

The Eighth Amendment U.S. History

Whip, Pillory, and Gallows: Punishment in Puritan Massachusetts

And this day brings the villains hence
To suffer for their late offense;
They on the pillory stand in view:
A warning sirs to me and you!
-from a colonial circular

In the spring of 1630, a fleet of ships carried about 700 men, women, and children to a new life in the Massachusetts Bay Colony. As they crossed the Atlantic, these highly religious English Puritans had to deal with drunkenness, fighting, and other acts of wrongdoing. John Winthrop and the other Puritan leaders quickly recognized the need to establish law and order in their new homeland.

Today, many of the punishments used in Massachusetts Bay seem cruel and excessive. The Eighth Amendment of the Bill of Rights prohibits "cruel and unusual punishments." As you read this article, try to decide which of the Puritan punishment methods would be thought "cruel and unusual" today. Consider how definitions of cruelty change over time and how they vary from society to society.

Law and Order

The colony charter that John Winthrop brought with him from England granted the power to pass laws and impose punishments "not contrary to the laws of this our realm of England..." The General Court was elected each year by the freemen of the colony to pass and enforce all the laws. But ten years after the Puritans arrived in Massachusetts Bay, many freemen began to complain that the laws and punishments enacted by the General Court had not been published for all to see.

In 1641, the *Body of Liberties* was written. Drawn from the laws of the Bible as well as English common law, this document was in some ways an early bill of rights. Among other things, it outlawed cruel punishments: "For bodily punish-



▲ The ducking stool. As an onlooker, what would you be thinking? (The Bettmann Archive)

ments we allow amongst us none that are inhumane, barbarous or cruel." The Puritans considered cruel such common English punishments as burning at the stake, cutting off hands, and more than 40 lashes by the whip.

Massachusetts Bay was originally established by and for the Puritan church. To vote or hold government office, a freeman had to maintain church membership. Consequently, many of the colony's criminal laws had a religious or moral nature. For example, criticizing or "reviling" a Puritan minister, refusing to pay taxes to support the Puritan church, or denying that the Bible contained the infallible word of God could be punished. The Puritan Sabbath or holy day lasted from sundown Saturday until sundown Sunday. Laws made work, play or travel illegal during the Sabbath. Blasphemy, which meant denying the "true God," cursing God, or attacking the religion of God, could be punished by death.

Punishing Lawbreakers

The Puritans established a wide variety of punishments to enforce their strict laws. In many cases, judges had the power to choose among the penalties or combine them according to the circumstances. A fine was the most common penalty for all but the most serious crimes. In one typical case, a Boston woman was fined ten shillings for doing needlework on the Sabbath.

If a convicted person could not pay a fine, he or she would probably be required

to submit to some "bodily punishment" which usually meant whipping. Whipping also punished such serious crimes as robbery, gambling, sex outside of marriage, lying, spouse beating, and swearing. Disobedient children as well as teenagers who stayed out at night "with corrupt company" might also feel the sting of the whip. The law limited any one whipping to 40 stripes or lashes, the maximum allowed in the Bible.

Also common was ducking, a practice used in some towns to punish quarrelsome persons known as "scolds." A scold would be placed in a chair at the end of a long pole and then "dipped over head and ears three times in some convenient place of fresh or salt water..."

The Puritans also believed that some lawbreakers, especially petty thieves and drunkards, should be shamed in public by the use of stocks and the pillory. In stocks the offender would sit on a bench for several hours with hands and feet thrust through holes between movable boards. Townspeople often insulted and hurled garbage at the offender. The pillory was similar to the stocks except the criminal stood behind a post and wooden frame with head and hands sticking out through the holes.

Offenders were occasionally made to wear large letters sewn onto their clothing. For example, the letter "A" would mark an adulterer. In other cases, a person would have to wear a paper sign such as this one worn by a Salem sex offender in 1675:

This Person Is Convicted For Speaking Words In A Boasting Manner Of His Lascivious & Unclean Practices

Banishment from the colony was the penalty for those who persistently refused to obey the laws. This punishment was most often used to get rid of those who openly challenged the Puritan church. Such was the case with Roger Williams in 1635 and Anne Hutchinson in 1638. Anabaptists who opposed infant baptism and Quakers who denied the need for church ministers also found themselves banished.

The 12 death penalty laws listed in the *Body of Liberties* had basis in the Bible. While religious and moral offenses such as blasphemy and adultery were included, common death penalty crimes in England such as burglary and robbery were not. In later years, the General Court approved 25 capital crime laws including ones for burglary and robbery (but only after the third conviction).

The Puritans evidently believed that stoning, the method of execution most often mentioned in the Bible, was a cruel form of punishment. Instead they adopted hanging, the form of execution most commonly used in England. Hangings in Massachusetts Bay became public events where large crowds of people would gather. Usually, one or two ministers would harangue the crowd with "execution sermons" before the noose was slipped around the criminal's neck. Unlike more "modern" hangings which break the condemned person's neck and often bring instantaneous death, hangings in Puritan New England really meant strangling to death and could take several minutes of agony before the victim died.

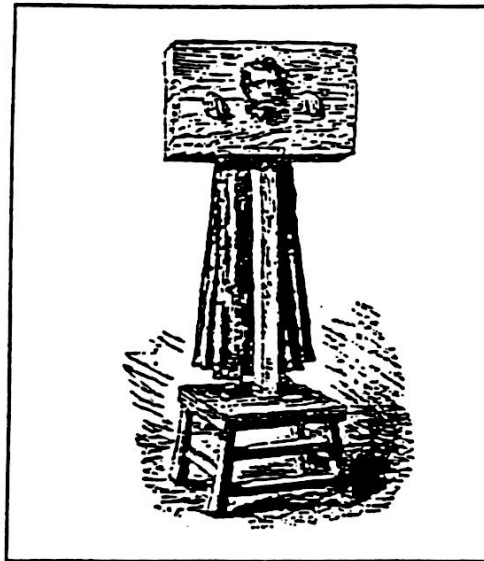
When compared to the frequent executions in England, where even petty thieves went to the gallows, hangings in Puritan Massachusetts were not very common. During the 60-year period of Puritan dominance in Massachusetts, only about 50 individuals were hanged. Except for the 19 who died on the gallows at Salem during the witch hunt, most had been convicted of murder. This included four women. Juries repeatedly refused to ordain hanging for such crimes as blasphemy (none) and adultery (two).

The Quaker Persecution

The Massachusetts Bay Puritans tended to be relatively lenient toward ordinary lawbreakers. But those who publicly contradicted Puritan beliefs suffered harsh punishment, especially the Quakers who began to arrive in the colony in 1656.

Founded in England as a Christian sect, the "Society of Friends" denied the need for organized churches, religious ceremonies, or even ministers. They got the name "Quakers" because of the agitated way they publicly spoke out about their beliefs. In Massachusetts Bay, Quakers verbally attacked government leaders, judges, and Puritan ministers. They disrupted church meetings. They refused to pay taxes to support the Puritan church or to bear arms to defend the colony. However, they never resorted to any acts of violence.

Fearing this assault on the foundations of their church and government, the Puritans passed special anti-Quaker laws. Quakers found themselves fined, whipped, and locked up in the Boston "house of correction" for spreading their "horrid opinions." None of this had much effect as the Quakers began to win converts among the people of the colony. Then, in 1658, a new law banished outspoken Quakers from the colony under the threat of death should they return.



▲ The Pillory (The Bettmann Archive)

Between 1659 and 1661, four previously banished Quakers were hanged on Boston Common. One of them, Mary Dyer, was forced to watch as two fellow Quakers were hanged. Just as she walked to the gallows, an official read an order from the General Court banishing her again. Though driven from the colony, she returned once more to protest the "wicked laws." This time the noose ended her life.

After 1661, "wandering Quakers" could be stripped naked from the waist, tied to a cart, and whipped as the cart proceeded to the edge of the town. Officials of the next town would repeat the punishment, reaching a third town, and so on, until the Quaker reached the border of the colony. Attendance by anyone at a Quaker meeting could

be punished by whipping, imprisonment, a heavy fine. This sort of religious persecution lasted nearly 40 years until 1692 a new colony charter permitted Quakers to worship in their own meetinghouses.

For Discussion and Writing

1. What differences can you point out between crimes and criminal punishments in Puritan Massachusetts and those in the United States today?
2. What is your opinion about public shaming as a form of punishment for some crimes today? Which crimes, if any, should have this punishment? How, specifically, might "shaming" be done in the 1990s in the United States?
3. There are really two types of "cruel and unusual punishments." One type concerns the cruelty of the punishment method itself. The other type has to do with the cruelty of an excessive sentence. Give an example of each type from the article.
4. Can you think of any modern examples of both types of "cruel and unusual punishments?" Why do you believe them to be cruel and unusual?

For Further Reading

Friedman, Lawrence M. *A History of American Law*. New York: Simon & Schuster, 1973.

Powers, Edwin. *Crime and Punishment in Early Massachusetts, 1620-1692*. Boston: Beacon Press, 1966.

A C T I V I T Y

"CRUEL AND UNUSUAL" TODAY?

Below is a list of punishment methods used by the Puritans in Massachusetts Bay Colony. Form small groups to discuss and decide which of the punishments ought to be considered "cruel and unusual" today and therefore should be prohibited by the Eighth Amendment of the Bill of Rights.

Fines	Prison
Pillory	Piercing Tongue
Whipping (up to 40 Stripes)	With Hot Iron
Wearing a letter	Ducking Stool
Branding	Banishment
Wearing a sign	Stocks
Cutting off ears	Hanging
	Public Shaming

Following the small group work, list on the chalkboard those punishments that one or more of the groups believe do not violate the Eighth Amendment today. Hold a class discussion to identify what sort of crimes should be related to each of these punishments. Finally, take a class vote to decide which of the punishments on the list, if any, should be used today.