

Evlyn Belz Russell, "An Overview of the Criminal Justice System of Hampshire County, 1677-1728" *Historical Journal of Massachusetts* Volume 5, No 2 (Spring 1977).

Published by: Institute for Massachusetts Studies and Westfield State University

You may use content in this archive for your personal, non-commercial use. Please contact the *Historical Journal of Massachusetts* regarding any further use of this work:

masshistoryjournal@wsc.ma.edu

Funding for digitization of issues was provided through a generous grant from MassHumanities.



Some digitized versions of the articles have been reformatted from their original, published appearance. When citing, please give the original print source (volume/ number/ date) but add "retrieved from HJM's online archive at <http://www.wsc.ma.edu/mhj>.



“An Overview of the Criminal Justice System of Hampshire County, 1677-1728”

by Evlyn Belz Russell

Early attention was given by the Colonists to the keeping of judiciary records. In September of 1639, the Massachusetts “General Court,” sitting in Boston, ordered that the judgment of every Court with all the evidence, be recorded for posterity. This directive also included the record keeping of all wills, administrations, and inventories as well as those of marriages, births and deaths. Thus began the preservation of immensely important sources of information for those exploring life in early America. Researchers will find that the original county court records of colonial Massachusetts remain in the possession of the individual counties.

In Hampshire County, nearly all of the court records are extant, though divided among four repositories, two in Springfield and two in Northampton. One of the earliest of the county court records is preserved in the office of the Clerk of Superior Court in Northampton and covers most of the years from 1677 to 1728. Although the recording is done in a very desultory manner, with gaps here and there, this intermittent record offers an interesting insight into the aspects of individual behavior and town government that were supervised by the colonial county government.

The beginnings of colonial county government originated with the charter granted to the Massachusetts Bay Company by Charles I in March of 1629, which directed the investors of the company to meet four times a year to settle common business.¹ These quarterly meetings, known as “great and general courts” had an elected hierarchy that did not distinguish between legislative, judicial and administrative acts; all such functions were equally necessary and considered “magisterial” in nature.

The establishment of local courts in Massachusetts began in 1630 when the General Court appointed several of its members as justices of the peace, empowered to reform abuses and to punish offenders.² As settlement expanded, a shortage of these justices (or magistrates) appeared and the General Court decreed that towns without magistrates could elect three commissioners to settle minor disputes.³ However, the judicial authority of the magistrate and of the local commissioners was limited and many still had to go to Boston on court business. Thus justice for many colonists was available only at the cost of neglect of personal affairs and of great risk to life and limb in the dangerous journey to Boston. To alleviate these problems, the General Court in 1636 created a number of quarter or shire courts, later to become county courts.

Each quarter court was made up of the magistrates who lived within its jurisdiction; three or more of the magistrates had to be present at each court sitting.⁴ The court had the power to try all misdemeanors or crimes which would not be punishable by death or exile. The quarter courts also had various administrative duties and served as courts of probate and as coroner’s courts. Firmly establishing county government in the original four counties of the Commonwealth, the quarter court became an essential part of each newly-created county as well.

Twenty-six years after the creation of the first quarter courts, Hampshire County was organized.⁵ It consisted of three settlements lying along the Connecticut River in Western Massachusetts—Northampton, Hadley and the Shire Town, Springfield.⁶ By 1740, Hampshire County was the largest county in the province in territory but not in population.⁷ The county included all of the land west of the Connecticut to the New York border as well as a strip on the east side of the river between fifteen and twenty miles wide.⁸ Perhaps the earliest population estimate for Hampshire County can be drawn from the 1690 militia records which indicate that there were approximately 2,957 settlers at that time.⁹

Sparsely settled and isolated from the eastern counties by the Indian threat and traveling hazards, Hampshire County settlers had to struggle for survival in the wilderness. However there still was the need to enforce the personal and public standards of behavior which the colonial government deemed necessary. And so the powerful authority of the government was carried to the frontier in its system of courts.

When courts by the justices of the peace were first instituted, the seventeenth-century Puritans held that a magistrate should be allowed discretion to punish whatever offenses he thought necessary with whatever punishment he thought adequate. But in 1692, the general court defined the powers of the justice of the peace. However, his jurisdiction was still sufficient to enable him to try a wide

range of criminal offenses, settle civil disputes and enforce various regulations affecting the towns. In fact, the magistrate was a prosecutor, judge, jury and clerk. He was also an agent of the Court of Sessions and of the Court of Common Pleas, by his authority to refer cases beyond his jurisdiction to the higher court.

The specialization of courts on the county level occurred in 1692 with the General Sessions given criminal and administrative powers, while the Inferior Court of Common Pleas was assigned civil jurisdiction. Prior to this, as disorganized court records will attest, civil and criminal cases were heard in no particular order as the courts moved between Springfield and Northampton every March and September.

Misdemeanors recorded in volume I of the Court of General Sessions and the Inferior Court of Common Pleas during the years from 1677 to 1728, were brought to the attention of the court in a variety of ways. The bulk of the presentments were by the Grand Jury but there were others such as individual justices ordering offenders to appear at court; private citizens complaining directly to the court of crimes committed against them; selectmen, constables and tithingmen reporting breaches of the law; and some persons appearing voluntarily to confess their crimes.

There was a wide range of punishable offenses, including such anti-social acts as theft, slander, assault, public drunkenness, and failure to perform military service. There were many offenses against morality, including fornication, profanity, lying, and breach of the Sabbath. Even petty offenses such as laziness, bad relations within the household, and disrespect for civil or religious authority appear on the records.

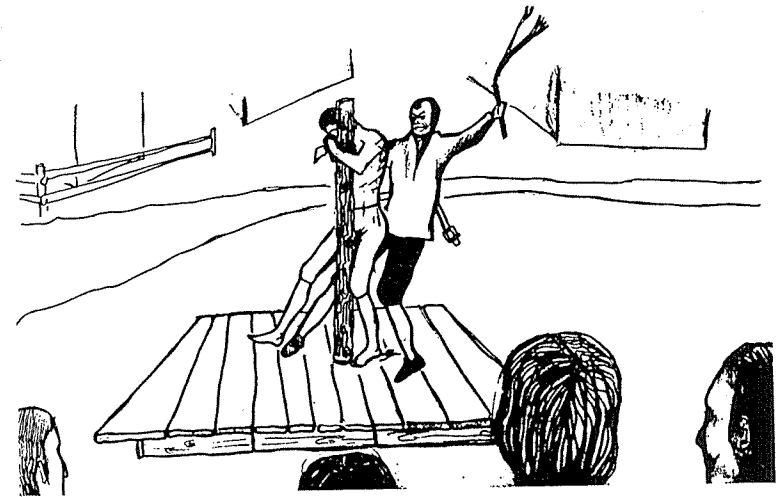
Judging from the large number of misdemeanors recorded in the decade from 1677 to 1687, observance of the Sabbath was strictly enforced during the early colonial days. Sabbath offenses took many forms—traveling or carting, hunting, smoking, working, and neglecting to worship were the most frequently recorded. The breach of Sabbath fines were either five or ten shillings, while others were dismissed after court admonishment.¹⁰ This indicates that the justices were free to determine the penalty, which would be as severe as the case warranted. Perhaps a reduced fine resulted after a defense based on a crucial need to go hunting to replenish the food supply, or perhaps Indian attacks could explain an apparent disregard for the Sabbath. Of course, a double standard could have existed, depending on the social class or race of the offender.

Of all the criminal cases heard during this period, the greatest number recorded are for fornication and bastardy. Of these only one case involved a black and a white person, both of whom were severely punished. An interesting comparison can be made by looking at the disposition of a case of fornication in 1677, and again in 1727. In 1677, the crime of fornication is described:

"Whereas John Evens and Mary Evens were bound over to this Court for their committing the sin of fornication which they committed in Court and it being a matter heinous and shameful at any time especially in such a day of calamity as this is, this Court therefore to show their one offence against such sins have adjudged the said John Evens to be well whipt with 20 lashes severely laid on upon the naked body and his wife Mary Evens, to be likewise whipt with 10 lashes on the naked body well laid on, and they to discharge all costs and charges that the Constables have expended upon the apprehending and securing the said persons—which is forthwith to be paid or him to be secured by the Constable of Hatfield, till the money be paid—".¹¹

The same crime in 1727:

"Daniel Spencer and Elizabeth, his wife, having confessed the sin of fornication together before marriage, ordered to pay a fine of thirty shillings each to his Majesty and costs, accordingly paid."¹²



In the early years, the court's treatment of fornication reflects the Puritan attitude toward and intense concern with preserving a strict moral code. But as time went by and the area became more populated, a definite change in attitude took place; fornication was dealt with less severely.

Proof of fornication was the birth of an illegitimate child or one born prematurely in wedlock. Faced with such obvious evidence every defendant brought before the court quickly confessed his crime. Another consideration was the attempt to establish the paternity of illegitimate children so that the public would not have to support them. Invariably, if the father was known, he was ordered to pay for maintenance for a period of four or five years, until the child would be put out to service.¹³

Prostitution did not appear to be a problem in Hampshire County. Although there was no law specifically forbidding prostitution in colonial Massachusetts, one can assume that it was officially deplored. However, in the fifty-one year span between 1677 and 1728, there were eight cases of "dissolute" or "licentious behavior" brought before the court. At least some of these cases appear to have been directed against prostitution as in the case of James Carver of Hatfield who on September 25, 1677 was accused of "heinous swearing and lascivious, wanton carriages with women." The case against John Web of Northampton on September 29, 1685, for "abusing little maiden Mary Bennet in a shameful and unclean way" was obviously a case of rape. The punishment in each of these cases was severe—heavy fines and whipping.

The authority of the courts to put a stop to any behavior that did not conform with the moral standards of the community resulted in a multitude of convictions. Crimes such as the following were brought before the court and prosecuted: "Making and publishing a lye by saying he saw Indians;" "breaking into cellar, playing cards, being disorderly—and excrementing in a shameful manner—;" "for wearing silk contrary to law and aggravated it by persisting in it once before;" "running away from father—to Rhode Island and marrying without his father's knowledge;" "for having a pack of cards in his hands;" "smoking on the street before his house contrary to law;" and "beating his wife and unnecessary spending away his time and estate in drinking." The duties of the county courts in preserving the social harmony of western Massachusetts even extended into the regulation of business practices. An example is one case in 1682, when a merchant was accused of "charging excessive prices. . . ."

Before there were any laws on such subjects, the quarter and county courts assumed the power to reprimand towns on various shortcomings. The towns were obliged to provide themselves with the agents of justice such as stocks, whipping posts and Constables; maintain highways and bridges which linked other towns; appoint and support ministers and schoolmasters; and keep a set of certified weights and measures. In spite of the role of the courts, no effort was made to supplant the towns as the primary unit of local administration. When the justices found it necessary to rule on some neglect of duty or breach of law involving a town or town officials, the guilty parties were admonished, apparently in the hope that it would not re-occur.

The witchcraft epidemic in eastern Massachusetts did not spread to the western settlements, for there were only two accused witches brought before the county courts. Both were imprisoned and eventually acquitted by the tribunal in Boston. In spite of their release, they were objects of distrust, judging by the heavy bonds put up for their good behavior upon release.¹⁴

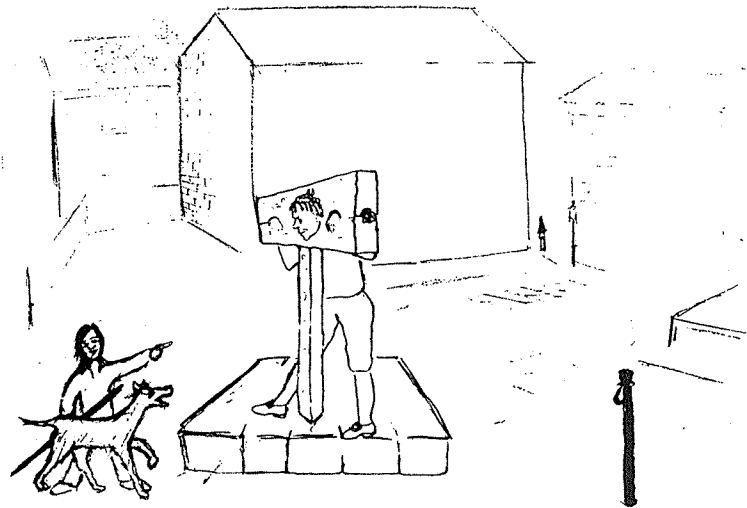
Those who insulted the authority of the court, whether in or out of session, were in contempt of court. Some cases of contempt appeared on the docket during this period in the form of refusal to serve either on a jury or as a constable, or failure to carry out an order given by a constable or tithingman. It is interesting to note that only one case *against* a tithingman appeared during this time and

that is the accusation of "selling liquor without license" leveled on Thomas Day on September 26, 1682. Day was fined five pounds but he appealed and was again fined the same amount. One constable had to appear in court for neglecting to provide weights and measures in accordance with the standards of his town, but the charge was dropped when he obtained them.¹⁵

The cost of being taken to court in colonial Massachusetts could be very high. Men found innocent of criminal presentments still had to pay trial costs. In the court of sessions the costs usually ranged from three to five pounds but one case on record listed a total of twelve pounds which covered the expenses of witnesses, attorney's fees, pleadings and clerk's fees.¹⁶ Thus most persons presented for offenses preferred to be tried before a single magistrate who might be more merciful or lenient than a jury of their fellow citizens, and whose court costs were lower. It is unfortunate that few records of these justices exist, although they were required by law to keep them.¹⁷

The Hampshire records demonstrate that justices made frequent use of bonds, sometimes with sureties. Often bonds were used in detaining persons for later trial. These bonds were forfeited if the defendant failed to appear in court as called—several forfeitures are to be found in the years 1677 to 1728.¹⁸ Bonds for good behavior were issued frequently in cases of assault, battery, profanity, lying, drunkenness and vagrancy. Sometimes bonds for good behavior were required from persons of bad reputation but against whom nothing could be proven.¹⁹

In the early years the most popular form of punishment was whipping, perhaps because it provided a maximum of both publicity and pain. The idea was to disgrace the offender in the eyes of his fellow citizens, and whipping was especially humiliating. Indeed, in about seventy-five percent of the cases in which a whipping or a fine was decreed, almost all of the defendants chose to pay the fine. Stocks also were used to inflict public humiliation upon defendants.



Generally those who were brought before the Hampshire courts during the period committed their crimes in their home town. The hostile environment was probably the chief factor in the lack of mobility in crime among the towns on the frontier during the early years. Making a broad observation on the following statistics it would appear that the size of Hampshire towns was not always a factor in the crime rate during this period.

Towns	Approximate population in 1690	Individual offenses brought in Hampshire Courts from 1677 to 1728
Springfield	522	40
Northampton	586	28
Westfield	298	21
Hadley	330	27
Hatfield	437	25
Suffield	320	38
(sometimes called Southfield)		
Deerfield	272	5
Enfield	192	15

In studying the records of the Court of General Sessions and the Inferior Court of Common Pleas for Hampshire County during the years from 1677 to 1728, one can see the rapid development of a highly complex judicial system in response to the demands of frontier life in colonial Massachusetts. Some of the court records for these years are scanty and others are missing—perhaps to be found in other repositories. Perhaps the decrease in the Hampshire County Court caseload in the later years of this study was the result of more criminal offenses brought before the single justice, or a decrease in charges of immorality, as the religious enthusiasm of the early Puritans slowly abated.

The courts used corporal punishment, fines, imprisonment, or admonishments against evildoers, extending mercy and lenience to those who confessed their crimes and promised to reform. The county court dispensed justice in order to maintain the structure of family life and to preserve harmony within the community. The small size of the communities, the willingness of neighbors to report offenses to officials, along with the availability of the courts for almost instant justice combined to make county government and its system of courts successful in these early years.

- 1 The charter is available in *Records of the Governor and Company of the Massachusetts Bay in New England*, edited by Nathaniel B. Shurtleff., (5 volumes, Boston: 1853-1854) Volume I, p. 3-20.
- 2 *Ibid.*, p. 74.
- 3 *Ibid.*, p. 327.
- 4 *Ibid.*, p. 169-70.
- 5 Sylvester Judd, *History of Hadley* (Springfield: 1905), p. 85.
- 6 *Ibid.*, p. 86.
- 7 Robert J. Taylor, *Western Massachusetts In The Revolution* (Providence: 1954), p. 4.
- 8 *Ibid.*, p. 4.
- 9 The Militia List was taken from Evarts B. Greene and Virginia D. Harrington, *American Population Before The Federal Census of 1790* (New York: 1932), p. 21; also see Reverend Joseph B. Felt, *American Statistical Association, Collections*, Volume I, (Boston, 1847) for statistical formula.
- 10 Records of the Inferior Court of Common Pleas and Court of General Session, (1677-1728), Vol. I, pages 41, 42, 46, 56, 60, 61, 65, 69, 142, 159, etc.
- 11 *Ibid.*, p. 7.
- 12 *Ibid.*, p. 260.
- 13 *Ibid.*, p. 43.
- 14 *Ibid.*, pages 65 and 142.
- 15 *Ibid.*, p. 2.
- 16 *Ibid.*, p. 101.
- 17 See Joseph H. Smith, ed., *Colonial Justice in Western Massachusetts, 1639-1702: The Pynchon Court Record*, (Cambridge, Mass., 1961)
- 18 Records of the Inferior Court of Common Pleas and Court of General Session, (1677-(1677-1728), Vol 1, pages 27, 42, 59, 103, 145 etc.
- 19 *Ibid.*, pages 45, 46, 159, 166, 169.