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# Fornication Prosecutions beyond the Mainstream Community and the Role of Community Policing in Early Colonial New England

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Fornication Prosecutions beyond the Mainstream Community and the Role of Community

Policing in Early Colonial New England

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Department of History

**Honors Research Project**

Submitted to

*The Honors College*

## Introduction

In May of 1670, Ann Chase was called before the Essex County Quarterly Courts in Massachusetts Bay Colony to answer for her crime of fornication. Ann was a servant and unmarried at the time of her prosecution. Before her trial, the “midwives of Newbury” deposed that Ann had revealed the father of her child when “she was at the point of death” while in labor with a child that had made her sin of fornication clear to the community. Her former master and mistress were also deposed before the Court to determine her previous actions and attitudes. In the end, the Court found the Ann, who had been a servant for multiple households, was found guilty and sentenced her “to be whipped or pay a fine.”<sup>1</sup> Ann Chase’s prosecution demonstrates two major facets of Colonial New England’s legal system: the role of all members of the community in ensuring compliance with the theocratic codes of law and the equal treatment before the law that all inhabitants, whether they were landholding members of the church or dependent servants, enjoyed.

Early American historians, during the mid-to-late nineteenth century regarded colonial New Englanders as uniquely noble, the creators of America’s “City on a Hill” identity.<sup>2</sup> Prominent Puritan men such as John Winthrop left behind ample writing explicating their ideology and vision for their settlement and the world. This scope eventually widened to encompass interest in the nation’s early history outside of the Massachusetts Bay Colony to the rest of the original thirteen colonies, especially those with similar religious origins such as

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\*Thank you to my mom, Kay; boyfriend, Luke; and adviser, Dr. Gina Martino.

<sup>1</sup> George Francis Dow, *Records and Files of the Quarterly Courts of Essex County Massachusetts, 1667-71*, vol. 4 (Salem, MA: Essex Institute, 1914), PDF, 243-44.

<sup>2</sup> John Winthrop, Esquire, "A Modell of Christian Charity" (speech, Atlantic Ocean, Arabella Ship, 1630), <https://sites.hks.harvard.edu/fs/phall/03.%20winthrop%2C%20Christian%20Cha.pdf>. ; Gordon S. Wood, "A Century of Writing Early American History: Then and Now Compared; Or How Henry Adams Got It Wrong," *The American Historical Review* 100, no. 3 (June 1995): 679-680, JSTOR.

Plymouth Colony and New Haven Colony. Historians have continued to thoroughly analyze and research how people of Colonial New England lived even as the areas of social and cultural life that they focus on and the analytical lenses they employ have evolved over the last century.<sup>3</sup>

Most Americans perceive that colonial Americans adhered to strict moral codes across all cross-sections of society. To an extent, this perspective is accurate, at least in the legal sphere. For example, fornication was treated similarly among the theocratic New England Colonies, and among genders and races. However, opinions and legal standards surrounding fornication evolved over time to reflect societal trends. In the mid-twentieth century, historians such as Edmund Morgan and John Demos employed traditional historiographical lens and techniques to analyze the social history of the Puritans in Massachusetts Bay Colony and the Pilgrims in Plymouth Colony.<sup>4</sup> Morgan focused specifically on the colonists' relationship with sex. As the twentieth century progressed, after both the events of the Civil Rights Movement and the emergence of Second-Wave Feminism, society gained a broader appreciation for different experiences among genders and races.<sup>5</sup> Thus, the historiography surrounding fornication as defined by race and gender followed.

In the 1940's, Edmund Morgan authored "The Puritans and Sex" with the intention of demonstrating the similarities between Puritans and contemporary Americans. Morgan analyzed primary source writings about Puritan philosophy on sex and extramarital sexual relations e.g. fornication from wealthy, white, male puritans such as John Cotton in addition to citing court

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<sup>3</sup> See: Renee Bergland, "Looking Back: Scholarship in Early American Sex," *American Literary History* 17, no. 1 (Spring 2005), JSTOR. ; Alan Taylor, *American Colonies*, ed. Eric Foner (New York: Penguin Books, 2001), Kindle.; Wood.

<sup>4</sup> See Edmund S. Morgan, "The Puritans and Sex," *The New England Quarterly* 15, no. 4 (December 1942): 592, <http://jstor.org/stable/361501>.; John Demos, *A Little Commonwealth: Family Life in Plymouth Colony* (New York: Oxford Univ. Press, 1970).

<sup>5</sup> Wood, 693.

records.<sup>6</sup> Morgan provides numerous instances of Puritans engaging in extramarital sexual relations and even producing illegitimate children, demonstrating the humanity of the Puritans who were considered frigid and out of touch with human desire and impulse.<sup>7</sup> However, the World War II-era work is extremely limited because of the author's inherent bias attributable to his attempt to prove the normalcy of the Puritans. Morgan neglected to analyze the Puritan sexual experience from any viewpoint except that of prominent, white men. Morgan did not employ lenses of gender or race to explore why community members acted or authorities enacted specific laws as future historians have.

In the 1970's women's and gender history was first recognized as a legitimate and distinct field. Thus, published works after this period are more likely to employ gender as a lens to analyze the actions of both men and women. Additionally, this academic paradigm correlates with an increase in scholarship about out-of-marriage sexual relationships and illegitimate children. However, this trend does not appear to have reached Colonial America's historiography, specifically Colonial New England, until the 1990's and most prominently the early 2000's.

During the social trend of collecting and statistically analyzing quantifiable data and community records, Peter C. Hoffer and N.E.H. Hull published *Murdering Mothers: Infanticide in England and New England, 1558-1803*. Hoffer and Hull analyzed court records of infanticide, which they define as the murder of a child under eight years old, as well as other crimes that could be linked to infanticide to demonstrate the changing rates in occurrence, prosecution, and motivating factors around infanticide during the early modern period. This work is valuable to

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<sup>6</sup> Morgan, 592.

<sup>7</sup> Morgan, 599.

research on fornication because Hoffer and Hull argue that illegitimate children were the most obvious evidence of a forbidden extramarital relationship having taken place.<sup>8</sup> However, this mindset only developed in the seventeenth century as Puritans gained power in England and settled in the New World. Before the Protestant reformation, of which the Puritans were an extreme offshoot, sexual relationships were not considered taboo if a couple promised to marry each other even if not before witnesses.<sup>9</sup>

Cornelia Hughes Dayton's 1995 *Women Before the Bar* explores the evolution of the justice system in Connecticut and the simultaneous evolution of the role of women in the courts. Hughes-Dayton argues that shortly before the turn of the eighteenth century, the fundamental goals and ideas behind the criminal justice system changed to reflect changes in colonial society as it became larger, more diverse, and increasingly focused on commercial activity.<sup>10</sup> Hughes-Dayton argues that women were relegated outside the formal fraternity of the law after the eighteenth century.<sup>11</sup> Thus, information about fornication is less available to historians because it was of less import to government and the court system. During this time, New England moved away from its Biblical system and embraced the comparatively secular English Common Law system more fully.<sup>12</sup>

Mary Beth Norton's *Founding Mothers and Fathers* explains the role of women in colonial America situated within the paradigm shift between a worldview predicated on patriarchy and deference that viewed the family and government as essentially the same

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<sup>8</sup> Hoffer and Hull, 132.

<sup>9</sup> Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1984), Kindle, 49.

<sup>10</sup> Cornelia Hughes Dayton, *Women Before the Bar Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill: University of North Carolina Press, 2012), Kindle, location 257.

<sup>11</sup> Dayton, location 211.

<sup>12</sup> Dayton, location 265.

institutions and a Lockean model that separated family and government.<sup>13</sup> Norton's research reveals the community standards and protocols regarding fornication while explicating the gendered nature and revealing the beliefs underlying the colonial legal system. This work was critical because it outlines the differences in both abstract and physical development of the New England and Chesapeake region while specifically focusing on how women of all classes and races interacted with their respective legal systems and communities. Norton's meticulous study provides a comprehensive overview and reimagination of the role of women in the early colonial period.

Richard Goodbeer's *Sexual Revolution in Early America* also closely studies the impact of race on relationships and sex. Godbeer explores the ambiguity of gendered interracial relationships, explaining that relationships between white men and black or Native American women were more socially acceptable than those between white women and men of color.<sup>14</sup> Goodbeer's discussion of race and the evolution of its social construct in the sexual frame relates to the sociological and historical concept of "othering" used to designate and categorize those outside of the mainstream community. Groups or individuals can be designated as "others" based on their race, status, ethnicity, or religion.<sup>15</sup> The settlers of New England, specifically Massachusetts Bay Colony, Plymouth Colony, and New Haven Colony, were overwhelmingly homogenous: white, religiously devout, and freemen or members of their families.<sup>16</sup> The

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<sup>13</sup> Mary Beth. Norton, *Founding Mothers & Fathers: Gendered Power and the Forming of American Society* (New York: Division of Random House, 1997), 5.

<sup>14</sup> Richard Godbeer, *Sexual Revolution in Early America* (Baltimore, MD: Johns Hopkins University Press, 2004), Kindle, locations 75, 97.

<sup>15</sup> Sune Jensen, "Othering, Identity Formation, and Agency," *Qualitative Studies* 2, no. 2 (October 3, 2011).

<sup>16</sup> "A Freeman of this colony was a member of the body politic and as such entitled to exercise the right of suffrage and to hold office. As early as 1631, in order to become a freeman, it was required that the applicant produce evidence that he was a member of the Congregational church. But this regulation was modified in 1664. Freemen were admitted by the General Court of the colony." Hon H.F. Andrews, comp., *List of Freemen: Massachusetts Bay Colony from 1630-1691* (Exira, Iowa: Exira Printing Company, 1906), 1, Haithi Trust.

colonists conforming to these characteristics, especially members of the Church in the first half of the century, were members of the mainstream community and considered to be essentially the first tier of a society stratified primarily on religious affiliation and spiritual compliance.

In all three colonies, gender was not a factor relegating someone to the “other” category. Rather, women who conformed to the blended legal and religious standards had their own social space and role within the family and community-centric society. According to Mary Beth Norton, the Filmerian society viewed the patriarch of each household as a miniature king, and his wife had a role to support him and care for their children and home.<sup>17</sup> Women were secondary to men but not excluded from the general community. Rather, “others” in Colonial New England were designated based on race, status, and religious affiliation and sincerity.<sup>18</sup> Thus, indentured servants of European heritage, who were frequently not Calvinists; servants of either Native American or African ancestry; and those repeatedly refusing to comply with the moralistic codes of the Colony, if they had been born to members of the mainstream community, made up the “other” group in these three colonies during the Seventeenth-Century.<sup>19</sup> “Others” were identified because they threatened the community’s stability, cohesion, and imposed social order. The presence of those who were not necessarily dedicated to the same goals as the majority reinforced contemporary community leaders’ constant fear of chaos and anarchy. Community cohesion was key to the success of the religious missions of all three colonies.

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<sup>17</sup> Norton, *Founding Mothers*, 10.

<sup>18</sup> Becoming a member of the church was an exclusive and selective process. According to Taylor, church membership was only available to “those who could publicly recount a New Birth experience, a personal journey [...] While everyone in the community had to attend church, only full members could receive [...] communion. In effect, the full members composed a smaller elite church [...]” Only full members of the church could hold positions of authority; thus, relegating non-members to judgement from those not like them. As the century progressed, the percentage of church members continued to decline. Taylor, 179-80.



Using quantitative data and trial records, I argue that fornication cases from three courts in seventeenth-century New England reveal remarkable religious and legal commitments to maintaining morality and order. In the Puritan and separatist colonies of Massachusetts Bay, New Haven, and Plymouth, entire communities, including “others,” worked with the theocratical legal system to police sexual morality and preserve social hierarchies that colonists understood to be fundamentally intertwined. This commitment was so strong that these colonies overlooked centuries of English legal custom when drafting harsher fornication laws, relied on the expert testimony of midwives over that of men, and placed a greater emphasis on protecting status-based hierarchies and economic order than preserving hierarchies of gender and race.

In the late 1620's under a charter from King Charles I, the Dorchester Company founded Massachusetts Bay Colony. Members of the company were Puritans who wished to leave England because of differences in interpretation of faith with the Church of England. Unlike the Pilgrims who founded Plymouth Colony, the Puritans did not necessarily endorse separating from the Church of England; however, Calvinism heavily influenced their faith.<sup>20</sup> Thus, Puritans were more austere and literal in their Biblical interpretations than Anglicans.<sup>21</sup> Over the course of the next fifteen years, around 14,000 Puritans moved to the colony from England during what has been termed the Great Migration.<sup>22</sup> The immigration influx ended in the last year of the 1630's and early 1640's with the onset of a period of civil war with religious implications in England.

Throughout this period and until the final dissolution of the colony in 1692, the colony grew economically, primarily from trade with both England and her colonies in the Caribbean,

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<sup>20</sup> Taylor, 160.

<sup>21</sup> Taylor, 160-162.

<sup>22</sup> Taylor, 168.

despite numerous challenges to its moral existence.<sup>23</sup> For example, in the first two decades of the colony, both Roger Williams, the founder of the Colony of Rhode Island and Providence Plantations, and Anne Hutchinson, who claimed a direct relationship with God, threatened the established religious system and authority.<sup>24</sup> These unique crises challenged the moral existence of the colony and the stability and cohesion of the community because Williams and Hutchinson undermined established sacred and lay authority which were irrevocable intertwined.

The physical survival of Massachusetts Bay Colony was threatened in two major wars with neighboring Native American tribes. The winter of 1637 was bleak as the English suffered early losses in a year-long war against the Pequot tribe. However, the colonists and their Native allies won a decisive victory in late July, marking the end of the conflict but the beginning of a generation of strife between Native Americans and Europeans in the region.<sup>25</sup> The thirty years of sporadic confrontation culminated in the largest war in colonial New England's history, King Philip's War, in 1675-1676. King Philip's War claimed 1,000 English and countless more Native Americans lives, ending the Native threat to New England's colonies but leaving their governments heavily indebted.<sup>26</sup>

1620 brought the arrival of the Pilgrims, separatists from the Church of England, who sought a new land to practice their faith and create their own ideal society. These Pilgrims settled Plymouth Colony, which grew to encompass the towns of Scituate and Bridgewater. The colony had a population of around 3,000 in 1690 when it was absorbed into the Province of

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<sup>23</sup> The implementation of the Navigation Acts (1651) demonstrate the economic success of the New England colonies, specifically the largest, Massachusetts Bay. Wendy Warren, *New England Bound: Slavery and Colonization in Early America* (Liveright, 2016), 54.

<sup>24</sup> Taylor, 181.

<sup>25</sup> Taylor, 194-95. Meredith Mason Brown, "Axe Head, Adze Head: The Pequot War," in *Touching America's History: From the Pequot War- World War II* (Bloomington: Indiana University Press, 2013), 8-10.

<sup>26</sup> Taylor, 185.

Massachusetts Bay Colony per the orders of the King.<sup>27</sup> Plymouth Colony participated in both The Pequot and King Philip's War in their pursuit of more land for settlement and further security for their colony. Plymouth is unique in that it was the first colony to be settled in New England, and, thus, reflects the greatest level of societal growth and change. For example, during the first several years of settlement, the colony operated in a communal fashion, sharing both goods and labor. However, this model strayed to far from English tradition and failed to reinforce the Filmerian "miniature monarchy" system familiar to the colonists and necessary for the functioning of the legal system.<sup>28</sup>

New Haven Colony was founded without a charter from the English Crown in 1638 with about 500 settlers. The colony claimed a Puritan identity and looked to the Bible, as did Plymouth and Massachusetts Bay, when authoring their legal codes. During the last years of the English Civil War, New Haven earned the ire of the crown for harboring anti-monarchical fugitives, resulting in their forced merger with Connecticut Colony in 1665.<sup>29</sup> From that point forward, New Haven was only a town in Connecticut Colony. During this period, the colony experienced economic growth while also limiting religious requirements and precedent in the legal system for its residents.<sup>30</sup>

Between 1625-1685, when prosecuting defendants for the crime of fornication, the main objective of the theocratical governments' legal systems in Massachusetts Bay, Plymouth, and New Haven Colonies was to strictly enforce both legal and spiritual compliance with their Old

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<sup>27</sup> Patricia Scott Deetz, James Deetz, and Chris Fennell, "Population of Plymouth Town, Colony, and County, 1620-1690," Illinois.edu, 2007, <http://www.histarch.illinois.edu/plymouth/townpop.html>.

<sup>28</sup> Norton, *Founding Mothers*, 6-7.

<sup>29</sup> Taylor, 166.; George Larkin Clark, *A History of Connecticut: Its People and Institutions*, 2nd ed. (New York: G.P. Putnam Sons, 1914), 78, <https://play.google.com/store/books/details?id=CWY1AAAAMAAJ&rdid=book-CWY1AAAAMAAJ&rdot=1>.

<sup>30</sup> Ibid.

Testament-based legal codes to ensure members who had strayed were successfully reintegrated into the spiritual and social community. Their secondary objective was to relieve the colony of any financial stress that could stem from an illegitimate child produced through fornication. These priorities only applied to members of the mainstream community; for “others,” the goals were reversed. The court system prioritized saving the colony from economic duress and secondarily focused on ensuring general order among the full population of the colony not reintegrated into a community of which the offender had never been a member. Authorities relied on community structure to ensure members of the community or “others” committing violations were made to answer for their crimes. Although this system would break down if citizens refused to participate or made false statements, it rarely did so because of the small population sizes, nature of the legal system, and harsh consequences for lying which was a crime in and of itself.<sup>31</sup> The legal system generally made no distinctions based on race or gender in charges and punishments of offenders or treatment of witnesses. The populace regardless of race, status, or gender were generally given equal standing before the lay courts. Fornication prosecutions, one of the most common offenses, also demonstrate a legal and spiritual disconnect between English custom and the behavior of colonists and the legal system created in the New World. To verify charges of fornication and bastardy, the Courts relied on midwives, while neighbors also testified to convict their fellow colonists whether they were a member of the community or not.

First, I will examine the prosecutions for fornication among Essex County in Massachusetts Bay Colony, Plymouth Colony, and New Haven Colony and Town to prove the

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<sup>31</sup> Lying was illegal in MA Bay Colony; the law stated, “[...] and whereas all lying is contrary to truth, and some sorts of lies are not only sinful (as all lies are) but also pernicious to the Public-weal [...]” Massachusetts Bay Colony, *The Book of the General Laws and Liberties Concerning the Inhabitants of the Massachusetts* (1648), accessed March 10, 2018, [http://plaza.ufl.edu/edale/Laws and Liberties.htm](http://plaza.ufl.edu/edale/Laws%20and%20Liberties.htm).

commonality of fornication and the court and community commitment to uncovering sinful crime. These prosecutions are quantitatively analyzed to determine trends based on time and case factors. The sum of prosecutions in each locality is compared to make conclusions about the culture of each colony. It is difficult to locate accurate population records, especially for New Haven; however, historians agree Massachusetts Colony had the largest population followed by Plymouth, and New Haven was significantly smaller.<sup>32</sup> The different coded case factors are represented on graphs for each locality relative to the total prosecutions in the locality.

In creating the visual representations of data and performing quantitative analysis, I examined around two-dozen volumes of primary source court records from Essex County, Massachusetts Bay Colony; New Haven Colony; New Haven Town; Connecticut Colony; and Rhode Island and Providence Plantations. After selecting over 300 records of prosecutions for fornication from the three localities with the most reliable, detailed, and numerous records, I coded each record for five factors: involvement of an “other;” testimony/deposition of a midwife; testimony/ deposition from neighbors; mentions marriage; mentions existence of formal contract of marriage.

A prosecution is defined as an appearance in court or record of a guilty conviction or plea for fornication or a similar offense e.g. “uncleanness” or “lascivious carriage.”<sup>33</sup> When a couple was prosecuted on two different dates for reasons such as the wife was “not in condition to come to court,” or the pair was unmarried, I counted this as one prosecution if it could be clearly determined (i.e. within a reasonable date location range) that the two individuals prosecuted for

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<sup>32</sup> United States Census Bureau, *Population in Colonial and Continental Periods* (US Census Bureau), 4-5, <https://www.census.gov/history/pdf/colonialbostonpops.pdf>. ; "Estimated Population of American Colonies, 1610-1780," Vancouver Island University, <https://web.viu.ca/davies/h320/population.colonies.htm>.

<sup>33</sup> Vol. 1, 220, 247.

fornication had committed the crime together. Because one of the objectives of the court system was to save the colony from the economic burden of supporting a child, every attempt was made to identify and prosecute the father of any children born to single women.

Next, I focus on the 11.4% of prosecutions across the three localities involving “others.” The numerous case studies demonstrate the diversity or lack of diversity within the three localities and how the law interacted with those on the fringes of the community. Specifically, how “others” were treated in comparison with members of the mainstream community. In general, “others” encountered equivalent treatment before the courts because full participation of the populace, “others” and the community, was necessary for each colony’s legal system to function.

Finally, I argue that the colonial court systems could not have functioned without the active and honest participation of the community, specifically midwives. To accomplish this, I explore the integral role of community policing through seven case studies. Three cases exemplify midwives’ roles as de facto authorities and subsequent treatment as expert witnesses by the early colonial courts, while two cases establish the importance of community members in enforcing law.

### Quantitative Analysis of Prosecutorial Trends for Fornication in Massachusetts Bay, Plymouth, and New Haven Colonies

<b>Plymouth Colony</b> <sup>34</sup>	Fornication Prosecutions	Explicit Mention of Marriage	Involving an "Other"	Mention of Contract	Neighbor Reports/ Testifies	Midwife Reports/ Testifies
Total Prosecutions	69	33	6	3	0	0
Percent of all Fornication Prosecutions		47.83%	8.70%	4.35%	0.00%	0.00%
<b>Essex County, Massachusetts Bay Colony</b> <sup>35</sup>	Fornication Prosecutions	Explicit Mention of Marriage	Involving an "Other"	Mention of Contract	Neighbor Reports/ Testifies	Midwife Reports/ Testifies
Total Prosecutions	235	115	29	1	20	15
Percent of all Fornication Prosecutions		48.94%	12.34%	0.43%	8.51%	6.38%
<b>New Haven Colony (1633-65) and New Haven Town (1665-85)</b> <sup>36</sup>	Fornication Prosecutions	Explicit Mention of Marriage	Involving an "Other"	Mention of Contract	Neighbor Reports/ Testifies	Midwife Reports/ Testifies
Total Prosecutions	11	6	1	0	5	3
Percent of all Fornication Prosecutions		54.55%	9.09%	0.00%	45.45%	27.27%

Figure 1

<sup>34</sup> Nathaniel B. Shurtleff, ed., *Records of the Colony of New Plymouth in New England, 1633-1661 and 1668-1678*, vol. 1-3, 5. (Boston: William White, Printer to the Commonwealth, 1855-56), PDF.

<sup>35</sup> George Francis Dow, *Records and Files of the Quarterly Courts of Essex County Massachusetts, 1636-1683*, vol. 1-8 (Salem, MA: Essex Institute, 1911-21), PDF.

<sup>36</sup> Charles J. Hoadly, *Records of the Colony and Plantation of New Haven from 1638-1649* (Hartford: Case, Tiffany and for the Editor, 1857), PDF. ; Franklin Bowditch Dexter, ed., *Ancient Town Records: New Haven Town Records, 1649-1684*, vol. 1-2 (New Haven: New Haven Colony Historical Society, 1917, 1919), PDF.

Figure 2

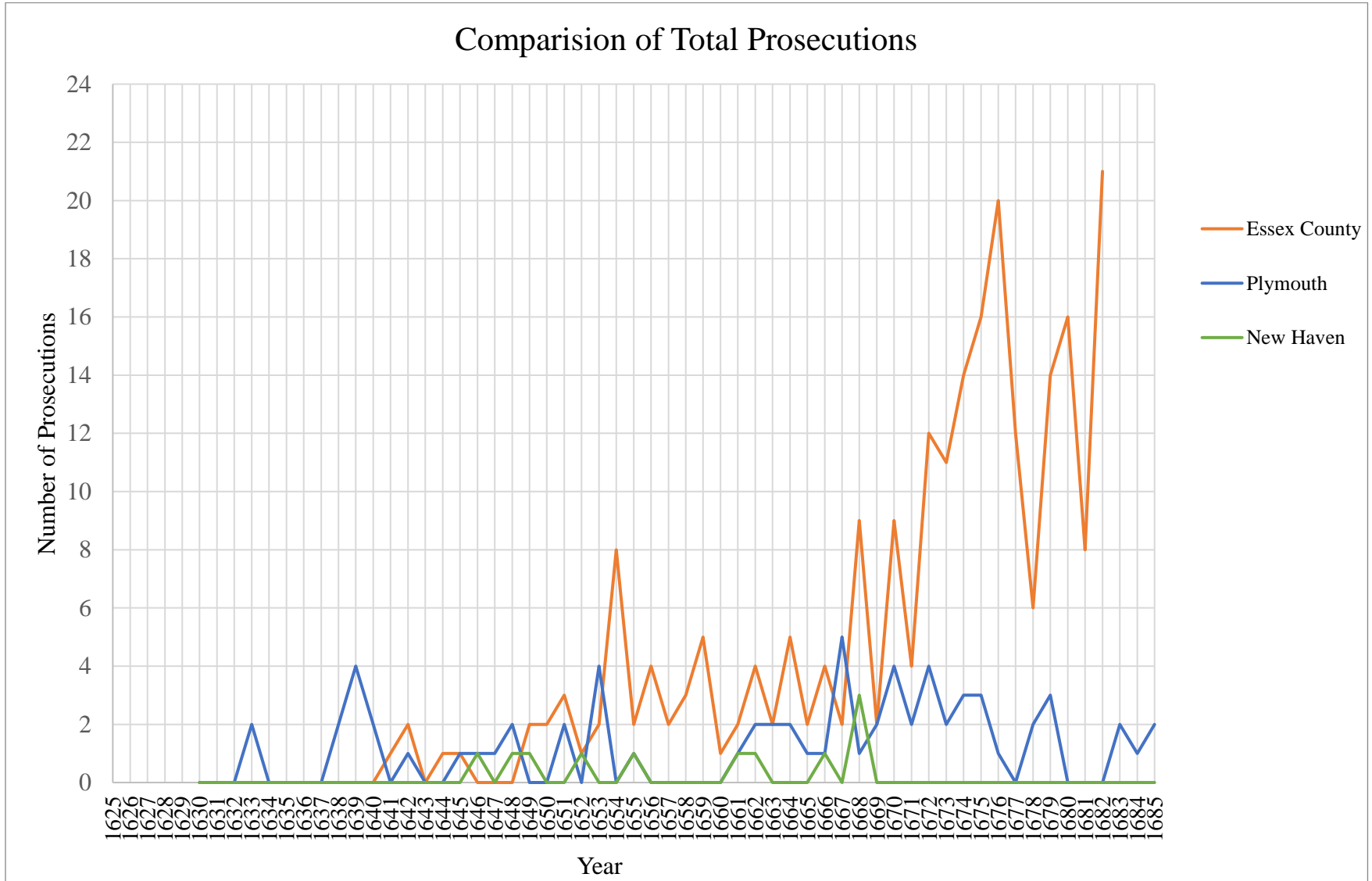




Figure 3

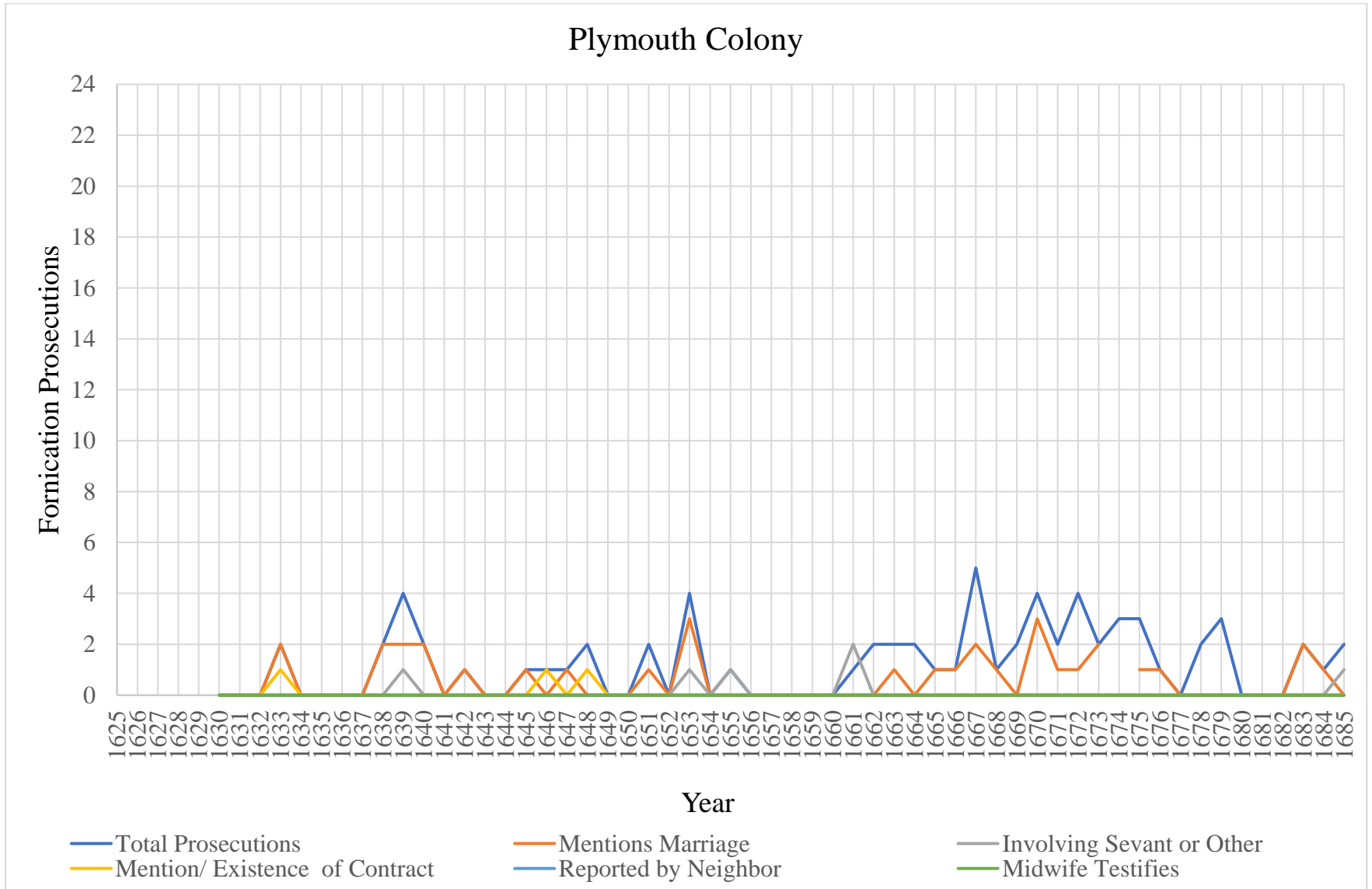


Figure 4

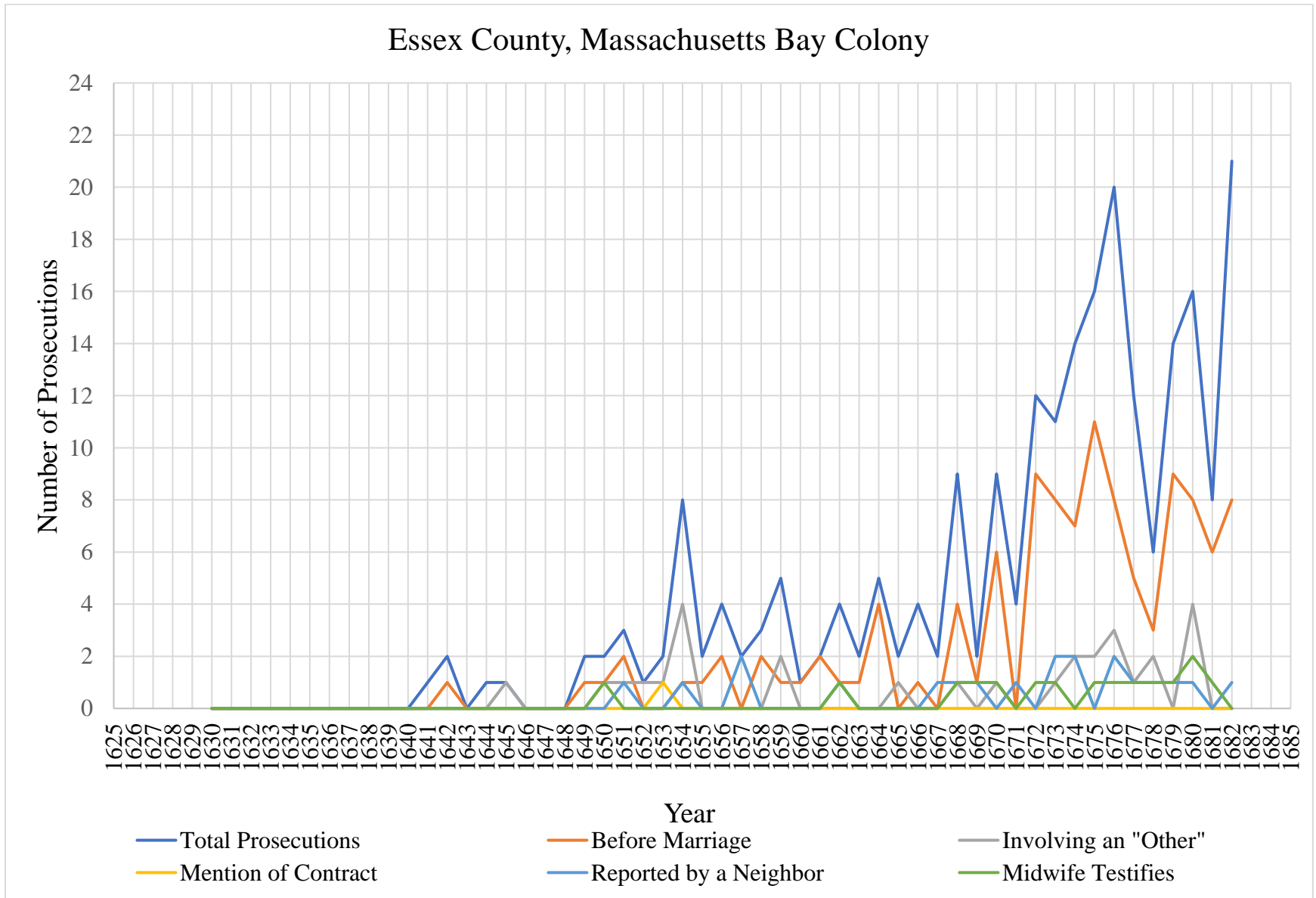
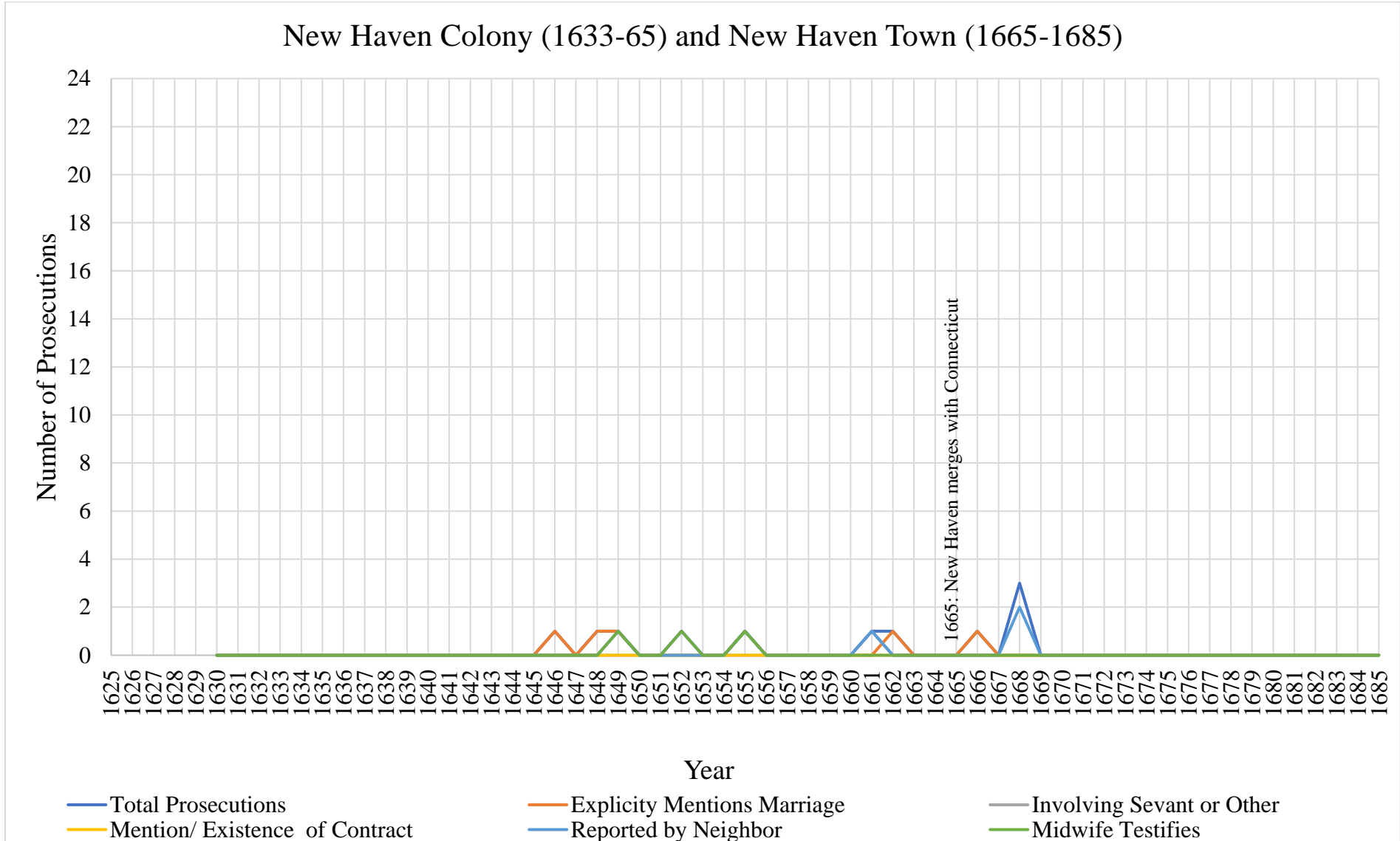


Figure 5



## **Qualitative Analysis of Prosecutorial Trends for Fornication in Massachusetts Bay, Plymouth, and New Haven Colonies**

When 102 followers of John Calvin founded Plymouth Colony, the *Mayflower* did not only carry Pilgrims. The famous ship also carried indentured servants and people who had paid their own way, later referred to as “particulars” within the colony or “others,” for the purposes of this study.<sup>37</sup> Thus, from the signing of the Mayflower Compact, Plymouth Colony was not as homogenous as popular perception reflects nor as homogenous as the colony’s own founders would have preferred. This concept is reflected in Plymouth Colony’s fornication prosecutions. Of the fifty-three prosecutions for fornication between 1633 and 1685, over 56.53% mentioned marriage or contract/betrothal, by far the most common category of fornication across all 3 localities (see figure 1). 8.7% of fornication cases involved “others;” however, excluding cases mentioning marriage, 20% of defendants were “others” which is disproportionate to the proportion of Plymouth’s population that were not members of the community (see figure 1).

During the early colonial period, chaos was at the forefront of political and social leaders’ consciences as the fear of anarchy permeated England and those who left it to establish religious havens.<sup>38</sup> Thus, when the colony faced threats, either physical or moral, there were frequently surges in prosecutions for crimes that indicated a lack of discipline within the community. For example, during both the Pequot War (1636-1638) and King Phillip’s War (1675-76), fornication prosecutions in Plymouth increased (see figure 3). This wartime surge demonstrated the

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<sup>37</sup> Number of surviving Mayflower passengers calculated based on ship manifests in Herbert Moller, "Sex Composition and Correlated Culture Patterns of Colonial America," *The William and Mary Quarterly* 2, no. 2 (April 1945): 114-115, <http://jstor.org/stable/1923515>. ; For the origin of the term particulars and further description behind meaning and purpose see Demos, 5-6.

<sup>38</sup> Mary Beth Norton, "The Evolution of White Women's Experience in Early America," *The American Historical Review* 89, no. 3 (June 1984): 596, [www.jstor.org/stable/1856118](http://www.jstor.org/stable/1856118).

necessity and desire of authority to ensure control within the confines of their own settlement amidst chaos that threatened the colony's very existence.

The 55% of prosecutions mentioning marriage or specifically contract demonstrate a disconnect between authority and community because of the differences among the sacred legal system in the Colonies and English tradition and common law. Common law recognized betrothed couples, or those with a contract, as essentially married meaning they were free to participate in sexual activity; it was not uncommon for brides to be visibly pregnant at their weddings.<sup>39</sup> Plymouth's theocracy limited "carnal copulation" to after the official marriage ceremony; however, the law did fine those with a contract half the amount of those without a contract.<sup>40</sup> The law's differentiation demonstrates authority in Plymouth were aware the laws of their theocracy were not aligned with traditional English custom and law. Thus, this discrepancy could possibly present a problem in convincing the community to adhere to the colony's Biblical interpretation of fornication.

In the more populous Essex County in Massachusetts Bay Colony, there were the most prosecutions for fornication among the three localities. A large population indicates more opportunities for members of the community to stray from the most stringent laws while also indicating a greater need for outside witnesses to report offenses to ensure the system functioned. For example, in efforts to find sufficient land for large-scale farming (compared to agriculture in England), community members increased their sprawl to the chagrin of authorities who preferred small, compact living areas to make Indian attacks less effective and ensure community

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<sup>39</sup> Hoffer and Hull, 49.

<sup>40</sup> David Pulsifer, ed., *Records of the Colony of New Plymouth in New England, Laws, 1623-1682* (Boston: William White, Printer to the Commonwealth, 1861), PDF, 46.

discipline and cohesion.<sup>41</sup> When living in a remote area or farther from neighbors, it is easier for transgressions to be committed without witnesses, the greatest threats colonial New England's legal system. In over 15% of cases, members of the community such as neighbors and midwives provided testimony that led to the conviction of their peers for fornication (see figures 1,4).

The larger population of Essex County also lent itself to more prosecutions of "others." (see figure 1). Essex County also covered a larger geographical area meaning there were more opportunities for interaction with Native Americans, and therefore, more opportunities for colonists to stray from prescribed standards. Additionally, the larger geographic region and population of the county and colony attracted more outsiders for economic purposes.<sup>42</sup>

Essex County recorded nearly 50% of prosecutions directly related to marriage indicating the same disconnect present in Plymouth between authority and theocratical law and English custom and tradition (see figure 1). In Massachusetts Bay Colony, however, this disconnect may have been even more pronounced; the laws governing the residents of Essex County made no distinction in punishment between those prosecuted for fornicating with or without a contract or betrothal.<sup>43</sup> This legal dissimilarity also explains the lack of mention of contract or betrothal in the Essex Courts in comparison with the Plymouth Court, where three times more cases involved mention of a contract. In Massachusetts Bay, it was irrelevant to the court if you had a contract or not; the crime and punishment were analogous.

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<sup>41</sup> Taylor, 165.

<sup>42</sup> Massachusetts Bay Colony, specifically Essex County, had a significant population of fishermen who tended to not be Puritans especially later in the century. The economy of early colonial New England was intertwined with the West Indies as the Triangular Trade began to take shape. Major industries in colonial New England included fishing, ship building, and small-scale farming. Taylor, 175-177.

<sup>43</sup> Massachusetts Bay Colony, *The Book of the General Laws and Liberties Concerning the Inhabitants of the Massachusetts* (1648), accessed March 10, 2018, [http://plaza.ufl.edu/edale/Laws and Liberties.htm](http://plaza.ufl.edu/edale/Laws%20and%20Liberties.htm). See fornication.

During King Phillip's War, Essex County saw a similar increase in prosecutions to that evidenced in Plymouth Colony for fornication (see figure 4). This spike is also present when only looking at prosecutions of "others" (see figure 4). After 1676, the prosecution of others declined until it peaked again in 1680. Prosecutions among all sectors of the community also peaked around 1680. This peak most likely occurred because throughout the seventeenth-century, because the population continued to increase as did the spread of the population over a larger land area.

New Haven provided only 3.49% of all fornication prosecutions among the three localities; however, the entries are some of the most revealing of the legal construction religious influence in government. Instead of focusing on the details of the offenses, New Haven records focus on how these offenses violated law and offended God. In New Haven, despite having the smallest population and geographic size, there is the most testimony from neighbors and midwives. In New Haven, neighbors and midwives most likely frequently testified because of their belief in the mission of the settlement and the sweeping social authority of the courts in the smaller colony.

New Haven also did not differentiate between fornication committed with or without a contract. However, nearly 55% of their cases mentioned marriage, once again demonstrating the same disconnect that existed in the other two localities. New Haven only existed as an independent colony for around thirty years before it was absorbed into the larger, neighboring, and chartered Connecticut Colony.<sup>44</sup> The number of prosecutions in New Haven were static during its duration as an unchartered colony. When New Haven became only a town in

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<sup>44</sup> Nancy Finlay, "A Separate Place: The New Haven Colony, 1638-1665," Connecticut History, The Charter of 1662, accessed February 2, 2018, <https://connecticuthistory.org/a-separate-place-the-new-haven-colony-1638-1665/>.

Connecticut Colony, in 1664, it had become less homogenous. The town was also now part of a new colony and operating under its legal system that had different goals and enforcement mechanisms. Since New Haven was a much smaller colony and accounted for under five percent of fornication prosecutions across the three colonies, it is difficult to determine any obvious prosecutorial trends relative to external events such as war.

### **“Others:” Prosecutions Outside the Mainstream Community**

Most of New England was white, puritan or separatist, and free; however, there were those relegated to outside of the mainstream community based on their race, ethnicity, or status. Although these “others” were not within the majority, they did not face harsher punishments than their counterparts when charged with fornication. Nor did the Courts make a distinction between fornication committed between two people of the majority, a member of the majority and an “other,” or two “others.”<sup>45</sup> “Others” were more likely to come before the court repeatedly, especially for fornication, because their marriage options were more limited, and they were less likely to have the same religious view as the majority. In this section, the themes of repeated prosecution, equal treatment and punishment, and the interactions of “others” with the mainstream community will be explored to identify and explicate the priorities of the legal system specifically for the crime of fornication.

In Massachusetts Bay Colony, the case of Katherine, “Kate,” a servant to Daniel Rumball of Salem, represents the themes of repeated prosecution, equal punishment, and interactions with the mainstream community. Between 1650 and 1653, Katherine was prosecuted twice for

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<sup>45</sup> Twombly and Moore argue “a profound commitment to the law and the judicial process overpowered antipathetical racial views and assured fair and equal treatment, guaranteeing basic legal rights of Englishmen to free, servant, and slave Negroe.” Twombly and Moore, 226.



fornication (see figure 4).<sup>46</sup> On both occasions we can assume her crime was discovered because of the birth of a child. In July 1650, when Katherine first appeared before the court, they described her as a “negar servant,” which indicates Katherine was an “other,” as a non-white and non-free woman. However, when she appeared before the Court as “Kate” in 1653 she was described using a now offensive and defunct sixteenth-century term to describe a person of African descent, indicating more about her ethnicity. It is difficult to conclude many specifics about Katherine’s life before arriving in New England. Although it was rare in the first-half of the seventeenth-Century, some servants were transported from the Caribbean to New England.<sup>47</sup>

The Essex Quarterly Courts most frequently sentenced those convicted of fornication to be whipped or pay fines; therefore, the punishment of “others,” such as Katherine, can be compared with punishments for members of the community to determine the equality of the legal system. For her 1650 offense, Katherine was “fined 40s. (shillings) or to be whipped,” but “her master promised to pay the fine.” After the birth of presumably her second child in August 1653, the court ordered Katherine to face corporal punishment or pay a fine of 20 shillings; the record does not stipulate which option she chose or if her master intervened to pay the fine as he had in Katherine’s 1650 case. In both cases this punishment was commiserate with other offenders who were not servants. For example, at a Salem Court in April 1653, a man was fined forty shillings for committing fornication after contract but before marriage, and in January 1651 in Ipswich a couple was fined forty shillings only “for suspicion of uncleanness.”<sup>48</sup>

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<sup>46</sup> Dow, *Records and Files of the Quarterly Courts [...], 1636-1656*, vol. 1, 196, 287, 323.

<sup>47</sup> Puritans did not distinguish enslavement based on race at this point. Rather, slave was term reserved for “prisoners of war and criminals.” Twobly and Moore, 225. Under 2% of the population were slaves in 1700 throughout New England. Some servants were transported to New England from the Caribbean because the regions were so intricately commercially linked. Taylor, 174-76.

<sup>48</sup> For records of these fornication prosecutions see Dow, Volume I, 220, 286; Miscegenation was not differentiated in law until after the scope of this study. When two members of different races committed fornication and a child

Only in her second offense was the father of Katherine's child, James Thomas, identified. James Thomas was most likely white, although court records indicate he was not a well-integrated member of the community and was prosecuted for drunkenness, stealing, and at some point, was a servant.<sup>49</sup> It is possible that her earlier prosecution in 1650 stemmed from the birth of a bastard that was the child of her master. This could explain why, unlike most prosecutions in the Essex Quarterly Courts, there were not two people tried for each instance of fornication (in the 1650 case) even if they were not married. Additionally, in 1650 Katherine was fined forty shillings but only twenty shillings in 1653, despite it being her second offense, because James Thomas was also fined for the offense and ordered to pay "18d. (pennies) a week" toward the maintenance of the child, presumably to free her master from the financial burden of another household member. If Daniel Rumball had fathered her first child in 1650, then it is logical that the fine in 1650 would have been double the amount of the fine in 1653, twenty shillings for Katherine and twenty shillings for Daniel, and that no maintenance payment schedule would have been instituted because he would already have to provide for the child of his servant.

In April 1673 a court at Ipswich, also in Essex County, convicted two "others, "a servant and a foreigner, of fornication. Nathaniel Wells reported his servant, Mary Greely, to the court for committing fornication with a man only identified as Richard, "an Irishman who worked for John Ring," most likely as an indentured servant, who decided "running away" was the best option to avoid prosecution.<sup>50</sup> Mr. Wells probably brought the complaint before the court in hopes of receiving payment from either Richard or Mr. Ring to pay for the costs of his servant's child to live in his household. Initially, Mary Greely was sentenced to corporal punishment, but

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was produced, "penalties [...] were generally the same as for simple fornication." Twobly and Moore, 230; See also Moller, 114-115.

<sup>49</sup> Dow, Volume I, 68, 172, 380.

<sup>50</sup> For court records Dow, Volume V, 154, 158.

her sentence was remitted to a fine per her master's request. The preference for a fine indicates Mr. Wells did not want to lose the labor of Mary for any time while she recovered from corporal punishment, yet, he still found it worthwhile to bring the matter before the court himself. However, unfortunately for Mr. Wells, it seemed that in the end, only his servant was punished because Richard, the child's father, had already left the area.

In Richard's case, he likely had little to entice him to stay in Ipswich after learning he would face fornication charges for which he would most likely be whipped or heavily fined while also having to pay to support the child. As an Irishman, Richard most likely was not a member of the mainstream community because he was most likely Catholic.<sup>51</sup> Additionally, leaving Ipswich allowed Richard to escape not only financial obligations to a child but also possibly his indenture before the end of its term.

Like the Essex County courts treatment of Katherine, a black servant in the 1650's, Plymouth Colony also emphasized the defendant's status not his or her race when prosecuting for fornication. In November 1684, Hannah Bony was prosecuted for fornication with two different men, John Mitchell and Nimrod, a "negor," with whom she produced a child (see figure 3).<sup>52</sup> John Mitchell was sentenced to be "severely whipt, & to give bond with surtyes (sureties) for his good behavior." Nimrod was sentenced to "be severely whipt, & [...] pay 18 pence per weeke to said Bonny towards the maintenance of said child for a year."<sup>53</sup> If either Nimrod or his master did not produce the weekly maintenance payments, Nimrod's service was to be used for

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<sup>51</sup> "Catholics were sent to all of the North American colonies, even Massachusetts. At least 400 Irish servants arrived on the ship the *Goodfellow* in the 1650's, mostly women and children." From Francis J. Bremer, "Families and Religious Conflict in the Early Modern Atlantic World," in *Puritans and Catholics in the Transatlantic World: 1600-1800*, ed. Crawford Gribben and Scott Spurlock (Basingstoke: Pgrave Macmillan, 2016).

<sup>52</sup> Shurtleff, vol.5, 176-77.

<sup>53</sup> Ibid.

the benefit of the colony not his master for an equal amount of time or labor as the unpaid maintenance.<sup>54</sup> This condition of the sentence was not because of Nimrod's race but rather his status as a dependent servant. The foremost priority of authority when prosecuting members of the mainstream community was moral rectitude with a secondary objective of ensuring the colony was not financially burdened because of poor and illegitimate children. However, when dealing with "others," the financial burden became more important because servants and those outside of the community were likely less financially secure with fewer community ties e.g. religion and family.<sup>55</sup>

"Others" were designated based on their ethnicity, race, or status in all three colonies. However, unique to New England, those who were not members of the mainstream community still faced essentially equitable treatment before the law. Although distribution of punishment and fiscal responsibility was similar with those imposed upon members of the mainstream community, "others" were more likely to come before the court as repeat offenders because of their inherent inability to conform to the mainstream i.e. become members of the church or financially secure. Furthermore, the priority of the courts changed when faced with an offender who was an "other" because they were not responsible for their morality only the impact of the person on the entire community. Thus, financial redress was the most pertinent aspect of these prosecutions.

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<sup>54</sup> Ibid.

<sup>55</sup> Twobly and Moore, 226. Greenberg, 297-98.

## Community Policing: Midwives and Neighbors

To ensure the legal system functioned and offenders were reprimanded, community officials relied on third parties to report violations. Midwives functioned as de facto authority figures. Women's bodies and childbirth were the exclusive purview of women, making a midwife the foremost authority and witness in fornication cases predicated on the existence of a child or the timing of a child's birth. When midwives were unavailable, or the offense didn't involve offspring, neighbors functioned as essentially community police officers (see figure 1). Certain positions of authority, such as town constable, even rotated amongst the citizenry.<sup>56</sup>

### Midwives

In all three localities, determining the paternity of children conceived through fornication was extremely important to authorities attempting to ensure that the colony would not assume any expenses on behalf of the child.<sup>57</sup> There was no fool-proof method (by twenty-first-century standards) to determine paternity, but authorities believed they had devised a fool-proof method. The belief that a woman in labor could only be truthful when asked the identity of the father of the coming child was so prevalent it was codified into law in Massachusetts in 1658.<sup>58</sup> Thus, the burden most frequently fell to midwives to question single women or those giving birth under suspect circumstances e.g. giving birth only seven months after their marriage.<sup>59</sup> This special

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<sup>56</sup> All men who were members of the church were required to hold public office. These positions including members of grand juries, constables, and surveyors. Norton, *Founding Mothers*, location 6829.

<sup>57</sup> Fitzpatrick, 745.

<sup>58</sup> Massachusetts law stated "[...] then the Man charged by the Woman to be the father, thee holding constant in it, (especially being put upon the real discovery of truth of it in the time of her Travail) shall be the reputed father and accordingly liable to the charge of maintenance [...]" William Henry Whitmore, ed., *The Colonial Laws of Massachusetts Reprinted from the Edition of 1672, with Supplements Through 1686* (Boston: City Council of Boston, 1890), 55, accessed March 14, 2018, Haithi Trust Digital Library. ; This idea is also explained in Norton, *Founding Mothers and Fathers*, 225; Fitzpatrick, 744.

<sup>59</sup> Norton, *Founding Mothers and Fathers*, 225. See also Fitzpatrick, 745.

duty also contributed to the more frequent appearance of midwives in court relative to other women as witnesses and represents a major aspect of community policing.<sup>60</sup>

In August 1672 a case came before the Essex Quarterly Courts at Hampton that demonstrates the role of midwives in determining paternity in a birth under suspicious circumstances. Elizabeth Eastman accused Joseph Lyn of being the father of her child despite being married to Nathaniel Eastman at the time of her delivery.<sup>61</sup> The court evaluated the veracity of Mrs. Eastman's claims based on the testimony of her midwife, Elizabeth Osgood, who deposed that Mrs. Eastman had told her the father of the child was Joseph Hale.<sup>62</sup> Hanna Browne gave the same testimony as the midwife.<sup>63</sup>

The midwife most likely interrogated Mrs. Eastman during labor while Hanna Browne was helping her with the delivery because questions already existed about the paternity of Mrs. Eastman's child.<sup>64</sup> Though it is not explicitly mentioned, it is likely Mrs. Eastman gave birth less than nine-months after her marriage, prompting an investigation regardless of paternity, because the birth of even slightly underdeveloped infants, aroused suspicions of fornication. Since the primary objective of the courts when dealing with two members of the mainstream community was to ensure order and morality, authorities still punished couples for fornication even after they had been married for several months if the birth of their first child revealed prior sin.

Mrs. Eastman's father, John Hudson, testified that Joseph Hale, the purported father of Mrs. Eastman's child, had inappropriately pursued his daughter contrary to his wishes. The testimony of Mr. Hudson was necessary to explain the deficiency in his family order and structure. As the

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<sup>60</sup> Midwives appeared in court regularly whereas other women only appeared to give testimony or as the accused from time to time. Norton, *Founding Mothers*, 225.

<sup>61</sup> Dow, vol. 5, 103.

<sup>62</sup> Ibid.

<sup>63</sup> Births were community events, taking on a celebratory air that allowed women to gather in the most formal, gender-exclusive setting available. Norton, *Founding Mothers*, 222. See also Taylor, 174.

<sup>64</sup> Large groups of women frequently went to the home of women giving birth to assist the midwife, gossip, etc.

patriarch and ruler of his family, Mr. Hudson should not have allowed his daughter to be led into spiritual and legal transgressions.

An aspect that cannot be overlooked is also the transactional nature of fornication cases. Joseph Hale was ordered to provide or pay for two years of “provisions” to Mr. Eastman.<sup>65</sup> Although the court’s primary objective was ensuring morality, Mr. Eastman’s primary objective may have been gaining financial compensation for a child delivered by his wife that was not his own for whom he would have to provide, much like a master in the case of a servant committing fornication and delivering an illegitimate child. Young children contributed nothing to the family productivity while also draining it of resources such as the wife’s time and energy in addition to food, shelter concerns, etc.<sup>66</sup>

The May 1674 case of Sarah Wolcott demonstrates the role of midwives in ascertaining the paternity of children born to single women. The entry in the docket is short but revealing. Sarah Wolcott was brought before the court on charges of fornication and convicted because she had a child born in March and was unmarried at the time of the birth; hence, indicating she was guilty of fornication.<sup>67</sup> It is possible to infer she was unmarried because the court records refer to her as the daughter of John Wilcot not the wife of any man indicating she had not transitioned from one patriarchal family structure to another; she was still in the role of daughter not wife at the time of her delivery. The only two witnesses in the case were the midwife, Elizabeth Browne, and Mary Wilcot, wife of John Wilcot and presumably Sarah’s mother, who would have also been at the birth. The midwife and Sarah’s mother both deposed that Sarah had named

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<sup>65</sup> Ibid.

<sup>66</sup> Dayton, 206; New Englanders used their sons and daughters as laborers but only when they became old enough to contribute productively. Taylor, 171.

<sup>67</sup> Dow, Volume V, 302.

Thomas Chaddock as the father presumably during her “travail” when it was believed she could not lie about the matter.

In September 1674, the Salem Court recorded the April 6<sup>th</sup> marriage of Thomas Chaddock and Sarah Wolcott at Newbury.<sup>68</sup> This indicates that Sarah and Thomas took steps to remedy their situation after the birth of the child in March and before the intervention of the courts in May. They may have thought it possible to avoid prosecution if they married after the birth of the child, a legal remedy for fornication; however, as has been demonstrated, the main objective of the authorities in Massachusetts Bay Colony was to ensure morality through community policing in addition to order and respect for authority. Consequently, the Courts did not frequently allow for complete self-remedy.

In May 1676 a more complicated case than Sarah Wolcott’s came before the court but with same result: the midwife identified the father of a child born to a woman who was single at the time of delivery. Remember Samons was brought before the court on fornication charges to which she confessed and named Thomas Greene as the father at her trial.<sup>69</sup> The depositions of Elizabeth Kitchen, a midwife, and Rebecka Downton, who explained they were present at the birth, queried about the identity of the father, and, during labor, Samons asserted it was Thomas Greene, thereby corroborating Miss Samon’s testimony in court.<sup>70</sup> Although Samons’s sworn testimony would have been given heavy weight, considering the sanctity of her oath, the testimony of the midwife greatly bolstered her credibility in naming the father.

When Thomas Greene was brought before the Court, he denied that he was the father of the child but admitted that he “was adjudged to be the reputed father,” presumably based upon

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<sup>68</sup> Dow, Volume V, 439.

<sup>69</sup> Dow, vol.6, 171.

<sup>70</sup> Ibid.



the testimony of Kitchen, Samons, and neighbors who claimed to have seen Samons and Greene together at the home of Benjamin Felton instead of attending lecture.<sup>71</sup> Thomas Greene was ordered to provide 3 shillings worth of corn per week for the child's maintenance. Thus, it seems the testimony of a midwife was more highly valued than that of a man denying his guilt under oath indicating the confidence authorities had in the exclusive expertise of midwives. It is notable that a seventeenth-century court would trust a woman's word over that of a man's oath. This indicates that men and women's testimony was held relatively equal and when testimonies competed women were as likely as men to be believed.

Midwives played an important role in convicting couples of fornication even when the paternity of the father was considered to be conclusive. Frequently, the testimony of midwives provided authorities with the necessary evidence to convict couples of fornication before marriage even if they were married and had been for several months at the birth of the child. These prosecutions reveal the disconnect between colonial law, especially in Massachusetts Bay and New Haven, and English custom and common law regarding sexual activity and betrothal. For example, in October 1675, Elizabeth Kitchen, the same midwife involved in the case of Remember Samons and Thomas Greene, testified in another case where she was similarly "deposed concerning the condition of the child."<sup>72</sup> Presumably, the Court was concerned regarding the developmental stage of her baby relative to the length of the couple's marriage. Elizabeth Clifford, who was also present at the birth corroborated her testimony. The testimony of Midwife Kitchen, an expert witness, was enough to convict Thomas Clark and his wife of fornication before marriage. Although, Massachusetts Bay Colony made no official legal distinction between fornication between betrothed, non-betrothed, and eventually married

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<sup>71</sup> Ibid.

<sup>72</sup> Dow, vol.6, 98.

partners, nearly 50% of prosecutions in the Essex Quarterly Courts were specifically for fornication before marriage. As is consistent with the legal system, there does not appear to be a difference in punishments for couples convicted before or after marriage. This legal distinction is critical because it illustrates the differences between theocratic colonial law and English custom and common law.<sup>73</sup> In England, it is unlikely Thomas Cleark and his wife would have been prosecuted for fornication because they were married at the time of the birth of the child. However, in the colonies, where moral rectitude was at the forefront of public concerns, midwives functioned as de facto authorities in cases of suspected fornication.

In New Haven in 1652, the prosecution of Robert Meaker and his wife, Susan, exemplified the trust authorities put in midwives and the value of their testimony as well as articulating authorities view of fornication (see figure 5). When the Meakers, were brought before the Court they were derided for “a high breach of the law of God, in committing fornication, in defying one another before marriage.”<sup>74</sup> In testimony, Mr. Meaker and his wife admitted to fornication but disputed the circumstances surrounding the couple’s sin. Mr. Meaker was accused of getting Susan “drunke with strong water (alcohol)” so that “she was so fast asleepe at that time as she knew it not.” However, Mr. Meaker and his now-wife disputed this in Court, but when Goodwife Beecher, “ye midwife,” confirmed that Mrs. Meaker had told her the version of events involving alcohol and lack of awareness when she was in labor, the Court chose to believe the midwife. The Meakers were ordered to be whipped for fornication but were also fined for lying to the court about the circumstances of their crime, demonstrating the abstract and real value placed on truth in the colonial court system.

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<sup>73</sup> “They (settlers) thus continued to follow traditional English practice, which required no intervention by civil or religious authorities [...]” Norton, *Founding Mothers and Fathers*, location 1418.

<sup>74</sup> Dexter, vol. 1, 134.

Goodwife Beecher's testimony not only demonstrates the value of midwives to authorities but also confirms the idea that women were thought to be unable to lie while in labor. The Court may have believed Goodwife Beecher because of her role as a midwife but also because in her version of events, Mrs. Meaker was in a position where authorities assumed it impossible for her to be untruthful. Thus, they concluded that the Meakers' testimony in court must be false because Mrs. Meaker's statements in her travail, when it was believed she must be honest, were communicated to the courts by a reliable source such as Goodwife Beecher, a midwife.

### **Neighbors**

While midwives testified most often (as individuals) and were essentially expert witnesses, ordinary members of the community gave a deposition or testimony in about 8% of cases demonstrating the need for and use of community policing.<sup>75</sup> Without both midwives and the community contributing to the courts, the legal system would have been paralyzed from lack of evidence (see figures 1, 5). In 1674, two older men deposed that Timothy Some and his wife had a child "born about eighteen weeks after their marriage," leading to the conviction of the couple for fornication.<sup>76</sup> The testimony of the two men over age fifty represents the role community members played in detecting and reporting crime and sin. The two men had the ability to and did pay sufficient attention to the activities of their neighbors because that was their duty as members of the community. They believed that the community could not survive if violators of God and law were not brought to heed. It is unclear why there was no testimony

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<sup>75</sup> See Figure 1. Add total of all prosecutions among all localities. Add total of all prosecutions involving neighbors. Divide number of prosecutions with neighbors by the total to find total cases involving neighbors/ community members testifying.

<sup>76</sup> Dow, vol.5, 358.

from a midwife or woman present at Mrs. Somes' delivery, but, in this case, members of the community came forward to ensure authorities were aware and standards upheld.

In 1657 two cases came before the Ipswich Court on the same day regarding similar incidents and featuring defendants with similar names, and similar participation of neighbors as a community police force in convicting the two couples. At the trial of Edmond Bridges, three different men who were acquaintances or peers of Bridges and members of the community testified to his unlawful behavior with Mary Browne, resulting in the severe whipping of Bridges.<sup>77</sup> Samuel Younglove testified that Edmond Bridges bragged about his inappropriate relationship with Mary Browne while the two were mowing.<sup>78</sup> Then, Simon Stacey deposed that Mr. Bridges asked if he had heard the story about him and the "wench," meaning Mary Browne. John Allen then deposed that he witnessed Edmond Bridges' "unseemly carriage" towards Mary Brown.<sup>79</sup> The testimony of the three men gave the court a coherent picture of the circumstances surrounding the relationship of Edmond Bridges and Mary Brown, enabling the court to convict Mr. Bridges.

The second case centered around Hackaliah Bridges and Mary Quilter, who gave birth to a child. The conviction of the two for fornication was dependent upon the testimony of a member of the community who was not a midwife, John How. How explained to the court that the on "Michelmas," the Feast of St. Michael on September 29<sup>th</sup>, the previous year he ran into Hackaliah bridges who bragged that he had a sexual relationship with Mary Quilter and explained he was on his way to see her.<sup>80</sup> The court found John How's testimony as a member of

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<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> Testimony from Dow, vol.2, 54.; Claudia Durst Johnson, *Daily Life in Colonial New England*, 2nd ed. (Santa Barbara: Greenwood, 2017), 264.

the community sufficient, in addition to the birth of a child, to convict the unmarried couple who were “bringing up the child,” meaning the couple who probably intended to marry as a partial remedy for their crime, as prescribed by law.

Without the voluntary participation of members of the community, such as the two men who reported the untimely birth of Timothy Some’s child, and the perceived expertise of midwives, as a distinct group of women, the legal system would have failed to effectively prosecute offenders, especially those suspected or guilty of fornication. The theocratical penal codes in two of the three colonies made no distinction between fornication before or after promise of marriage (even if not before witnesses), which demonstrates a disconnect between action, law, and English tradition. However, because these were religious communities, members of the community still participated in convicting their peers because their religious devotion and adherence superseded English tradition. Although this concept would seem to dismiss the idea that members of the community would commit fornication, that is not the case because there is abundant evidence of these crimes.

## Conclusion

Colonial New England was unique from its English neighbors to the south in the Chesapeake Colonies, and the Dutch to the east in the Hudson River Valley. The purpose of the founders of Massachusetts Bay, Plymouth, and New Haven Colonies was to create new societies with varying degrees of removal from the Church of England that emphasized religious devotion and purity. With a goal of settlement not profit, the companies that founded New England created communities predicated on the Filmerian structure of deference and family. In such communities, there were naturally “others,” defined predominantly by their ethnicity, status, and faith. However, “others,” were not excluded from equitable legal treatment.

All three localities featured in this study codified the crime of fornication demonstrating the importance of morality and social control to authorities. Fornication prosecutions were some of the most common and demonstrate the equality of race and gender before the law for both defendants and witnesses, primarily midwives (see figure 1). By the end of the Seventeenth-Century, the three colonies had been consolidated and with that consolidation came a transformation of society and law. No longer were the residents of New England governed by theocracies that emphasized equality before God and thus the courts.<sup>81</sup>

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<sup>81</sup> Hughes-Dayton, 4-5.

Around the turn-of-the-century, new laws were passed weakening the legal status of “others” and women as society in New England became more similar to other colonies, specifically in the Chesapeake where the legal system has been racially stratified and biased in favor of men.<sup>82</sup> For example, after 1690, men rarely faced trial for fornication.<sup>83</sup> The reasoning behind this dismissal of responsibility was new perspectives that simultaneously weakened the role of women, specifically midwives, as witnesses. The practice of determining paternity during labor was no longer accepted, thus lessening the importance of women present at birth to testify in court. Furthermore, laws came into existence differentiating between crimes committed by “others,” based on their race or ethnicity. For example, lifetime slavery came to exist and with it the implementation of miscegenation laws.<sup>84</sup>

Prosecutions also reveal the integral role of community cohesion and policing. Without participation from the entire populace, hence the premise of equality before the law, the court systems would have floundered. Fornication is a crime that exemplifies numerous aspects of the commitment to order, morality, and social hierarchy as well as the encompassing reach of the courts in colonial New England. In this legal system, “others” and women were valued as participants in court because it was necessary for it to function.

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<sup>82</sup> Norton, *Founding Mothers*, 13-14.

<sup>83</sup> Hughes-Dayton, 194.

<sup>84</sup> For information on miscegenation and interracial relationships see Hughes-Dayton, 161, 198,

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