UC Berkeley

Papers Presented in the Center for the Study of Law and Society Bag Lunch Speaker Series

Title
Puritan Godly Discipline in Comparative Perspective: Legal Pluralism and the Sources of "Intensity"

Permalink
https://escholarship.org/uc/item/1rf100tv

Author
Ross, Richard J

Publication Date
2007-02-13

Peer reviewed

Puritan Godly Discipline in Comparative Perspective:
Legal Pluralism and the Sources of "Intensity"

Richard J. Ross[1]
University of Illinois (Urbana-Champaign) College of Law and History Department

[This article is a work-in-progress. I am particularly eager to receive feedback about what worked and did not work and about what needs further elaboration or could be cut. Please do not cite or quote from this essay without permission.]

Massachusetts Governor John Winthrop famously called on his fellow colonists to "bring into familiar and constant practice" what English Protestants "maintain as a truth in profession only." Settlers must not think that God "will bear with such failings at our hands as He does from those among whom we have lived."[2] This sensibility infused the campaign of early Massachusetts' magistrates, ministers, and local notables to combat sin, reform morals and manners, and foster a godly society. The colony's ability to turn "professions" widely shared among serious English Protestants into "familiar and constant practice" earned it a reputation for intense godly discipline.[3] Yet many contemporary critics of Massachusetts would have been surprised to learn of the colony's current reputation. In the 1640s, English and Scottish presbyterians charged that the New England Way would encourage schism, social disorder, and inconsistent standards of judgment and administration among clashing churches and civil authorities—all of which would undermine godly discipline. In particular, they saw Massachusetts as deficient in the sorts of mechanisms for coordinating among congregations and between the civil and ecclesiastical realms available in Reformed polities such as Calvin's Geneva and early seventeenth-century lowland Scotland, places of special significance in debates between presbyterians and Massachusetts puritans.

I will compare Massachusetts to Scotland and Geneva in order to make sense of the presbyterians' supposition that the colony's campaign to reform morals and manners should have turned out disorganized and inconsistent. I will develop the critics' hypothesis not to embrace it. Rather, by exploring why it turned out to be incorrect, one sees fresh reasons for the intensity of Massachusetts' godly discipline. First, the underlying logic of the colony's approach to discipline and the design of its legal system reduced the need for the types of coordination useful in Scotland and Geneva. Second, the examples of Scotland, Geneva, and England reveal how many of the social and normative impediments to godly reform in Reformed Europe were absent or muted in early Massachusetts, which made the colony's less-synchronized disciplinary machinery appear more fervent because it confronted fewer obstacles.

Historians have often treated the intensity of Massachusetts godly discipline in the first generation of settlement (1630-c.1660) as a historical force, a thing-to-be-explained, and have

---

[2] John Winthrop, "A Model of Christian Charity" (1630), in Edmund S. Morgan, ed., Puritan Political Ideas, 1558-1794 (Indianapolis, 1965), 91

[3] Comparing the Massachusetts puritans' laws governing morals to English and European ones, Perry Miller observed that "their standards prove generally not to be too far above the prevailing, and their reputation for harshness seems to result rather from the rigor with which they were enforced than from the unreasonableness of their exactions." Miller, The New England Mind: The Seventeenth Century (Cambridge, Mass., 1939), 197. On this theme, see also, e.g., David H. Flaherty, Privacy in Colonial New England (Charlottesville, 1972), 164-65; David Hackett Fischer, Albion's Seed: Four British Folkways in America (Oxford, 1989), 195-96. This emphasis on the "zealousness" of early Massachusetts morals regulation rather than its novel content is congruent with the stress, since the work of Patrick Collinson, on the "intensity" rather than the distinctiveness of puritans' piety and social ethic. Collinson famously styled Puritans the "hotter sort" of Protestants. Collinson, "Concerning the Name Puritan," Journal of Ecclesiastical History 31 (1980): 485-86; Collinson, English Puritanism (London, 1983), 19, 28-29, 34-35; Theodore Dwight Bozeman, The Precisionist Strain: Disciplinary Religion and Antinomian Backlash in Puritanism to 1638 (Chapel Hill, 2004), 3-6; Charles Lloyd Cohen, God's Caress: The Psychology of Puritan Religious Experience (New York, 1986), 4-5; Charles L. Cohen, "Puritanism," in Encyclopedia of the North American Colonies, ed. Jacob Ernest Cooke et. al. (New York, 1993), III, 578-81; Peter Lake, "Defining Puritanism--again?," in Puritanism: Transatlantic Perspectives on a Seventeenth-Century Anglo-American Faith, ed. Francis J. Bremer (Boston, 1993), 3-29; Michael P. Winship, "Were There Any Puritans in New England?," New England Quarterly 74 (2001): 118-38.

then advanced social, political, and ideological reasons for it. While my essay assumes and builds upon this prior work, it takes a different perspective by asking to what extent fervor was a byproduct of lessened resistance. I will pursue this line of analysis by situating early Massachusetts in two frameworks seldom brought together: first, the comparative study of early modern Reformed campaigns for godly discipline; and second, the comparative investigation of legal pluralism among New World colonies. Placing Massachusetts in these two contexts highlights features of the colony's experience that facilitated its campaign for moral righteousness and social regeneration. Treated as a case study that fits into both comparative frameworks, the colony can serve as a rare point of contact that brings them together.

As a preliminary matter, by what standard can we label early Massachusetts godly discipline as "intense?" This is, after all, a relative rather than an absolute claim: fervent compared to what? There is reason to be careful when speaking of Massachusetts intensity. The colony's ambition to make the churches and civil authorities work together in a coordinated fashion to suppress disorder and sin and foster a godly society was not distinctive but a common (if seldom realized) aspiration of English puritans.[4] Nor was Massachusetts' litany of offenses and punishments unusual, for these largely resembled the mother country's, with the exception of the greater Biblical influence in the capital statutes.[5] Prosecutions of drunkenness, fornication, swearing, adultery, idleness, defamation, profaning the Sabbath, and other moral offenses, leading to fines, bonds, whipping, and shaming penalties, went on in English quarter sessions, leets, and ecclesiastical tribunals as well as in Massachusetts. The colony did not gain a reputation for fervor because of riots or violence in the streets. Nor did colonists unreservedly unite behind the pursuit of godly discipline, a goal contested in meaning and sometimes resented. The Massachusetts saints lived among a considerable number of what David Hall has termed "horse-shed" Christians with limited and varying attachment to the churches, along with many settlers in port and frontier towns who were more materialistic and prone to strife than the puritan ideal.[6] The colony's achievements in fostering a godly society appear incomplete and variegated if measured against ministers' and magistrates' hopes, let alone against stereotypes of a Bible Commonwealth of blue laws and scarlet letters.

Yet if measured not against the unfulfilled aspirations of committed Massachusetts puritans but against the standards of contemporary England and her Chesapeake and Caribbean colonies, a different picture emerges. From the perspective of the English Atlantic, early Massachusetts provides a model of the state, churches, and local notables cooperating fervently to suppress sin and encourage a more fully Christianized society. Mary Beth Norton's comparison of published seventeenth-century court records from the Chesapeake and New

---

[4] See, e.g., Stephen Foster, The Long Argument: English Puritanism and the Shaping of New England Culture, 1570-1700 (Chapel Hill, 1991), 37, 44-48.

[5] On these similarities, see George L. Haskins, "Precedents in English Ecclesiastical Practices for Criminal Punishments in Early Massachusetts," in Essays in Legal History in Honor of Felix Frankfurter, Morris D. Forkosch, ed. (Indianapolis, 1966), 321-36.

[6] See, e.g., Philip F. Gura, A Glimpse of Sion's Glory: Puritan Radicalism in New England, 1620-1660 (Middletown, 1984); David D. Hall, Worlds of Wonder, Days of Judgment: Popular Religious Belief in Early New England (New York, 1989), 15-16; Christine Leigh Heyrman, Commerce and Culture: The Maritime Communities of Colonial Massachusetts, 1690-1750 (New York, 1984). 29-51; Stephen Innes, Labor in a New Land: Economy and Society in Seventeenth-Century Springfield (Princeton, 1983), xvii-xix, 124-43; Darrett B. Rutman, Winthrop's Boston: A Portrait of a Puritan Town, 1630-1649 (New York 1972).

England reveals some suggestive statistics.[7] The Chesapeake jurisdictions that Norton surveyed prosecuted thirteen premarital fornicators as against 153 in New England. Minor offenses against public order such as "swearing, disturbing the peace, unlicensed liquor sales, and sabbath breaking" yielded 106 prosecutions in the Chesapeake versus 1,238 in New England. Prosecution rates in Maryland county tribunals were less than half of those in Massachusetts on a per capita basis.[8] Colonists in the Bay Colony appear to have taken more seriously than their Chesapeake or English contemporaries conventional norms of sexual self-control. In the middle seventeenth century approximately one in two hundred brides became pregnant before their wedding as against one in five in Maryland and England.[9] Offenders in the early Bay Colony distinguished themselves by their high rates of confession, often tinged with pained acknowledgement of weakness and degradation. These confessions derived in part from religious commitment and in part from a desire to secure leniency in a colony where conviction rates ran near or above 90% (as against 60 to 80% in the Chesapeake, depending on the offense).[10]

To be sure, in England, godly ministers and magistrates did sometimes unite behind fervent local campaigns to reform manners and morals—one thinks of, for example, Elizabethan Gloucester, the late sixteenth-century Stour valley in East Anglia, or the city of Dorchester from the late 1610s through the 1630s. But these efforts were episodic, geographically specific, and quite often short-lived.[11] Massachusetts godly discipline can be termed "intense" insofar as it was persistent and widespread, a "familiar and constant practice" that reached the bulk of the population and enlisted the participation of a large a proportion of the heads of households and local notables. This godly discipline sought not so much "social control" as the cultivation of virtue, order, industry, and civility. Contributing to an understanding of this intensity by exploring, comparatively, what the puritans were up against is the central ambition of my essay.

---

[7] Norton drew upon published seventeenth-century court records from colony-wide tribunals and selected county courts in the Chesapeake and New England. Norton, Founding Mothers and Fathers: Gendered Power and the Forming of American Society (New York, 1996), 409-410.

[8] Norton, Founding Mothers and Fathers, 66; 424 n.28 [premarital fornicators]; 326, 463 n.12 [public order offenders]; 462 n.3 [prosecution rates].

[9] Roger Thompson, Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699 (Amherst, 1986), 54, 70, 204 n. 28.

[10] Norton, Founding Mothers and Fathers, 328 and 464 n.20 and 21 [conviction rates]. Edith Murphy's study of Middlesex County, Massachusetts reveals that 100% of accused fornicators confessed in the 1650s (n=11). Murphy concurs with Thompson in finding a decline, beginning in the 1660s, in fornicators' candor and acceptance of moral responsibility, particularly by male offenders. Edith Murphy, "Skillful Women and Jurymen: Gender and Authority in Seventeenth-Century Middlesex County, Massachusetts" (Ph.D., University of New Hampshire, 1998), 235, 246 (table 5.4); Thompson, Sex in Middlesex, 33. "Examples of utter self-abasement can be multiplied almost indefinitely from New England records but scarcely exist in other colonies, . . ." John M. Murrin, "Magistrates, Sinners, and a Precarious Liberty: Trial by Jury in Seventeenth-Century New England," in Saints and Revolutionaries: Essays on Early American History, eds. David D. Hall, John M. Murrin, and Thad W. Tate (New York, 1984), 196.

[11] Paul Slack, Chapter 2: "Godly Cities," in From Reformation to Improvement: Public Welfare in Early Modern England (Oxford, 1999), 29-52; Francis J. Bremer, "The Heritage of John Winthrop: Religion Along the Stour Valley, 1548-1630," New England Quarterly (1997): 515-47; David Underdown, Fire From Heaven: Life in an English Town in the Seventeenth Century (New Haven, 1992).

Unpromising Massachusetts: A Weak Foundation for Godly Discipline?

Let us develop, somewhat counterintuitively, the reasons for predicting that early Massachusetts would have been ill-suited to cultivate moral righteousness and social regeneration. Our perspective will be that of well-informed English or Scottish presbyterians in the late 1630s and 1640s contrasting Massachusetts to the successful godly polities at the forefront of their minds, contemporary lowland Scotland and Calvin's Geneva. Early modern Reformed Protestants commonly assumed that discipline required effective cooperation among churches and between the "two swords" of the civil and ecclesiastical orders. Massachusetts clergy and statesmen agreed that the commonwealth and churches should be "close and . . . coordinate," helping "mutually each to other" so that "obstinacy in members" may be met by "the united action of both polities." Yet, they added, the two polities should not be "confounded" in ways that "negate the self-rule or sufficiency" of each "in its own field."[12] Though the colony's ministers and political leaders differed at times over how best to understand the ban against "confounding," they interpreted it to forbid many of the mechanisms that Geneva and Scotland used to coordinate the two swords in the service of godly discipline. In addition, Massachusetts' congregationalist form of church organization enhanced the difficulties of harmonizing within the ecclesiastical realm.

Consider some common strategies of Reformed polities that Massachusetts' religious and political commitments ruled out. Geneva and Scotland joined ministers and civil authorities in standing institutions devoted to godly discipline. The mid-sixteenth-century Genevan consistory included both the city's pastors and a number of magistrates and elders. Geneva treated the consistory, as Robert Kingdon observed, as a "standing committee of the government. Its lay members were chosen in much the same way as members of the committees controlling fortifications and grain supplies."[13] Scottish kirk sessions around the turn of the seventeenth century overlapped with civil authorities. Many, sometimes most, of the urban kirk's lay elders were simultaneously councilors in the burghs. As Margo Todd notes, kirk sessions in burghs "often met jointly with councils, co-operating in the administration of schools and hospitals and facilitating corporal punishment of sinners." Some urban parishes invited law-officers to sit with the kirk in the interest of furthering civil and ecclesiastical collaboration.[14] The Scottish

---

[12] I have drawn these quotations from: John Cotton, Letter to Lord Say and Sele (1636), in Everett Emerson, ed., Letters from New England: The Massachusetts Bay Colony, 1629-1638 (Amherst, 1976), 191; John Cotton, A Discourse about Civil Government in a New Plantation Whose Design is Religion (Cambridge, Mass., 1663 [MS, 1637]), 8; John Norton, The Answer to the Whole Set of Questions of the Celebrated Mr. William Apollonius, Pastor of the Church of Middelburg, trans. Douglas Horton (Cambridge, Mass., 1958 [MS, 1645; published in Latin, 1648]), 167-68. See also Thomas Hooker, A Survey of the Sum of Church Discipline (New York, 1972 [reprint of London, 1648]), Part I, 13; David D. Hall, The Faithful Shepherd: A History of the New England Ministry in the Seventeenth Century (Chapel Hill, 1972), 121-25.

[13] One of Geneva's four highest magistrates, the syndics, presided over the consistory. Robert M. Kingdon, "The Control of Morals in Calvin's Geneva," in The Social History of the Reformation, ed. Lawrence P. Buck and Jonathan W. Zophy (Columbus, 1972), 6-7; Robert M. Kingdon, "Calvin and the Establishment of Consistory Discipline in Geneva: The Institution and the Men Who Directed It," Nederlands Archief voor Kerkgeschiedenis 70 (1990): 162.

[14] Margo Todd, The Culture of Protestantism in Early Modern Scotland (New Haven, 2002), 11-12 and 12 n.31; Geoffrey Parker, "The 'Kirk by Law Established' and the Origins of 'The Taming of Scotland': Saint Andrews, 1559-1600," in Perspectives in Scottish Social History, ed. Leah Leneman (Aberdeen, 1988), 5; Walter Roland Foster, The Church Before the Covenants: The Church of Scotland, 1596-1638 (Edinburgh, 1975), 70-71, 78-79; Bruce

presbyterians' understanding of the separation of civil and ecclesiastical administration was consistent with an expectation that personnel would overlap in order to make each of the two swords effective.[15] The English parish provided another model of a "partnership between the minister and the chief inhabitants" of a jurisdiction, who served as churchwardens, overseers of the poor, and constables. At its best, in William Hunt's estimation, it could help cultivate a "culture of discipline" as it relieved and regulated the poor, bound young paupers into apprenticeship, "petitioned for the suppression of alehouses, and generally attempted to elevate moral standards."[16]

Early Massachusetts lacked institutions that, like the English parish, Geneva consistory, or Scottish kirk, mixed clergy with civil authorities. Its prohibition on "confounding" the civil and ecclesiastical orders forbid ministers from holding public office or joining with civil officials in "secular entanglements" such as the regulation of the poor, administration of schools, or imposition of corporal punishment.[17] In 1632, several of the churches decided that even a ruling elder should not serve simultaneously as a "civil magistrate."[18] Meanwhile, magistrates, deputies, judges, constables, and selectmen did not earn a voice in church disciplinary proceedings by virtue of their office in the civil state.

The Scottish kirk and Genevan consistory not only brought together clerics and secular officials in the same body, but established mechanisms for referring cases between the ecclesiastical and civil authorities. The criminal courts in Geneva received about 20% of their cases from the consistory in the 1540s and about 40% in the 1550s.[19] Urban kirk sessions in Scotland sometimes disciplined offenders with the town bailies in attendance so that the sentence could be enforced at the same time in both the kirk and civil tribunals. Rural kirks might request permission from the privy council to inflict civil penalties. Towns routinely passed on cases to the kirks, which reciprocated by sending offenders who could not afford a fine to the magistrates

---

Lenman, "The Limits of Godly Discipline in the Early Modern Period with Particular Reference to England and Scotland," in Religion and Society in Early Modern Europe, 1500-1800, ed. Kaspar von Greyerz (London, 1984), 135-38; William M. Abbott, "Ruling Eldership in Civil War England, the Scottish Kirk, and Early New England: A Comparative Study of Secular and Spiritual Aspects," Church History 75 (2006): 65.

[15] Lenman, "Limits of Godly Discipline," 137-38.

[16] William Hunt, The Puritan Moment: The Coming of a Revolution in an English County (Cambridge, Mass., 1983), 79-83, 143. On the parish, see also Steve Hindle, The State and Social Change in Early Modern England, c.1550-1640 (Basingstoke, 2000), 216-21.

[17] John Cotton, Discourse about Civil Government, 5, 7-8; Cotton, Letter to Lord Say and Sele, 191; John Witte, Jr., "How to Govern a City on a Hill: The Puritan Contribution to American Constitutionalism," Emory Law Journal 39 (1990): 55.

[18] John Winthrop, Winthrop's Journal: History of New England, 1630-1649, ed. James Kendall Hosmer (New York, 1908), I, 83. The churches' conclusion caused magistrate Increase Nowell to resign as a ruling elder of the church of Boston. For decades, no ruling elder of that church became a magistrate or colony-level official, though two did serve on Boston's Board of Selectmen between 1634 and 1639. Harold F. Worthley, "The Lay Offices of the Particular (Congregational) Churches of Massachusetts, 1620-1755: An Investigation of Practice and Theory" (Th.D. thesis, Harvard University Divinity School, 1970), 199-201, 210-212, 221.

[19] Because of gaps in the records of the Genevan criminal courts, these percentages should be taken with some caution. They refer to "known" criminal cases. They are averages over the course of a decade; the figures year by year fluctuate significantly. Still, they establish that the referral of cases from the consistory to the criminal courts was routine. William G. Naphy, Calvin and the Consolidation of the Genevan Reformation (Manchester, 1994), 108, 179.

for additional punishment.[20] Although early Massachusetts displayed much informal collaboration between church discipline and state tribunals, it lacked these sorts of regularized procedures.[21] Civil authorities sat in church disciplinary proceedings only as brethren of the congregation and not in their official capacity as representatives of secular courts. Church meetings and state tribunals independently evaluated the alleged misdeeds of offenders and would not simply accept each other's findings as grounds for discipline.

The colony's strong distinction between spiritual and civil penalties magnified the importance of its unwillingness to allow the state and the churches to share personnel and act upon each other's judgments. Churches administered the spiritual sanctions of exclusion from communion and excommunication, but not the secular punishments of fines, imprisonment, and bodily coercion. The Scottish kirk and Genevan consistory, by contrast, did not strictly separate the two types of sanctions. Calvin relied on Geneva's magistrates to reinforce the consistory's admonitions and excommunications with financial and corporal punishments, and the consistory sent offenders to the Council with that purpose in mind. In addition, the Council appears to have imposed fines on offenders denounced to the consistory.[22] Scottish lay elders, on their own authority, fined congregants who swore or missed Sunday services. Kirk sessions might impose even heavier fines on an offender, force him to post a bond with a surety, chain him to a wall with an iron neck collar (the "jougs"), place an iron mask over his head (the "branks"), or imprison him in the church steeple for a week or two on a diet of bread and water.[23] Massachusetts church meetings could neither inflict financial or coercive sanctions nor enlist the state to do it for them (unless the authorities chose to punish an offender for their own reasons).

The colony had as few formal mechanisms for coordinating discipline among the various churches as it did between the churches and the state. Massachusetts congregationalism granted each church final say over disciplinary proceedings. Churches were not embedded in hierarchical and pyramidal systems running from the local to the national level in the manner of Scotland (parish kirks, regional presbyteries and synods, and a national General Assembly) or England (archdeaconry and diocese courts, provincial courts at Canterbury and York, and a Court of High Commission under royal auspices).[24] These systems, whatever their other flaws,

---

[20] Lenman, "Limits of Godly Discipline," 137; Parker, "Kirk," 5; Todd, Culture of Protestantism, 175-76; Foster, Church Before the Covenants, 79.

[21] To be sure, ministers gave advice in difficult criminal cases and in the framing of laws, particularly those affecting ecclesiastical matters. Thomas Lechford, Plain Dealing: or News from New England (London, 1642), 25; Hall, Faithful Shepherd, 130-31; Robert F. Scholz, "'The Reverend Elders': Faith, Fellowship and Politics in the Ministerial Community of Massachusetts Bay, 1630-1710" (Ph.D. dissertation, University of Minnesota, 1966), 131-35. County courts occasionally required an offender to confess before his congregation. Haskins, Law and Authority, 89. And ministers helped question Anne Hutchinson during her trial before the General Court. Despite these instances of collaboration between clergy and civil officials, early Massachusetts lacked the formalized procedures for referring cases between ecclesiastical and secular tribunals seen in Geneva and Scotland.

[22] Philip Benedict, Christ's Churches Purely Reformed: A Social History of Calvinism (New Haven, 2002), 463; Robert M. Kingdon, Thomas A. Lambert, and Isabella M. Watt, eds., Registers of the Consistory of Geneva in the Time of Calvin: Volume I, 1542-44 (Grand Rapids, 2000), xxx.

[23] Todd, Culture of Protestantism, 32-33, 141-42, 257-58; Parker, "Kirk," 12-13.

[24] The Reformed churches of France and the Netherlands also maintained hierarchical pyramids (albeit with varying powers of supervision), as presbyterian critics liked to point out at Massachusetts' expense. Thomas Edwards, Antapologia: Or, a Full Answer to the Apologetical Narration (London, 1644), 107.

allowed institutions at higher levels to hear difficult cases and chastise offenders too prominent or disobedient to be handled at lower levels. They also conducted visitations of potentially idiosyncratic or laggard kirk sessions and archdeaconries.[25] Massachusetts consociations and colony-wide synods provided respected (but not binding) statements of doctrine and offered sites for consultation among ministers, but they did not scrutinize the conduct of discipline in the individual churches. Nor did they serve as ecclesiastical courts of appeal that might handle, as John Norton put it, "cases of inadequacy, of illegal administration, or of defiance."[26]

To presbyterian eyes, the colony seemed ill-adept at coordinating discipline not only through "top-down" mechanisms, but through "side-to-side" collaborations among churches. To be sure, churches offered each other (non-binding) advice about discipline, sometimes at the prompting of the magistrates. But contrast Scotland, where a kirk session in one parish would, at the request of another, help track down fugitives from discipline, returning them by force if necessary.[27] There was no analogous system in Massachusetts. Churchmembers in Massachusetts could not leave their congregation to join another unless they received a letter of dismission, which would not be issued if they were under discipline. In this fashion, the churches could prevent their members from escaping discipline by officially "resigning" or seeking out a more congenial congregation without the permission. Yet the churches did not have a reliable mechanism for stopping members who left to go elsewhere without intending to join another church.[28] Nor could congregations, in the Scottish fashion, return an offender against his will to his home church.

Pointing out the superior mechanisms for coordinating the civil and ecclesiastical realms in Scotland should not obscure the continuing obstacles to collaboration and the rivalries and differing priorities of nobles, magistrates, clergy, lay elders, and local notables. Kirks, for instance, sent offenders to the civil authorities for further punishment only to encounter magistrates unwilling to act because they considered ecclesiastical sanctions sufficient or state penalties excessive. Some nobles looked warily on kirks as an intrusion into their feudal jurisdiction and tried in particular to preserve control over servants and tenants.[29] Yet how much

---

[25] Foster, Church Before the Covenants, 66-132; Martin Ingram, Church Courts, Sex, and Marriage in England, 1570-1640 (Cambridge, 1987), 35-40.

[26] Norton, Answer, 127-28, 131 (quotation on p. 128). See generally Robert F. Scholz, "Clerical Consociation in Massachusetts Bay: Reassessing the New England Way and Its Origins," William and Mary Quarterly 29 (1972): 391-414; Scholz, "The Reverend Elders."

[27] Todd, Culture of Protestantism, 12-13.

[28] For the rules on the books, see John Cotton, The Keys of the Kingdom of Heaven (London, 1644), 17-18; Cambridge Platform (1648), in Williston Walker, ed. The Creeds and Platforms of Congregationalism (Boston, 1960), 224-26; Emil Oberholzer, Jr., Delinquent Saints: Disciplinary Action in the Early Congregational Churches of Massachusetts (New York, 1956), 25-26. David Konig has noted that "of the 256 persons admitted to membership in the Salem congregation by 1640, 48 (almost 1 out of 5) left to join another congregation." Other congregations found it difficult to distinguish those actually "dismissed" by Salem from "the excommunicants who presented themselves to other congregations as members. Disturbed by this problem in 1639, the Salem church wrote to that of Dorchester for assistance and asked it to read publicly the names of those whom Salem had excommunicated." David T. Konig, Law and Society in Puritan Massachusetts: Essex County, 1629-1692 (Chapel Hill, 1979), 31-32.

[29] K. M. Brown, "In Search of the Godly Magistrate in Reformation Scotland," Journal of Ecclesiastical History 40 (1989): 568; Michael Graham, "The Civil Sword and the Scottish Kirk, 1560-1600," in Later Calvinism: International Perspectives, ed. W. Fred Graham (Kirksville, 1994), 237-48.

more difficult would the campaign for godly discipline have been if Scotland had shared early Massachusetts' commitment to congregational autonomy or its strict understanding of what practices improperly "confounded" the civil and ecclesiastical realms.

The Scottish and Genevan experiences suggest why, to its critics, the New England Way appeared likely to produce a disjointed and unsystematic campaign for godly discipline undermined by idiosyncrasy and schism and by oscillations between lassitude and enthusiasm. Presbyterian controversialists such as Robert Baillie, Thomas Edwards, Alexander Forbes, and Richard Hollinworth reiterated these themes in pamphlets that condemned Massachusetts congregationalism, in part as a roundabout way of criticizing the English Independents maintaining an uneasy alliance with presbyterians during the Civil War.[30] They claimed that congregationalism caused divisions in Amsterdam and Rotterdam, but never more than in Massachusetts, where it "brought forth such a multitude of gross heresies and divisions, as did threaten not the churches alone, but the civil state also with a total ruin."[31] The New England Way had "produced among persons accounted religious, more . . . looseness of life and manners, than ever have been in all the Reformed churches of the presbyterial way above fourscore years."[32] Lacking synods that could hear appeals and issue directives, congregationalism provided no effective way to control churches that imposed wrongful sentences, lacked vigor or prudence, incubated contagious heresies, or fell prey to "inconstancy and uncertainty in judgment." Ministers and congregations might reason with or withhold their fellowship from an offending church. But this remedy would prove "worse than the disease" by inspiring endless public controversy, producing factions made up of contending congregations withdrawing from each other, and, in the end, offering no sure method for forcing an obstinate church to rectify its mistakes.[33]

Falling short in "ecclesiastical authoritative power," and with the churches exercising discipline only over the "visible saints" and their minor children rather than the entire population (as in Geneva and Scotland), Massachusetts congregationalists gave magistrates the authority to prosecute a wide range of morals offenses and to investigate doctrines and errors as "disturbances to the commonwealth."[34] New Englanders apparently reasoned, in Thomas Edwards' unsympathetic reconstruction, that "less ecclesiastical . . . authority with a large civil

---

[30] The following two paragraphs draw on: Robert Baillie, A Dissuasive Against the Errors of the Time (London, 1645), 112; Robert Baillie, Errors and Induration, Are the Great Sins and the Great Judgments of the Time (London, 1645), Preface, A3^v; Robert Baillie, The Dissuasive from the Errors of the Time (London, 1655), 45; Thomas Edwards, Reasons against the Independent Government of Particular Congregations (London, 1641), 8-9; Thomas Edwards, Antapologia: Or, a Full Answer to the Apologetical Narration (London, 1644), 29-30, 107, 136-41, 152-53, 165-76, 178-79, 294-95; Thomas Edwards, Gangraena (London, 1646), 125; Alexander Forbes, An Anatomy of Independency (London, 1644), 5, 48-50; Richard Hollinworth, Certain Queries Modestly (Though Plainly) Propounded (London, 1646), 16.
[31] Baillie, Errors, Preface, A3^v.
[32] Edwards, Gangraena, 125.
[33] Without a superior authority to hear a dispute among contending congregations, the "debate ends rather in more strife than in a making up the former breach." Alexander Forbes, An Anatomy of Independency (London, 1644), 49; Edwards, Antapologia, 295, 141.
[34] The percentage of settlers who became members of churches fell during the 1640s. Darrett Rutman estimates that in 1649 "less than one-half" of Boston's "total adult male population" were members of the church. Membership rates ran higher among fathers and mothers of families than among servants. Darrett B. Rutman, Winthrop's Boston: A Portrait of a Puritan Town, 1630-1649 (New York, 1972), 146-47.

power to back it, will be every way as effectual as much ecclesiastical authority, with a small civil power." In this they were mistaken. Civil authorities lacked the expertise to judge religious disputes and could not proceed against sins that did not fall within secular jurisdiction. Nor could the state impose the spiritual sanctions necessary to reform the inward man. Suppose a magistrate supported a congregation shunned by other churches: who was to yield?[35] Reading the presbyterian critique from the vantage point of the present, one might add another point. Given the weakness of "ecclesiastical authoritative power," would not Massachusetts benefit from features of the Genevan and Scottish systems that it lacked: for instance, disciplinary institutions bringing together ministers and state officials, or formal mechanisms for referring cases between the ecclesiastical and civil authorities.

The Debate Over Godly Discipline and the Nature of Massachusetts Society

Massachusetts congregationalists and their allies among the English Independents deployed several types of arguments in response to presbyterian attacks. For our purposes, it is important to note that their defense of the colony's godly discipline said little about how the particular nature of Massachusetts society contributed to its success. Ministers devoted most of their tracts to interpreting Scripture and the history of early Christian communities in order to justify the leading elements of the New England Way.[36] On occasion, clerical and civil leaders praised the practical results of the colony's discipline—for instance, the multiplication of well-attended churches and the containment of incipient divisions, such as in the Antinomian crisis.[37] And sometimes, like English Independents, they invoked natural law, "due process," and exquisitely self-serving analogies between congregational discipline and the proper relations of

---

[35] Edwards, Antapologia, 165, 168, 169-76.

[36] Ministers labored, in particular, to justify the colony's distinctive system for coordinating but not confounding the civil and ecclesiastical realms; its commitment to congregational autonomy and a restricted role for synods; its restriction of full church membership to visible saints; and its understanding of the proper roles of the minister, lay elders, and brethren of the congregation. See, e.g., John Davenport, An Answer of the Elders of the Several Churches in New England unto Nine Positions Sent Over to Them (London, 1643); Richard Mather, Church Government and Church Covenant Discussed, In an Answer of the Elders of the Several Churches of New England to Two and Thirty Questions Sent Over to Them by Divers Ministers in England (London, 1643); Richard Mather, An Apology of the Churches in New England for Church Covenant (London, 1643); John Cotton, Keys of the Kingdom of Heaven (1644); Thomas Weld, An Answer to W. R. His Narration of the Opinions and Practices of the Churches Lately Erected in New England (London, 1644); Thomas Weld, A Brief Narration of the Practices of the Churches in New England (London, 1645); Richard Mather, A Reply to Mr. Rutherford or a Defense of the Answer of the Reverend Mr. Herles Book Against the Independence of Churches (London, 1647); John Allin and Thomas Shepard, A Defence of the Answer Made unto the Nine Questions or Positions Sent from New England, Against the Reply thereto by that Reverend Servant of Christ, Mr. John Ball, Entitled, A Trial of the New Church Way in New England and in Old (London, 1648); John Cotton, The Way of the Congregational Churches Cleared (London, 1648); Thomas Hooker, A Survey of the Sum of Church Discipline (New York, 1972 [reprint of London, 1648]); Norton, Answer.

[37] Richard Mather, for example, estimated that most heads of families had subscribed to church covenants and become the foundations of robust congregations. Mather, Church Government and Church Covenant, 7. Thomas Weld and John Cotton claimed that Massachusetts successfully contained the Antinomian crisis and other potential schisms through civil proceedings and brotherly advice from churches in fellowship with troubled congregations. Weld, a minister who returned to England and defended Massachusetts congregationalism, asserted that the colony did not breed schism, but "destroyed" those brought over from England. "When these divisions did fall, it was while our discipline stood." Cotton, Way of the Congregational Churches, 83-85, 102; Weld, An Answer to W. R., 12.

children to parents or of corporations to commonwealths. Massachusetts ministers Richard Mather, Thomas Hooker, and John Norton, for example, contended that the presbyterian system of appeals from local kirks to regional synods to national assemblies undermined the reclamation of sinners by delaying discipline and transferring it from knowledgeable congregations to less informed higher authorities.[38] While the greater part of a congregation might err, as the presbyterians ceaselessly pointed out, so might the majority of a synod or national assembly.[39] Even should a church misuse its disciplinary powers, why assume that another body could supersede the congregation. If, as Mather observed,

> a family shall abuse their power, it does not follow that other families may lawfully for this cause take away their power from them. Or if a corporation shall so offend, it will not follow that other corporations may deprive them of their power. And if it be so in commonwealths and families, why may we not say the same of churches?[40]

But these were false analogies, contended the most acute presbyterian writers. Husbands, masters, and corporations cannot live by their own rules and conduct their affairs free of supervision. They must respect the law of the land and allow oversight by higher civil authorities, which intervene "in cases of wrong, condemning the innocent, [and] suffering delinquents to escape . . . ."[41] Not just analogies, but the "law of nature with right reason" favored presbyterian churches' system of appeals and "consociation in government" rather than congregational independence. Towns and counties have "particular governments" whose representative join together to form the superior authority of Parliament. Schools, armies, and navies operate in discrete houses, regiments, and ships, yet consociate together in councils that oversee the group. The "several parts should be subject to and ordered by the whole, as is a man's body"—or presbyterian church government.[42] The "law of nature" also taught that "no man can be a judge in his own cause." How, then, could the elders of a congregation investigate and sanction a Christian and then prevent neutral, higher tribunals from hearing his complaint?[43]

These very different forms of argument shared a common feature. Beyond assuming a Reformed Christian polity, they were tied lightly, if at all, to specific times, places, or circumstances. Appeals to Scripture, early Christian history, natural law, and "due process," and analogies to the basic components of society (such as families and corporations), could be invoked in favor of congregational or presbyterian discipline whether in Massachusetts, England, Scotland, the Netherlands, or the Swiss and German city-states, and whether in the present or the future. The families and corporations that made an appearance were generic rather than situated in a particular social setting—say, the municipal corporations of East Anglia in 1610, or the families of rural lowland Scotland in the 1630s. Disputants did not say that their system worked

---

[38] Mather, Reply to Rutherford, 5; Hooker, Survey, Part IV, 17-19; Norton, Answer, 134.

[39] Hooker, Survey, Part IV, 38; Mather, Reply to Rutherford, 60.

[40] Mather, Reply to Rutherford, 60.

[41] Thomas Edwards, Antapologia, 121-22, 124.

[42] Thomas Edwards, Reasons against the Independent Government of Particular Congregations (London, 1641), 11; Edwards, Antapologia, 75; Richard Hollinworth, A Rejoinder to Master Samuel Eaton and Master Timothy Taylor's Reply (London, 1647), 56. Presbyterians also advanced these arguments in their debates with the Independents at the Westminster Assembly. Robert S. Paul, The Assembly of the Lord: Politics and Religion in the Westminster Assembly and the "Grand Debate" (Edinburgh, 1985), 254, 270, 356.

[43] Samuel Rutherford, The Due Right of Presbyteries (London, 1644), 338 [the printer of this tract referred to two pages in the tract as p. 338; I am citing the latter page marked as "338"].

particularly well in England, New England, or Scotland at a given moment in time because of demographics, the nature of the economy, the presence or absence of ethnic and linguistic diversity, the operations of guilds, mercantile associations, and other institutions of what we would today call "civil society," and so forth. Natural law and Scripture, if rightly understood, could suggest a trans-cultural, ideal system of godly discipline whose essentials (if not "circumstantials") would appear largely the same in Edinburgh, York, or Boston.[44] Even the Massachusetts ministers who pronounced the New England Way successful in its practical results did not commonly ask whether the peculiar social conditions of Massachusetts made possible its achievements.

To be sure, Massachusetts spokesmen occasionally considered the fit between the colony's godly discipline and its society—but only at a high level of generality. Their starting point for thinking about the question was the common distinction between the civil order, which varied with circumstances, being "human and subject to change," and the "essentials" of the church order, divine in origin and "subject to no change." [45] God had left to mankind the challenge of fitting the immutable church order to the wide array of acceptable forms of civil administration. Fortunately, as John Cotton observed, "God has so framed the state of church government and ordinances that they may be compatible to any commonwealth." Unlike Christians in a settled state, the founders of a newly formed plantation had the liberty to design the civil government best suited to work closely with the churches in the shared pursuit of a godly society. No one "fashions his house to his hangings but his hangings to his house. It is better that the commonwealth be fashioned to the setting forth of God's house, which is His church, than to accommodate the church frame to the civil state."[46]

But there was a second question of fit to consider. Civil government should accord not only with the "general rules of the Word," but with the "state of the people."[47] Massachusetts leaders invoked this concern from time to time to explain government structure or policies. John Winthrop pointed to the need to acquire knowledge about the "nature and disposition" of the people as a reason to resist calls for codification.[48] The General Court contended that the "condition of this place and people" justified the colony's adoption of laws divergent from—but not repugnant to—the laws of England.[49] The Massachusetts puritans faced the challenge of melding a church order that was "immutable" in its "substantials" with a civil government

---

[44] The elastic category of "circumstantials" could expand to include much of importance.

[45] John Norton observed that the two orders "differ as being of this world and not of this world." Norton, <u>Answer</u>, 167. Richard Mather, like Thomas Hooker, believed that the "essentials and substantials" of church polity are "prescribed in the Word and therefore immutable" and cannot vary from one church to another. Mather, <u>Church Government and Church Covenant</u>, 82-83. Mather differentiated between immutable "substantials" and "accidents" that human communities could adjust. Thomas Hooker used the terms "essentials" and "circumstantials" to capture the same distinction. Hooker, <u>Survey</u>, Part 1, 5-7, 9.

[46] John Cotton, Letter to Lord Say and Sele, 191; Cotton, <u>Discourse about Civil Government</u>, 3, 9-10, 14.

[47] "Model of Church and Civil Power" (c.1635), quoted in Roger Williams, <u>The Bloody Tenent of Persecution</u> (1644), in <u>The Complete Writings of Roger Williams</u>, ed. Samuel Caldwell (New York, 1963), III, 247. A group of Massachusetts ministers, perhaps with Richard Mather in the lead, composed the "Model" in the middle 1630s. No copy survives. Some extracts appears in William's <u>Bloody Tenent</u>.

[48] Winthrop, <u>Journal</u> (Sept. 1639), I, 323.

[49] Massachusetts General Court's Petition to the Commissioners for Foreign Plantations, in Winthrop, <u>Journal</u>, II, 310 (1646).

sensitive to the transitory social environment of a single colony on the American coast in the 1630s and 1640s.

This challenge moved to the foreground the relationship between Massachusetts society and government and, more particularly for our purposes, the fit between the colony's society and its cooperating civil and ecclesiastical institutions of godly discipline. These considerations point to a road not taken by Massachusetts spokesmen. Perhaps "the state of the people" in early Massachusetts and the colony's society and legal system were (to use Cotton's term) "compatible" with a system of godly discipline lacking coordination mechanisms found in Scotland and Geneva. Considering this possibility requires exploration of the colony's design of discipline and of some notable features of its social structure that distinguished it from Reformed polities such as Scotland and Geneva.

The Sources of Intensity: Institutional Design, and What Godly Discipline Was Up Against

Historians have offered a range of ideological, social, and political explanations for early Massachusetts' relative success in combating sin and encouraging a godly society.[50] The most important is ideological. The preeminent position of puritan religious commitment, despite its diversity and tensions, effectively excluded or marginalized advocates of episcopacy and strong royal authority, thoroughgoing Erastians and Arminians, and Catholics, to name only a few of the views common in the broader ideological spectrum of contemporary England. The puritans who dominated the colony largely agreed that the state and the churches should work together in guiding or driving people towards moral regeneration. They reminded nominal Christians of the colony's "national covenant" with God, and engaged in moral introspection and "holy watching." Massachusetts controlled immigration in order to minimize ideological challenges and exiled dissenters. The colony selected most officials by yearly election (rather than by gubernatorial or imperial appointment), but confined the franchise in colony-wide contests to churchmembers. This system ensured that the government enjoyed high levels of legitimacy while remaining firmly in the hands of puritans rather than, as in Europe, mixing godly reformers with timeservers, trimmers, and unprepossessing sons of the rich. The relatively normal age distribution and gender balance of the early Massachusetts population, which largely immigrated in family groups, also helped. Unlike Virginia and the Caribbean islands, potentially volatile young men did not constitute the bulk of the colony's settlers.[51] There were few desperately poor and no nobles. As Theodore Dwight Bozeman has recently observed: "To a large degree the colony was to effect a Puritan reformation of manners, not by force, but by simple exclusion."[52]

---

[50] A few select citations from this vast literature would include: Timothy H. Breen and Stephen Foster, "The Puritans' Greatest Achievement: A Study of Social Cohesion in Seventeenth-Century Massachusetts," Journal of American History 60 (1973): 5-22; Foster, Long Argument, 108-175; Jack P. Greene, Pursuits of Happiness: The Social Development of Early Modern British Colonies and the Formation of American Culture (Chapel Hill, 1988), 19-26; Haskins, Law and Authority, 58-62, 70-91; Edmund S. Morgan, The Puritan Dilemma: The Story of John Winthrop (Boston, 1958), 69-72.

[51] Virginia DeJohn Anderson, New England's Generation: The Great Migration and the Formation of Society and Culture in the Seventeenth Century (Cambridge, 1991), 20-21.

[52] Bozeman, Precisionist Strain, 313.

I do not plan to challenge these well-established interpretations. Instead, I want to add to them by asking which social and normative obstacles to godly discipline in Reformed Europe were missing or reduced in early Massachusetts, and why did this matter? The colony's social, political, and ideological "exclusions" are, of course, part of this story. But more could be said by examining, with a comparative eye, the division of responsibilities in Massachusetts between the state and churches in pursuing godly discipline, the design of the legal system, the nature of what we would today call "civil society," and the fragility of custom—to foreshadow a few of the topics that I will discuss. European historians have argued that religiously-inspired disciplinary efforts enjoyed greater success in smaller, less complex societies. Bruce Lenman observed that "in relatively simple and homogeneous societies where local communities internalized the spiritual and moral values of a national church," such as Scotland, "Godly Discipline was most effective." "England proved too complex, divided and recalcitrant a society for its seventeenth-century governments to forge any coherent moral ascendancy over it."[53] Marc Raeff's comparative study of early modern Russia and the German-speaking lands concluded that "the larger the territory and the more complex its social and legal structure, the less rewarding the central authorities' efforts" to enforce disciplinary and police ordinances.[54] Perhaps Massachusetts could fervently pursue its reformation of manners and morals, and could do so without the formal mechanisms for coordinating discipline seen in Geneva and Scotland, because the colony faced fewer impediments than Reformed polities in Europe? Let us consider what the puritans were up against.

To begin with, Massachusetts's system of discipline so differed in its basic logic from that of Scotland and Geneva (and England) that the colony faced far fewer challenges coordinating between ecclesiastical and temporal jurisdictions. Massachusetts concentrated in the state responsibilities split between the civil and ecclesiastical authorities in Scotland and England. Systems like Scotland that gave "temporal" powers to churches faced more complex management of discipline across jurisdictional and geographical lines than did Massachusetts. Kirks returned fugitives from discipline to their home parishes; regional presbyteries and synods treated offenders who disobeyed or slipped away from kirks; and civil and ecclesiastical authorities had to coordinate the imposition of fines and bodily coercion. The Massachusetts state's monopoly of temporal power simplified matters. The state had exclusive jurisdiction over settlers' property and liberty and bore the burden of insuring that the "outward man" obeyed civil ordinances and divine law, including the "first table" of the Ten Commandments laying out human obligations to God. Congregations applied only spiritual sanctions to guide the "inward man," and then only for the visible saints who subscribed to the church covenant and for their minor children. The colony's central problem was establishing boundaries between the churches' discipline of saints' "inner man" though spiritual sanctions and the state's discipline of the "outer man" and the unchurched—a difficult matter, but one made simpler when the colony did not, in addition, need to coordinate discipline between ecclesiastical and civil realms with overlapping temporal powers. Massachusetts offenders who left their local town or parish could be dealt with by county courts or colony-wide tribunals. There was no need for congregations to retrieve and return these offenders in the manner of the kirks. Nor was there call to ask whether the state or a higher-level ecclesiastical body (a presbytery, a synod, a bishop's court) would

---

[53] Bruce Lenman, "Limits of Godly Discipline," 142.
[54] Marc Raeff, The Well-Ordered Police State: Social and Institutional Change through Law in the Germanies and Russia, 1600-1800 (New Haven, 1983), 45.

handle the offender. How much less did Massachusetts need the sorts of coordination mechanisms found in Scotland, Geneva, and England when the state alone disciplined the "outer man" and the colony's churches could not impose fines or coercive punishments or ask the state to do so, did not raise and manage money for education and other social services, and did not police labor discipline in the process of managing the poor.

The Massachusetts legal system responsible for the outer man was not, in the fashion of early modern European polities, a patchwork of numerous, fragmented, and bounded jurisdictions and tribunals with overlapping responsibilities and clashing agendas. Settlers stripped away much of the complexity that they had known in England and thereby made the machinery for detecting and punishing morals offenders simpler, quicker, and more effective. With a few minor exceptions, courts were organized by levels (town, county, colony) rather than by subject (common pleas, equity, admiralty, ecclesiastical, forest, heraldry, mining).[55] This "unified" system prevented offenders from escaping the godly as they did in England by setting different jurisdictions against one another—invoking the common law against the ecclesiastical courts, or the justices of the peace against the leets and boroughs.[56] The magistrates, town commissioners, and grand jurors targeting sin through the unified Massachusetts court system were less tempted to displace their responsibilities to other tribunals. Nor did they worry about complaints from rival jurisdictions. There were no others; not the seigniorial jurisdictions of England, nor the Councils of the North and Wales, the Star Chamber and High Commission, or the archdeacon's and bishop's ecclesiastical tribunals.[57] In addition, an official without a true analogue in England, Scotland, or Geneva—the Massachusetts "assistant" (or "magistrate")— increased the coordination and determination of the various branches of the state in pursuing godly discipline. The dozen or so magistrates simultaneously exercised executive, legislative, and judicial authority (at multiple levels). They directed affairs in conjunction with the Governor and sat as one house of the General Court, where they worked with representatives of the towns (the "deputies") in passing legislation and hearing judicial appeals. As a body they constituted the highest regular tribunal, the Court of Assistants, and they served individually as judges on county courts and in the towns.[58] Representatives of the colony to the county and the towns, conduits of information from the localities to the center, participants at once in the making, enforcing, and interpreting of law, and observers of all levels and types of government: the magistrates helped invigorate and harmonize the state's disciplinary work.

---

[55] On the organization of the seventeenth-century Massachusetts courts, see Barbara Aronstein Black, "The Judicial Power and the General Court in Early Massachusetts (1634-1686)" (PhD dissertation, Yale University, 1975), 76-137; Joseph H. Smith, ed., Colonial Justice in Western Massachusetts (1639-1702): The Pynchon Court Record (Cambridge, Mass., 1961), 65-82.

[56] I borrowed the term "unified" from Mark DeWolfe Howe, "The Sources and Nature of Law in Colonial Massachusetts," in Law and Authority in Colonial America, ed. George A. Billias (New York, 1965), 5; see also William M. Offutt, "The Atlantic Rules: The Legalistic Turn in British North America," in The Creation of the British Atlantic World, eds. Elizabeth Mancke and Carole Shammas (Baltimore, 2005), 161, 168.

[57] While a pluralistic (rather than "unified") legal system may offer more strategies for escaping godly discipline, it may also, under certain circumstances, encourage moral regulation. The very multiplicity of tribunals and officers means that if one jurisdiction does not act, another might. Also, jurisdictions might compete with each by engaging in vigorous morals regulation. These factors may reduce the advantage of a unified over a pluralistic legal system. I am indebted to my colleague Bruce Smith for suggesting these points.

[58] On the varied responsibilities and broad jurisdiction of the magistrates, see Black, "Judicial Power," 76-104; Smith, ed., Colonial Justice, 65-78. "In the first charter period, the number of magistrates ranged from seven (in 1631) to twenty (from 1680), and averaged . . . thirteen." Black, "Judicial Power," 83.

The simplification of the legal system brought more than practical benefits. In Europe, clashing jurisdictions fought for business and dignity by defining for themselves a purpose and source of legitimacy that elevated them above rivals. In this fashion, jurisdictional conflict encouraged normative and political dissensus. Massachusetts' unified court system offered little reason for jurisdictions to produce contradictory accounts of the nature, goals, and limits of discipline.

Massachusetts also did not struggle with the intermixing of religious confessions that, in Europe, often complicated or undermined Reformed efforts to foster godly societies. European confessional competition took a bewildering variety of forms. Confessional fault lines could run between (and within) civil and church leadership in a given polity; between the royal court or official church and a segment of the population; or between a prince and local municipalities, corporations, seigneurial jurisdictions, or dissident congregations. These antagonisms interfered in a variety of ways with Reformed efforts to encourage a godly society. First, confessional rivals might contend for political primacy by undermining each other's disciplinary efforts. In the East Friesland town of Emden in the 1590s, for example, a Lutheran territorial prince tried to reassert his rule over resistant Calvinist burghers, ministers, and elders by dismissing their most distinguished pastor and forbidding assemblies of the presbytery, the chief instrument of Reformed discipline.[59] Second, Calvinist leaders in multiconfessional areas restrained the scope of their discipline over congregants lest some defect to a less rigorous church. Huguenot consistories at the turn of the seventeenth century, for instance, moderated their demands on adherents who could always return to the majority Catholic Church.[60] Third, overaggressive discipline might lead not only to the abandonment of Reformed congregations by individuals, but to the strengthening of confessional alternatives. Early modern Ireland provides the clearest example. The more that the established Protestant Church of Ireland attempted to discipline the majority Catholic population through visitations, excommunications, and fines, the more it antagonized them. Its efforts inadvertently strengthened Catholic elites working with Jesuits to create countervailing methods of instruction and discipline.[61] None of these dynamics obtained in early New England. Congregants facing what they viewed as misguided discipline might drift into inactivity, draw up petitions of complaint, or leave for other New England colonies. But there were no ecclesiastical alternatives and the English court and Church of England seldom intervened effectively before 1660. Puritans felt little need to restrain the intensity of their discipline lest they provoke political rivals, drive believers to competing churches, or prompt organization and resistance by rival Christian denominations.

Nor did ethnic, national, or linguistic diversity pose problems. These differences interfered with godly discipline even in securely Reformed polities. The pastors of Calvin's

---

[59] Heinz Schilling, Civic Calvinism in Northwestern Germany and the Netherlands: Sixteenth through Nineteenth Centuries (Kirksville, 1991), 32.

[60] Michael Graham, The Uses of Reform: 'Godly Discipline' and Popular Behavior in Scotland and Beyond, 1560-1610 (Leiden, 1996), 341.

[61] Ute Lotz-Heumann, "Social Control and Church Discipline in Ireland in the Sixteenth and Early Seventeenth Centuries," in Institutions, Instruments and Agents of Social Control and Discipline in Early Modern Europe (Frankfurt, 1999), 275-303; Ute Lotz-Heumann, "Church Discipline in a Biconfessional County: Ireland in a European Context," in Social Control in Europe: Volume I, 1500-1800, ed. Herman Roodenburg and Pieter Spierenburg (Columbus, 2004), 99-112.

Geneva, for example, were largely foreigners. What they saw as moral regeneration could appear to native Genevans as the imposition of alien ways of life. This tension fed off of concern about the large number of religious refugees, primarily French, settling in the city.[62] Western European Protestant cities oriented towards mercantile exchange often attracted immigrants who organized churches worshiping in a native tongue. This created a certain distance from a town's leading pastors, burghers, and consistories. By contrast, the godly of Massachusetts labored amid a largely homogenous English population with few linguistic enclaves and little ethnic or national diversity.[63]

More than linguistic, ethnic, national, and confessional differences made for "social complexity" in European Reformed polities; so did institutions and corporations that tried to turn godly discipline towards their own ends. Merchant associations, guilds, military orders, self-perpetuating urban oligarchies, seigneurial jurisdictions, and other institutions and corporations that predated the Reformation might resent what they saw as overaggressive godly discipline or might extend support only if they could shape its priorities and limits. There were those who disagreed with the practice of godly discipline in early New England. Some interpreted God's demands differently than the majority of ministers and magistrates, or disliked puritan intrusiveness, or believed that the state should seldom interfere with the promptings of grace within the saints, or called for a more presbyterian or more purely congregational church polity.[64] But these critics did not work through corporations or institutions that could resist godly discipline or negotiate over its course with the magistrates, deputies, and ministers. The General Court created or regulated institutions other than the state and the churches, such as Harvard College, the undertakers of the iron works, and the Ancient and Honorable Artillery Company. None preexisted the formation of the colony and needed to be converted to its mission or shunted aside. Nor did military officers exercise independent power, as in Providence Island, the Caribbean puritan colony whose history Karen Kupperman has carefully reconstructed. Appointed by and reporting to the Providence Island Company in London, the captains undermined the civil government of the island and the ambitions of the godly settlers for a truly Christian society.[65] Massachusetts military officers were approved by and took orders from the General Court. The colony's godly discipline did not lack skeptical settlers or groups needing to be won over. But by the standards of European Reformed polities, the colony lacked skeptical institutions and corporate orders needing to be won over.

Not only governmental, business, and military institutions, but a variety of social sites (theaters, taverns, youth cultures, and vocational associations) could, in Europe, bring together in a sustained way those skeptical about godly discipline. Some of these sites were absent or vestigial in Massachusetts. Magistrates and ministers exerted much tighter supervision over the rest, as with the most important site of all, the family. Early Massachusetts did not permit public

---

[62] William G. Naphy, Calvin and the Consolidation of the Genevan Reformation (Manchester, 1994), 121-62; Kingdon, "Calvin and the Establishment," 164-65.

[63] To be sure, there were tensions between the English majority in Massachusetts and local minorities of Scots, Irish, and Jerseymen. Innes, Labor in a New Land, 143-45; Konig, Law and Society, 69-74. But the relative homogeneity of Massachusetts stands out if compared to the heterogeneity of other leading centers of Reformed Protestantism such as Geneva, Emden, or Amsterdam.

[64] From this vast literature, see, e.g., Foster, Long Argument; Gura, Glimpse of Sion's Glory.

[65] Karen Ordahl Kupperman, Providence Island, 1630-1641: The Other Puritan Colony (Cambridge, 1993), 59.

theaters.[66] It conceived of inns and taverns as places for the conduct of business and "relief of travelers." The colony tried to prevent "idlers" from lingering beyond their "necessary occasions" by forbidding patrons (who were not travelers) from drinking for more than one half hour or after nine in the evening. Though these regulations were only partly effective, the owners of inns and taverns understood that their license became less secure if "idlers" loitered too long or acted scandalously.[67] Public houses in early Massachusetts scarcely lived up to the reputation of English alehouses as places to escape from masters, parents, and magistrates in search of dancing and gaming, casual trysts, or a refuge from Sabbath services.[68] Before 1660, Massachusetts had only the scantiest of what Roger Thompson has called an "adolescent culture" marked by "separate institutions, lifestyle, and outlook among groups of young unmarried people." Teenagers and young adults might sneak away at night or on militia training days for drinking and bawdy escapades, but these occasions were fleeting. Early Massachusetts lacked an analogue to the organized goings on of English urban apprentices and journeymen, who formed associations, such as the Lords of Misrule, and put on feasts, charivaries, carnivals, and sporting contests.[69] Nor did the colony have the craft and trade guilds and vocational organizations that, in England, sponsored recreations and processions.[70]

Finally, and most importantly, consider the family in its public role as a subordinate unit of governance and a site for the management of labor, social services, and education. Early Massachusetts famously put the family under more extensive public supervision than did contemporaries in England or the Chesapeake. Puritans expected household heads to maintain order among children, servants, and dependents, to educate and catechize them, and to prepare them to lead a godly life. The state would intervene with admonitions, prosecutions, or even transfer of children to other families when heads of household failed in their responsibilities. Strong communal oversight did not mean that the family lacked some measure of autonomy. The courts did not intervene when heads of household handled "private" offenses committed within the family that did not affect the surrounding community. But early Massachusetts lacked what Mary Beth Norton observed in the Chesapeake colonies, a "de facto private realm of family life immune from regular oversight by civil officials," where heads of household could rule by

---

[66] Puritans believed that acting was a form of dissembling that encouraged dishonesty in viewers and tempted them to lay aside work or break the sabbath in order to attend performances. Bruce C. Daniels, Puritans at Play: Leisure and Recreation in Colonial New England (New York, 1995), 66-68.

[67] Records of the Governor and Company of Massachusetts Bay in New England, ed. Nathaniel B. Shurtleff (Boston, 1853-54), I, 213-14 (1637); id. at II, 100 (1645) and II, 172 (1646); Sharon V. Salinger, Taverns and Drinking in Early America (Baltimore, 2002), 103-104.

[68] Peter Clark, "The Alehouse and Alternative Society," in Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill, eds. Donald Pennington and Keith Thomas (Oxford, 1978), 60-65; Peter Clark, The English Alehouse: A Social History, 1200-1830 (London, 1983), 148-54.

[69] Roger Thompson, "Adolescent Culture in Colonial Massachusetts," Journal of Family History 9 (1984): 127-44 (quotation from p. 130); Roger Thompson, Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699 (Amherst, 1986), 83-96; Anne S. Lombard, Making Manhood: Growing Up Male in Colonial New England (Cambridge, Mass., 2003), 52-57. I am not claiming that a "youth culture" (a problematic concept in the early modern period) existed in contemporary England. On this issue, see Paul Griffiths, Youth and Authority: Formative Experiences in England, 1560-1640 (Oxford, 1996), 113-122; Ilana Krausman Ben-Amos, Adolescence and Youth in Early Modern England (New Haven, 1994), 205.

[70] Stephen Innes, Creating the Commonwealth: The Economic Culture of Puritan New England (New York, 1995), 220-225; Richard P. Gildrie, The Profane, the Civil, & the Godly: The Reformation of Manners in Orthodox New England, 1679-1749 (University Park, 1994), 13; Peter Clark, British Clubs and Societies, 1580-1800: The Origins of an Associational World (Oxford, 2000), 23-24, 34.

and large as they pleased unless they lost control of unruly dependents or abused them excessively.[71] The Massachusetts General Court did not credit political and ideological objections to the state imposing moral discipline by enlisting heads of households along with public officials. By contrast, some members of early Stuart English Parliaments successfully argued against bills that would subject heads of households to admonitions or fines when their children or dependents committed blasphemy, broke the Sabbath, or skipped church services.[72]

Because of the close supervision of the household by the state and the relative weakness of ideological support for a robust private realm in the household, the early Massachusetts family was ill-situated to question the nature of godly discipline. To be sure, family members and heads of households maintained a range of opinions on these matters. But in comparison to the Chesapeake and England, the early Massachusetts family, as an <u>institution</u>, enjoyed less of the <u>de jure</u> and <u>de facto</u> autonomy valuable when evading or contending with public pressures for moral righteousness. Looked at from this perspective, the family can be usefully grouped with the theater, tavern, youth culture, and vocational associations. Whether tightly regulated, vestigial, or simply absent, they could not serve as well as their English analogues as sites where skeptics might criticize, reinterpret, or hide from godly discipline.[73]

In the first generation of settlement, Massachusetts did not have the longstanding customs that impeded the reformation of morals in England. Local customs in England tended to be more forgiving of some of the behaviors that Parliamentary legislation, municipal ordinances, and puritan didactic literature targeted: excessive gaming, drinking, and idleness; overfine clothing; swearing; unlicensed keeping of alehouses; and fornication that did not result in pregnancy. Officials from the village constable up through the justice of the peace mediated between, on one hand, the stricter standards of behavior that statutes and the godly would impose and, on the other hand, the looser standards allowed, even celebrated, by popular mores. As Steve Hindle has argued, English festive culture displayed "scorn for magisterial activism which arose from the popular conception that pastimes were *theirs* to be enjoyed and that *their* constable should defend them from the officiousness of magistrates. . . . The social drama of authority and resistance was . . . played out primarily in the idiom of custom."[74] Early Massachusetts, as a newly constructed society, lacked the dense, deeply rooted customs of English cities and villages. Towns mixed colonists from different points of origin in England. They brought over a variety of customs and argued over which should prevail in their new home.[75] In comparison to

---

[71] Edmund Morgan, <u>The Puritan Family: Religion and Domestic Relations in Seventeenth Century New England</u>, rev ed. (New York, 1966), 143, 148; Mary Beth Norton, <u>Founding Mothers and Fathers: Gendered Power and the Forming of American Society</u> (New York, 1996), 39, 42-56, 80, 146 (quotation on p. 49).

[72] Joan Kent, "Attitudes of Members of the House of Commons to the Regulation of 'Personal Conduct' in Late Elizabethan and Early Stuart England," <u>Bulletin of the Institute of Historical Research</u> 45 (1972): 55-56.

[73] To be sure, these sites might as readily encourage godly living. English guilds sponsored sermons, for example, and families pursued household devotions. My point is not that these sites inherently undermined godly discipline. Rather, those inclined to question or escape from it had fewer organizations and institutions available to shield and hearten them than was the case in England and in European Reformed polities.

[74] Steve Hindle, <u>The State and Social Change in Early Modern England, c.1550-1640</u> (Basingstoke, 2000), 202. On the centrality of mediation, see the classic article by Keith Wrightson, "Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England," in <u>An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries</u>, ed. John Brewer and John Styles (New Brunswick, 1980), 21-46.

[75] David Grayson Allen, <u>In English Ways: The Movement of Societies and the Transferal of English Local Law and Custom to Massachusetts Bay in the Seventeenth Century</u> (Chapel Hill, 1981); Konig, <u>Law and Society</u>, 53.

England, Massachusetts customs appeared negotiated or imposed more than inherited from "time out of mind;" lacked the legitimacy and emotional power created by longevity; and, as a result, served less well as a foundation for arguments based on prescription. Those disliking the course of godly discipline in early modern England and Reformed Europe could appeal to the power of countervailing custom. How much less so in early Massachusetts.

If custom proved less of an impediment in Massachusetts, so did the prerogatives of manhood and wealth. Puritans moved towards (if they did not achieve) a universal rather than explicitly status based regulation of morals. New England men were less able to invoke masculine prerogatives in order to deflect demands for righteousness. Cornelia Dayton has shown how Connecticut puritans muted misogynist disparagements of women's rationality in order to take complaints of abuse and sexual assault seriously and impose severe punishments on men.[76] Ministers throughout New England preached that original sin afflicted men and women alike so that both needed continual encouragements to pursue godly living. Men found it difficult to excuse themselves from such lectures on the grounds that their allegedly superior rationality or cultivation made them less susceptible to sinfulness. Massachusetts tribunals, like those of Connecticut, reduced the "double standard" in the prosecution and punishment of bastardy and fornication. Contrast England. Justices of the peace concentrated on making fathers support bastards in order to reduce the parish's expenditures. Punishment was a secondary concern. Yet when justices imposed punishment, it fell harder on women, who were whipped or placed in the stocks far more frequently than men and, unlike men, could be committed to a house of correction (bridewells).[77] By contrast, colonial Massachusetts through the 1660s sentenced men accused of fornication and bastardy to whipping in nearly the same proportions as women. The colony expected men to repent for the sinfulness of fornication and bastard-bearing, not merely pay for the support of illegitimate children. The colony would not look the other way when a man came to a private financial arrangement with a pregnant woman in the style of an English gallant. Massachusetts further curtailed the leniency that English justice showed young men sewing their wild oats through its willingness to prosecute "lascivious carriage," an offense defined by excessive flirtation or by conduct suggesting (unproven) sexual relations.[78]

---

[76] Cornelia Hughes Dayton, Women Before the Bar: Gender, Law and Society in Connecticut, 1639-1789 (Chapel Hill, 1995), 10, 31-32, 173-74. See also Dayton, "Was There a Calvinist Type of Patriarchy? New Haven Colony Reconsidered in the Early Modern Context," in The Many Legalities of Early America, eds. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill, 2001), 337-56.

[77] The justices of the peace shared jurisdiction with the church courts over the offense of bastardy and largely stayed away from punishing fornicators (which makes comparison with Massachusetts tribunals difficult). The rate and severity of punishment for bastardy varied from county to county and tended to be harsher in towns controlled by hot Protestants. Anthony Fletcher, Reform in the Provinces: The Government of Stuart England (New Haven, 1986), 256-57; Steve Hindle, The State and Social Change in Early Modern England, c.1550-1640 (Basingstoke, 2000), 185-86; Martin Ingram, Church Courts, Sex, and Marriage in England, 1570-1640 (Cambridge, 1987), 338-40; Walter J. King, "Punishment for Bastardy in Early Seventeenth-Century England," Albion 10 (1978): 130-51.

[78] Mary Beth Norton, Founding Mothers and Fathers, 337, 341, 346-47; Roger Thompson, Sex in Middlesex: Popular Mores in a Massachusetts County, 1649-1699 (Amherst, 1986), 194 (only in the late seventeenth century were Massachusetts men attempting, typically unsuccessfully, to avoid prosecution for bastardy by making a private financial deal with the pregnant mother); Edith Murphy, "Skillful Women and Jurymen: Gender and Authority in Seventeenth-Century Middlesex County, Massachusetts" (Ph.D. thesis, University of New Hampshire, 1998), 233-36, 267.

The prerogatives of wealth and high status also posed less of an obstacle to the campaign for godly living in Massachusetts than in England. To be sure, New England ministers and magistrates believed that order depended on social and political hierarchy and they afforded high ranking colonists special privileges familiar from England. The colony would not whip a "gentleman" unless "his crime be very shameful" and the sumptuary laws turned from an early egalitarianism towards an explicitly status-conscious prohibition of "men or women of mean condition" assuming the "garb of gentlemen."[79] Yet puritans were more willing than English officials to inquire into the affairs of the better sort, which reduced the power of rank to shield wrongdoing. English gentry in the late Elizabethan and early Stuart Parliaments objected to bills for the control of drunkenness, bastard-bearing, and swearing on the grounds that the "slavish" punishments of the stock, prison, and whipping post should not be inflicted on gentlemen, and that vices which were socially destructive to the poor were but peccadilloes for the great.[80] Massachusetts' ambition to connect its law more closely to Scripture than was the case in England cut back on the indulgence that English justice customary showed the rich and prominent. Puritans claimed that Christ's law exceeded human ordinances in "impartiality" by not respecting the wealth and status of persons.[81] New Englanders' insistence that original sin marred the well off and powerful as much as the middling and poorer sort suggested that people of all rank could readily degenerate into criminals (though, in practice, servants and youth came under particular suspicion). The universality of original sin and the impartiality of Christ's law shaped ground-level patterns of prosecution. Eli Faber used tax lists, estate inventories, and officeholding records to divide non-servant offenders in mid-seventeenth-century Middlesex County into three groups: prominent, middling, and lower. The prominent cohort produced more offenders than the lower cohort, with the middling group supplying the most.   Puritan Massachusetts prosecuted the wealthy and powerful with as much vigor as the middling and lower sort.[82] Indeed, because the colony's leaders particularly feared the opposition of elites, prominent settlers experienced higher rates of conviction for religious dissent and contempt of authority and received more serious penalties for seditious speech than middling and modest folks.[83]

Conclusion: Legal Pluralism and Godly Discipline in a Colonial Context

---

[79] Liberty #43, Body of Liberties (1641), in The Laws and Liberties of Massachusetts, 1641-1691: A Facsimile Edition, Containing also Council Orders and Executive Proclamations, ed. John D. Cushing (Wilmington, 1976), III, 695. On sumptuary laws, contrast Massachusetts Records, I, 126 (1634) to III, 243 (1651). Massachusetts judges imposed fines for many common offenses (such as swearing, petty theft, drunkenness, and sabbath profanation), with the understanding that those who could not pay would instead receive a whipping or bout in the stocks. The ability of the wealthy and middling sort to pay fines shielded them from whippings that the poorer sort suffered on account of their poverty. Eli Faber, "The Evil that Men Do: Crime and Transgression in Colonial Massachusetts" (PhD dissertation, Columbia University, 1974), 318-319, 347-51.

[80] Joan Kent, "Attitudes of Members of the House of Commons to the Regulation of 'Personal Conduct' in Late Elizabethan and Early Stuart England," Bulletin of the Institute of Historical Research 45 (1972): 49-50, 62.

[81] William Aspinwall, preface, An Abstract of Laws and Government. . . . Collected and Digested into the Ensuing Method by that Godly, Grave, and Judicious Divine, Mr. John Cotton (London, 1655), A3ʳ.

[82] Eli Faber, "Puritan Criminals: The Economic, Social, and Intellectual Background to Crime in Seventeenth-Century Massachusetts," Perspectives in American History 11 (1977-78): 85-86, 92, 103-117, 134-35. Cf. Jules Zanger, "Crime and Punishment in Early Massachusetts," William and Mary Quarterly 22 (1965): 471-77.

[83] Faber, "Puritan Criminals," 117-121; Howard Schweber, "Ordering Principles: The Adjudication of Criminal Cases in Puritan Massachusetts, 1629-1650," Law and Society Review 32 (1998): 395, 399.

Early Massachusetts was at once a Reformed polity and a New World colony. Its quest for moral regeneration and a more fully Christianized society can be seen as part of two larger frameworks: first, the comparative investigation of legal pluralism among New World colonies (since institutional structure and normative tensions are such important parts of our story); and second, the comparative study of early modern European campaigns for godly discipline, including the work pursued under the auspices of "confession building." Exploring the reasons for early Massachusetts's relative success in achieving godly discipline connects two scholarly literatures seldom considered together.

European colonizing states such as England and Spain maintained legal orders that were pluralistic along a number of dimensions.[84] Their kings ruled over "composite" monarchies composed of territories with dissimilar constitutions and norms of government. Both England and Spain contained a multiplicity of overlapping and sometimes competing royal, seigneurial, urban, and ecclesiastical tribunals exercising a variety of forms of law. Edward Coke's First Institute catalogued fifteen types of law in England, ranging from common law, parliamentary statutes, equity, and the law merchant to local ordinances, the law of nature, forest law, and the law of the stannaries.[85] The legal pluralism inherited from European states often grew more complex in New World colonies. Many territories in the Americas were claimed by several European states, or passed from one to the other after cession or conquest, producing tensions between old and new legal orders. Settlers created institutions and rules to deal with indigenous peoples and slaves, unknown in early modern Europe. Private jurisdictions (such as manors) and ethnic enclaves (of Dutch and Germans in British America) operated for decades with only partial oversight by colonial authorities. Colonists and imperial officials argued over how to integrate the settlers' own ordinances and customs with those of the metropolis when the terms of interaction and the priorities among these competing rules were contested and seemed to vary as interests and balances of power shifted.[86]

Yet the New World environment also encouraged simplification, at least in institutional design. Both English and Spanish settlements pared down the multiplicity of overlapping judicial and administrative institutions that had governed them in Europe. The royal bureaucracies in New Spain and Peru, entangled with partly independent fiscal and ecclesiastical establishments, did not need to confront the entrenched privileges of nobles, municipalities, and corporations that complicated crown government in Castile. English settlers left behind the welter of specialized and overlapping tribunals with limited jurisdiction familiar from home.

---

[84] For an analysis of the meaning and various types of legal pluralism, see John Griffiths, "What is Legal Pluralism?," Journal of Legal Pluralism and Unofficial Law 24 (1986): 1-55; Sally Engle Merry, "Legal Pluralism," Law and Society Review 22 (1988): 869-96.

[85] Edward Coke, The First Part of the Institutes of the Laws of England (London, 1629), 11b.

[86] Lauren Benton, Law and Colonial Cultures: Legal Regimes in World History, 1400-1900 (New York, 2002), 9-13, 33-45, 83-86, 101, 124; J. H. Elliott, Empires of the Atlantic World: Britain and Spain in America 1492-1830 (New Haven, 2006), 117; Eliga H. Gould, "Zones of Law, Zones of Violence: The Legal Geography of the British Atlantic, circa 1772," William and Mary Quarterly 55 (2003): 471-510; Jack P. Greene, "'By Their Laws Shall Ye Know Them': Law and Identity in Colonial British America," Journal of Interdisciplinary History 33 (2002): 247-60; Daniel J. Hulsebosch, Constituting Empire: New York and the Transformation of Constitutionalism in the Atlantic World, 1664-1830 (Chapel Hill, 2005), 5, 22, 31; Richard J. Ross, "The Legal Past of Early New England: Notes for the Study of Law, Legal Culture, and Intellectual History," William and Mary Quarterly 50 (1993): 36.

Although some colonies created a handful of courts devoted to orphans, probate, slave offenses, equity, and other particular matters, the majority of business channeled through a pyramid of local and county courts of general jurisdiction with a colony-wide tribunal at the apex.[87] Amid the varied experiences of different settlements, then, one perceives a recurrent pattern in New World colonies: simultaneous pressures towards enhanced legal pluralism and towards institutional simplification.

Early Massachusetts (through 1660) does not readily fit this pattern. While the colony adopted a unified judicial system, which reduced the institutional pluralism familiar from England, it experienced only in minimal form the forces creating legal pluralism in other settlements.[88] Early Massachusetts felt only lightly the tension pervasive in Spanish America and in the post-Restoration English empire between the settlers' ordinances and the various forms of law governing the metropolis that extended to or could be imposed upon the colonies. Only after the Restoration would these tensions meaningfully increase as the English empire instituted mechanisms for projecting the authority of the laws of England—resident imperial and customs officials and, later, a royal governor and Privy Council appellate jurisdiction and review of statutes. The early colony's government did not need to respect the prerogatives of manors or other "private" jurisdictions. Nor did it contend with military commands, corporations, and economic organizations controlled by London or asserting semi-autonomous status. The Church of England, while worrisome as an offstage presence, exercised little control. Massachusetts experienced no quarrels between ecclesiastical and civil justice, still less the clashes between diocesan institutions, the friars, and the Inquisition that caused such complications in Spanish America. The colony's churches could not compete with the state by inflicting corporal or financial sanctions. Nor did they overlap with the state by regulating education, social services, poor relief, labor discipline, and assistance to indigenous peoples. The colony did not wrestle with the ethnic, cultural and linguistic diversity and the multiconfessional religious environment of the late seventeenth-century and eighteenth-century middle colonies and Caribbean islands. Slavery played little role in the economy. With the exception of Indians in the praying towns, the colony did not require special courts or personnel to handle the legal affairs of indigenous peoples. Native-Americans little affected the godly discipline of the settlers, not least because the English did not live off of the labor and tribute of the Indians nor seriously try to "anglicize" their legal relations among themselves.

The modest levels of legal pluralism in early Massachusetts did not mean that the colony was free of political disputes conducted through jurisdictions, most notably those between the magistrates and deputies and between the colony government and the towns. Yet by the standards of the Caribbean islands, the post-Restoration English mainland colonies, and Spanish America, early Massachusetts experienced relatively little of what Lauren Benton has called "jurisdictional politics."[89] These struggles drew strength from circumstances common in New World settlements but absent or minimal in early Massachusetts—in particular, the persistent exploitation of jurisdictional tensions and ambiguities by clashing indigenous leaders, imperial officials, and settlers divided by race, ethnicity, national origin, language, and religious

---

[87] Elliott, Empires, 126-29; Peter Charles Hoffer, Law and People in Colonial America, revised ed. (Baltimore, 1998), 28-30; Howe, "Sources and Nature of Law," 3-6; Offutt, "Atlantic Rules," 161, 170.

[88] With some adjustments, this statement is also applies to the other New England colonies.

[89] Benton, Law and Colonial Cultures, 10-15, 23.

commitments. In addition, since nearly all Massachusetts institutions were created by and answered to the General Court, the colony also minimized the quarrels endemic in New World polities among organizations and jurisdictions with independent bases of legitimacy and authority. Contrast the Spanish empire, in J.H. Elliott's words, "a corporate society in which each corporate body and institution enjoyed a semi-autonomous status and its own permitted sphere of action."[90] In sum, the (modest) jurisdictional and institutional conflicts in the colony provided less maneuver room for settlers trying to deflect or escape from godly discipline, much as the family, the tavern, occupational associations, and local customs provided less refuge than in early modern European societies. What made early Massachusetts unusual in a New World colonial context—its relatively low levels of legal pluralism—also strengthened its pursuit of godly discipline.

Early Massachusetts also stands out as unusual in a second context: that of Reformation polities encouraging moral righteousness and social regeneration. For two generations, historians of the Reformation have explored parallels between efforts by European Lutherans, Calvinists, and post-Tridentine Catholics to build their confessions between the middle sixteenth and eighteenth centuries. Each of the three confessions elaborated more precise doctrine, enforced conformity, sharpened distinctions with competing confessions, attracted recruits from rivals and the unchurched, improved training for clergy, tightened discipline, and educated believers through preaching, rituals, and catechizing. On this view, seemingly disparate institutions such as the Calvinist consistory, Catholic Inquisition, and Lutheran parish visitation were "functionally similar" insofar as they pursued these shared goals. Scholars of the "confessional age" in western and central Europe have worked to identify not only uniformities in confession building, but patterns of difference in its course and implications—in principalities as opposed to cities; in territories with two or more competing confessions as opposed to those with a religious monopoly; and in polities with broad participation and representative government as opposed to those with narrow participation and concentrated (or absolutist) rule.[91] Historians have identified further variation by extending the study of confession building beyond the German-speaking lands, whose scholars pioneered the idea, and asking to what extent it explains developments in France, Italy, Spain, the Netherlands, Ireland, and other areas.[92]

---

[90] Elliott, Empires of the Atlantic World, 200.

[91] See, e.g., R. Po-chia Hsia, Social Discipline in the Reformation: Central Europe, 1550-1750 (New York, 1989), Philip Benedict, Christ's Churches Purely Reformed: A Social History of Calvinism (New Haven, 2002), 430; Benjamin J. Kaplan, "Confessionalism and its Limits: Religion in Utrecht, 1600-1650," in Masters of Light: Dutch Painters in Utrecht during the Golden Age, ed. Joaneath A. Spicer and Lynn Federle Orr (Baltimore, 1997), 61; Ute Lotz-Heumann, "The Concept of 'Confessionalization': A Historiographical Paradigm in Dispute," Memoria y Civilizacion 4 (2001): 97; Wolfgang Reinhard, "Reformation, Counter-Reformation, and the Early Modern State: A Reassessment," Catholic Historical Review 75 (1989): 383-404; Wolfgang Reinhard, "Pressures Towards Confessionalization? Prolegomena to a Theory of the Confessional Age," in The German Reformation: Essential Readings, ed. C. Scott Dixon (Oxford, 1999), 172-192; Heinz Schilling, Civic Calvinism in Northwestern Germany and the Netherlands: Sixteenth through Nineteenth Centuries (Kirksville, 1991); Heinz Schilling, "Confessionalization in the Empire: Religious and Societal Change in Germany between 1555 and 1620," in Religion, Political Culture and the Emergence of Early Modern Society (New York, 1992); Heinz Schilling, "Confessionalization: Historical and Scholarly Perspectives of a Comparative and Interdisciplinary Paradigm," in Confessionalization in Europe, 1555-1700, eds. John M. Headley, Hans J. Hillerbrand, and Anthony J. Papalas (Burlington, 2004), 21-35.

[92] Philip Benedict, "Confessionalization in France? Critical Reflections and New Evidence," in The Faith and Fortunes of France's Huguenots, 1600-85 (Burlington, 2001), 309-25; Wietse de Boer, "Social Discipline in Italy:

Understanding early Massachusetts as a case study, as another form of variation, within the framework of early modern confession building brings to the fore some of its notable features. I am not claiming that the combined pursuit of godly discipline by the Massachusetts state and churches unleashed the array of social developments that Wolfgang Reinhard and Heinz Schilling have linked to full-blown "confessionalization," including modernization, political centralization, and the strengthening of national identity. Instead, I am suggesting, more modestly, that one sees in early Massachusetts the same types of policies and mechanisms as in contemporary European polities undergoing confession building—from the emphasis on discipline, purity of worship and doctrine, and proper education in schools and the home to the marginalization or expulsion of dissidents, the production of self-justifying polemics, and the control of rites.[93] Massachusetts' pursuit of the precision, conformity, institutional development, and discipline at the heart of contemporary European confession building distinguished it from the seventeenth-century English colonies in the Caribbean, Chesapeake, Carolinas, and New York, with their sectarian tensions, high levels of indifference, and the marked disorganization in their ecclesiastical orders.[94] Yet Massachusetts deployed strategies familiar from European confession building in a singular setting. Unlike the great Reformed polities of North West Europe (England, Scotland, and the Netherlands), Massachusetts did not need to manage or placate significant Catholic or Protestant dissenting populations.[95] In contrast to European Reformed (and, for that matter, Lutheran and Catholic) polities, Massachusetts did not create or strengthen a confession in a long-established, complex, already Christian society whose

---

Peregrinations of a Historical Discipline," <u>Archiv für Reformationsgeschichte</u> 94 (2003): 294-307; James R. Farr, "Confessionalization and Social Discipline in France, 1530-1685," <u>Archiv für Reformationsgeschichte</u> 94 (2003): 276-93; Jonathan Israel, <u>The Dutch Republic: Its Rise, Greatness, and Fall, 1477-1806</u> (Oxford, 1995), ch. 16; Benjamin J. Kaplan, <u>Calvinists and Libertines: Confession and Community in Utrecht, 1578-1620</u> (Oxford, 1995); Ute Lotz-Heumann, "Social Control and Church Discipline in Ireland"; Andrew Pettegree, "Confessionalization in North Western Europe," in <u>Konfessionalisierung in Ostmitteleuropa</u>, ed. Joachim Bahlcke and Arno Strohmeyer (Stuttgart, 1999), 105-120; Allyson M. Poska, "Confessionalization and Social Discipline in the Iberian World," <u>Archiv für Reformationsgeschichte</u> 94 (2003): 308-19.

[93] On the distinction between "confession building" and the more thoroughgoing "confessionalization," see Philip Benedict, "Confessionalization in France?," 312-13; Hsia, <u>Social Discipline</u>, 2-4; Lotz-Heumann, "Concept of 'Confessionalization'"; Reinhard, "Reformation, Counter-Reformation;" Reinhard, "Pressures Towards Confessionalization?"; Heinz Schilling, "The Reformation and the Rise of the Early Modern State," in <u>Luther and the Modern State in Germany</u>, ed. James D. Tracy (Kirksville, 1986), 23; Heinz Schilling, "Confessional Europe," in <u>Handbook of European History, 1400-1600: Late Middle Ages, Renaissance, and Reformation</u>, ed. Thomas A. Brady, Heiko A. Oberman, and James D. Tracy (New York, 1995), II, 642-43, 655, 662, 659; Schilling, "Confessionalization: Historical and Scholarly Perspectives," 23. Andrew Pettegree has persuasively argued that the states of North Western Europe (England, Scotland, France, and the Netherlands) did not undergo confessionalization, but did experience "the process of confessionalism (<i>Konfessionsbildung</i>), the internal consolidation of the different confessions in parallel, competing churches . . . ." Pettegree, "Confessionalization in North Western Europe," 119.

[94] Patricia U. Bonomi, Under the Cope of Heaven: Religion, Society, and Politics in Colonial America (New York, 1986), 14-17, 21-24; Jon Butler, Awash in a Sea of Faith: Christianizing the American People (Cambridge, Mass., 1990), 37-66; Charles L. Cohen, "The Post-Puritan Paradigm of Early American Religious History," William and Mary Quarterly 54 (1997): 698-99. Intriguingly, if examined from the perspective of confession building, New Netherlands before the English conquest bears some resemblance to early Massachusetts. Evan Haefeli, "The Creation of American Religious Pluralism: Churches, Colonialism, and Conquest in the Mid-Atlantic, 1628-1688" (PhD dissertation, Princeton University, 2000), 48-150.

[95] Nor, in the fashion of the Spanish American church, was its commitment to moral and social regeneration among settlers compromised or complicated by the mass conversion of indigenous peoples.

institutions, clergy, and rulers needed to be won over, co-opted, or overborne. It did not need to overcome inertia and resistance from entrenched compromises, customs, privileges and folkways. To study the foundations and nature of its godly discipline is not to encounter the situations so often described by historians of the European confessional age: the transition from one confession to another, the coexistence or confrontation of two or three confessions within a single land, or the development of a more severe and energetic confessional attachment in a society previously characterized by a measure of religious diversity, lethargy, or commitment to peace above purity. Early Massachusetts stands as an unusual case because it strove for godly discipline in a context shared by no European Reformed polity: it had an open field.

Situating early Massachusetts in two frameworks seldom brought together—Reformation confession building and comparative New World legal pluralism—reveals how the colony escaped or minimized a number of critical impediments to campaigns for godly discipline. In both frameworks, the colony stands out as unusual. Massachusetts puritans were up against less than their Reformed colleagues abroad, and up against less than other New World colonists with aspirations to encourage civility and godliness. Presbyterian critics predicting disarray and swings between listlessness and enthusiasm failed to recognize the ways in which the colony's distinctiveness would confound their expectations and facilitate its pursuit of "familiar and constant" godly discipline.