and did beat her because she had said anything of
it."

The morning after the rape had occurred, Holbrook told
Treslott what had happened. She said:

Betty did you not hear me cry out, yes said I what is
the matter. She said the devil had played the rogue
with her. I asked her if the master had ever done
for to her before. Yes he used to follow her up and
down.

Treslott further claimed that while she had been aware of
Holbrook's circumstances before the night in question she had
withheld the information because she was afraid that William
Cheney would kill her if she spoke.

Holbrook had been in an impossible position, beaten by
William Cheney because she would not yield and beaten by Deborah
Cheney when she went to her for protection. Cheney demanded her
silence:

She said her master "bade her not confess it" after
her hand that his carriage to her was known, he was
angry with her, asking her had she prated to any body
what he had done. She said she told her master she
had said nought but a word or two to Betty, ___ but
she told (him) she would not lie__, to deny it but
would stand to, if she had to, ___ the truth.

Her only confidant was the 16-year-old Treslott. On that night
in August, however, she screamed and Cheney's activities were
exposed. He was arrested and charged with "feloniously
commit(ting) a rape on the body of Experience Holbrook his
servant and had carnal copulation with her by force against her will she crying out it was heard."\textsuperscript{60}

The drama did not end with Cheney's arrest. As Cheney was being transported from Dorchester to Boston for trial, he asked to go home to fetch a clean shirt. The constable, 21-year-old Samuel Rise, in deference to Cheney's status in the community, saw no reason to refuse Cheney's request. As the constable stood holding his horse, waiting for Cheney's return, the neighbors shouted that Cheney was escaping across the field:

I made haste after and overtook him, he having gone a quarter of a mile before I overtook and when I came near him he had his knife in his hand and said I vow Samuel that if you come near me I will stab you, and so I followed him and taking advantage I struck him a blow on the head and gave him a (kick) and he fell down and so I took his knife and gave it to Joseph Hopkins but then William Cheney said that he would go along with me willingly.

While this was the most serious breach of Puritan sexual mores committed by Cheney, it was not the first. He had married Deborah Cheney, a prominent minister's daughter in 1661 because she was pregnant. By the late 1660s he was living apart from his wife until his father literally manipulated him from the grave by stipulating in his will that Cheney would lose his Medfield property, in which he was living at the time, unless he

\textsuperscript{60}Suffolk County microfilm, Case # 2024, William Cheney, Sept. 1681.
reconciled with his wife. Otherwise the property was to be administered by his father-in-law for the benefit of his wife.61

Cheney was sentenced to death because his behavior violated the accepted norms of the Puritan community. He had abused Holbrook repeatedly and he had tried to escape from the authorities. When confronted by Rise, he had pulled out a knife. While Puritans understood that young men might have uncontrollable sexual impulses, however regrettable and act upon them when tempted, Cheney had been a solid member of the community. His behavior could not be explained or accepted in terms of an irrepressible urge because he was fully adult and married.

Fornication Cases in Which the Depositions Imply Coercion

A number of depositions filed by women in illegitimate fornication cases in the Essex County Quarterly Court indicate that violence played a role in the sexual activity.62 Sixty-three per cent of the women who describe the circumstances under which they conceived were between the ages of 15 and 20 and worked away from home. Their situation made them vulnerable. In an economic system where production occurred in a patriarchal


62This could indicate that the depositions that survive were selected for retention by archivists who recognized that they represented a departure from the norm.
household containing a husband and wife, sons, daughters, apprentices and servants, both male and female, and every person worked, ate, worshiped and slept (often in the same room) as part of a family unit, the potential for physical and sexual abuse existed.

When an unmarried woman conceived, no matter how vile the physical assault had been, how virtuous the young woman had been perceived to be in the past, or how many witnesses there were to attest to the fact that she had been forced, there was no possibility of a rape prosecution. As Dalton had stated, and popular opinion believed, conception, to the Puritans, "proved" that a victim had consented to her rape.

In this section I will discuss some of the cases in which a pregnancy precluded a rape prosecution, despite an atmosphere of coercion. The first case is the most benign example, but it demonstrates a continued and persistent sexual pursuit. Susannah Durin was a servant in the Cromwell household in Salem in 1668 when she and a fellow servant, William Reeves, were charged with fornication. Durin presented a series of depositions that indicated that she had been harassed by Reeves. A neighbor testified that she had slept with Durin for a whole year in order to protect her from Reeves. 63 A friend of Reeves

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63 Lawrence Stone, Uncertain Unions: Marriage in England 1660-1753, (Oxford: Oxford University Press, 1992), 51, demonstrated that the act of sleeping alone could be construed as an invitation to sexual intercourse.
deposed that Reeves had secured a love potion to make Durin look
upon him more favorably, and that Reeves had asked him why Durin
left the room every time he entered it. Another neighbor, Sarah
Williams, testified that Durin:

has often made moan that she was so perplexed with
Will Reeves that she knew not what to do. She wished
that somebody would tell her mrs.; & that she might
go out to live some where til he were gone.64

Fifty-two-year-old Elizabeth Price admonished Reeves about
his behavior:

I took occasion to speak to him of the heinousness of
the sin of fornication which he was reported (and
affirmed by the young woman) to be guilty of I asked
him why he would act so foolishly, he answered me
that having a great affection for the maid with whom
after which this act was committed, he thought it the
best way to attain his desire, further I told him the
young woman did confess that he had not been with her
twice as aforesaid his answer was it was enough.65

Given that Susannah Durin went out of her way to avoid Reeves,
and that Reeves admitted that they had intercourse only once,
the statement that "he thought it the best way to attain his
desire" would seem to indicate that Reeves had used force,
hoping that Durin would then feel obliged to marry him. She,
however, did not.

64W.P.A. transcription of the Essex County Quarterly Court
records and files.

65Ibid.
A second case involved Anne Chase of Salisbury. Although her father was a prosperous carpenter, Anne Chase, at the age of 22, was working in at least her third household. At the time she became pregnant, she was a servant in the household of her uncle, Henry Wheeler, and his wife, Abigail. They had seven children ranging in age from ten years old to eight months old, including two-year-old twins. Chase’s labor would have been essential to the maintenance of a household that included so many young children. In 1669, Mrs. Wheeler’s brother, John Allen, came to stay with them. During Allen’s stay, Chase moved in with Abigail Wheeler’s sister’s family. It is impossible to know if she left the household each night because there was no room for her to sleep in, or if Abigail Wheeler’s 21-year-old brother was harassing her. On a March evening, she left John Allen sitting in the Wheeler household to walk from the Wheelers’ to the Hubbard household:

She knew nothing of his coming from hence until he met her by the way as she was going to her lodging and suddenly laid hands on her; and she told him he would wrong her: his answer was he would right her again: she said that she would cry out, he told her that he would stop her mouth, and he forced her

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66 It was not poverty that drove Chase out of the household. When her father died the following year, he left an estate valued at 336 li. 14s. 3d. Chase was the second of eleven children.

against the Rails, and she being in a sore fright was not able to cry out.\textsuperscript{68}

Anne Chase was prosecuted for fornication in May, 1670, and sentenced to be whipped or to pay a fine. She had borne an illegitimate child, whom she named John Allen for his father, in late December. The midwife, Elignor Baily, testified:

\begin{quote}
(t)his she constantly affirmed, being in labor and extremity about six days, and in appearance at the point of death I often told her that her pains continued the longer because she had not spoken the truth; her constant answer was, that if she died for it she had spoken the truth and nothing else.
\end{quote}

Chase was not a stranger to Baily. She had worked for Elignor Baily previously for two years. Baily testified that:

\begin{quote}
"she never saw any light or unseemly carriage all that time."\textsuperscript{69}
\end{quote}

Still, Baily did not believe Chase's version of the circumstances under which she had conceived. Nor did the court. Allen was not charged with fornication, nor was he required to pay child support.\textsuperscript{70} This indicates how thoroughly the seventeenth-century residents of Massachusetts had inculcated the notion that conception was impossible unless the victim had consented to, and received pleasure from, that particular act of

\textsuperscript{68}Testimony of Elignor Baily, midwife in Newbury.

\textsuperscript{69}Ibid.

\textsuperscript{70}Allen and his wife Mary (Pike) Andrews were charged with fornication in October 1674. Records and Files, Volume V, 408.
intercourse. Chase had also worked for John and Mary Brown who attested that:

Anne Chase lived with us for a year and for our parts we never saw any light carriages by her but she kept the house and did not go out at nights but carried herself very honestly as far as we could perceive: nor never perceived any wanton carriages by her, but carried herself very severely and honestly as far as we saw.  

Chase's story is most illustrative because it not only describes a rape in explicit terms, but it notes the midwife's skepticism of Chase's account. There are other depositions, however, presented by witnesses and defendants in fornication trials that reveal coerced circumstances.

In 1653, Elizabeth Due, who had arrived in Massachusetts the previous year and found work in the household of Governor John Endicott in Salem, was hastily freed from her indenture and married to a fellow servant, Cornelious Hulett when she became pregnant. She claimed that Endicott's 18-year-old son, Zerobabel, was the true father of her child. The next door neighbors, Dulzebella Bishop and her daughter, Mary, testified on Drew's behalf:

(She) did complain of Zerobabel Endicott his unseemly carriage to the maid as when she was in an inward room at her work he would pull away her cushion from before her being making of lace and would throw her down on the ground. Afterward she came and told us that she went with Benjamin Skarlett & Zerobabel went to the farm and going ashore about two or three polls

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71Ibid.
from the water he followed her and cast her down in
the corn and such was his carriage that she said she
would not be his common whore for he had by doing or
ugly doing I am with child already. When I Dulzebell
heard these things I asked her how do Cornelious
carry himself. She said he never offered me wrong not
so much as kissed me in all the time he has been in
the house. I told her why do you not complain to
your master, the maid said she had told it to Mary
Gowen who told me that Zerobabel would have done as
much to me I know thy condition well alas poor
wench.72

Again, the acts described in this deposition indicate the
possibility that Due was raped and then fobbed off on another
servant. She was precluded from charging Endicott with rape
because she had conceived. That Endicott was her social
superior would also have been a deterrent. In fact, when Due
persisted in her claims, the Endicotts sued her for slander. It
took two public whippings to silence her.

These fornication cases show that when a woman conceived,
there was no possibility of pressing a rape charge. Her consent
was assumed, and consent, to the Puritans, was not just an
indication that the woman had verbally assented to intercourse.
It meant that the woman had had an orgasm, because this was the

72 W.P.A. transcription of the Essex County Quarterly Court
records and files. That the Endicotts released Due from her
indenture when, given that she could make lace, she was a
valuable servant, indicates a desire to silence her. It is
interesting to note that the only year between 1651 and 1664
that John Endicott failed to be elected governor of the
Massachusetts Bay Colony was the year in which Elizabeth Due
accused his son of fornication. He was reelected the following
year after the successful slander suits against Due.
necessary precondition for conception. The dissonance between the conditions under which many young women charged with fornication had conceived and their expectations of what was necessary for conception must have been considerable.

Conclusions

The recorded rape statistics understate the incidence of sexual violence against women. The legal assumption that conception implied consent deprived many young women of communal support and brought them to court as co-defendants. While no rape or attempted rape prosecutions were tried in the Court of Assistants after 1683, it is difficult to believe no woman was raped in Massachusetts between 1683 and 1692. In the five-year period between 1681 and 1685, in Essex County alone, 34 women had illegitimate children and a further 32 women were prosecuted for premarital pregnancies. Depositions presented by women prosecuted for illegitimate fornication suggest some of the sexual activity that did not result in marriage was coerced.

While I would like to conclude that the burden of evidence required for conviction was so difficult to meet because Puritan jurists did not want to see any young men convicted of such a heinous crime, this does not appear to be the case. The central issue for the court seems to be not that the sexual intercourse was accomplished through violent means, but that it had occurred at all. The generally light sentences given to young male
rapists and attempted rapists when the victim was unmarried, both in the Court of Assistants and in the Essex County Quarterly Court suggest that a certain level of coercion was an acceptable part of sexual activity. This sentencing pattern highlights the Puritan belief that women were responsible for initiating sexual intercourse. Women were expected to refrain from provocative behavior, to stay out of territory defined as men's, and to defend their chastity if necessary.

The penalties assigned to two sets of defendants at the September 1680 Essex County Quarterly Court session meeting in Ipswich illustrates the relative value the justices placed on male sexual violence and consensual sexual intercourse between unmarried persons. Twenty-one-year-old William Nelson was tried for the attempted rape of Mehitabel Avis, a child younger than ten. There was a witness to the attack, the testimony of Mehitabel Avis, and an admission of guilt from Nelson. Additionally, one of Nelson's friends told the court that Nelson had "buggered a cow." One might have expected a grand jury to send this case on to the Court of Assistants for adjudication rather than trying it locally. Nelson, however, was sentenced

73Records and Files, Volume VIII, 15.

74Nelson had powerful local connections in Ipswich. His maternal grandfather was Robert Cross and three of his uncles, all married to his mother's sisters paid one-half of his 50£ fine. Avis was an orphan who lived with relatives in Chebacco Parish a newly-settled part of Ipswich. Her relatives were leaders in a successful struggle against the local power
to be severely whipped. The defendants in the previous case, John Ring and Martha Lamson, were also sentenced to be severely whipped. Their crime had been the commission of consensual sexual intercourse.\textsuperscript{75}

structure in an effort to establish a church in Chebacco rather than making the long trip to Ipswich twice a week.

\textsuperscript{75}Records and Files, Volume VIII, 15. They were, however, given the option of paying a fine. The fine was to be reduced if they married, and Martha Lamson’s sexuality contained. They did not marry.
CHAPTER 6

"THEY ARE HERE MORE DISCOVERED AND SEEN": CONCLUSIONS

Introduction

This study of Puritan men and women who were prosecuted for fornication between 1640 and 1692 in Essex County, Massachusetts, provides a firm basis for sustainable inferences on sexual behaviors and attitudes in seventeenth-century Massachusetts Bay Colony. I have counted the defendants, read their words, traced their families, and examined their circumstances to develop profiles of the defendants. I have analyzed presentments, verdicts, and sentencing patterns to determine judicial attitudes. My data support five conclusions about Puritan sexuality. 1) Puritans successfully controlled extramarital sexual activity through a combination of criminal prosecutions of single women and single or married men who had engaged in coitus, and through cultural impediments that mediated against premarital sex. 2) The Puritan system of sex prosecutions deviated significantly from judicial regimens in other areas of the British Atlantic world. There was a broader range of criminal sexual offenses and men were prosecuted in greater numbers in New England than in other jurisdictions. 3)

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Women paid a higher price than men for violating (or being forced to violate) laws prohibiting sexual intercourse between single women and single or married men. 4) Many of the women who were prosecuted for breaking laws against extramarital sexual intercourse were forced to do so by rape and circumstances beyond their control yet they were victimized by a legal system that privileged aggressive male sexual behaviors and treated women who experienced out-of-wedlock pregnancies with contempt. 5) Puritan sexual behaviors and attitudes were not static. There was considerable change from the initial decade studied to the final decade that parallels the the decline in religious intensity and increasing incorporation into the Atlantic economic community. The number of out-of-wedlock pregnancies increased in successive decades at a rate that exceeded the population increase and an initially harsh punishment regimen for both sexes was replaced in the 1660s by monetary fines for women and the substitution of child support payments for criminal prosecutions for men.

The Puritan Sexual Regimen

Reasons for Restricting Extramarital Sex

Puritans had moral, structural and economic reasons for prohibiting extramarital sexual intercourse. First, sex between single women and single or married men was explicitly prohibited
in the Bible which was foundational to Puritan jurisprudence. Intercourse unsanctioned by marriage was a sin and as such, Puritans believed, it exposed not just the persons involved but the entire Puritan Commonwealth to the wrath of God. Massachusetts was a corporate society in which the pursuit of individual interests, in this instance the satisfaction of sexual desire, had to be subordinated to the common good; it was essential that personal behavior be in conformance with community norms. Thus, there was a strong moral imperative against extramarital sexual activity in general (as prosecutions for "lewd behavior" such as kissing or engaging in verbal flirtation indicate) and extramarital sexual intercourse in particular.

There were, however, practical reasons as well for restricting sexual intercourse to married persons. The household served not only as the basic structure of society but also as the primary unit of economic production. Puritans were required by law to live in patriarchally-structured households. Married men who emigrated to New England without their families were expected to bring them over as quickly as possible. If they did not do this, they could be ordered to return to England themselves rather than be allowed to remain in New England with an ambiguous marital status. Single men were required to live in households as well. There was no way for a single woman (even if she had the financial resources) and her illegitimate
child to be incorporated as an independent family unit into a social structure that required single persons to live under the guidance of a parent, husband, or employer.  

The economic imperative for prohibiting extramarital sexual intercourse was considerable, as evidenced by the 1668 amendment that privileged the collection of child support over the punishment of male fornicators. Bastards represented a potential drain on town resources. Moreover, there were economic costs to employers in the form of lost or more limited production from pregnant female servants. In the initial two decades of settlement, when the demand for labor was high and the supply low, this loss represented an economic cost not only to the individual employer but to the developing society as a whole.

A different type of economic cost was borne by couples who married within 32 weeks of the birth of their child, their parents and siblings. An untimely pregnancy could be used to force the premature disbursement of family resources at the expense of more continent brothers and sisters. It limited the

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The young widow, Sarah Stickney, for example, while possessing the resources to live independently, bore two illegitimate children prior to marrying, or being married to, Stephen Ackerman. The general perception of Stickney in Newbury, where she and her family lived, was that she was sexually available. Stickney portrayed herself as a victim. Whichever perception is correct, Stickney needed marriage for sexual protection because her marital status meant potential harassers, and Stickney herself, would be charged with adultery.
length of time women had in which to amass the capital required to contribute their portion to the establishment of a separate household. And, while married women made undeniably important economic contributions to the economic well-being of their marital households, wages saved by female servants prior to their marriages served as important stimulants to the nascent household economy.

The contextual concerns of Puritans about extramarital sexuality conformed to a particular understanding of Scripture. Puritans worried that women who lacked a legitimate sexual outlet would be tempted to sexual intercourse with the Devil. They feared that young men would resort to farm animals for sex or to adultery. These fears were not without foundation as continuing prosecutions of women for witchcraft recurred throughout the seventeenth-century, culminating in the mass witchcraft trials in Salem in 1692. Concerns about bestiality surfaced much earlier, peaking in the 1640s. For example, in 1642 Thomas Granger of Duxbury admitted to having sex with "a mare, a cow, two goats, five sheep, two calves, and a turkey." Granger and the animals were executed.3

The basic structural and economic imperatives for restricting extramarital sexual intercourse did not deviate

significantly from other English jurisdictions, but the moral
impetus behind Massachusetts sex prosecutions that seemed to be
a primary consideration prior to the 1660s was distinctive. The
stakes were high for the first generation of Massachusetts
settlers. Extramarital sexuality was a sin of such import that
it threatened the existence of the Colony. Puritans believed
they had signed a Covenant with God in which He had promised
them prosperity and in return Massachusetts Bay Colony had
promised to live as perfectly as possible. Moreover, the Colony
had positioned itself as a moral exemplar to Europe. It
believed itself to be the cynosure of European eyes, and its
destruction, for moral lapses, would damage the Puritan movement
irreparably. For reasons as practical, then, as fear of losing
the daily labor of a female servant in an Ipswich household or
as ideological as apprehension for the future of Puritanism, it
was necessary to limit expressions of sexuality to marriage.

Puritan Systems of Repression

The low numbers of persons prosecuted for transgressing
Puritan sex laws demonstrate that few Puritans were willing to
engage in sexual behaviors their neighbors deemed "unclean."
Puritans successfully repressed extramarital sexual intercourse
using a combination of criminal prosecutions and cultural
conditioning. The governor of Plymouth Colony, William
Bradford, summed up the Puritan strategy, saying:
for the churches look narrowly to their members, and the magistrates over all, more strictly than in other places.4

He attributed the successful limitation of extramarital sexual intercourse not only to these policies but to the fact that the population of Plymouth Colony was limited and it was impossible to escape community oversight. While Bradford was referring to neighboring Plymouth Colony, the same conditions prevailed in Massachusetts Bay Colony and the same tactics were used to limit extramarital sexual intercourse. Ministers and magistrates, working in combination from pulpits and benches, exhorted their parishioners to refrain from sin and administered humiliating public punishments to those who failed.

It was illegal for single women to have sex in seventeenth-century Massachusetts. In fact, for much of the eighteenth-century as well the potential for criminal prosecution for consensual sexual intercourse remained for women who bore bastards. While prosecutions of couples who married following the conception of their first child were discontinued early in the eighteenth-century, the selective prosecution of women who bore bastards continued until after the American Revolution. A pregnancy provided irrefutable evidence that a woman had engaged in coitus. Men who had engaged in sexual intercourse could not be identified so readily. Unless there

4Morrison, Of Plymouth Plantation, 317.
was a voluntary confession, or a tacit admission of paternity through marriage with a pregnant woman, men could not be convicted of fornication.

Fornication prosecutions alone would not have deterred single Puritans from sexual intercourse. Cultural constraints and behavioral expectations are powerful determinants of sexual behaviors and Puritans successfully used them to limit most sexual expression to marriage and to influence the conduct of sexuality within marriage. The most important were religious and cultural imperatives that promoted male and female chastity prior to the wedding night. Sexual intercourse was the province of married persons for the primary purpose of procreation. That it also provided pleasure and cemented the marital bond was a positive benefit. Nevertheless, for every positive affirmation of the benefits of marital sexuality to be found in the ministerial and advice literature, there is an admonition lest sexual pleasure divert Puritan couples from their religion.

Love was supposed to develop between husband and wife as an outcome of marriage, not as a precursor to it. Sexual intercourse promoted love, eased the transition to marriage, and served as a mutual comfort to husband and wife, but Puritans were very clear about the right order of events. Couples married, began a mutually-exclusive sexual relationship, and sexual attraction, personal compatibility, and status-equivalence, all qualities deemed necessary to successful
marriage formation, evolved into marital love. Puritans drew a clear distinction between marital sexual intercourse which was a "comfort" and a "delight," and extramarital coitus which was "filthiness," "incontinence," and "uncleanness."

There were other factors that militated against extramarital sexual intercourse. The homosocial structure of youth networks, the relatively low marriage age, and the ability of most young persons to marry limited the number of persons who were unable to wait for marriage or who were forced to seek sexual partners outside of marriage. There were practical problems as well. Houses were small, supervision constant, and privacy limited. At the same time, however, women commonly worked as servants, beginning in adolescence and continuing until marriage. Even women whose families possessed sufficient resources to provide dowries lived in other people's households for extended periods during adolescence learning housewifery skills. Parents would not have sent their daughters into service if they had believed that they were placing them in a sexually-charged environment or if they did not believe their daughters had been sufficiently socialized to understand the value of remaining chaste prior to marriage and to resist sexual overtures.

The small numbers of persons convicted of illegitimate and premarital fornication support the conclusion that Puritans successfully controlled extramarital sexual intercourse. One
hundred and four women bore illegitimate children in Essex County, Massachusetts, between 1640 and 1685. During the same time span, 151 couples were prosecuted for premarital fornication. Unfortunately, estimates of the numbers of single persons of an age at which they might have been expected to be sexually active are not available for comparison to determine with precision the proportion of single women and single or married men who engaged in extramarital sexual intercourse. Population statistics for seventeenth-century Essex County are limited so it is necessary to turn to other historians and to raw counts for comparative statistics. Lawrence Stone found that one of every 200 births in seventeenth-century New England was illegitimate.5 I have found a premarital pregnancy rate of two percent in Rowley, Massachusetts, between 1640 and 1692.6 In addition, I found that the number of women charged with illegitimate and premarital fornication in the final decade of this study peaked at approximately thirty women per 10,000 persons. Clearly, few Essex County residents, even in the final, most sexually-active decade of this study, failed to

5Lawrence Stone, The Family, Sex, and Marriage.

6I counted 176 marriages between 1640 and 1692 in the Rowley Vital Statistics. Four couples were prosecuted for fornication following the birth of their first child within 32 weeks of marriage. I was unable to find any additional couples for whom both the date of marriage and the date of birth of the first child occurred within 32 weeks of each other.
adhere to the dominant Puritan sexual ideology which presented marriage as the only appropriate venue for sexual intercourse.

The Singularity of Puritan Sex Prosecutions

England, New England, and the British North American colonies in the Chesapeake and the Caribbean prosecuted women and men for consensual sexual intercourse that resulted in the birth of illegitimate children. There were, however, three significant differences between the New England regimen of sexual prosecutions and the judicial system that prevailed in the rest of the British Atlantic world. 1) In New England Puritans implemented a legal system based on Biblical, rather than English common law, precedents. Prior to the Great Migration English Puritans had tried unsuccessfully to convince Parliament to discontinue the system in which poor, mostly female, defendants were prosecuted for bastardy in the ecclesiastical courts in favor of a comprehensive system of criminal fornication prosecutions in the civil courts. New England offered Puritans an opportunity to put theory into practice. 2) New England prosecutions were predicated on the assumption that the criminal offense was the act of sexual intercourse, fornication, not the production of an illegitimate child, bastardy, the usual charge in contemporary English jurisdictions. Wile Puritans were no less immune to the economic issues inherent in removing female workers temporarily
from production and the tax burden of child support payments, the offense was framed in sexual terms. 3) New England was the only British Atlantic jurisdiction that prosecuted married couples for fornication. Other jurisdictions considered this a victimless crime since redress had been given the female defendant through marriage and taxpayers were not required to support a bastard. The prosecution of couples who had legitimized their sexual relationship by marrying is further a testament to the Puritan abhorrence of out-of-wedlock sexual intercourse. The uniqueness of the Puritan jurisprudential system is evident then in three ways. Puritans criminalized consensual sexual intercourse between single women and single and married men, prosecuted cases of illegitimacy as fornication rather than bastardy, and prosecuted couples who had married prior to the birth of their child.

The Role of Gender in Sex Prosecutions

If only prosecutions of couples who married subsequent to conception are considered, Puritans appear to have rejected the sexual double standard and prosecuted men and women equally for sex crimes. This presumption is negated by an analysis of fornication trials involving single women and single or married men. For every three couples who married following an out-of-wedlock conception, two women bore illegitimate children. In these instances women paid a higher price than men for violating
(or being forced to violate) laws prohibiting sexual intercourse.

Women were prosecuted more frequently; 104 single women and 35 single or married men were convicted of fornication and punished more severely. In 75% of cases, although the class of the male and female defendants was often equivalent, women received more rigorous sentences. Moreover, the act of engaging in sexual intercourse had life-defining implications for a single woman. Fewer than 25% of convicted women married subsequently. Women who did not marry were essentially debarred from full participation in the community of women because they were not wives and mothers, the adult life-cycle role of Puritan women. These women were victims of a sexual system that simultaneously restricted sexual intercourse to marriage, used a sexual vocabulary that stressed female passivity, and accepted a sexual double standard.

For men, the overt consequences of being named as the father of an illegitimate child in terms of corporal punishment or the payment of a fine were relatively minor. Fifty-five percent of men named as the fathers of illegitimate children were either married at the time of their trial or married subsequently. The most significant consequence, and one most men sought to avoid by refusing to confess, was the loss of honor. While their honor was temporarily impacted by the community perception that they had violated Puritan sexual
mores, however, the ownership of a small farm or the possession of a viable trade combined with the belief that women were responsible for protecting their chastity ensured that men could reestablish themselves following a conviction with less difficulty than their partners.

For every three women convicted of fornication and sentenced to be whipped or fined following the birth of an illegitimate child, only one man was convicted. Three-quarters of the time, he received a lesser sentence than his female partner. This indicates the existence of a sexual double standard in seventeenth-century Massachusetts. It was mitigated, however, by the strict Puritan regimen of punishing fornicators who could be clearly identified such as pregnant women and men who married pregnant women. Also, in societies with a traditional sexual double standard, since the negative consequences of male sexual activity are limited, the illegitimacy and premarital pregnancy rates are high. This was not the case in Massachusetts. While men were privileged by the court, the rate of extramarital sexual intercourse was low.

Many of the women who were prosecuted for breaking laws against extramarital sexual intercourse were forced to do so by rape. Sadly, contemporary understanding of the mechanics of conception meant that women who conceived as a result of a rape were prosecuted for fornication because it was believed that conception was impossible unless both partners had reached
orgasm. Only seventeen rape cases were prosecuted by the Court of Assistants between 1630 and 1692 and while rape was a capital crime if the victim was married or contracted at the time of the assault, no young man was convicted and executed for the rape of a single woman in seventeenth-century Massachusetts. Women were victimized by a legal system that privileged aggressive male sexual behaviors, had a mistaken notion of conception, and was predisposed to treat women who experienced out-of-wedlock pregnancies with contempt.

Changes Over Time in Sex Prosecutions

The Puritan sexual regimen can be divided into two separate and distinct phases. The year, 1668, in which an amendment was passed that placed the collection of child support above the prosecution of men for fornication, makes a convenient demarcation line although the amendment itself was a pragmatic recognition that conditions had already changed. Prior to the 1660s, fewer than one woman per year bore an illegitimate child. She and her male partner were presented, prosecuted, convicted, and usually sentenced to be whipped. The number of couples charged with premarital fornication was equivalently low and most couples married in the first trimester of the pregnancy. In the decade of the sixties the number of prosecutions for both illegitimate and premarital fornication increased while the incidences of corporal punishment declined. Fines, even for
those of lower social status, became the preferred alternative. After 1668, women became the sole focus of punishment and the number of female defendants increased from seven in the first decade of this study (1641-1650) to 124 in the final decade of this study (1676-1685).

The 1660s were a transitional decade. Native-born Puritans lacked the religious fervor that had impelled their parents and grandparents across the Atlantic. The Restoration meant the end of supportive Puritan government in England and the beginning of efforts to incorporate New England into the broader British Atlantic legal and economic systems. The ability of some Essex County Puritans to capitalize on the developing triangle trade between England and the Caribbean created greater wealth differentials in Massachusetts. As a few Puritans became more wealthy and as others became less religious, the population lost the homogeneity that had enabled them to call each other "brother" and "sister." The sense of corporate identity that had enabled the repression of individualistic behaviors lessened. While extramarital sexual intercourse remained relatively low throughout the seventeenth-century, the extreme sexual discipline that characterized the period 1630-1660 was impossible to replicate as Puritans became increasingly drawn, economically, culturally, and legally into the broader British Atlantic community.
The Puritans and Sex: An Overview

The stories of women who were prosecuted for fornication in Essex County, Massachusetts, during the seventeenth century, when placed in a broader context, are more than moving, or funny, or sad, explications of individual lives. They provide unparalleled opportunities for examining the sexual mentalités of early modern women and men and they explain why, although a modified sexual double standard existed in Puritan Massachusetts, the rates of illegitimate and premarital births remained so low. Women’s motives for engaging in coitus were varied, and often pathetic. Susanna Bowden engaged in sexual intercourse "in the upper end of the pasture where her father dwells" in return for an unfulfilled promise of marriage. Mary Sheffield engaged in coitus with her employer, Isaiah Wood, in his barn, during his wife’s pregnancy. Sheffield’s prior fornication conviction evidenced to Wood she was sexually available at a time when his own wife was not. Anne Chase was raped by her employer’s brother, but even people who knew her well refused to believe her account of the circumstances she had conceived because they deemed it impossible. Hannah Souter, however, was boldly unrepentant when discovered in bed with her employer, Mr Philip Parsons, by the Marblehead selectmen.

A specific social mechanism underlaid the demonstrated low rate of Puritan extramarital sexual intercourse. The Puritans who arrived in New England in the 1630s were the vanguard of
Protestant intellectualism. They wanted to create a spiritualized family headed by a new type of Protestant patriarch, whose thoughts and behaviors were controlled not by a priest-confessor who mediated between the individual and God, but through direct communication with God and the development of a conscience. This upgraded image of men required that women be reconfigured from the traditional view that posited them to be sexually uncontrollable into suitable helpmeets. As a result, chastity was declared to be the defining characteristic of femininity. Once chastity and womanhood were linked, premarital sexual intercourse was construed as a social evil. To this end, all consensual sexual intercourse between single women and single or married men that resulted in a pregnancy, whether illegitimate or premarital, was prosecuted in the County Courts of Massachusetts as fornication. Coerced sexual activity that resulted in conception was also prosecuted as fornication. The conflation of chastity and womanhood and the concurrent elevation of women’s status within marriage both motivated and inspired most women to refrain from premarital sexual intercourse. The stringent sex discipline evidenced by fornication trials and the consequent shunning of women who did not meet the new Puritan standard of femininity intimidated other women from satisfying sexual urges through intercourse.
The most opprobrious epithets women cast at other women related to sexual reputation. To be called a "baud" or a "whore" almost inevitably led to a slander suit with expensive repercussions. That women resorted so immediately and so frequently to the courts if their sexual reputation had been impugned is a sign both of the tenuous hold the new ideology commanded and the potential power of the imagery of the virtuous woman. One of the themes that resounds throughout the seventeenth-century, and, I would argue, resonates until the American Revolution and the articulation of republican motherhood is the tension created by the existence of two competing ideologies about women's natures. On the one hand, there was the old, implicit, ideology depicting women as the lustful daughters of Eve. It was so imbedded in the mentalité of seventeenth- and eighteenth-century men and women that it did not need to be openly articulated. On the other hand, there was the new ideology that Puritans sought to promote. The notion of virtuous wives promoted not only the status of married women but the institution of marriage, and made possible the elevation of men to patriarchs. Its newness, however, required constant, explicit reinforcement.

Marriage was the only possible option for adult women in Massachusetts since household service was structured for women between adolescence and marriage age. The Puritan ideological conception of marriage that accorded wives increased status
within their marriages and within the Puritan community was worth protecting. It was necessary to ensure that marriage entry was limited to women whose sexual behaviors reinforced the association between femininity and chastity. In the Chesapeake and the Caribbean, the limited number of women and the traditional view of women as incapable of sexual control created an ideological climate in which it was possible to bear an illegitimate child and marry subsequently or to marry when pregnant without the concomitant fornication trial. In Massachusetts, a good sexual reputation increased marriage opportunities, a poor sexual reputation severely limited them. Both married and single women had a vested interest in policing the sexual behaviors of other women who evidenced, through their sexual behaviors, that they were not representative of the new, improved, sexually continent version of Puritan womanhood.

With Puritan women socialized to see chastity as the essence of femininity, Puritan men found the number of women prepared to engage in consensual premarital sexual intercourse was limited. Moreover, when it came to marriage, men wanted a woman with a reputation for chastity because it enhanced their status. But these men were required to demonstrate virtue as well, so sexual intercourse with a willing third partner was not an option for them. The public exposure inherent in a paternity suit would limit their access to women who might have enhanced their status through their reputation for virtue or their
possession of a large dowry. Puritan men were constrained from premarital sexual activity for three reasons: 1) willing female partners were limited, 2) men did not want to marry a woman who was pregnant, 3) eligible women did not want to marry fornicators.

Puritan women would not have articulated the notion that they were withholding sex as part of a broader strategy to elevate the image of wives, which, in turn, enhanced the status of their husbands and the patriarchal family. Women were motivated to remain chaste not only because a reputation for virtue enhanced their marriageability but because they genuinely feared that they would go to Hell if they did not. Women were predisposed to believe that they had a greater propensity to sin than men despite what the new ideology told them. Even in the final decade of the seventeenth-century, when women composed the majority of church members in Massachusetts, the Salem witchcraft trials exposed that large numbers of the population still assumed women capable of carnal intercourse with the Devil. The 104 women who bore illegitimate children in Essex County between 1640 and 1685 were punished with greater comprehensiveness and more severity than their male partners because they confirmed traditional fears about women while failing to meet the new standard of Puritan womanhood. Puritan women and men expected that young women who had been educated to Puritan precepts and socialized to Puritan values would navigate
the shoals of service in other households and the reefs of sexual desire during courtship to the safe harbor of marriage. Most women conformed to the new moral code and managed the transition to adulthood and marriage with success. Those who evinced their failure through the births of illegitimate children were scorned by other Puritans for their human weaknesses. But many of these women were clearly the victims of sexual predators, poverty, ignorance, and violence.

Directions for Further Research

This dissertation has provided a basic foundation for further research into Puritan sexuality. Much work remains to be done. First, the study needs to be extended into the eighteenth-century. I theorize that as Massachusetts became increasingly Anglicized, sex prosecutions came to resemble those in the other British Atlantic colonies; that premarital fornication, perceived as a victimless crime, ceased to be prosecuted except in exceptional cases; and that illegitimate fornication came to be increasingly defined as bastardy and selectively targeted poorer women whose children were a potential charge on the town tax rate. The seventeenth-century sex regimen in Essex County was unique in the degree of sexual restraint practiced by the majority of Essex County residents but it needs to be placed in a broader context to be evaluated.
The statistics that have been developed on eighteenth-century premarital pregnancy rates present an interesting conundrum. Laurel Ulrich has stated that the number of premarital pregnancies increased in every decade of the eighteenth-century prior to the American Revolution peaking at 40% of marriages. Ulrich attributes this rise in premarital pregnancy rates to the lag-time between the breakdown of the Puritan system of court, church, and parental regulation and to the development of the conscience as an internalized monitor capable of regulating sexual behavior in the nineteenth-century. Mary Beth Norton places the premarital pregnancy rate at 33% in New England prior to the American Revolution.7 Ulrich’s and Norton’s figures represent a considerable change in sexual attitudes and behaviors between the close of the seventeenth and eighteenth centuries. Why did the number of pregnant brides increase so radically? At first glance, the figures would seem to verify the effectiveness of Puritan sex legislation and cultural conditioning. I would like to see, however, a correlation to the number of women who bore illegitimate children. It is difficult to believe that New Englanders could have afforded the associated welfare costs if the ratio of pregnant brides to unwed mothers had remained steady at 3:2. I would expect to find that if the number of pregnant brides

increased as Ulrich and Norton attest, that the proportion of
women bearing illegitimate children decreased. In addition, I
would like to know the rhetoric associated with women who bore
illegitimate children, and if there was further diminishment
over time in sentencing and punishment. Furthermore, scholars
have pointed to a change in attitudes to unwed mothers after the
American Revolution. Novels like Charlotte Temple increasingly
depicted women who bore illegitimate children as victims. Is
this an outcome of changed sensibilities connected to the
reconfiguration of women as Republican mothers or are these
attitudes prefigured in the final decades of fornication trials?

The picture is increasingly complicated by the work of the
historical demographer, Susan Norton, who has developed very
different and much lower premarital pregnancy rates for
eighteenth-century New England. Norton cites premarital
pregnancy rates of 5.6% for the period 1701-1725 and 6.3% for
1726-1750. There is a discrepancy between the findings of
historians and historical demographers which I think is related
to the use of different sources. Social historians rely on
varied sources (court records, published genealogies, diaries)
while historical demographers use family reconstructions from
published Vital Records in which irregular births are under-
recorded.

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8Susan Norton, "Population Growth in Colonial America: A
Study of Ipswich, Massachusetts," 443.
But what if Susan Norton’s premarital pregnancy rates are correct? Dayton and Norton have asserted that women’s status, self-esteem, and access to the courts was lowest in the period immediately prior to the American Revolution. Ulrich found the highest proportion of premarital pregnancies during the same time period. A premarital pregnancy rate of 6.3% in Ipswich, Massachusetts, between 1626 and 1650, if it could be confirmed by further research, would require a reassessment of women’s status in the eighteenth-century. The trends I have observed in seventeenth-century Essex County, which includes the town of Ipswich, suggest that Ulrich’s, Norton’s, and Dayton’s findings of a decline in women’s status from the seventeenth to the eighteenth century will be supported by a study of eighteenth-century sex prosecutions in Essex County, Massachusetts.

Another important area for future research is women’s labor in the seventeenth-century. Forty percent of the women who bore illegitimate children were specifically described as servants. The actual numbers of women prosecuted for illegitimate and premarital fornication who were servants is probably considerably higher. There are many depositions unrelated to sexual activity in which a woman who is described as a servant attested to a commercial transaction, described a neighborhood quarrel, or witnessed a will. By identifying these

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3Dayton, Women Before the Bar, Norton, Liberty’s Daughters.
women I hope to show the socio-economic range of women who worked in other people's households. To spend time as a servant was not necessarily a sign of low social status. It was part of the education of young people.

There are a number of cases detailing sexual harassment in the workplace that varied from verbal solicitation to rape that I have not considered in this study. Some of the women who were discussed in this study provided information about their work that I was unable to use. Employment was an essential part of life for most women between adolescence and marriage. The money women earned to put toward a dowry increased their marriageability and the range of jobs they held increased their ability to function effectively as goodwives.

The early modern English literature on women's labor serves as an example of what could and should be done to clarify the nature of women's work in New England and their economic contributions to the family of their birth. Laurel Ulrich, Goodwives, presents the contributions of married women to the family economy early America in eloquent detail. Their daughters worked too, under often difficult circumstances.

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Socialized to deference and chastity, sometimes irreconcilable traits, they lacked the moral authority of married women. Their experiences merit illumination and interpretation.

More research is required on the ideology underpinning Puritan marriage to explain why half of the couples who married following an out-of-wedlock pregnancy took more than five months to wed. The length of time that elapsed between conception and marriage indicates that men who subsequently married their pregnant partners had to overcome considerable personal reluctance, or, in some instances, parental objections to an unequal match. Premarital sexual intercourse was described by Puritan ministers and justices as "uncleanness" and "incontinence" with a frequency that indicates these terms were not merely rhetorical devices meant to shame their listeners but expressions of belief. Was there an underlying ethos that attributed a permanent taint to a marriage begun under such inauspicious circumstances? Samuel Sewell clearly believed there was. He opined in his diary that the sin of fornication was so dire that the stain extended to succeeding generations.

Community studies have fallen out of fashion, partly because considerable variance between New England towns has been demonstrated by scholars which has made generalization difficult and undermined their utility. Nevertheless, a community study focused on women’s experiences would help to flesh out issues of courtship and marriage, women’s labor, inheritance patterns,
economic and social mobility, and would enable some demographic "guesstimates" that this study has lacked possible. I have been frustrated by the lack of reliable population statistics which would enable me to relate the numbers of persons convicted of fornication to the broader community with surety. No one primary source is reliable in and of itself, but by incorporating vital records, court records, church records, account books, genealogies, and probate records for a well-documented town with a population of manageable size it would be possible to construct a community study that incorporates traditional aspects of such studies with a focus on women's issues.
APPENDIX A

METHODOLOGY

I studied the records of the Massachusetts Court of Assistants and the Essex County Quarterly Courts for cases in which male defendants, either married or single, were alleged to have engaged in coitus with single female defendants. I then assembled a data base containing detailed information on both male and female fornication defendants. This data base included basic information, where available, on the date of birth of the defendant, the date of marriage, where applicable, and the date of birth of the child which was the cause of the court action. The data base also included information on the nature of the sexual activity, consensual or coerced, the location in which the sexual activity occurred, and the frequency of the sexual activity. As well, I gathered information on the family of origin of the defendant, and his/her employment status, financial status and social status prior to and following the fornication conviction.

I studied paternity trials to determine the level of child support payments mandated by the court for the mother of an illegitimate child and the degree to which her partner complied with the court orders. Town records were reviewed to determine the arrangements made for illegitimate children whose mothers, because of their employment situation, family circumstances, or
personal choice, were unable to raise their children themselves. Finally, I read sermons, conduct manuals, diaries and personal correspondence to determine the attitudes of persons in authority and the general public to sexual activity outside of marriage.

There is no way to assess quantitatively the total amount of sexual activity that occurred between unmarried persons or between married men and unmarried women. Anecdotal evidence is unreliable. Thus, in 1657, young Edmond Bridges of Ipswich entertained his friends while they were mowing together with stories of his sexual activity with multiple partners in 1657. At the same time, promoters anxious to stress the salubrious aspects of life in the Massachusetts Bay Colony, commented on the saintliness of its inhabitants. Given that fornication was illegal, and that, for women, a poor sexual reputation represented a severe diminution of their prospects for marriage, most Puritan men and women had little incentive to speak or write about illicit sexual activity. What can be assessed, however, using the various court records, are the numbers of illegitimate births and premarital pregnancies.

1Adultery, which in seventeenth-century Massachusetts was defined as sexual intercourse between a married woman and any man other than her husband, is beyond the scope of this dissertation.

2Records and Files of the Quarterly Court of Massachusetts, Volume II, 54-55.
How consistently did the courts prosecute couples whose first child arrived before 32 weeks of marriage and women who bore illegitimate children and their partners? If a measurable percentage of these persons were escaping presentation, it would not be possible to obtain a valid quantitative measure. A cause for concern was a statement by Daniel Scott Smith and Michael S. Hindus that:

(a)s late as the 1670s, at least by a rough estimate of the number of premarital pregnancies in Essex County, well over half of the guilty couples were being convicted.3

They based their conclusion on a match of vital records to court prosecutions and found that only three of five Ipswich couples with births within six months of marriage were found in the printed Essex County court records between 1657 and 1682. If their determination was correct, it would invalidate my quantitative data. However, for the same time period, I found 11 Ipswich couples charged with fornication in the Essex County Quarterly Court. I think the difference between my findings and the Smith and Hindus findings is related to the nature of the vital records for the period under study. Not all births were recorded. People were not anxious to draw attention to the birth dates of infants conceived outside of wedlock. Confusion

can also arise over the month of birth. An analysis of the
total records for Rowley indicates that marriage and birth dates
have not been converted to modern terminology. Eleven couples
were prosecuted during the fifteen-year period Smith and Hindus
studied. If two couples went unprosecuted during this time
period, and the lack of prosecution was unrelated to a
misinterpretation of the vital records, I would be perturbed,
but it would not materially invalidate my quantitative data.¹

I located two women in the Essex County court records
between 1640 and 1685 who bore illegitimate children and for
whom there was no surviving record of a fornication prosecution.
One case surfaced because the father of the illegitimate child
was charged with fornication, the other because the mother sued
for child support. In 1664, Francis Pafat was charged with
fornication. His partner, Margerite Dudley, was the young
daughter of Exeter’s minister, Mr. Samuel Dudley, and the grand-
daughter of a previous governor of Massachusetts Bay Colony.
Pafat fled before his trial and Mr. Samuel Dudley was awarded
£36 of Pafat’s £40 bond for the support of the child. A second
woman, Judith Robie, bore an illegitimate child in 1671. There
is no surviving fornication prosecution of Robie or her partner,
John Young, although he and Robie’s father, Henry, frequently

¹The names of the two couples were not provided by Smith
and Hindus so I am unable to check the vital records for further
information.
opposed each other in court over issues of child support and in suits filed by the town of Hampton which Henry Robie represented in court. Neither of these cases occurred in communities that are currently located in Essex County. Fornication prosecutions may survive in another jurisdiction, although that is doubtful. They may never have existed due to the local prominence of both women’s fathers. However, since the number of elite women presented for fornication in the first place is limited, their absence does not materially affect the quantitative data.

I checked two comprehensive local genealogies to determine the level of under-reporting. The Old Families of Salisbury and Amesbury, was checked for references to children born to unmarried women, and to marriages in which the birth of the first child took place before the couple had been married for at least 32 weeks. Sixteen couples fit into this category between 1640 and 1692. Of the 16 couples, 15 were prosecuted by the Essex County Quarterly Court. The sixteenth couple had a seven-month child, and it is likely that there was evidence of prematurity which allowed them to escape the attention of the court. Eight local women appeared in the same genealogy as bastard-bearers. None of them escaped the oversight of the

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Essex County Quarterly Court. They were all charged, tried, and convicted of fornication.

A second local history which contained a collection of genealogies, A Sketch of the History of Newbury, Newburyport and West Newbury, revealed the same pattern. There were no single mothers, but there were eleven couples whose first child arrived before 32 weeks of marriage between 1640 and 1692. Of these, ten couples were prosecuted. Since local genealogies are biased in favor of families who have a strong enough economic presence in the community to remain for several generations it is encouraging (in methodological terms at least) to note that these couples did not escape presentation. These genealogies provide further evidence that couples from all levels of Puritan society were presented for fornication if a case could be made.

I was concerned that as the numbers of persons prosecuted for fornication increased in the final decade of the study, the Essex County Quarterly Court might have relaxed its prosecution of premarital fornication cases, since couples who married had received more favorable treatment from the court from the commencement of the study in 1640 than their peers who bore illegitimate children. I picked 100 couples who married in Essex County between 1680 and 1692 and who had not been prosecuted for fornication at random from the Essex County Vital Statistics and cross-checked this information with the date of birth of their first child. There were no recorded births prior
to 32 weeks of marriage, allowing me to assert with confidence that couples continued to be prosecuted for premarital fornication to the endpoint of the study in 1692.

An additional problem was created both by the abrogation of the Massachusetts Bay colony charter in 1684 and the arrival of a new governor, Sir Edmund Andros in 1686 to govern the reorganized and enlarged Dominion of New England. I decided to end the quantitative portion of this study at this point for two reasons: (1) the court was no longer under wholly Puritan jurisdiction and (2) while the names of many of the defendants can be obtained from file papers, the final disposition of many of the cases is unknown.

Puritans congratulated themselves upon the thoroughness with which they sought out and prosecuted sexual offenders. A 1642 report on the prevalence of unmarried persons engaging in sexual intercourse provided by William Bradford, Governor of Plymouth Colony, stated:

they are here more discovered and seen and made public by due search, inquisition and due punishment; for the churches look narrowly to their members, and the magistrates over all, more strictly than in other places. Besides here the people are but few in comparison of other places which are full and populous and lie hid, as it were, in a wood or thicket and many horrible evils by that means are never seen nor known; whereas here they are, as it were, brought into the light and set in the plain
field, or rather on a hill, made conspicuous to the view of all.  

Other historians have commented on the assiduity with which the Puritan courts pursued sexual offenders. Roger Thompson said of the Middlesex County Quarterly Court records:

There may have been more breaches of the laws against fornication than is noted in the court records, but, given the watchfulness of both the authorities and the communities at large, it seems unlikely that the ninety-six cases that appeared in court were only the unlucky few who were detected among a majority who escaped.

Since I find no reason to believe that the Essex County Quarterly Court records are any less reliable, I conclude that it is probable that no more than 10% of illegitimate and premarital births went unprosecuted.

The most important source of qualitative data for this dissertation is the formal depositions provided by defendants and witnesses as evidence in fornication trials. In 1650, as legal procedures became formalized, written depositions were required by the courts of Massachusetts Bay Colony. Depositions are immensely valuable for the scholar, but they also pose problems. A deposition cannot supply the twentieth-century historian with an eye-witness account of courtroom proceedings

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7 Thompson, Sex in Middlesex, 33.
that would include the judge's comments, the body language of
the defendants, or the ambiance of the courtroom. Court was
usually held in the local ordinary or in the house of one of the
judges. It is apparent from the contradictory testimony that
not all depositions were truthful. Also, deponents had a vested
interest in presenting themselves in the best light possible.
Nevertheless, the depositions filed between 1650 and 1692 by
young women and men in answer to fornication charges and by the
midwives and neighbors who assisted at the birth as well as by
character references provide important information about the
circumstances under which women and men engaged in coitus and
about judicial and community attitudes toward this extramarital
sexual activity. They also offer broader information about the
intersection of gender, labor, and class in Massachusetts Bay
Colony between 1640 and 1692.
REVIEW OF THE LITERATURE

Ever since John Winthrop, first governor of the Massachusetts Bay Colony, described the founding of the Colony in his journal, historians have invested a great deal of time and paper in the study of colonial Massachusetts. Despite all the works in print about almost every facet of life in seventeenth-century Massachusetts, we know very little about how the Puritans constructed one of the most basic aspect of human existence, their sexuality, or about the frequency and nature of sexual offences and the socio-economic status of those who appeared in court charged with fornication. While Winthrop and other Puritan diarists, such as Samuel Sewell and Michael Wigglesworth, noted specific cases of fornication in their diaries, and historians are cognizant of the existence of fornication trials, this evidence has mainly been used by revisionist historians to make generalizations about the Puritan attitude toward extramarital sexuality and by women’s historians in support of a broader topic such as witchcraft or gender

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roles. There has not been an attempt to deal systematically with the evidence as a way to understand sexual practices.

Revisionist Historians

Edmund Morgan contended that the Puritans took a rather worldly and sophisticated view of sex. The aim of his seminal 1942 article, "The Puritans and Sex," was to contradict the stereotypical view of the Puritans as joyless and repressive. He wrote almost tongue in cheek, as if recognizing that in the 1940s sexuality was not a topic worthy of discussion by the serious historian. Morgan may be right about the Puritans if the only sexual activity under consideration is marital. Within a marital relationship, he asserted, Puritans endorsed frequent and mutually pleasurable sexual activity. They believed, in common with most early modern English persons, that a mutual orgasm was an essential precursor to conception. However, about sexual activity involving unmarried persons, Morgan stated:

The Puritans were as frankly hostile as they were favorable to it in marriage. . . . (N)oe offense, sexual or otherwise, could be occasion for surprise or hushed tones of voice. . . . The Puritans became inured to sexual offenses, because there were so many. The impression one gets from reading the records of seventeenth-century New England courts is that illicit intercourse was fairly common. The testimony given in cases of fornication and adultery - by far the most numerous class of criminal cases in the records - suggests that many of the early New

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Englanders possessed a high degree of virility and very few inhibitions.\(^3\)

The notion that Puritans were calmly matter-of-fact or unsurprised when presented with information about sexual misconduct or that they were so accustomed to sexual misconduct that they had become blasé about it is one of the themes that is disputed in this dissertation. The example Morgan used to illustrate Puritan imperturbability when faced with overt sexual activity concerned a drunken Peter Grant, who "flung the maid down in the streete and got atop hir."\(^4\) If covert sexual intercourse had been a possibility for Grant, he would never have been driven to such a public act of alcohol-fueled desperation. Depositions such as the one cited by Morgan are bawdy, sometimes moving, often comic. It is easy to skip over the dry details of debt cases, land disputes and probate settlements that form the bulk of the Quarterly Court's business and to overestimate (as Morgan did) the frequency with which fornication cases came to court.

Morgan's analysis is devoid of discussion of female sexuality. As well as the extract above about New Englanders' "considerable virility," he blamed the "abundance of sexual offenses" on the fact that "although men left their wives

\(^3\)Ibid., 594-5.

\(^4\)Ibid., 595.
behind, they brought their sexual appetites with them."\(^5\)

Morgan's contemporaries in the historical profession, moreover, were not considering women in their analyses either.

Nor can Morgan be blamed for the fact that his argument was so persuasively presented that it was accepted without question by succeeding historians. David Flaherty agreed with Morgan's thesis in his influential 1971 article, "Law and the Enforcement of Morals in Early America." He accepted the view that sexual offenses were widespread in Puritan Massachusetts:

There is substantial historical discussion of the prevalence of sexual offenses in New England, perhaps because the information is so at odds with the popular conception of the Puritan lifestyle. Practically every scholar who has studied this subject has commented on the existence of widespread sexual irregularities. A random examination of quarterly court records in any New England county would illustrate this situation.\(^6\)

Flaherty's thesis extended to his evaluation of the validity of the court records. He wrote that:

the prosecuted cases were only the most visible manifestations of illicit sexual activity. Most immoral acts escaped the attention of the law.\(^7\)

\(^5\)Morgan, *The Puritans and Sex*, 596.

\(^6\)Flaherty, "Law and the Enforcement of Morals in Early America," 225.

\(^7\)Ibid., 225.
What are the grounds upon which Flaherty based his argument of widespread, unpunished, extramarital sexual intercourse in seventeenth-century New England? I traced the sources on which Flaherty based his argument in his widely-cited article, "Law and the Enforcement of Morals in Early America." First, Flaherty cited Morgan's influential 1942 article, "The Puritans and Sex." Flaherty also cited Francis Bremer. Bremer concluded that the Puritans were neither prudish nor condemnatory about sex, but Bremer was referring to marital sexual intercourse and went on to state that:

colonists insisted that intercourse be limited to married couples and were harsh in punishing promiscuity and sexual deviance.  

When Bremer's comment is placed in context it does not support Flaherty's conclusion that most immoral acts escaped the attention of the law.

Flaherty also cited Edwin Powers. Powers offered quantitative data within the context of a discussion of corporal punishment. Powers stated that the Suffolk County Quarterly Court sentenced 215 people to be whipped between 1671 and 1680. However, this does not provide evidence of widespread sexual irregularities since a further analysis of Powers' data reveal

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8Bremer, The Puritan Experiment, 114.

that only 46% of the defendants were sentenced to be whipped or fined for sexual misdemeanors and of the 46% only three-fourths were found guilty of fornication. Powers' data indicate that 7.4 persons per year were sentenced for fornication. Given that Suffolk County was the most populous county in seventeenth-century Massachusetts, that the busy seaport of Boston was located within its boundaries, and that fornication prosecutions increased dramatically in Essex County during the time-period studied, 7.4 fornication prosecutions per year would not be an unreasonable number. Moreover, Powers' data conflated premarital and illegitimate fornication cases since sexual irregularities were not his primary concern so his data reflect the total number of persons sentenced to be whipped or fined, not the number of prosecuted offenses.

Flaherty cited John Demos' statement that fornication occurred with regularity in Plymouth Colony. Demos referenced the Plymouth Colony court records as the basis of his opinion. However, I found only 68 cases in the Plymouth Colony court records between 1640 and 1685; an average of 1.4 fornication prosecutions per year. As in Essex County, the majority of the Plymouth Colony prosecutions were for premarital fornication.

Church records, according to Flaherty, further illustrate a high level of extramarital sexual intercourse in Massachusetts

\[10\] John Demos, A Little Commonwealth, 152.
during the seventeenth century. Oberholzer’s research into Congregational church records was cited, but Oberholzer cited the paucity of surviving seventeenth-century church records; his figure of 1242 documented fornication cases represents what occurred between 1620 and 1839, a period of 219 years.\textsuperscript{11} The majority of individuals and couples presented for church discipline were tried in the eighteenth-century. I checked the published records of the First Church of Salem and was unable to find any one presented for church discipline who was not also tried by the Essex County Quarterly Court prior to 1685.

Flaherty cited only one dissenting view, that of Henry Bamford Parkes who stated that:

\begin{quote}
the laws against it (sexual immorality) were systematically enforced, and an analysis of its prevalence is therefore possible.\textsuperscript{12}
\end{quote}

Flaherty’s influential argument in favor of the existence of frequent, unpunished extramarital sexual activity (see his 1971 article, "Law and the Enforcement of Morals in Early America," repeated in his book, Privacy in Colonial New England, the following year) is not supported by empirical data. The sources Flaherty cited accepted the same underlying thesis first presented by Morgan, that unmarried Puritans were sexually


active. There are three problems with this. The thesis, as it took on a life of its own, did not incorporate underlying Puritan religious and gender ideology. Historians were so certain illicit sexual activity was widespread that no quantitative analysis was attempted. If, as Flaherty had stated, most cases escaped the oversight of the law, there was little utility in such a venture. They ignored the work of historical demographers who documented low rates of illegitimate and premarital pregnancies. This would seem to be a useful example of how a well-written and provocative thesis can take on a momentum of its own. In 1942, Morgan’s conclusions changed received beliefs about Puritan men. In 2000, the dominant paradigm requires adjustment to include women and to incorporate recent research on gender and religion and to mitigate Morgan’s hyperbole about "widespread 'illicit sex.'"

Roger Thompson also looked at the frequency of sexual activity between unmarried persons in seventeenth-century Massachusetts. In 1942, Morgan’s conclusions changed received beliefs about Puritan men. In 2000, the dominant paradigm requires adjustment to include women and to incorporate recent research on gender and religion and to mitigate Morgan’s hyperbole about "widespread 'illicit sex.'"

Roger Thompson also looked at the frequency of sexual activity between unmarried persons in seventeenth-century Massachusetts. Since his aim was to refute Lawrence Stone’s notion of the patriarchal family by showing that sexual activity was so widespread in Middlesex County as to dispel any notion of a controlling father, he was invested in providing evidence of adolescent promiscuity. Despite his assertion of widespread

13 Thompson. *Sex in Middlesex.*

sexual activity between unmarried persons he documented only ninety-six cases between 1649 and 1700. Further, he emphasized the assiduity with which the Puritan courts pursued sexual offenders.

As well as exaggerating the frequency of the sexual activity that occurred, Thompson misstated the nature of the sexual activity that did occur. He believed that most extramarital sexual relationships were generated by feelings of love, stating in one instance that "love and affection played an important part in adolescent relationships."¹⁵ Yet, in the instances that Thompson described, it was women, not men, who expressed feelings of love. Sexual intercourse between unmarried persons was, he believed, an expression of affection.¹⁶ An avowal of affection or a promise of marriage was hollow in cases where the male partner refused the court’s suggestion that he marry his co-defendant. My research shows that in Essex County relationships that resulted in an illegitimate pregnancy, while 45% of the women were between the ages of 15 and 20, 44% of the men were older than 27. Given that the average marriage age for women in seventeenth-century Massachusetts was between 22 and 25, this suggests that sexual activity involving adolescent females was neither a preliminary to marriage nor an

¹⁵Thompson, Sex in Middlesex, 39.

¹⁶Ibid.
outcome of mutual sexual exploration that went too far. Rather, it may have been evidence of a predatory relationship involving a female teenager working away from home and an older man taking advantage of her vulnerability.  

The most serious problem, however, with Morgan's, Flaherty's, and Thompson's analyses of Puritan sexuality is their conflation of male and female sexuality. Thompson, except for his telling discussion of love as a preliminary to sexual intimacy for women, did not differentiate between male and female sexuality. Although Morgan, writing in 1942, could not draw upon the scholarship of women's historians, revisionist historians like Flaherty and Thompson have had access to feminist historical research on the effect of female sex-role conditioning in early modern England and early America since the 1970s and have chosen not to integrate any of it into their work. An analysis that is based on the assumption that the terms "male sexuality" and "female sexuality" are identical is fatally flawed.

Revisionist historians have rehabilitated the Puritans. But in the course of reshaping the Puritan image from joyless ideologues obsessed with repressing any expression of sexuality

17The Union News, in a recent article (Fall, 1995), states that in a 1994 study of 10,000 teen age pregnancies conducted by the National Center for Health Statistics, "teen pregnancy is not just a matter of kids getting each other into trouble, but also of grown men taking advantage of girls." In half of the cases, the fathers are age 20 or older.
into men of the world who were unsurprised by any sort of sexual deviance (Morgan) or into hapless parents with no control over their children's sexual activity (Thompson), they have neglected or discounted the purpose and the effect of Puritan moral legislation. They are correct to suggest that premarital fornicators, where the couple was married by the time they appeared in court, could be rehabilitated in the eyes of the community. The couple was reintegrated into Puritan society after penitential rites that required a full admission of their sin and an expensive fine. One-third of the Essex County women, however, who appeared in court for fornication between 1640 and 1692 were unmarried at the time of their presentation, and the very nature of their presentation precluded a marriage that might have reintegrated them into Puritan society.

Feminist Historians

Feminist historians have focused on women's distinct sexual experiences rather than assuming that men and women had uniform sexual attitudes and experiences. Nevertheless, the sexual activity, or lack thereof, of single women in seventeenth-century Massachusetts and Puritan sexual attitudes have never been the major focus of feminist interpretation. Adequate documentation of the daily lives of women in early America was required before the information contained in the Quarterly Court docket books and surviving depositions could be
interpreted. Since unwed mothers and pregnant brides were not the major focus of their work, feminist scholarship often provides only a tantalizing glimpse of what might be. For example, Carol F. Karlsen analyzed prosecutions for sexual offenses in Essex County, Massachusetts between 1636 and 1700 and concluded that women were punished more frequently and more severely than men beginning as early as 1640. Her discussion of Essex County prosecutions for sexual offenses anticipates many of my findings, but she was interested in these cases only as they bore on Puritan beliefs about female inferiority and women's innate licentiousness, and then only as these beliefs pertained to witchcraft prosecutions.

Other feminist historians have looked at the Puritans and sex from new vantage points. Mary Beth Norton took a comparative perspective and concluded that New England courts treated men and women more even-handedly in sex-crime prosecutions than did courts in the Chesapeake. Male defendants outnumbered female defendants in New England and they received almost equal sentences. She claimed that in New England men, as well as women were likely to be sentenced to be whipped or fined, whereas in the Chesapeake, only women were sentenced to be whipped. Norton attributed the greater severity

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19Mary Beth Norton, Founding Mothers and Fathers, 346-7.
in sentencing of male offenders in New England than the Chesapeake to Filmerian ideology requiring the maintenance of the family. To that end, men had to be held responsible for their violation of the family ideal which a sexual offense represented. In contrast this thesis shows that wage disparities in New England between men and women made it rather more likely that a female defendant would be forced to accept a whipping than a male defendant.

In a simple count of cases involving sexual offenses Norton’s argument can be made, but Norton conflated minor and severe sexual offenses. Prosecutions for lewd and lascivious behavior were more likely to have male defendants, but the defendant was usually bound to good behavior or fined. When cases involving premarital fornication are factored in, where husband and wife received equal sentences in most instances, it appears that the double standard evident in the Chesapeake is absent in New England. For example, 106 women and 35 men were convicted of illegitimate fornication in Essex County between 1640 and 1685. Here the Filmerian analogy breaks down. Men were not held equally responsible for the creation of incomplete families which surely represented the greatest ideological threat to the family.

Important regional differences appear as well in the consequences of a prosecution for a sex crime, which would appear to be as important as the implications of conviction and
sentencing. The implicit sexual double standard in New England meant that once a woman's sexual reputation was lost, her ability to marry, or at least to marry well, was also lost. In the Chesapeake, where women were scarcer, even those who had been convicted of bastardy during their indenture were able to marry and form a family after the completion of their indenture. Norton is essentially correct in all her assertions about sexual prosecutions in New England, but Norton is painting with a broad brush in support of her Filmerian/Lockean dichotomy. Women who bore illegitimate children did not fit into her New England framework. In this dissertation, devoted exclusively to Puritan sexuality, finer brush strokes are possible. I show that women who bore illegitimate children represent the population that defines Puritan treatment of sexual offenders and Puritan attitudes to sexuality because they could not be easily fitted into a society based on the maintenance of the family.

Cornelia Hughes Dayton also asserted that Puritans rejected the double standard, not because they believed women to be "oppressed," but because they hated to see the sanctity of marriage impugned and sinners unpunished. Again, her vantage point is different from mine. If one looks back from the

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midpoint of the eighteenth century, and considers the recourse women had to the courts, the Puritans look more even-handed than their descendants. And, if only defendants who were married when they appeared in court, are considered, Dayton is correct. Men and women were punished equally for fornication. In Essex County, Massachusetts between 1640 and 1685, however, single women represented one-third of the female fornication defendants; single men represented only one-seventh of the male fornication defendants.

I am in complete agreement with the broad picture of the Puritan world depicted so masterfully by Norton and Dayton. Women led their lives within a gender system in which they were subordinate to men in their families and, along with the men in their families, to male political authority in general, but Puritanism assigned them an equal spiritual role and elevated the status of marriage. The roles of wife, mother, and living saint held the potential for considerable personal satisfaction and the vast majority of New England women reaped the benefits of these roles.
APPENDIX C

THE JUSTICE SYSTEM

The Massachusetts Bay Colony charter issued by Charles I in 1629 called for the annual election of a Governor, Deputy Governor and eighteen Assistants on the last Wednesday in Easter term. They were to be elected by the General Court, which was itself elected by the freemen of the colony, from among the membership of the General Court. The Assistants formed a court to deal with crimes punishable by dismemberment, banishment or death. They also served as magistrates, performing in a fashion similar to English Justices of the Peace and served as Quarterly Court judges.

Fornicators came within the jurisdiction of the Inferior Quarterly Court system established in 1636 in Boston, Cambridge, Ipswich and Salem to try cases not serious enough for the Court of Assistants which served as the appeals court for Quarterly Court cases. In 1643, when the county system was established, the Inferior Courts of Salem and Ipswich became the Essex County Quarterly Court. Each County Quarterly Court had five judges appointed to it, and at least three, one or more of them an Assistant in rank, were required for a quorum. The other judges were Commissioners, also known as Associates, men who were elected on the county level by freemen and confirmed by the
Quarterly Court judges, then, represented the popular choice of male Essex County settlers.

The Quarterly Courts had administrative as well as judicial functions. The judges appointed local officials, managed prisons, confirmed militia appointments, granted business licenses, probated wills, and appointed committees to lay out local roads and to build local bridges. They were empowered to levy fines up to £10 and they settled land disputes, debt cases, theft, slander, assault, master-servant disputes and moral offenses.

Most fornication cases were adjudicated by the three judge panel, but defendants could opt for a jury trial. Juries were required in felony cases, but fornication was a misdemeanor so only if a specific request was made for a jury was one supplied. A jury of trials was selected from the citizens of Essex County towns for each session of the Quarterly Court. A second jury, the grand jury was assembled annually. Grand jurymen were appointed at town meetings and they were required to report on misdemeanors committed in their towns. They reported unmarried women who were pregnant and couples whose first child was born within 32 weeks of marriage.

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Tithingmen composed the next level of reportage. Long a part of the English judicial system, they did not become an organized part of Massachusetts' justice until 1677. Each tithingman was responsible for the morals of ten families. He reported Sabbath violations, alcohol offenses and local pregnancies that had not come to the attention of the town's grand jurymen. They were expected to be the "neighborhood censors of private morality." However, most tithingmen were hesitant to report offenses because of the effect it would have on their relationships with their neighbors and they never became an effective part of the system.

Constables performed the day-to-day chores necessary to law enforcement. They were elected annually by town meeting, but it was not an office that was eagerly sought. A property requirement meant that only solid citizens were eligible for an office that included collecting taxes and ministers' salaries, levying attachments, and keeping track of strangers. Constables collected fines, and presided at whippings, brandings, and hangings. So much time was taken up in the performance of their offices, that they had little time left for their own businesses. They were allowed to collect small fees for specific services, but those who were most qualified were

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2 McManus, 64.
3 McManus, 60.
the least likely to wish to serve. In Salem in 1676 a refusal to accept an appointment as constable was punishable by a £10 fine.

Constables were responsible for organizing the next level of law enforcement. All men between the ages of sixteen and sixty were required to perform daytime ward duty or watch duty after sunset. Constables set up the duty roster and fined those who failed to report. Watch duty was not required between October and April, when it was assumed that the cold would keep people indoors. These men would be on the lookout for couples who were engaged in illicit sexual activity.

There was yet another level of local supervision. Every citizen was required to oversee the morals of his neighbors. The church covenant of Beverly, for example, required "the brotherly watch of fellow members" to ensure that no one strayed from the path of Christian rectitude. Kissing, or even tickling in public could lead to a charge of lewd or lascivious behavior. There was an incentive provided for reporting this type of behavior. Holy watchers, as they were called, received a portion of the fine collected from offenders.⁴

From the elite men appointed by the General Court to the Court of Assistants who served as magistrates, to the Commissioners, grand jurymen, tithingmen, constables, the watch

⁴McManus, 68.
and ward, and holy watchers, the entire Puritan community was engaged in enforcing public morals and punishing those who managed to evade surveillance. Not many individuals did. Between 1640 and 1692, 124 women bore illegitimate children and 187 couples produced their first child within 32 weeks of their marriage.


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