ORDER IN THE HOUSEHOLD:
Domestic Violence in 17th Century Massachusetts

by

Patricia A. Mayr

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Abstract

The 17th century was quite nakedly a period of nation-building, cultural dislocation, and renegotiation of status within the Massachusetts Bay Colony. As a binding legal document formulated on Puritan religious principles *The Body of Liberties* mapped out the relationship of the church to the commonwealth, the Commonwealth to the male head of household, and the head of the household to the wife, children, and servants. By formalizing what had previously been a matter of custom and tradition, this early document solidified the social hierarchy and brought it under the purview of law. It was within this context that the first legal prohibition against domestic violence was formulated in the West, dictating that “Every marryed woeman shall be free from bodilie correction or stripes by her husband, unless it be in his own defence upon her assault” (excerpt from the *Body of Liberties* cited in Pleck 1987:21-22). Given that this migrant culture lay at the precipice of change (geographically displaced and in the process of displacing), and because they were equipped with the technical means to ‘fix’ these relations through law backed by force and sanction, it is reasonable to ask: ‘Why this law?’ ‘Why now?’ and ‘Toward what effects?’

I begin by arguing against Pleck’s (1987,1989) claim that the Massachusetts Bay Colony devised a law against domestic violence out of humanitarian concern for women. By describing the socio-political context in which this law was one small aspect of a much broader and somewhat fragmented endeavor to assert ‘order’ and to establish authority, I argue that it would be a mistake to emphasize its prohibitive message over and above its productive and often contradictory effects. Drawing from Haskins insights
on 17th century English legal tactics, and Roberts-Millers (1999) analysis of Puritan logic and language use, I warn against reading Puritan rhetoric or legal discourse literally, or ignoring the ways in which a complex system of regulatory controls and discursive slippages interacts to produce unexpected effects. When this new law prohibiting domestic violence is placed within this context, new insights and new questions emerge.
Dedication

I dedicate this thesis project to all of those women and children who remain caught between the cruel realities of family governors and the contradictory implications of a ‘benevolent’ and governing state.
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Preface

I came to this project in a rather unusual way. My broad research interests lie in exploring the role that discursive strategies play in social movement politics, and in tracking the transformations that this discourse undergoes as it is integrated into formal systems and interpreted through law and social policy. My general aim is to identify the mechanisms by which seemingly liberatory feminist gains backfire. Oriented by a somewhat eclectic theoretic perspective I believe that we should not ignore the slipperiness of discourse as it is translated within and across social fields and formal institutions, for to do so is to ignore the historical grounding of these institutions and the social genesis of discourse itself. So given my interests and political commitments, one might wonder how I ended up researching domestic violence in 17th century Massachusetts.

As I began researching the history of domestic violence legislation in North America, I was very quickly led to the work of Pleck (1987,1989). Pleck’s historical overview of the three periods of social ‘interest’ in domestic violence is widely cited throughout the literature on this topic. While her impressive analysis of the two later periods (late 19th and mid 20th centuries) importantly situated the response to domestic violence within the broader socio-political framework, I found her analysis of the history surrounding the 17th century legislation problematic on several counts. Relying too heavily on the stated ideals of the lawmakers (the law itself framed in the language of rights), she read Puritan rhetoric all too literally. Emphasizing its prohibitive message over and above its manifest effects, she failed to ‘situate this law, and thus ignored the
way that it interacted with other laws, institutions, and attitudes to entrench relations of subordination as opposed to alleviate them. Although the focus of this law shifted across time to target more women than men during key periods of female resistance, and to punish ‘husband assault’ more severely than ‘wife assault’, Pleck fails to address this. Claiming that this law was devised out of humanitarian concern for women, she overlooks the gendered dimensions of domestic violence within a worldview that associated a wife’s rebellion with sin and disorder.
Chapter 1

Introduction: Theoretical Overview

As we become increasingly aware of the role that discursive strategies play in changing and/or sustaining existing relations, the value of understanding and tracking these processes becomes apparent. Yet the way that we approach this theoretically can pose problems that manifest at other levels, for while over-emphasizing the stability of “hegemonic systems of meaning” can obscure “the active side of social processes”, lend a false sense of unity to the over-all system and eclipse dissenting forces (Fraser 1989:156), a naïve glorification of the liberatory potential of these strategies unhinges language from its socio-historical base, masks the role that language systems play in sustaining social hierarchies, and ignores the capacity of power to reconstitute itself in unforeseen ways. To argue that social relations are contested and always in flux, should therefore not be interpreted as meaning that these relations are necessarily free. Cooper makes this explicit in arguing for a more complex conceptualization of power; one that takes into account how it “combines and interacts not only with other forms of power, but also with physical conditions and existing processes, practices and relations to produce specific effects at given junctures” (1994:441). By avoiding the pitfalls of assuming a significatory constant, these new methods have played a pivotal role in the interpretation and analysis of social processes¹, and have indeed initiated new and ever-more imaginative strategies of resistance.

¹ In a defensive stance toward feminist criticism Shorter (1975) argues that revisionists see what they want to. This is a point worth responding to. It has been effectively argued that values affect all research,
As discourse is translated across social settings, it is given reference within particular conceptual frameworks, and is thus altered to reflect the inclinations, interests, and imperatives of that setting (Smith 1993). Given that some settings and groups (through routinization, administrative dictates, greater access to resources, and/or influence) are more able to accomplish this than others, even the most progressive rhetoric becomes vulnerable to co-optation (its radical potential displaced). It is not simply that there are competing discourses (although this is the case)\(^2\), it is also that any given discourse is open to multiple and contradictory readings, and these ‘slippages’ (the inherent instability of discursive formulations operating on and within the social and political fields) bring us back to the issue of power.

Although the term ‘slippage’ has been used by feminists (see Vaverde 1991; Vance 1984), and social theorists (see Donzelot 1979; Foucault 1980a; Garland 1985) it has never been adequately defined. Slippages are facilitated by the permeability of conceptual boundaries but they cannot be reduced to it. As a discursive product they provide the conceptual lens through which the social is grasped, but as a historical process they contribute to (and thus limit) the play it is afforded. It is in this way that they are slippery in a double sense. Because slippages can be fairly viewed as both a limit and a key to transformation they are simultaneously conservative and volatile.

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\(^2\) See Cooper (1994) for what is at stake in this debate.
Slippages can also operate toward more conservative ends, their negative thrust most felt when they inform law (see Smart 1989), or social policy (see Bacchi 1999). It is in this way that discourse can be described as both structured and structuring.

Relatively unstable as discourse, it becomes increasingly entrenched and difficult to displace once formalized. For this reason we need to pay closer attention to what discourse is heard and officially drawn upon (Snider 2003), and to identify how such messages are translated across time and circumstance; for it is the subtle expansion of meaning, usage, and applicability within and between fields that often signals that a slippage has occurred.

To facilitate a slippage is quite literally to let meaning slide. This can manifest as a formal and intentional displacement (where, for example, ‘rape’ is legally redefined as ‘assault’ through formally designated procedures), or it can take the form of a conceptual

3 This is also underlined in Garland’s (1985) historical analysis of social welfare (specific attention paid to the discourse surrounding the “deserving” and “undeserving” poor). More recently, it has been highlighted in the growing tendency to frame welfare in terms of personal “need”, the framework itself masking the gendered aspects of poverty (Fraser 1989).

4 We are reminded that ‘authorized’ knowledge is both legitimated and legitimating.

5 Snider raises this point in arguing for a less punitive approach to social problems. In her arguments she makes evident the limitations of a criminal justice system response to the issues facing women. Not only has it led to the increased criminalization of women, it has been particularly harsh on the poor and racial minorities. She challenges the effectiveness of such an approach while exploring the mechanics that underlie its current popularity. This takes both Snider and I into social movement politics and the function that slippages have in uniting groups with disparate agendas (see also Snider 1994). While Snider does not refer to this phenomenon as a ‘slippage’ it is indeed what she refers to.

6 In 1983 the Canadian Criminal Code was amended to reflect the following changes: the crimes of ‘rape’, ‘indecent assault (male)’, and ‘indecent assault (female)’ were replaced by a tripartite classification of ‘sexual assault’ that represented three levels of serious (1) ‘sexual assault’, 2) sexual assault with a weapon, threats to a third party, causing bodily harm; and 3) aggravated sexual assault (Roberts & Geboytys 1992). The changes were intended to underline the fact that first and foremost the crime previously identified as ‘rape’ is assault. The sexual nature of this assault was outlined in the case of R v. Chase (1987) further clarifying that an assault is sexual when it is of a “sexual nature such that the integrity of the victim is violated” (see “Annotations” in Martin’s Criminal Code 1998:500). The definition of assault was then left loosely defined to allow greater discretion in determining what constituted an offense. A critique of these changes is available in Snider (1985).
co-optation (as when Foucault attempts to displace entrenched notions of power\textsuperscript{7}). These are the forms of slippage most familiar to us, but slippages can also operate through irony (Hutcheon 1994), parody (Butler 1990), or satire (the Queen as ‘Royal Highness’/the ‘queen’ in drag - each term conjuring up and influencing the status of the other\textsuperscript{8}).

Alternatively, the slippages that Valverde (1991) draws our attention to reinforce existing power relations. This kind of slippage involves complex social representations that operate outside of conscious intention; I am speaking specifically of the meaning and affect that particular groups, identities, and social problems conjure up in the popular imagination because they have been repeatedly associated with, and therefore have come to signify, complex and often contradictory social tensions and arrangements. This kind of slippage is particularly instructive sociologically because of its role in the construction of social problems\textsuperscript{9}, its strategic resourcefulness in struggles over status and resources\textsuperscript{10}, and its fecund potential for multiform and often unexpected effects. The repeated association of certain categories of persons with social problems can dangerously fix social identity, threaten autonomy, and lead to stigma that invites social control (and this can occur with even the most seemingly benevolent of representations). Ironically, the

\textsuperscript{7} See for example Foucault (1980) where he describes repeatedly and in detail what power “is not”.

\textsuperscript{8} Leach (1979) sidesteps the subversive implications of this in his analysis of the taboo associated with the term. He does note that in both cases the object is associated with abnormal status: the ‘Royal Highness’ is marked by extreme social deference, the drag queen by disavowal. He also explains that the term ‘drag queen’ was originally slang for ‘prostitute’. What I wish to draw attention to is the way that the two meanings (or in this case statuses), conjure up and inadvertently ‘fuck with’ the taken for granted status (and thus significance) of the other.

\textsuperscript{9} I would argue that social problem work is a characteristic feature of the modern democratic state. Fueled by advances in communication and advertising, construction and ‘promotion’ of social problems replaces force in strategic reconfigurations of power (See Gusfield 1981; Loseke 2003; and Bacchi 1999 on the construction of social problems).
interests that drive this process are all too often disguised as benevolent ‘concern’ or obscured beneath the threat of public crisis.\textsuperscript{11}

This theoretical shift owes much to Saussure’s (1959) unique orientation to linguistic analysis. Saussure argued that thought is made possible by divisions instituted and organized into units through language. The system that is established is social in its genesis and relational in its form. It operates on distinctions and comparisons that create meaning within a given field. ‘Slippages’ occur at all levels of the system and allow for complexity, flexibility, and change. An intrinsic aspect of all sign systems, slippages are made possible by the arbitrary nature of the signifying relation itself, coupled with social and historical processes operating within a given field (Ibid.). While slippages allow for a measure of creativity within the system, this creativity is made possible through the ambiguity that is inherent to the system itself, and is thus limited by the social network in which it operates. And here the work of Bourdieu (1984) on the social and economic determinants of ‘tastes’ as objects of ‘distinction’ becomes particularly useful in shifting Saussure’s structuralist insights on linguistics to the power-laden and symbolically saturated materiality of the social world. By identifying complex systems of meaning that operate outside of conscious intention yet are communicated through the practicalities of day to day interchange, Bourdieu makes sociological sense of cultural ‘dispositions’ that are deeply rooted in (and expressive of) historical relations.

Bourdieu and Wacquant argue that all fields of relations reflect struggles aimed at preserving or transforming relations within that field (1992:101). In keeping with a

\textsuperscript{10} Professionalization brought with it new interests, new approaches, and new techniques as both Foucault and Bourdieu have made evident.
conflict perspective, Bourdieu (1990) has taken issue with Saussure on this point, arguing that Saussure and others influenced by him have importantly ignored the impact of unequal opportunity structures on the production, distribution, and translation of meaning within and between social groups. In doing so, they inadvertently contribute to the mystification of these relations by failing to acknowledge their structuring impact on realms traditionally ignored within social theory. Put simply, the language we use to describe the social world simultaneously reproduces it, with variation and change reflecting the outcome of local struggles. Without acknowledging the importance of these struggles, meaning appears to hang unconstrained in thin air, or alternatively, appear as natural, inevitable, and immutable. Most importantly, because meaning can vary across social groups, it does not translate perfectly across group boundaries; boundaries that intersect, overlap, and circumscribe one another to give subjectivity its ontological feel. The differences or ‘distinctions’ that result structure what Bourdieu (1984) refers to as the ‘habitus’, inscribed in the preferences, tastes, inclinations, and expectations of us all. It is in this way that they become mystified. And it is here that Bourdieu’s empirical work on culture importantly supplements Foucault’s on the ‘subject’ of discourse. Bourdieu grounds ‘discipline’ in the body, grounds the body in culture, ties culture to relations of hierarchy, and the perpetuation of hierarchies to the day-to-day ordering of meaning made possible through the uneven distribution of material goods and resources. By drawing attention to the symbolic violence created through such a process, his

11 See the literature on social movements (Buechler 2000; Gusfield 1981; Loseke 1992).
12 See Bourdieu (1990) on the subjectivist/objectivist debate.
analysis shares common threads with post-colonial theorists attempting to grapple with the effects of cultural oppression (see Bhabha 1994, Spivak 1988, 1999).

Foucault’s work on power and resistance has been widely cited by feminists and queer theorists (see Diamond & Quinby 1988; Spivak 1988, 1999; Smart 1989; Bartky 1990; Butler 1990; Smith 1990, 1993; Bradotti 1991; Halperin 1995; Sawicki 1991; to name only a few). His aesthetic leanings, epistemological stance, and personal politics converged to form a critical reflexivity that is an earmark of his method and his politics. Disentangling ‘freedom’ from the grand liberatory schemes of the enlightenment and resituating it in the micro-politics of local struggle, Foucault challenged the boundary between the personal and the political, gave a new reading to previous notions of deviance and marginality, and reworked alternative histories from discarded fragments. Given a politics and a method that lends itself to multiple interpretations, it is useful to quote him at some length here.

Foucault questioned how certain practices, theories, and ideas that appeared alien at one point in time came to appear inevitable at others (Foucault 1997c:305, 2000e). This “obviousness that imposes itself on all” (Foucault 2000e:226) operates as a constraint on two separate but interrelated levels: it masks the contingent nature of the phenomenon in question, and insulates it from challenge or critique. Therefore historical analysis is useful to the extent that it shows how “that-which-is” has not always been, but is rather “formed in the confluence of encounters and chances”, rendering it precarious and fragile (Foucault 1988:37, 2000f). Viewed thus, the present becomes more than
“that-which-is” but involves the subversive potential for discovering “…how that-which-is might no longer be…” (Foucault 1988b:36)\textsuperscript{14}: “It’s a matter of shaking this false evidence, of demonstrating its precariousness, of making visible not its arbitrariness but its complex interconnection with a multiplicity of historical processes” (2000e:225). As a complex field of relations with contradictions, disjunctures, and unlikely alliances, the present is inherently dynamic, in continuous play by social subjects diversely constituted. Not only does this depiction interfere with all efforts to reduce resistance to a simple ‘opposition’ or polarity, it also implies that even the most well planned and progressive strategies are unstable, may be co-opted, and can serve both radical and conservative ends.

Viewed through this lens, history was no longer a flat and linear trajectory that led to the truth of our nature in one direction and to our destiny in the other, but neither did it presuppose an uncomplicated freedom or unrestrained agency or choice. Change was possible but it would inevitably take place on contested terrain within limits that could never be fully anticipated ahead of time and therefore never fully realized or controlled\textsuperscript{15}. By refusing a reductionism that posited the past as univocal, unicausal, and unilinear, Foucault rendered intelligible previously obscured forms of subjection, and shed new light on the disciplinary technologies that produced them. By criticizing the

\textsuperscript{13} This open-endedness contributes to conflicting interpretations of Foucault. It is this method that leaves his work open to extension, but also leaves it vulnerable to a misreading. This capacity (itself a form of resistance) is simultaneously its strength and its vulnerability.

\textsuperscript{14} Foucault also warns against a hatred of the present that hearkens back to a mythical and idyllic past (2000l:357). He viewed this as politically dangerous, and ignorant of the painful constraints that impact people’s lives.

\textsuperscript{15} This importantly ties into the way that Foucault understood the workings of power. Power can never be ‘overthrown’ because it is always and inevitably present and diffuse. As a relation, it lacks a grand scheme
universalizing impact of theory, he challenged the individualizing effect of common methods of analysis.

It was by way of genealogies on madness (1967), sexuality (1980a), and penal reform (1979) that Foucault challenged the rational cohesiveness upon which institutional authority is founded. In this way he undermined the trans-historical subject, infused the body with political significance, and highlighted the important link between knowledge and power in the modern disciplinary apparatus. It was through this somewhat tortuous process, with its attention to contingencies, intersections, and accidents, that Foucault alerted us to the value and significance of unintended consequences and unanticipated effects. Not only did this disrupt the univocal narrative of history, but by focusing on the convergent effects of *discourse as event*, he was able to describe some rather unholy alliances between social institutions, subjects, and the broader discourse that aligns one to the other. It was in this way that Foucault (1998:262) accounted for how the ‘subject’ (simultaneously an ‘object’ of discourse) was itself constituted through such an arrangement. He argued that it was this precarious conjunction, with its potentials,

but is not without strategies. These strategies find their point of application precisely where power reaches its limit. Transgression is therefore its instrument and its ontological demise (see Foucault 1980c).

16 Approaching ‘discourse as event’ has often been a misunderstood element of Foucault’s work that has led to overly harsh claims that he has ignored material structures or effects. By viewing structures as precarious events in time and space he attempted to emphasize their contingent status while underlining their vulnerability. By stressing the specificity of technologies over ephemeral forces, Foucault promoted a view of modern power that exerts its effects through the subjects produced. For a more informed analysis of what is at stake in this distinction see Boyd’s (2002) discussion of the distinctions between discourse and ideology. We can also see from the above that Foucault is spring-boarding from Althusser’s work on ideology but with a very different twist and toward a very different end. It is in this way that Boyd underestimates Foucault. Foucault is not dismissive of Marx’s analysis of economic relations, but is instead attempting to qualify it, extend it to uncharted territory, and rid it of its humanist taint. Foucault’s strategic ‘play’ is intended to ‘displace’ and can easily be interpreted as flippancy with a less careful reading.

17 Not only are social subjects diversely *placed*, they are themselves *formed* out of this network of relations with its contradiction, disjunctions, and alliances.
contradictions, and inconsistencies (mirrored in the subject itself), that rendered resistance possible and indeed inevitable\textsuperscript{18}.

Foucault (2000a, 1980a) argued that the medieval merger between law (the rule of right) and the monarchy (the rule of power) has had a profound impact on the way that power is understood and exercised in the West. Law increasingly mediated disputes between parties, framing them in its own terms. Under such conditions the ‘common good’ could be translated as obedience to the law; the law serving to legitimate the Monarchy and its apparatus (Foucault 2000h)\textsuperscript{19}. Over time this arrangement produced new forms of authority, new forms of subjection, and new modes of social control (Foucault 1973, 1979, 1980a, 1997a, 2000a, 2000b, 2000c, 2000k)\textsuperscript{20}. This shift involved “… all the micro-mechanisms of power, that came from a certain moment in time to represent the interests of the bourgeoisie” (Foucault 1980b:101). What became useful within this new configuration were not systems of exclusion (repressive in their impact, and punishing in their intent), but the techniques and procedures themselves (productive in their capacity, and fecund with possibility). For it was this new emphasis on utility and

\textsuperscript{18} Misreadings of Foucault on this point have resulted in accusations that he allows no room for resistance …that we are always and already caught (see Halperin 1995; also Foucault 1980a:82-83). It is only when we take the above noted lack of cohesion into account that alternative accounts of resistance becomes plausible.

\textsuperscript{19} Foucault states elsewhere that the “system of right is centered entirely on the King, and is therefore designed to eliminate the fact of domination and its consequences” (1980b:95). He argues that “[t]he history of the monarch went hand in hand with the covering up of the facts and procedures of power by juridico-political discourse” (Foucault 1980b: 87-88), and it is the “facts and procedures” of power that most interested Foucault. He asks: “Why is this juridical notion of power, involving everything that makes for its productive effectiveness, its strategic resourcefulness, its positivity, so readily accepted” and he answers that: “Its success is proportional to its ability to hide its own mechanisms” (Foucault 1980b:86). As I have argued elsewhere, this has implications for the way that power is represented and understood (Mayr 2006).

\textsuperscript{20} We see this aspect of Foucault’s work mirrored in more detail in Bourdieu’s (1986-1987) theory of the juridical field. Whereas Foucault has made it possible to think differently about a particular issue through an alternative historical analysis, Bourdieu brings us into the present through the application of such insight.
applicability that ensured that power, exercised through “subtle mechanisms”, could “evolve, organize and put into circulation a knowledge, or rather apparatuses of knowledge”, which were not “ideological” (Ibid.102), but functioned instead as an economization of power, exerting a control distinct and different from that of the sovereign\textsuperscript{21}. And here it becomes possible to see how the double intention inherent in the rule of right, allowed power to slip from the monarch’s hands; for while the identity of a group (with rights) made emancipation imaginable, it was this same identity, accomplished through very different procedures than those of right, that rendered docility and discipline useful. It was this calculation, this economization of power, with its accompanying strategies and investments that Foucault attempted to draw our attention to.

…instead of asking ideal subjects what part of themselves or what power of theirs they have surrendered, allowing themselves to be subjectified \textit{se laisser assujettir}, one would need to inquire how relations of subjectivation can manufacture subjects. Similarly, rather than looking for the single form, the central point from which all the forms of power would be derived by way of consequence or development, one must first let them stand forth in their multiplicity, their differences, their specificity, their reversibility: study them as relations of force that converge, or, on the contrary oppose one another or tend to cancel each other out. Finally, instead of privileging law as a manifestation of power, it would be better to try and identify the different techniques of constraint that it brings into play (Foucault 1997b:59).

\textsuperscript{21} Foucault illustrates how this shift played out through the practice of punishment (Foucault 1979:48-53). In the spectacle of public torture it was the dissymmetry of power that was stressed with its corresponding excess. In the 19\textsuperscript{th} century increased codification and bureaucratization resulted in an economization of technique, with the body no longer serving as the anchoring point. It would be through a series of mediations that a more finely tuned ‘justice’ would be delivered, increasing its effect, minimizing its costs, and masking its mechanism (Ibid.:80-89)….power would now seek asylum in the ‘soul’ (Ibid.:101). It was toward the transformation of individuals that justice would now turn, and despite the failure of the new penology to achieve its expressed end, its ‘success’ (read continuance) must ultimately be measured in broader socio-political terms. For a more in depth analysis and critique of Foucault on this issue see Garland (1990). As Garland argues, Foucault’s historical analysis of punishment serves as a backdrop for his real interests: an analysis of modern power.
To do this one would have to examine law beyond the boundaries of law itself\textsuperscript{22}. As new social forms articulated with an increasingly rationalized and centralizing state apparatus the reach of power was extended, and a mutual efficacy established. Yet despite the proliferation of new institutions and practices, law was to remain secure “[f]or this is the paradox of a society, which from the eighteenth century to the present, has created so many technologies of power that are foreign to the concept of the law: it fears the effects and proliferations of those technologies and attempts to recode them in forms of law” (Foucault 1980a:109)\textsuperscript{23}. What Foucault describes as a heterogeneous, and heteromorphic process (full of alliances, disjunctures, appropriations, and reversals) allowed for ever-more invasive procedures of observation and ever more efficient mechanisms of control to displace the repressive function (Foucault 1979;1980c). This was facilitated by the developing entanglement between knowledge/power\textsuperscript{24}, technico-rational programming, new techniques of surveillance, slippages in juridical methods, and the continued representation of power as sovereign (Foucault 1979, 2000b, 2000c). Throughout his analysis Foucault’s aim was to show the extent to which “right, (not simply the laws but the whole complex of apparatuses, institutions and regulations

\textsuperscript{22} This is a point I will return to shortly in reference to Carol Smart’s work.
\textsuperscript{23} Although this statement appears to reify law, the increased move to regulate social life can be tied quite reasonably to ‘interests’ that are expressed through law as a communicative and regulatory framework. Smart notes the ability of law “to impose its definitions on the events of everyday life” (1989:4), specifically she argues that legal definitions of rape take precedent over the experiences of rape victims (Ibid; see also Naffine1996). Her point is that by dictating the terms of reference by which social problems are defined and dealt with, not only is law insulated against substantive change, but power imbalances are maintained through the very mechanism assigned to address them. It is for this reason that she calls for a “decentering of law”, suggesting strategies to subvert its hold and fend off its further advance.
\textsuperscript{24} Foucault refers to this elsewhere as “the power of true discourse” (1980b:94). He argues that “there can be no possible exercise of power without a certain economy of discourses of truth which operates through and on the basis of this association. We are subjected to the production of truth through power and we cannot exercise power except through the production of truth…” (Ibid). It is in this same vein that he argues
responsible for their application) [could] transmit and put in motion not relations of sovereignty, but of domination” (1980b:95-6). Foucault called these new forms of domination “polymorphous techniques of subjugation” (1980b:96), its effect “discipline” (1979).

Foucault encouraged us to change the way that power is represented, and therefore to alter our methods of analysis. To do this was to: 1) examine power through its “facts and procedures” instead of through its aims and rationales; 2) to avoid the analysis of power at its central location, but to examine it at its extremities where it exerts its effects; 3) to avoid a representation of power that posits a central ‘authority’, the mechanisms of which become masked through such a representation; 4) to avoid viewing power as merely negative or repressive, but instead view power as insidious and productive, therefore examining it for what it makes possible; and lastly 6) to view power as a process and a relation, and not a product, law, or right, for by privileging this latter representation, attention is drawn away from the multi-form techniques that power brings into play.

that we are “condemned to confess”. (Foucault 1980a), a process that he links to subjectivation, the formation of subjects (double meaning) through discourse.

25 See Garland (1985) for an application of Foucault’s work in this area. Garland argues that the rhetoric surrounding welfare (specifically the division made between a ‘deserving’ and ‘undeserving’ poor) became entangled with and reinforced by the discourse of punishment. Both drew from the liberal worldview, but were promoted and held in place by specific institutions that promoted this discourse as fact. Both reinforced one another to effectively govern the lower classes. See also Bourdieu and Waquant (1986-1987) on law as an institution and the structuring effects of professionalization through the interests it secures.

26 Foucault plays on the double meaning of the term ‘discipline’ (as he does with ‘subject’), each meaning intended to conjure up the other. ‘Discipline’ refers both to a program, or practice (eg. a school, a military establishment, a hospital, a penal institution) and to an effect (i.e. disciplined and docile bodies). Foucault argued that discipline “produces subjected and practiced bodies, ‘docile’ bodies” (1979:138). It renders them useful and obedient by virtue of a program and a routine. What is promoted is “a political anatomy of detail” (1979:139). What is produced are governable subjects. It is precisely this disciplining of gender that
This suggestion that the tools we have used to *understand* ‘the world’ may have in fact been *fashioning* that world was to confront ‘reality’ as conceptual quicksand, and the privileged ‘subject’ of history as ontologically unstable. Yet it was the very instability of these relations and the vulnerability of the identities that it suggested that allowed political ‘R’esistance in the Marxist sense, to slide into the kinds of ‘r’esistance that Mackinnon (1989) encouraged through consciousness raising, and Butler (1990) importantly applied in her work on gender. Resistance conceived of in this new way plays on the boundaries of multiple realms; the boundaries themselves maintained/mediated by the play itself. Yet as the work of Foucault importantly reminds us, it is this play on the line that makes resistance possible, but slippage inevitable. He made it clear that we are governed at multiple junctures, the play itself mediated by and through these relations. Therefore, play is never really ‘free’ and cannot produce a secure or universal freedom. And here again Bourdieu’s insights on language and culture are important, for to promote such a possibility would be to obscure the very processes responsible for the over-determination of the boundaries themselves. In this way, slippages *contain* change just as they facilitate it.

Precisely because slippages operate on the slipperiness of meaning, they have the capacity to unite disparate groups under the banner of a common cause, while serving a common interest: political utility. It is possible to locate this capacity as an aspect of symbolic systems (see Bourdieu 1990:86). Precisely because such systems rely on the “practical logic” of the social field, they reconcile unity and fuzziness through a “poor”

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Butler (1990) attempts to subvert through conscious parody. See also Garland (1985) on the ‘governing’ of the poor.
and “economic logic”; one that has the capacity to serve multiple and sometimes contradictory ends (Ibid.). But this still does not explain the persistent subordination of specific groups.

According to Bourdieu, domination is not a simple and direct act of coercion by a class of actors who holds power, “it is the indirect effect of a complex set of actions” (1998:34) engendered by the dictates of the field in which it operates. This field is itself structured by a network of intersecting interests, constraints, and possibilities that extend beyond the boundaries of this field alone. Bourdieu posits a complex system of ‘capital’ that cannot in and of itself be reduced to or explained by any one field. It is rather the complex coordination of these fields that produce and maintain the divisions, differences, and distinctions that form the backdrop of our lives, ordering them in a way that is oddly consonant with broader structural arrangements. In this way, Bourdieu, like Foucault, challenged traditional accounts of power that reify relations or structures (Ibid 59). He argued instead that this ‘misrecognition’ is itself an effect of historical relations, one that produces its own material effects by rendering alternative arrangements unthinkable. This helps to explain the persistent patterning of material and symbolic domination, without recourse to the Marxist concept of ‘false-consciousness’. Yet Bourdieu (1986-87, 1998) cautions against viewing either history, the state, or law, as distinct epistemological entities, free of interests or influences:

The major effect of historical evolution is to abolish history by relegating to the past, that is, to the unconscious, the lateral positions that it eliminated. The analysis of the genesis of the state as the foundations of the principles of vision and division

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27 Fields hold monopolies on particular forms of capital that may be transferable but not reducible to other forms within other fields.
operative within its territorial expanse enables us to understand at once the doxic adherence to the order established by the state and also the properly political foundations of such apparently natural adherence. Doxa is a particular point of view of the dominant – the point of view of those who dominate by dominating the state and who have constituted their point of view as universal by constituting the state (Bourdieu 1998:57 [Italics mine]).

Bourdieu (1984) argues that the principles of ‘vision’ and ‘division’ operating on the social field have a structuring impact that extends well beyond traditional notions of structure. The logic imposed has a determining influence, not only on what is, or what can be, but also what is desirable, or what should be. It is only when we examine the construction of meaning within and across domains, taking slippages and existing relations into account, that the limits of liberal rights arguments become apparent.

Women have a long history of using the language of rights to assert wrong-doing or mistreatment (Backhouse 1991; Dubinsky 1993), and also of arguing for an expanded view of rights that includes them (Bunch 1998; Cleverdon 1978; Bacchi 1983; Staggenborg 1991, 1998), yet the gains that have been made are often limited and contradictory. This has caused many to argue that while a feminist jurisprudence can inform legal practice it cannot solve social problems (Smart 1989; Fineman 1991; Sawicki 1991). Fineman suggests that we need something that “mediates between the material circumstances of women’s lives and the grand realizations that law is gendered, that law is a manifestation of power, that law is detrimental to women…such inequities in
the legal treatment of women are best exposed by referencing and emphasizing the circumstances of their lives” (1991:xii).

While this may be the case, many of the women who are most in need of having “the circumstances of their lives emphasized” are often not in the position to do so, or lack the status and resources to be heard. When these messages are ‘heard’ through the interpretive framework of others, women may not feel as if they have been fairly ‘represented’. How an issue is represented and how it is responded to are intimately linked, and this has indeed been the case for many women who experience domestic violence (Lempert 1997; Peled, Eisikovits, Enosh, and Winstok 2000; McDermott and Garofalo 2004).

Law has been variously described as a ruse of power (Foucault 1977, 1980a, 2000a, 2000h), as ideology or veil (Marx 1992a, 1992b; Althusser 2005), as a complex site of contested relations (Sumner 1979; Hirst 1979; Bourdieu 1986-1987; Garland 1985, 1990, 2002; Comack & Balfour 2004), as an instrument of social control (Mayer 1983), as symbolic violence (Bourdieu 1992), and more optimistically as a guarantor of rights and freedoms (Ignatieff 2000; Rawls 1971). Feminist historians, social constructionists, and policy theorists have focused on the relationship between law and moral regulation, specifically its entanglement with other institutions, its role in nation building, and the

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28 Indeed we see this approach in the new historiography (Backhouse 1991, 1999; Dubinsky 1993; Smart 1992) as well as in more recent accounts of women’s contact with the law (Hannah-Moffat 2001), and governance (Chappell 2002).

29 My intention is not to reduce either of these theorists’ writings to their common insights, nor to extract law from the broader analysis of the social and economic relations in which each positions it. Debate surrounding the precise nature of economic determinism in Marx has had implications for further debates on the role he attributes to superstructure (in this case the role of law and the state). For this reason, Althusser’s reading and subsequent extension of Marx has deepened the significance of ideology (in this case law), suggesting a more direct effect on material relations.
contradictory impact of social reforms (Bacchi 1983; Backhouse 1991, 1999; Boyd 2003; Chappell 2002; Dubinsky 1993; Loseke 1992, 2003; Valverde 1991). Others analyze law as a modern institution (Foucault 1977, 1980a, 2000a, 2000h; Bourdieu 1986-1987), its unique relationship to the state (MacKinnon 1989; Chappell 2002), its sanctioning power (Garland 1985, 1990; Hannah-Moffat 2001; Comack & Balfour 2004; Balfour & Comack & Balfour 2004; Comack 2006; Snider 2003), and its capacity to define (Smart 1989; Naffine 1996). By focusing on the relationship that law has to the broader social order, many note the ways in which an effaced social safety net is bringing already marginalized women into greater contact with the law, while new responsibilization trends are contributing to harsher and more punitive sanctions for those who breech its rule (Balfour & Comack 2006; Boyd 1991; Chappell 2002; Chunn & Gavigan 2006; Comack & Balfour 2004; Garland 2002; Fraser 1989; Heimer, Wittrock, & Ünal 2005; Snider 2003). The gendered and racial context of this arrangement has been difficult to address within the limits of law (Boyd 2000, 2002; Pulkingham 1999; Smart 1989).

Feminist engagement with the law is illustrative of its capacity and its contradictions. It is a history fraught with gains and losses, skepticism and hope, regulation and emancipatory possibilities. Law is neither fixed nor fickle. It is not neutral,

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30 These conditions are mediated by factors specific to social location (most notably race and class, but also include sexual orientation and disability (see Comack 2006, Comack & Balfour 2004). Women’s increased economic vulnerability derives in part from the fact that, on average, they continue to earn less than men in the workforce, and have a greater likelihood to be the primary caregivers of children if there is family breakdown, this is often referred to as the ‘feminization of poverty’ (see Hamilton 1996; Eichler 1997; Luxton 1997; Pulkinham 1999; Balfour & Comack 2006). This situation is exacerbated by a gender neutral reading of these arrangements that tends to obscure systemic constraints and therefore to add increased pressure on women (see Okin 1989; Knowles 1996; Boyd 2000, 2003). Pulkingham (1999) argues that the discourse surrounding this phenomenon is “double-edged”, used by many to support patriarchal values instead of challenging them. She argues that “the implications of the interaction of feminist demands and state action in structuring women’s subordination have been overlooked” (1999:290). My argument here is
yet neither can it ‘conspire’. Law does not stand above or apart from broader social relations but rather informs them, is informed by them (Gusfield 1981; Sumner; 1979; Garland 1990, 2002; Bourdieu 1986-1987; Hirst 1979; Rosca 1998). It is in this way that one’s contact with the law will tend to reflect one’s position in the social order. Not only do some individuals have greater access to the law in their service, but some are forced more often than others to defend against law by virtue of this placement (see Snider 1985, 2003; Comack 2006).

It is within this complicated framework that women have sought redress for inequities in the system, attempted to mediate the negative impact of such ordering on their treatment as legal subjects, and resisted the material and symbolic effect of this ordering on their daily lives. In each of these arenas they have been forced to deal with the inextricable ties between formal systems and broader discourse; ties that put into place an enduring web of constraints that appear natural (through this correspondence) and inevitable (through repeated and systematic application in social life). It has often been argued that it is only by way of an alternative and competing discourse that the logic of this seeming ‘inevitability’ is disrupted, and its un/natural coherency exposed (see Boyd 1991; Fraser 1989; Snider 1994, 199831). While this may be the case, it has not proven to be easy. Just as feminists seeking legal reforms are thrown back upon the

that this “interaction” is a product of the co-optation of feminist discourse toward conservative ends, the resignification process operating as a slight of hand.

31 Snider argues for “safer societies” where safety is predicated on a broader conceptualization of social justice, and masculinity is redefined.
discourse that informs law, the liberatory potential of discursive maneuvers is inevitably limited by the sanctions and impediments of formal structure.\(^{32}\)

In order for feminists to strategically position themselves in relation to law, Smart (1989, 1995) encourages a more thorough analysis of law itself, one that exposes the disjoint that exists between the structural realities of law and the ideology that surrounds it. Warning against all attempts to reify law, she argues that law lacks inherent ‘unity’, the over-arching nature of the term itself reinforcing this illusion (1989:4; 1995:124). Instead she proposes a ‘refracted’ view of law, one that acknowledges that it can be contradictory at and between its various levels.\(^{33}\) She argues against the view of law as having \textit{unified} aims or applications, instead “it has different applications depending on who attempts to use it” (Ibid.). Neither is law objective, according to Smart. Drawing attention to the ‘kinds of women’ present in legal discourse, she argues that law sustains a host of problematic social categories \textit{within} law.\(^{34}\) She concludes that, as code, law is gendered in its application, and gendering through its practice.\(^{35}\) Given this, the view of

\(^{32}\) See Naffine (1996:89) on the “limits of deconstruction”. She argues that “[d]econstruction can do some of the job, of effecting change, but alone it is insufficient to undo the institutional systems that have been built upon, and help to sustain, the economic and political power of men over women” (Ibid.). Of course these maneuvers will be more or less successful depending on what they are attempting to achieve.

\(^{33}\) See Snider (1994) on the potential of the various levels of Canadian law for feminist reform efforts. She argues that engagement with civil and administrative law importantly avoids the problematic of a criminal justice system response, and can prove most productive when used to address specific grievances. In this way, dominant ideologies can be challenged, while structural changes (as opposed to abstract principles) are put in place. See also Ericson (1982), and Ericson & Baranek (1983). Both are classic studies in the effects of a fragmented justice system on criminal processing and legal outcomes, with particular sensitivity toward the role that institutional factors play in this process. What Ericson and Baranek make evident is that there are professional and bureaucratic interests at each stage of processing that are extraneous to the crime itself. This exerts an effect that becomes masked under the guise of a unified system. This creates what is commonly referred to as ‘an unintended effect’. All of the above researchers note the relevance of the social location of claims-makers in this process.

\(^{34}\) See also Backhouse (1991,1999), Valverde (1991), Dubinsky (1993), and Chunn & Lacombe (2000).

\(^{35}\) Smart (1989) uses the term ‘phallogocentric’ to capture the impact of knowledge/power on the legal apparatus. Backhouse (1999) makes a similar claim about racism within law. In the both cases, this is often perpetuated through legal silences, extra-legal mechanisms, and agents external to law. It is sustained
law as neutral arbiter of justice is problematic (see also Eisenstein 1988; MacKinnon 1987; Naffine 1996; Smart 1989, 1992, 1995). It is rather instead the flexibility of law **parading** as neutrality that masks its on-going complicity in sustaining social hierarchies, and it is this same flexibility that makes it possible for specific laws to be co-opted toward conservative ends (Smart 1989). Although law lacks the capacity to **create** these relations, it plays an instrumental role in sustaining the conditions under which they survive (Smart 1995:144)\(^36\).

Together with other disciplines (most notably medicine, psychiatry, and social work), law has played an instrumental role in the regulation of women (Backhouse 1991; Faith, 1993; Sanger 2001; Schur 1984; Smart 1984, 1992; Vance 1984; Walkowicz 1980)\(^37\). Acknowledging the ways in which law is entangled with other social institutions, ideologically and structurally, is therefore imperative (Boyd 1991; Fraser 1989). It is through this entanglement that law manifests as both instrument and effect, facilitating and formalizing an over-determination of regulatory codes and sanctions\(^38\). As an instrument and arm of a state apparatus, law is invested with powers that extend well beyond that of other disciplines. Legal rulings have material consequences, and for this reason, neither its risks, nor its possibilities can be ignored. This is why women have at

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\(^{37}\) It is for this reason that Fraser (1989) refers to the state as the “juridico-administrative-therapeutic apparatus”.

\(^{38}\) This is precisely what Althusser is touching on when he speaks of law as “overdetermined” (2005: 114-116). This same dynamic is described in different terms by Bourdieu (1986-1987), Hirst (1979), Sumner (1979), and Gusfield (1981).
times resisted the regulative hold of law, while at other times they have used law as a means to resist\textsuperscript{39}.

It is the way that law and social forces conspire at important junctures (i.e. marriage, motherhood, and sexuality) to put into practice the day-to-day regulation of women based on the intersection of race, class, and gender that such categories are made secure\textsuperscript{40}. When a certain level of coherency is achieved through both formal and informal processes, one’s position becomes ‘fixed’ at intersecting sites of constraint. It is precisely because we are repeatedly confronted with such fixity (with all of its internal contradictions suppressed) that the possibility for resistance may present variously as altogether futile, or oddly uncontestable in its linearity\textsuperscript{41}. It is only when we are forced back onto a somewhat fractured alternative history of these arrangements (a history explained in different terms, and with different reference points) that new possibilities present and the discursive ground upon which specific laws rest is undermined. It is precisely this kind of challenging that Smart and others encourage through their revisionist histories.

The ‘new’ historical revisionism has underscored the limitations of traditional theoretical frameworks and has fostered new insights regarding the ordering of social

\textsuperscript{39} Again I am forced back onto the inadequacy of the categories themselves. Quite obviously ‘feminists’ are not a homogenous category that are in agreement about tactics, nor even the ends they wish to achieve. At times ‘feminists’ are pitted against each other. The pornography debate is one example (Mackinnon, 1989).

\textsuperscript{40} I am not suggesting that this constitutes a conscious or intentional ‘conspiracy’ (for more on the problem with conspiracy theories see Smart, 1989). I am instead attempting to capture the way that social forces converge to produce ends that are independent of their individual effects. Bourdieu & Wacquant, (1992:16) refer to this using a spatial metaphor (a ‘field’of relations ), whereas Foucault refers to it as a ‘force-field of relations’(emphasizing power dynamics).

\textsuperscript{41} Again we see the relevance of Bourdieu’s constructivist structuralism as it pertains to the subjectivist/objectivist debate. Social relations are neither entirely fluid nor entirely fixed. They are held in place at multiple junctures, and therefore elude conscious or intentional control. The habitus that is
relations. By highlighting the perspectival nature of all historical analysis, it has drawn attention to the centrality of the narrator, situated the ‘coherency’ of the narrative within a much broader field of relations, and challenged the adequacy of unilinear, unidimensional, and universal accounts of social processes. As feminists revisit history through a different lens, they have spawned a new appreciation of previously unrecognized forms of resistance, and produced a more complex depiction of regulation and constraint.

The analysis that follows will draw heavily from secondary sources in an attempt to track the role that slippages have played in the construction and reconstruction of a particular social problem: violence against wives in the 17th century Puritan community of Massachusetts Bay. As the site of the first legal prohibition against wife beating in the Western world (Pleck 1987), this case is particularly instructive. So while my research focus will be to revisit this prohibition and the broader history surrounding it, my analytical concerns rest with the broader theoretical questions concerning the relationship between codification and signification in the sustained subordination of women. Precisely because law is attributed with a ‘fixity’ that signification lacks, and because law is backed by force and sanctions, understanding the entanglement between codification and signification is of critical importance. Because domestic violence is difficult to research historically (it seldom made it into official accounts) and because records from this era are piecemeal and fragmented, there has been scant attention paid to this aspect of Puritan social life. Given that this migrant culture lay at the precipice of change (geographically produced makes certain options appear as altogether unproblematic, while others do not appear as options at all.
displaced and in the process of displacing), and because it was technically equipped with the means to ‘fix’ these relations through law backed by force and sanction, it is reasonable to ask: ‘Why this law?’ ‘Why now?’ and ‘Toward what effect?’

I begin by arguing against Pleck’s (1987, 1989) claim that the Massachusetts Bay Colony devised a law against wife beating out of humanitarian concern for women. By describing the socio-political context in which this law was one small aspect of a much broader and somewhat fragmented endeavor to assert ‘order’ and to establish authority, I argue that it would be a mistake to over-emphasize its prohibitive message over and above its productive and often contradictory effects. Drawing from Haskins insights on 17th century English legal tactics, and Roberts-Millers (1999) analysis of Puritan logic and language use, I argue against reading Puritan rhetoric literally. As many of the above theorists have made evident, we cannot ignore the broader social context in which particular laws arise, the diverse interests they may serve, the social environment in which they play out, and the contradictory effects that are produced across time and circumstance. We cannot ignore the way they interact with other laws, or the way they sometimes mask the very genesis of the subordination they purport to alleviate. When the above law against wife beating is examined through this lens, a more complex analysis of its impetus and effects is encouraged.

There are three types of slippage that I will be drawing attention to for the purposes of this study. Each carries somewhat different risks and possibilities. By

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42 It can be argued that the ‘three’ slippages that I have identified do not constitute three distinct category types, and therefore should not be classified in this way. The logical consistency of any taxonomy rests on the use to which it is put, coupled with the order that it imposes. All three of these slippages are associated with distinctly different strategies of resistance, are unevenly available across social groups, and carry different risks and possibilities in relation to law. Because law draws from ‘informal’ definitions to produce
focusing on their overlap and mutual reinforcement, the systemic nature of constraint becomes clear. Feminist legal scholars attempting to grapple with the relationship that law has to social order (specifically the role it has in sustaining social hierarchies across time) increasingly locate these mechanisms in the discourse that law imports and promotes. It is this discourse (exerting its effects through formal and informal mechanisms) that colludes with the institutional resourcefulness of law (its relation to the state, other institutions, and its authority to define and sanction) to produce and sustain networks of control.

The first type of slippage I’ll be drawing attention to addresses ‘authorized’ change within formal classification systems (specifically those systems that are rule bound and capable of formal sanctions)\(^43\). In 17\(^{th}\) century Massachusetts this was most notably law and the church, but in the current period it also includes medicine, the psych professions, and social work; all contributing to what has been loosely referred to as a disciplinary network of control\(^44\). Precisely because these fields overlap, involving a ‘formal’ system of rules, regulations, and sanctions, it provides a distinct type of slippage, while simultaneously influenced by and influencing slippages within other realms.

\(^43\) One example of a formal slippage would be the 1993 change to the definition of rape (see Snider 1985), or alternatively, the way that ‘rights’ have been legally redefined across time. As noted in the above footnote, however, the boundaries of these formal systems become blurred, when, for example, popular discourse infuses legal decision making with its logic resulting in increased social control for specific ‘problem’ groups. This is the case when, for example, historical constructions of a ‘good/bad mother’ impact on the outcome of child abuse cases, or influence the decisions in custody disputes (see Knowles 1996). Knowles argues that these instances provide “an opportunity to fine tune motherhood as a practical activity in professional narratives” (Ibid. 151). Although, she argues, there is no “coherent political agenda attached to these administrative processes…they do invoke new forms of social management” through the order that they impose (Ibid. 152).

\(^44\) The way in which this inter-disciplinary management forms a network of control is hinted at by Knowles (1996) in the above footnotes, but is also addresses more explicitly by Cohen 1985; Garland 1985, 1990; Naffine 1996; Smart 1989;1992; as well as many others. It is for this reason that Foucault describes these professions as ‘disciplines’ in two different senses – they constitute a distinct group with interests, and having a monopoly over knowledge in their designated field they have the power to institute programs that ‘discipline’ the object/subject of their discourse through the manipulation and dissemination of a knowledge that that extends well beyond the boundaries of the discipline itself. See Foucault (1979).
expertise that is state sanctioned, slippages within these realms extend well beyond the fields themselves. They play a powerful role in the distribution of goods and resources (both symbolic and material) through their influence on social and economic policy, and through the authority they have to define and sanction beyond their designated fields. This is indeed the case with law as Smart (1989) and Mackinnon (1989) make clear. Because law seeks ‘Truth’ it demands clear definitions and carefully structured arguments in order to facilitate unambiguous accounts and conclusions (and yet as Smart argues, this is a principle rarely achieved through law). She claims that what is actually produced through this process is an account of law that parades as Truth. Formal systems have a greater capacity to ‘fix’ meaning through the alignments that are made possible through this process.

The second form of slippage I’ll be examining involves the capacity of symbols to coalesce and harden around particular groups or identities in the interests of those most powerful. This is the subject matter of sociology, and precisely what feminist historians attempt to undercut through the new historical revisionism. It becomes possible to illustrate the ways in which groups appealing for privilege or rights under the law effectively appealed to these broader representations in their arguments. By drawing from and promoting popular stereotypes, reformers have often made gains on the backs of those already marginalized (and it is here that we see the contradictory impact that slippages have when mapped across a social grid). This underlines the political utility of representations and their capacity to be utilized for multiple and sometimes contradictory ends. It also illustrates how popular discourse permeates formal systems to produce material consequences.
The third slippage I’ll be addressing is more complex precisely because it plays more openly on the instability of meaning and relies on context and perspective for its interpretation. In many instances it stands as the mirror image of the aforementioned slippage, both mocking and deadly serious in its tone. A slippage makes it possible to interpret a given act or utterance in more than one way, and this is where the speaker, the context, and the social location of the interpreter becomes so important in the assignment of meaning (Hutcheon 1994). This context, coupled with the instability of the signifying relationship itself, is what makes the expression of tension and ambiguity possible (Ibid)\(^{45}\). Most importantly, it is this possibility of slippage that gives ambiguity a curious strength as a tool of resistance under extremely oppressive conditions, or in tightly woven networks of constraint. Direct confrontation is artfully avoided by ‘playing’ on those misattributions of character (representations) projected on to them through the dominant lens. What is produced is an ambiguous response, capable of mediating risk through its potential for misrecognition or dismissal (and here we begin to see how the tidy boundaries between refusal and consent begin to unravel under the necessities of a marginal existence). Most importantly, this can operate as a strategic displacement, providing an alternative model of protest that is no longer consonant with mainstream models of social order. While there is always the risk that such moves will reinforce dominant discourse, in the hands of the subjugated it can be used to manipulate and/or mocks this arrangement. We see this latter strategy used by women throughout the period under study.

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\(^{45}\) This was first noted by post-colonial theorists and post-structuralists interested in the subversive implications of irony, parody, and satire in resistance strategies (consider Bhabha’s [1994] ‘sly civility’, or
Taken together, these slippages and their effects underline the double-edged nature of discursive maneuvers and their entanglement with broader social processes. They allow us to expand traditional notions of structure, and lend evidence for its over-determination. Both a consequence of and an instrument of social change, slippages are neither ‘good’ nor ‘bad’, but neither are they politically neutral or absurd. Precisely because signifying systems are never stable, slippages are fecund with creative possibilities, but plagued by unintended effects.

Slippages have played an instrumental role in maintaining social control under modern conditions (Garland 1985, 1990, 2003), and have facilitated the mobilization of disparate groups into social movements (see Valverde 1991; Loseke 1992, 2003). They have played a more radical role in post-structuralist strategies (Butler 1990) and under extreme conditions of domination (Bhabha 1994).

By drawing from the concept of slippages (the inherent instability of discursive formulations operating on the social and political fields) I argue for a more integrated analytical approach to the way in which discursive mechanisms become entangled with legal processes to produce, reproduce, and/or transform the material parameters of change and/or stability. Because slippages occur both within and between fields, slippages within one field of relations can have implications for the transmutations that are made possible at another level. This makes alignment between systems possible, just as the instability itself makes contradiction inevitable, for meaning always exceeds what


46 While Loseke doesn’t use the term ‘slippage’, it is indeed what she describes.
we have in store for it, and what we have in store for it is always a matter of contest and struggle in which power relations are called into play.

In what is to follow I hope to avoid the limits of those theoretical approaches that (however inadvertently) posit a meaning system unhinged from its material base, and also those structuralist strains that underestimate the slippery role that meaning systems play in sustaining and/or changing these relations. The implications that this has for the perpetuation of gender relations (narrowly), and social relations (more broadly), is explored through the backdoor by way of a historical analysis of domestic violence legislation in 17th century Massachusetts, its impetus and effects.47

My own contribution in what is to follow lies in the somewhat eclectic theoretical approach I bring to this issue and the way that I have tied together the research. My elaboration of the role that slippages play as mechanisms of what has previously been theorized under the much broader umbrellas of either ideology or discourse, allows a window into the workings of a much more resourceful model of power. By identifying the mechanisms involved with the mediation of oppression, we are brought head to head with the unruly collision of materiality with discursivity in the perpetuation of these arrangements, thus underlining the need to approach complex social issues, such as domestic violence, through the very broadest of lenses in the most local of contexts. While much of the historical research I draw from highlights some aspect of the above theoretical perspectives, it is the weaving together of these various elements that makes my own approach unique.

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Chapter 2
Law and Order

2.1 Codifying Order

Pleck reports that in 1641, nearly ten years after settlement, the Massachusetts Bay Colony passed the first legal prohibition against wife beating in the Western world, declaring that “[e]verie marryed woeman shall be free from bodilie correction or stripes by her husband unless it be in his own defence upon her assault” (The Body of Liberties of 1641, cited in Pleck 1987:21-22). This dictate was one small section of a much longer document outlining all matters of significance to the new community including issues pertaining to governmental organization, judicial authority, and among other practical concerns, matters related to the ‘household’ such as marriage, divorce, children, animals, servants, and sexual conduct (Cahn 1989; Coquillette 1994; Nelson 2005)\(^{48}\). As a binding legal document founded on religious principles, it was governing in both the traditional and in the Foucauldian sense (2000g). It outlined the relationship of the Commonwealth to the church, the courts to the Commonwealth, the Commonwealth to the head of the household, and the head of the household to the wife, children, and servants.

This early document was transparently ‘positive’ or ‘productive’ in both its intentions and its effects. It mapped out social territory, legitimated authority, and

\(^{48}\) After listing the rights and duties of all “colonists” it then describes under the following section headings the rights and duties of the following categories: “(II) Rites, Rules and Liberties concerning Judiciall Proceedings”, “(III) Liberties more peculiarie concerning the free men,” “(IV) Liberties of Woemen,” “(V) Liberties of Children,” “(VI) Liberties of Servants,” “(VII) Liberties of Forreigners and strangers,”- that is
integrated formal and informal mechanisms of control. By formalizing what had previously been a matter of informal custom and tradition, it solidified the social hierarchy and brought it under the purview of law\textsuperscript{49}. This codification scheme was not entirely new (Foster 1984; Haskins 1986\textsuperscript{50}). A uniform, printed body of law was increasingly the means of consolidating authority and fostering popular unity. As such, the \textit{Body of Liberties} was part of a much broader “orgy of code making” characteristic of the New England colonies up until the 1680’s (ibid.138-9)\textsuperscript{51}. As both process and product it bound those with powerful and convergent interests to a negotiated set of values. It also marked boundaries; boundaries between the colony and the greater commonwealth, between one colony and another, between the ‘civilized’ and the ‘savage’, between the reprobate and the elect, and between those with authority and those without. While the structuring of these relations in the form of codified laws gave the over-all system a rigidity that it otherwise lacked, the introduction of an increasingly rationalized legal

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\textsuperscript{49}This was particularly true in outlining the structure of the family, its relation to the state and the obligations of its members, a point I will be returning to shortly. For a more thorough examination of the traditional European family structure see Crawford (1993); Donzelot (1979); Hufton (1995); Flandrin 1979; Shorter (1975). For a more in depth study of the family structure of the early New England colonizers see Demos (1970); Haskins 1960: 66-86; Morgan (1966); Shammas (2002); and Ulrich (1991).
\textsuperscript{50}Haskins 1986 argued that in England the move toward codification was intimately tied to the rule of law itself and the populaces recognized need to protect against the whims of Royal prerogative. In the new colonies the impulse was somewhat different. What was sought was a definite, relatively fixed body of law to alleviate discretion and thus tension between the interested factions. When Haskins argues that the \textit{Body of Liberties} was less a code of existing laws than a compilation and an assertion of the general institutions of government, he ignores the codification of what had been customary household arrangements. In doing so he overlooks the gendered implications of this arrangement. By focusing on the \textit{Body of Liberties} as a statement of fundamental laws, and the later \textit{Lawes and Liberties} as the codification of this arrangement, Haskins downplays the codification of authority relations within the family and the legal repercussions this had for women under the authority of their ‘Masters’. My position is consistent with Winthrop’s (first governor’s) statement that law was not a brake upon authority but “an enhancement and justification for it” (cited in Haskins 1986:32).
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apparatus made new power relations possible (see Foucault: 2000a, 1980a). This civil covenant or contract legitimated authority and served as the rational basis upon which a limited sovereignty was established (see Warden 1984:140-141).

The *Body of Liberties* was carefully worded in order to avoid a direct challenge to the colony’s Charter. Care was taken to legitimize the authority of the new government, while subtly shifting the ground upon which this authority rested. While this document was only one aspect of a much broader shift, it played a pivotal role in

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51 In 1684 England revoked the previous charters, unified the New England colonies, and placed them under the strict control of English common law (Warden 1984). This ‘unexpected break’ put a temporary end to what had been a fairly autonomous self-government and rule.

52 Kamensky (1999:96) argues that a printed body of laws and procedures provided new norms and new rules for public discourse. Because women were less a part of the written world than men, this provided yet another means of “governing women’s tongue”. She draws our attention to the fact that *The Body of Liberties* was drafted and passed shortly after the trial of Anne Hutchinson in 1637-1638; the charges against Hutchinson hinging on her challenge to authority, her threatening influence on the women in the community, and an outspoken attitude toward gender, speech, and the social order that threatened to turn their rigidly patriarchal world upside down (see ibid. 71-96). In 1642, one year after the Body of Liberties was passed Anne Hibbens was charged with a different offense but also accused of dangerously subverting the social order through her forward manner (ibid.). In order to understand the perceived threat that these women posed (and indeed any woman who refused to show the requisite deference to men) one needs to understand more about the order that they challenged and that the *Body of Liberties* was designed to uphold. Situating the law against wife beating in this broader context is imperative if we are to move beyond the stated ideals and rationales of law.

53 The royal *Charter of 1629* was simultaneously a corporate charter and a governing document. It granted authority to the magistrates to act on behalf of crown and company (Konig 1979). It gave them “full and absolute power and authority to punish, pardon, govern, and rule…according to the orders, laws, ordinances, instructions, and directions afore said, not being repugnant to the laws and statutes of our realm of England” (quoted from the royal *Charter of 1629* in Coquillette [1994]). This latter directive was important because it granted authority while simultaneously limiting it. What the *Body of Liberties* therefore accomplished through a kind of double speak was an acknowledgement of the charter’s authority, and thus the authority of the Massachusetts magistrate’s, without drawing attention to the liberty that the magistrates had taken in interpreted it. This put into place very different procedures of government and a very different juridical apparatus (see Cahn 1989; Haskins 1986; Konig 1979). The strategies that this entailed in many ways paralleled those employed by the Massachusetts churches (see Foster 1984). The churches also faced a crisis of authority in the new environment (see Hall 1998; Foster 1984). In both cases legitimacy was sustained through a stated allegiance to the established system, accompanied by tactics that surreptitiously asserted an autonomous self regulation.

54 Strategically implemented while England was in the midst of a civil war, it can fairly be viewed as a move away from Royal governance and toward autonomous self regulation (see Coquillette 1994; Haskins 1986). On the other hand it was not intended as a break from English rule or the legitimation that it represented (Konig 1979). See footnote above.
establishing the new hierarchy through the power it had to define and sanction. Moral authority displaced Royal authority in the logic that it drew from, and in the rhetoric that it promoted (see Foster 1984). It was steeped in biblical reasoning reformulated to address the problems of the day (see Cahn 1989; Coquillette 1994; Foster 1984; Konig 1979).

What the Body of Liberties established was a hierarchy of authority whereby all were answerable to law, with some (women, children, and servants) subordinate to authorities established through law. The “little commonwealth”, the term popularly coined for ‘household government’, was one of the three pillars of government authorized to establish and maintain order within the community; the other two being the church and the “greater commonwealth” (Demos 1970; Morgan 1966; Shammas 2002; Schweber 1998). Sometimes referred to as the three societies, each had its own mode of governance, its own hierarchy of authority, and its own point of application. Although a

55 Warden (1984:141) notes that in most colonies these civil codes represented ten years of already consolidated authority. Others have noted that while important aspects of this hierarchy were carried over from England, it would take on new forms in the colonial context (see Foster 1984).

56 There was a general fear in English Puritans of the 1620’s that the wrath of God would be visited upon a corrupt England, already evidenced by recent political and military failures, sudden calamities, and an uncertain economy (see Foster 1984:5-6). For this reason, many Puritans viewed emigration to the colonies as a way of escaping an inevitable doom; envisioned as both material and spiritual in its genesis and its form. Others remained loyal to the Church of England, arguing that “God is not wont to blesse the bedd of an adulteresse with greater increase then the bedd of the married wives” (John Cotton, as cited in ibid:7). By allying the Puritan congregation with traditional authority structures, Cotton attempted to dissociate their own dubious mission from ‘rogue’ sects or ‘separatists’. The gendered imagery employed to describe these broader moral and political tensions would play an increasingly significant role in the lives of women in the New England colonies.

57 The family was thought to be so important as an adjunct to government that the first Governor of Massachusetts described it as “the root whence church and Commonwealth cometh”, and the state as “many familys subjecting themselves to rulers and law” (Winthrop cited in Weisberg 1975:186).

58 Thomas (1993) and Schweber (1998) suggest that this idea of “three societies” appears to have been carried over from English Puritanism. In 1622 Gouge referred to the well ordered English household as both “a little commonwealth” and “a little church”...”a schoole wherein the first principles and grounds of government and subjection are learned: whereby men are fitted to greater matters in Church or commonwealth...” (cited in Scheber 1998:368-369). Shammas (2002) follows the historical path of
wife was subject to all three of these controls, she was placed under the immediate government of her husband. While a family structure of this type was widespread, and deeply rooted in custom and tradition (see Crawford 1993; Demos 1970; Donzelot 1979; Flandrin 1979; Morgan 1966; Shammas 2002), what distinguished the New England model was the codification of these arrangements, the obligatory role the household head had in maintaining order, and the formalization of women’s dependency within this three-tiered system (see Salmon 1983, 1986).

In attempting to explain the genesis of this shift Haskins suggests that it was an attempt to “provide admonition and guidance to heads of households in their crucially important disciplinary duties” (1960:196). We cannot ignore that it was also an effective means of establishing and expanding the authority of a newly formed government, an authority that was precarious at best. Under this new system, the household, not the individual was the basic unit of society and also its most effective instrument of social control. Because the obligation to over-see the household fell explicitly on the family head, this forged a more formal link between the traditional authority of the male head of

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59 The terms ‘women’ and ‘wives’ were practically synonymous in Puritan communities given the prohibitions against remaining single (Nelson 2005:186-187). This meant that almost all women were governed by a male family head.

60 English law during this era contained no explicit statement of domestic rights, privileges, and duties (Haskins 1990). I will be elaborating on the implications of this shift for women throughout.

61 The term ‘household’ was commonly employed instead of family to capture the broader nature of the institution, which including servants, apprentices, and other family members (see Schweber 1998; Ulrich 1991).
household and the centralized authority of the state apparatus. It also produced a complex web of legal relationships that were governed from above. While this family model was in many ways consistent with traditional cultural patterns and religious teachings, it was forward reaching in both its methods and its effect.

In keeping with a model of delegated authority and in the name of efficiency, the courts granted the head of household a certain degree of freedom and autonomy in accomplishing their important duties, as Morgan explains:

The state made no demand that the heads of family should “yield up their Family Government over their Wives, Children, and Servants, respectively, to rule them in common with other Masters of Families.” Rather it gave additional support to their authority, because without assistance from them it could not have begun to accomplish its task of enforcing the laws of God. Those laws, as the Puritans interpreted them, covered the minutest detail of personal action. They forbade work on the Sabbath and idleness on the weekdays; they forbade blasphemy, lying, idolatry, and heresy. They forbade “excessive wages” and “unreasonable prizes”; they forbade usury, tippling [being drunk], and the playing of shuffleboard. Even a multitude of petty officers would not have provided the close supervision of every individual that an effective enforcement of such prohibitions required, but family governors could provide it. The chief problem for the state, therefore, was to see that family governors did their duty (Morgan 1966:142-143).

The above quote makes clear that while relieving the state of certain broad policing functions, this new arrangement expanded others. Ensuring that heads of household met a prescribed standard justified the legal intervention into domestic affairs

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62 In exploring the broader historical roots of this arrangement Haskins quotes Napolean’s instructions to his lawyer: ”Make the family responsible to its head, and the head to me, and I will keep order in France” (1960:82).

while necessitating increased control over male citizens\textsuperscript{64}. This, in turn, contributed to an expansion of the bureaucratic functions of state and called for new modes of surveillance\textsuperscript{65}. These shifts occurred gradually, built on existing legal rationales and custom, and arose in piecemeal fashion as problems dictated and interests allowed for.

Such matters as setting up a household became strictly regulated by law (Morgan 1966). Marriage and the supervision of servants required a legal permit as opposed to, or in addition to, a contract between individuals (Morgan 1966:147). No single person was legally permitted to establish a household but was instead required to lodge with an established family\textsuperscript{66}. Property rights, property transfer, and inheritance were standardized, and were to follow proper legal procedure (Salmon 1986). It was in this way that the household increasingly fell under the governing function of a swelling state apparatus. This augmented the authority of male heads of household, and in turn reinforced the authority of the state and its representatives. Over time, the role of the ‘family head’ became so fundamental to the new order that in the last quarter century

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\textsuperscript{64} It is noteworthy that impotent men were not allowed to assume the conventional prerogative of head of household (Foster 1999:737). Using the language of seventeenth century divorce records, Foster argues that sexual impotence was associated with “office” or “duty” and was equated with “inadequacy”, incapacity”, “inability to perform” and “wanting in strength and stability” (1999:741). Lacking “self-mastery” (associated with masculinity) an impotent man was believed to lack power and strength (ibid.). This importantly tied sexual performance to masculinity, and masculinity to authority in the Puritan imagination. \\
\textsuperscript{65} This shift was in keeping with the more general trend toward bureaucratic expansion and its increased influence on social life. Haskins notes that one of the significant consequences of the division of church and state was “the civil government’s assumption of control over many matters, such as the recording of births, marriages, and deaths, which had been the province of ecclesiastical authorities in England (1960:194). This shift from ecclesiastical responsibility to state control had implications for the enforcement of these dictates, and the sanctions that could be meted out for breaches. The boundaries of this transition were far from distinct and it is fair to say that this period was marked by both ‘vision’ and revision.\\
\textsuperscript{66} Single individuals were viewed as a threat to order and were legally bound to live in family arrangements (Morgan 1966:145; Nelson 2005:187-188; Weisberg 1975). They were not only “subject to much sin and inequity”, they were living “contrary to the law of the country” (Colony v. Littleale cited in Nelson 2005:187). While this was a way of governing sexuality, it was also a way of making sure that everyone
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public officers were assigned to root out family discord, report on “negligent family heads”, and pursue legal action against those deemed ‘unfit’ (Nelson 2005:188; Shammas 2002; Weisberg 1975:186).67

It was in this way that the new government brought family relations under closer scrutiny, rendered control over one’s ‘household’ (and the person’s within it) a legal obligation (Nelson 1998:188), and rendered governance a male duty authorized by the state. While it is true that women, children, and animals were all earmarked for ‘protection’ under the new laws, the contradictory implications of this ‘protection’ cannot be fully appreciated without a more nuanced analysis of how governance was understood and compliance achieved within these newly formed communities.

Control at all three levels of government (church, state, and family) called for self-restraint on all sides, for as Winthrop [1630] explained, God had not granted any man power “out of any particular and singular respect for him…, but for the common good of the creature man” (cited in Nelson 2005:184)68. Like many Puritans, Winthrop believed that this could only work if people “knit together as one man” … with both the strong and the weak “moderating and restraining them [selves]…”(Ibid.)69. The rationale he provides is most informative: “so that the rich and mighty should not eat up the poor and [the] despised rise up against [them] and shake off their yoke” (Ibid.). Here it

was subjected to a most intimate form of surveillance. All members of the household (boarders, servants, wives, and children) were subject to the authority of the family head (see Morgan 1966).67 Even before this practice was systematized men were chastised and punished for not controlling their wives. See Barker-Benfeld (1972), Kamensky (1999), and Koehler (1974, 1980) on the Hutchinson trial.68 Winthrop was one of the twelve founding magistrates, and the first Governor of the colony. He served a total of twelve terms of office as Governor, and three terms as Deputy Governor (see Cahn 1989). He was a prolific writer on issues of governance and is more widely cited than any other political figure of this era.68 It is noteworthy how well this reasoning aligns with “unity of person” as a rationale for limiting women’s property rights after marriage (see Salmon 1986).69
becomes clear that Winthrop is more concerned with maintaining order than with changing it. As his comments reveal, the principle of restraint could serve many masters.

Winthrop was not isolated in his concern with maintaining order, or in his approach toward moderation. John Cotton, like Winthrop, also called for due bounds to be set in state, church, and family\(^70\). He called upon the powerful of the community to restrain themselves through “love, mercy, gentleness, and temperance”, while the “poor and inferior sort” were to respond with “faith, patience, and obedience” (Cotton [1655] in Nelson 2005:184). Whereas Winthrop’s comments betray the degree to which this ideology was bound to class anxieties, Cotton’s comments link it to gender\(^71\). In both cases restraint is explicitly tied to relations of governance, and in both cases the powerless are encouraged to be obedient and submissive.

So intersecting with concerns about legitimating authority, there existed a corresponding preoccupation with limiting authority. This is an issue that runs throughout the Puritan literature on church and government (see Cahn 1989; Cooper 1996; Nelson 2005). There was a concerted effort to ensure that there were checks on even the most legitimate forms of authority; checks that were both formal and informal, popular and administrative. Abuse of authority was understood simultaneously as a sin against God, and a breach of a civil order that was in keeping with divine will (Kamensky 1999).

\(^{70}\) Cotton was a prominent and influential Puritan minister whose sermons on moral order are often quoted (see Morgan 1966).

\(^{71}\) See Kamensky (1999) on the ideology of constraint as it played out in speech acts. Kamensky brings a wealth of research to bear on the relationship between authority, speech, and gender. She argues that while ‘governing’ one’s tongue was widely accepted as a responsibility of all community members, the prescribed boundaries of this governance were intimately tied to one’s station, the station of the person or persons that speech was directed to, one’s gender, age, and the social context in which the speech act took place. Although her study expressly examines speech, it does so through the eye of power. In exploring how speech was authorized, condemned, and controlled, she tells us a great deal about the complex
While all action was to be moderated, the hierarchy itself was not to be challenged; in fact it was to be *held in place* through this method.

Within this framework, self-restraint (discipline) displaced force (coercion) as the ideal mechanism of social control (see Haskins 1960). Coercion was retained for governing those most obstinate (a point I will be addressing shortly), but it was to be minimized, augmented by discipline on all sides\(^72\). This discipline would have very different consequences depending on which side of the gender divide one found oneself.

Lest the drive for ‘order’ be explained away as a political ploy of the power elite, it cannot account for the demand for conformity within the community itself, for not only was compliance a goal of the elite, it was a preoccupation of the general congregation (Morgan 1966). Matters that today would be considered private or personal became matters of grave public concern, the congregation fearing the negative impact that disorder would bring upon the entire community. This reasoning was tightly tied to a religious worldview and the Puritan mission itself. While the relationship between the ecclesiastical and the civil order were *technically* distinct, there was a great deal of interpenetrability between the two spheres\(^73\). A civil communalism was established,
informed by a god-fearing congregationalism (Morgan 1966). This facilitated an entanglement between formal and informal controls. Ultimately it increased the level of surveillance that community members were subjected to, and correspondingly, those they were expected to participate in\textsuperscript{74}. It also had implications for the kinds of sanctions that were meted out. Given the patriarchal nature of early Christian teachings (Anderson & Zinsser 1988; Flanderin 1979) and its manifest application in Massachusetts law, this reinforced gender norms and provided new socio-legal mechanisms by which wives were subordinated to their husbands.

In the early years of settlement policing was accomplished through a complex system of mutual surveillance that strains modern notions of public/private. “Spiritual watchfulness” or “ear witnessing” as it was sometimes called, was lateral or democratic in the sense that it was the duty of all members of the community to ‘watch out for’ one another, regardless of class, rank, gender, or distinction (see Cooper 1996; Haskins 1986; Kamensky 1999). Early towns were virtually structured around this principle (Lockridge 1985). Precisely because the boundaries between public and private were more permeable than they are today, all aspects of social life were open to public scrutiny and/or intervention (Morgan 1966). The most intimate forms of surveillance emerged, the character of the defendant, and to attest to the reliability of his/her testimony. This expertise was most often sought in cases involving moral indiscretion, or to clarify whether a particular ruling was consistent with Biblical principle and church teachings (Konig 1979). In keeping with this, town members were taxed for the maintenance of church property and fined for missing church service (Ibid.). Women were disproportionately targeted to explain their absence (Crane 1998; Hemphill 1982), a phenomenon that Crane (1998:85) links to the increased social control of women through religious doctrine. See also Saxton (2003).

\textsuperscript{74} See Crane (1998); Salmon (1986).
significance of which are difficult to grasp given contemporary notions of privacy\textsuperscript{75}. The shared use of designated common lands, the close proximity of the houses, the expanded notion of household, and the mutual interdependence of neighbors, inhibited notions of the private insular family from developing. This may have actually served most women were it not for the patriarchal ordering and double standard that it enforced.

Uhrich argues that “casual watching-and warding by neighbors was far more significant to most women than the power of magistrates” (1991:60). She recounts the story of a young wife being chastised by her neighbor for neglecting her washing and failing to feed the pig. While this ‘meddling’ might seem relatively ‘toothless’ to us today, this incident landed the young wife in court (see Uhlrich 1991:61). We are reminded here of Haskin’s claim that all aspects of social life were micro-managed and regulated \textit{under law} (1960:77-78). Uhrich’s detailed accounts of the role that neighbors played in this project make evident the complex systems of negotiation and constraint that were called into play.

Kamensky, like Uhrich, argues that “proficient eavesdropping was one of the skills that made and unmade reputations...stories about one’s neighbors constituted a vital form of social currency”(1999:12). But it also facilitated the policing of sexual behavior and other household offenses within a system that was more likely to penalize women more harshly than men for many of these offenses\textsuperscript{76}. Women who did not

\textsuperscript{75} Uhrich provides a striking example. One neighbor, upon suspecting illicit sex, climbed through a woman’s window and felt around in her bed until he found the “beard” he had expected would be there (1991:90). Whether this was a case of attempted rape or consensual sex is unclear. What we do know is that the woman involved wished to keep the incident quiet and the entire town became involved (1991:92-94).

\textsuperscript{76} All manner of ‘private’ acts were punished under Puritan law. In order of relative numbers, Hemphill (1982) lists absence from meetings, sexual offenses, defamation, assault and battery, theft, contempt of authority, and drunkenness as being those crimes most likely to land a woman in court. Sexual offenses
conform to the norms of feminine behavior were more likely to face both formal and informal censure (Koehler 1980:190). Under these conditions, there was a greater likelihood that informal surveillance and its associated practice of ‘witnessing’ would inadvertently collude to facilitate increased regulation.

While the practice of community surveillance remained intact across the century, it became increasingly entangled with formal processes through the role that informants played in the courts (see Haskins 1960; Karlson 1987). It was as a conduit to a formal system of sanctions that the legal witness gave new teeth to old measures. A witness held a great deal of power because a defendant was not given the right to face or examine their accuser, and only in capital cases were witnesses required to appear in person. Witness depositions were allowed in all but capital crimes, and even hearsay evidence was admissible in non-capital offenses (Haskins 1960)\(^77\). The influential role of witnesses in the court underlined the practical utility of maintaining positive ties to the community for witnesses as well as defendants.

[O]ffenders accomplished their readmission to society after violating rules by bringing complaints or appearing as witnesses against someone else for offenses of which they had been convicted in the past. By making such an accusation the offender was acknowledging society’s standards. The legal form of presentment, therefore, was in some respects taking the place of the ecclesiastical form of repentance; in addition, the former offender was now plainly acting in behalf of the community and no longer against it (Konig 1979).

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\(^77\) A two-witness rule was in place for all capital crimes (Haskins 1960).
This, of course, reinforced and tightened social controls. But as both Koehler (1980) and Karlsen (1987) make clear, the choice of targets wasn’t arbitrary (rendering the effects of witness disclosure unevenly distributed across social groups). Nowhere are the above methods (and their limits) made more evident than in the witchcraft trials in the last quarter century (see Demos 1982; Karlsen 1987; Reiss 1997). A good reputation could make or break a legal case.

It has been suggested that the visibility of women as witnesses in the courts, the churches, and the streets was a source of social currency (Uhrich 1991:57). Yet if this was a strategic play for power it was doomed to backfire, for in its more meddlesome forms ‘spiritual watchfulness’ encouraged a dangerous gossip that left all women vulnerable to increased sanctions and controls. In ways that are not immediately obvious, it tightened the patriarchal control that husbands had over their wives; it exposed female accusers and their accused to the dangers of a ‘discerning’ male audience, and it left witnesses vulnerable to charges of mischief or even witchcraft if they were not believed. It stripped them of authority through the deferential posture that it demanded of them, and it reinforced the notion of women as untrustworthy gossips. I am not claiming that it never worked to women’s advantage. I am merely attempting to place these

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78 For example Reiss (1997) argues that the court’s tendency to mitigate penalties based on confession and public apology found its limits in the witchcraft trials. Her literature review on this topic is most instructive. Karlson (1987) notes the increased burden that was place on women accused of crimes even if they were found innocent. The bonds that were required for release were particularly difficult for some women to secure, and one’s character could be placed under suspicion. Consider the following comments by Karlson: “accusers denounced witches for behaviors and emotions that were widespread among the colonists, not least among the accusers themselves…The possessed by definition embodied the characteristics of their possessors—and were themselves, like the people they accused, in most cases female” (1987:225-226).

80 Saxton notes the positive and influential role that female witnesses played in one woman’s divorce proceedings (2003:73), and Uhrich (1991) makes this clear in a variety of examples.
practices in a broader context. Under these conditions women’s traditional roles were often channeled in ways that served interests other than their own.

What Konig refers to as the “neighborly regulation of private behavior” involved arbitration and admonition as well as surveillance (1979:126). Fidelity to a spiritual vision of community as embodied in the ideology above, meant that as often as possible disputes were to be settled through voluntary mediation, arbitration, or church counsel (Breen and Foster 1973; Konig 1979). It was incumbent upon all men to work out their disputes as peacefully as possible, thinking always of their greater obligation to the commonwealth as a whole and ultimately God himself. Thus, when the future townsmen of Dedham drew up their covenant, they pledged to practice “everlasting love” and should that bond ever be strained by local differences “then such party or parties shall presently refer all such differences unto some one, two, or three others of our said society to be fully accorded and determined without further delay” (quotes from the early records of Dedham, cited in Breen & Foster 1973:12).

These informal approaches often took the form of church counsel, and were intended to defuse community conflict, to avert disruption, and to minimize court involvement. We know from Koehler (1980) and Morgan (1966) that family disputes were often dealt with in this way. As a complement to the court system, aggrieved parties were urged to settle their differences peacefully and to abide by Biblical principles (Breen & Foster 1973:15). In order for subordinates to accept “their place in the [divinely ordained] hierarchical order, they must first be disciplined to accept the sin in their very tendency to rebel” (Karlsen1987:163). For a wife, this rendered even the most
minor confrontations with her husband sinful; for a husband, it was his refusal to guide, govern, and protect (see Ulrich 2001:39). Subjecting oneself to these ritualized acts of submission communicated deference to the order itself. Even if this wasn’t the intended function of this ritual, it was most certainly a powerful effect\textsuperscript{82}.

The church also relied on censure, admonition, and in the event of serious breaches, excommunication\textsuperscript{83}. When these methods failed, when the offense was grievous or the offender obstinate, the case ended up in the courts. While legal records attest to the degree to which these informal methods were applied and failed, court referral rates suggest that they were not altogether unsuccessful (see Konig 1979)\textsuperscript{84}. What distinguished cases selected out for formal intervention were the attention that they drew, the status of the parties involved, the degree of disruption caused to community, and the danger posed to the order itself (see Schweber 1998). Where order might be restored with discipline and not force, it was discipline that was called for. In this way the threat of legal sanction was closely tied to the refusal of discipline\textsuperscript{85}.

Across time the rationale for a neighborly watchfulness slipped from saving souls to saving the community (or its established members) from a multitude of real and

\textsuperscript{81}This was in keeping with the “spiritual watchfulness” that a godly community was to maintain toward its inhabitants (Breen & Foster 1973; Morgan 1966), and had the effect of reinforcing traditional norms. It was fostered by a nucleated town structure that facilitated community surveillance (Breen & Foster 1973:7).
\textsuperscript{82}The entanglement between education and religion is evident here. See Haskins (1960) for the role that education played in social order.
\textsuperscript{83}Mary Wharton and Mercy Verin were both excommunicated from the church of Boston for offenses against their husbands, the harshest penalty that the church could mete out (Morgan 1966:141). Although these are the only examples Morgan lists involving domestic disputes he does claim that churches regularly punished breaches of family order (ibid.142). Given the lack of detail, and with no other examples to compare these to, it is impossible to draw any conclusions concerning the harshness of these penalties.
\textsuperscript{84}The popularity of informal approaches declined when the old charter was revoked and the new charter came into being in the 1680’s. Breen & Foster (1973:18) argue that by this time discipline had become the responsibility of individuals and not communities.
imagine threats (see Konig 1979; Roberts-Miller 1999). Traditional surveillance practices merged with a legalistic moral code and a religious worldview to facilitate “hostility toward everything strange” (Lockridge 1985:19). This justified the most invasive forms of surveillance and encouraged the most dangerous kinds of gossip and slander. As religious ideals merged with the more immediate and practical demands of order maintenance, an increased civil surveillance was justified giving rise to hybrid technologies of control (see Haskins 1986:329) \(^\text{86}\). My point here is that this melding of formal and informal controls had consequences not only for the degree of surveillance that women and men were subjected to, but also for the degree of conformity that it imposed on them. This was accomplished by the policing that all members participated in. The outcome of this practice may have been different if it were not for the hierarchy that it held in place.

Expanding the authority of the state meant expanding the legal apparatus itself. The General Court, the principle governing and adjudicating body, was forced to expand shortly after settlement. Whereas in the early years of settlement only twelve magistrates served in this capacity, their inability keep up with the colony’s growth culminated in the extension of freemenship (voting status) to an additional one hundred and sixteen males chosen from among the most influential members of the church community (Cahn 1989; Nelson 2005). Not only did these newcomers to government elect assistants (magistrates) who would then elect the Governor and Deputy Governor, increasingly they judged cases

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\(^{85}\) This method of establishing authority has important parallels within the family and is a point I will be returning to in regard to domestic violence.

\(^{86}\) Konig argues that as communities became more heterogeneous these informal methods became impractical and unwelcome (1979:126-127).
in the lower courts. This extension of freemenship eased some of the anti-aristocratic tensions among orthodox Puritans without challenging the authority upon which magisterial power rested (see Nelson 2005). It allowed the General Court to attend to legislative responsibilities and left the magistrates free to judge the most serious cases\textsuperscript{87}.

A three-tiered legal apparatus was subsequently developed to deal primarily with the adjudication of cases\textsuperscript{88}. With the Court of Assistants modeled after the Borough Courts in England, and the Quarterly Courts resembling the old Manorial system or County Courts (Konig 1979), this new hybrid made for a more economical application of sanctions, and a more fluid method of control under the existing conditions. The introduction of Quarterly Courts allowed for a wider distribution of governance and proved popular because they were both cheaper and more accessible to local inhabitants; their necessity was due, in part, to the growing number of land disputes and the litigious nature of the Puritans generally (see Konig 1974). While these lower courts remained under the strict authority of the Court of Assistants, on a practical level they overlapped a great deal in the kinds of cases they handled (Konig 1979; Nelson 2005). This entire apparatus was marked by the absence of women and the preoccupation with a hierarchical vision of order.

What was accomplished was a new economy of justice that decentralized the locus of authority and allowed for local application of the law. This expanded legal jurisdiction while retaining a great deal of discretion in the meting out of sanctions (Cahn

\textsuperscript{87} The General Court functioned as an appeal court, and also (along with the Court of Assistants) heard the most serious cases involving threats to the community (Breen & Foster 1973; Schweber 1998).

\textsuperscript{88} I cannot stress the degree of inconsistency evidenced in the available material on the jurisdictional boundaries of these various legal institutions. Nelson argues that these boundaries were both "unsteady and
The expansion of the lower courts and the right to a jury trial (a right secured by the *Body of Liberties*) expanded the power of local freemen by engaging influential members of the community in the exercise of law. While all three of the above adjudicating bodies held the authority to mete out sanctions, it was the Court of Assistants and the General Court that held appellate authority and the power to try capital offenses (Konig 1979). Together these two courts determined the limits of disorder against which order was defined.

Power remained in the hands of the ruling elite through the establishment of an administrative apparatus of delegated authority that maintained control at the top. By 1643 it was necessary to expand this apparatus even further by selecting a few distinguished men from each community to oversee the affairs of the townships (Konig 1979). By granting increased authority to those powerful enough to have launched a credible challenge against them, hierarchical authority was stabilized and organized rebellion averted (see Cahn 1989; Konig 1979; Morgan 1958).

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89 There were twelve capital offenses listed in the *Body of Liberties*, they were: idolatry, witchcraft, blasphemy, murder, slaying out of sudden anger, slaying through guile, sodomy, adultery, kidnapping, false witness, conspiracy, conspiracy to overthrow the colony (Cahn 1989:119, footnote 73). Beyond these twelve no specific penalties were listed for other crimes. The above list gives us a better understanding of those crimes considered most reprehensible and/or a threat to order (Schweber 1998).

80 Morgan comments that in extending freemanship and redistributing authority, Massachusetts was not transformed into a democracy, "legislative power was lodged not in the people but in a select group where, according to [Winthrop’s] reading of the Bible it belonged" (1958:94). Church members, "the least depraved part of the population", now selected their rulers from a restricted group of men entrusted with the responsibility of shaping secular law to reflect God’s law (Reich 1994:79). This should not be read as an affirmation that the Puritan’s believed “that governments derive their just powers from the consent of the governed” - all just power was believed to derive from God (Morgan 1958: 94-95). It was the people’s duty to ensure that their rulers appealed to God for a just standard, and toward this end ministers could offer sound advice (ibid.).
This did not extinguish the ongoing tensions between these various interest
groups however, the most serious dispute revolving around the discretionary power of
magistrates. While some of this distrust could be worked through at the ballot box,
much of it would be channeled into an organized movement aimed at limiting magisterial
discretion through increased codification, standardized sanctions, and stiffer penalties.
The irony of this is that increased codification had much more of an impact on those with
little or no power, as compared to those whose power the freeman most feared. It is here
that we can begin to identify the convergence of interests. An increased fear of disorder
coupled with a belief that the rule of law could curb magisterial power to render
increased codification a logical remedy.

The *Body of Liberties* made clear the obligations of the ‘governors’ to the
‘governed’, and in turn, those who govern them. It was a model of governance that
permeated all aspects of Puritan social life, reflecting the permeable boundary between
the public and private within these early communities (see Ross 1993). The
economization of power that it suggested was predicated on the governability of the

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91 The judicial power of the magistrates [Assistants] were enormously extensive. Not only did they have,
individually, wide summary jurisdiction, but they sat in, or controlled appointment to, every court in the
county. With little direct supervision from England, and with broadly defined authority within the colony,
the magistrates were relatively free to exercise discretion at will, and to establish a judicial system to
conform with their own notions of an ordered society” (Cahn 1989:113).
92 There was reason for the freemen to fear an emerging oligarchy. In fact certain key figures were able to
maintain their stronghold for years. Winthrop, for example, was elected Governor twelve times and Deputy
Governor three times over the first forty years (Cahn 1989:121).
93 See Haskins (1986) on this point.
94 Richard Ross refers to the notion of separate social spheres as “a hallmark of legal modernization”
(1993:34). His analysis encourages us to view the Puritan pre-modern legal culture as involving the
melding of law, religion, and politics, as well as the blurred conceptual boundaries between institutions,
rules, values, and perceptions. I would also argue that this period represented an important transition in this
regard, which had implications for the forging of social boundaries. This period of uncertainty had some
unusual implications for gender boundaries (a point I will return to shortly in reference to the ‘deputy
wife’).
governed (see Foucault 1979); the economization of punishment reserved for non-resisters. As such, the Body of Liberties functioned more as a set of management principles than as a declaration of rights.

The law that resulted was inherently slippery: rigid in structure, but fluid in how it was applied, what it was applied to, and what justifications were employed in its application. This produced uneven consequences for those bound by law. Not only were the new laws geared to the ideological concerns of the law makers, these concerns were infused with historically entrenched notions of gender, race, and class privilege. Codification standardized these arrangements, making it possible for formal and informal controls to interact in new and more insidious ways. It is for this reason that we cannot ignore the way that legislative changes interacted with religious belief and popular custom. Social relationships are shaped by a confluence of formal and informal processes and under these conditions local politics, a religious worldview, and patriarchal custom were mutually reinforcing. If as Nelson suggests, the Puritans were attempting to “reconcile liberty with hierarchy through [an] ordered community” (2005:2), the ‘order’ that was produced was far from egalitarian. This effectively governed women under their

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95 On the issue of class in early Massachusetts see Haskins (1960). Haskins provides a good overview of the mutual impact of class ideology and law on the emerging order, if one is able to read through his own racial and class bias. He argues that “birth and blood aided by the laws governing the descent and distribution of property” as well as education and the intermarriage of class equals functioned together as stable determinates of class, mediated by a fluid economic structure that allowed for upward mobility among all but the lower classes (see 1960:94-112). Most importantly he notes that the laws produced did not protect the elite overtly but rather the social positions that their elite status allowed for (1960:99). A similar conclusion can be drawn from his comment regarding the “lowest class”, noting that it was “numerically insignificant” and containing “a few negroes, a few Indian captives…, and a few sentenced to slavery for crimes…”, noting uncritically, that like other servants, they appear to have been “prone to criminality” (1960:101). This suggests that the category of ‘servant’ importantly obscured social and racial distinctions that were disproportionately targeted by law. The same comment can be made about Antinomianism or Quakerism in regard to its more liberal attitude toward gender and women speaking out. Without
husbands as well as the state. The impact that this body of laws had on domestic violence is obscured through slippages that surreptitiously condoned this type of violence while manifestly prohibiting it.

When we approach the new prohibition against wife beating from this perspective it takes on a more questionable tone than is generally acknowledged. Pleck (1987, 1989) is widely cited in the literature for her overview of this law. Framing this legislation in terms of the ‘visibility’ of this kind of violence, she approaches this issue on very different terrain and with very different assumptions. For example, she explains the emergence of ‘concern’ about wife beating as arising primarily from a utopian religious view entailing positive notions of the family. Focusing on the Puritan emphasis on moral reform, she claims: “With this view of the family, combined with advanced humanitarian ideas on the rights of woman and children brought with them from England, the Puritans developed the concept of family violence as a public concern” (Pleck 1989:18). Although she touches on the broader socio-political backdrop (noting inconsistencies), her orientation to this law as prohibitive and negative prevents her from exploring the positive and productive aspects of this law. As Pleck herself notes, “like many reforms that came later… legislative success depended on unusual social and political circumstances that had nothing to do with the prevalence of domestic violence” (1987:22). My own analysis suggests that this dictate may have been more concerned

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96 Correspondingly she explains the disinterest that follows as the waning of these notions coupled with the rising tendency to distinguish between public and private spheres (Pleck 1987, 1989).

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with establishing ‘territory’, circumscribing authority, and prohibiting “excess” than with promoting “humanitarian concern for women” or prohibiting violence against them.

Haskins argues that the tactic of “limiting the power of authority by defining the rights of the individual” was a “characteristically English device” (1960:196). This kind of ‘double speak’ was pervasive throughout the New England colonies, and problematizes any straightforward assumption concerning intentions or effects. And this is where my own position diverges from both Haskins and Pleck.

Throughout his work, Haskins stresses the complexity and contested nature of authority, yet surprisingly, in reference to this law he claims that “[a]lthough suits and presentments arising out of disregard of those rights came before the courts with fair frequency, the mere declaration of the rights of family members, hortatorily announced in the colony laws, appears substantially to have ensured that the wide powers entrusted to the heads of families would not be abused [italics mine]” (1960:196). He appears not to have questioned the fundamental mapping of power that the Body of Liberties stood for. Nor does he provide support for his claim that these “wide powers” were not substantially abused. Does he take the stated rationale for this law at face value, or has he forgotten to connect his own dots? This would be very unlike him, for elsewhere he strongly encourages placing law in a broader frame of reference: “the law of any given society is a

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97 See for example the relationship that is mapped out between the original Charter and the Body of Liberties (Coquillette 1994, Cahn 1989, Haskin 1986). See also Coquillette’s observation on bond-slavery. In the laws and Liberties it dictates that “[i]t is ordered by this court and authoritie therof, that there shall never be any bond-slavery, villenage or captivitie amongst us… unless it be lawful captives, taken in just warrs, and such strangers as willingly sell themselves, or are solde to us” (Lawes and Libertyes in Coquillette 1994:203). Each of these cases involves slippages that are not readily identifiable. Whereas the first facilitates a break from English rule by stating an allegiance to it, the latter establishes the boundaries of bond-slavery through a superficial disavowal. Placing these maneuvers in a broader context, and giving them a more careful reading makes evident why it would be an error to take these claims at face value. It is
compound of past as well as present forces, and in seeking to explain or access its scope and function we must look to received ideals and professional techniques as well as to contemporary pressures and purposes. At the same time, because law molds society, to the extent that obedience thereto is exacted by governmental authority, law is itself a pressure upon social organization and a device for effecting social change…” (Haskins 1957:357-358). Haskins consistently urges us to view law as both a social product and an agent of social control (see 1957:359), so how has he missed the broader implications of this mapping and its links to other historical institutions like patriarchy?

Whereas Pleck has failed to adequately situate this law in the greater socio-political context, Haskins never challenges the patriarchal ordering upon which this law rests. Nor does he acknowledge the contradictory effects it might have on individuals diversely placed, a surprise given his emphasis on the broader political context. As a result, and for very different reasons, both researchers adopt an interpretation that is somewhat blinded by the stated ‘principles’ and ‘ideals’ of the lawmakers.

To acknowledge law for its polyvalent quality- its capacity to serve multiple interests and agendas- and to probe it for its unintended as well as intended effects, allows us to identify new and reconfigured modes of power, and new and reconfigured methods of subordination. To view the seeming coherency of law as an interdependent network of slippages that mask the disjuncture between a law’s stated purpose and the historical collision of interests and affinities that hold it in place, will encourage us to adopt a more skeptical approach to law, and to ask different questions about its possible to make this same connection between the 1641 law against husbands’ beating and whipping their wives.
relationship to the status of women (diversely located). Law is politically important not for the liberties it ‘grants’ or ‘denies’ all women, but for the boundaries of negotiation that it makes possible (or constrains) in particular women’s lives.

2.2 Boundary Setting: Punishment

It was in this way that order was established and maintained through a legal apparatus that modified the English system to suit the colonial context (Foster 1984; Haskins 1957, 1986). While the form and procedures shifted over time to accommodate New World concerns, over-all it reflected the tensions and compromises of the interest groups involved and the perceived imperatives of the new setting (see Cahn 1989; Haskins 1957; Warden 1984). Previous to the revocation of their charter in 1684, Massachusetts legal institutions underwent numerous adjustments and adaptations in an effort to ease existing tensions and to secure peaceful conformity. These political concerns coupled with the Puritan worldview to produce a confluence of anomalies, ambiguities, and contradictions between the expressed code, and actual practices in the legal arena and in social life. What presents to us today as bold inconsistencies, appears to have made practical, political, and/or religious sense to those involved.

Punishment and order were inextricably linked through the above model of authority, as were reason and morality within the Puritan worldview. In keeping with the principles of a ‘disciplined’ society punishment would be lean and efficient with all

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98 Here we can see that ‘interest groups’ are never merely groups with interests, but are instead those groups with enough power to have their interests taken seriously.
attempts at a more lenient ‘correction’ attempted, for conformity to order was the ultimate goal. Toward this end admonishment was ritualistic, aimed at securing a confession and a public statement of wrong-doing (Cahn 1989; Schweber 1998). Remittance was believed to serve a reintegrative function in line with the biblical dictate to “go and sin no more”. It also sent a broader message that submission was a great deal less painful than the repercussions of obstinacy.

As ritual displays of authority, these admonitions and prescribed apologies served a broader educative function. Much like religious confession, it called into play a mode of power that was economical in its application and insidious in its form (see Foucault 1979). When couples were brought into the courts for ‘disorderly conduct’ (fighting) the various actors were expected to respond in a prescribed way. Each person was expected to confess his/her wrong-doing (the wife for not being more submissive, the husband for not being a better governor) and they were then expected to publicly apologize to the community for the disruption that they had caused (Schweber 1998). This apology also served as a promise not to repeat the problematic behavior. If their apology appeared hollow or lacked the requisite deference, a bond was required and/or punishment followed. If all went well, they might expect to be admonished and sent home to work matters out. When this occurred the responsibility was placed squarely on the wife to submit to the husband’s authority (see Koehler 1980; Konig 1979; McDonald 1986). Failure to submit would be viewed as obstinate. In this way, admonishment (reproach) remittance (release) and mitigation, could excuse certain crimes and individuals
(Schweber 1998:380). While admonition and confession served an educative function, remittance and mitigation modeled an economical justice\textsuperscript{100}. When mitigation proved to be difficult or impossible, punishment would be, when necessary, tailored to fit the crime (Cahn 1989: 113). The key seems to have been: reproof for a wise man stripes for a foole (Schweber 1998: 377). Mitigation and harshness were the “twin pillars of justice” (Perkins cited in Cahn 1989:127\textsuperscript{101}). As one well known Puritan minister explained, “[t]hough mitigation be as necessary as extremity, and often more, yet because of the ill consciences of most men and the readiness of men to offend, [it is thought]…fitter to express the extremity in plain terms; thereby to keep ill men within the compass of obedience, and closely leave the mitigation to the magistrates” (Ibid.). Or as a former Governor explained in no uncertain terms, “[o]ur desire is to use leniency all that can be, but in cases of necessitie… correcon is ordained by the ffooles back…” (Endicott cited in Cahn 1989:113)\textsuperscript{102}. Given that ‘ffooles’ had proven themselves to be beyond the reach of reason (and therefore God), to be ‘obstinate’ (a “ffoole”) was a sign of willful disobedience to a higher authority. Those individuals who obstinately challenged authority, in church, court, or family, received the harshest sanctions (Cahn 1989; Schweber 1998). In this way, punishment that may have appeared arbitrary in its target, was exacting in its effect\textsuperscript{103}. 

\textsuperscript{100}This was an efficient means to deal with crime given that few communities were set up to house offenders. Offenders were usually housed locally as servants. Most towns lacked a jail, and even those that did could not house men or women in the winter. This may also explain the utility of banishment and exile. 

\textsuperscript{101}Perkins was a well-known and respected English Puritan minister of this time period. 

\textsuperscript{102}Whereas anyone could sin through error, the obstinate individual was not amenable to correction. Whereas admonition was reserved for the former, corporal punishment was the choice for the latter. 

\textsuperscript{103}For example in 1631 Phillip Ratliffe was whipped, fined forty pounds and had his ears cut off for uttering malicious and scandalous speeches against the government and the church. In 1640 James Luxford
Status and gender affected the kinds of crimes people were more likely to be charged with as well as the ‘corrections’ that the court might rely on (Hemphill 1982; Schweber 1998). Restitution or remittance was an option more often offered “gentlemen”, depending on the offense, for it was ordered that “no gentleman should be subjected to the humiliation of public whipping” (Schweber 1998:381)\textsuperscript{104}. This show of lenience could shift sharply if one were from the lower strata, Indian, or slave (ibid.). While the patterning of ‘justice’ was complex when it came to gender, race, and class (Schweber 1998), over all it is fair to say that patterns were discernable, and that they mapped social territory in ways that reveal much about the order itself\textsuperscript{105}.

Schweber (1998) found that in the early years the severity of punishment assigned to particular crimes was more strongly associated with its threat to the political order than to the religious order. This was so even though the rationale given was framed in terms of communitarian ideals and moral principles. This mapping of moral meaning onto what was in effect political terrain was nothing short of transmutation. The most striking aspect of these maneuvers were their ability to obscure their own mechanisms (and here we are reminded of Foucault’s work on power). The significance of these maneuvers becomes increasingly obvious when we consider the Puritan’s tendency toward over-signification and their reliance on typology in assessing danger. My point is that the legal apparatus was bound to the whipping post “till the lecture from the bell”, and after to have his ears cut off and to be banished for losing much of the Governors estate to poor investments (cited in Cahn 1989:123, footnote 94). The message is clear: authority is not to be challenged.

\textsuperscript{104} ‘Gentlemen’ did not always get off easy. Crimes involving speech content were often punished more harshly for those in authority, perhaps because they had more influence in the community (ibid.). The courts got around this with one obstinate ‘gentleman’ by removing the title of ‘Mister’ from his name.

\textsuperscript{105} For example Schweber reports that crimes such as violence, sexual misconduct, and household offenses were disproportionately populated by the lower classes, and within these categories, race and gender played a role in the penalties assigned (1998:381).
utilized these slippages not only through the ‘crimes’ named, or the ‘criminals’ separated out, but through the punishments, rationales, admonitions, and prescribed apologies that it ritualistically relied on.

While public displays of punishment operated as a ‘spiritual’ corrective, aimed at deterring the public as well as the individual offender, on a practical level it demonstrated the boundaries of acceptable behavior within a community that was only partially literate. This effort to ‘educate’ the public through demonstration was consistent with the Puritan mission and is evidenced by the degree to which the community was invited into the courts as observers and witnesses. While predestination beliefs may have ruled out the possibility of rehabilitation, it did not preclude a civil conformity, for while sainthood could not be ‘achieved’ through human action or will, compliance could be.

In this way, the ritualization of punishment merged with the rationalization of law to produce particularly oppressive conditions for those ‘most governed’. What changed gradually across time is that these ‘rituals’ of correction took on a more systematized and dispassionate tone as the community became larger and the spiritual ‘mission’ paled. Increasingly educative displays were replaced by rule books that outlined in a more precise and linear fashion what lay beyond the bounds of acceptable behavior. Toward this end, the *Body of Liberties* had been only a fore-runner for what would come to fruition in the *Lawes and Liberties*.

Puritan preoccupation with ‘disorder’ ran as a thread throughout the discourse of the day (Kamensky 1999). Irreducible to any single source of tension or uncertainty, one might argue that this preoccupation united very different agendas and concerns under the same sign. This was particularly true for the time period covering their arrival in
Massachusetts (at which time the original charter took effect) to the 1680’s, when a new system of government was imposed. Many have linked this preoccupation to 1) the nature of Puritan predestination beliefs and insecurity about their religious ‘mission’ (see Miller 1993); 2) their recent history as political dissenters, and concerns about the abuse of authority (see Foster 1984); 3) the harshness of the environment and the insecurities that the ‘wilderness’ evoked (see Merchant 1989); 4) fear of the ‘savage’/other, specifically the symbolic significance this ‘other’ was granted (see Kamensky 1999; Kibbey 1986; Merchant 1989); 5) cultural displacement and the perceived breakdown of moral conduct and established norms (see Haskins 1960); and last but not least, 6) a social and economic reorganization that threatened to untether status from its traditional roots (Karlsen 1987). According to Nelson (2005:185) very disparate interests and concerns converged to take law in a very different direction than the original magistrates had originally envisioned.

Boundary disputes plagued the local communities. Conflicts over fencing problems filled the local courts (Konig 1979), just as the maintenance of sexual boundaries preoccupied the church and local communities (Parkes 1932; Karlsen 1986; Koehler 1980). This latter problem was exacerbated by the practical ease with which men were abandoning their wives and families (Weisberg 1975), and the economic strains this imposed on the community (Abramovitz 1989). Class anxieties were played out over dress codes (Demos 1982:22; Karlson 1987; Konig 1979; Ulrich 1991)\(^{106}\) and church

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\(^{106}\) For example in 1639 the General Court became overloaded with community member’s complaints about their neighbor’s excesses of dress (Konig 1979:31). Excess of dress not only separated “the proud from the virtuous” it also distinguished “better sort from the commonality” (Ulrich 1991:82). Clothing signaled one’s station, and so it was therefore viewed as insubordinate to dress beyond one’s assigned ‘place’ (e.g. one could be fined for wearing a scarf if one was not among the well-to-do*). Most importantly, it lacked humility, because knowing one’s place and submitting to it was central to the ideology of peaceful compliance, and was viewed as a sign of the elect*. Superficial adornment, like the law itself should...
seating arrangements (Dinken 1970), and women were becoming all too uppity as the Hutchinson crisis and other incidents had made evident (Barker-Benfield 1972; Kamensky 1999; Karlsen 1987; Koehler 1974). Just as insurrection threatened to erupt from within, Indian/outsiders threatened to breach boundaries from without (see Heyrman 1984; Kibbey 1986)\textsuperscript{107}… and yet all of the above ‘threats’ had a common locus of concern in the maintenance of boundaries; boundaries that were simultaneously geographic and social, material and symbolic, gendered and political.

It is fair to say then that obsession with boundaries marked this Puritan sect as a culture in transition, however the tendency to interpret these tensions as a symbolic battle was a distinctive feature of Puritan logic and religious beliefs (see Kibbey 1986; Roberts-Miller 1999). On this level, all of the above threats merely prefigured the spiritual doom that the community faced if the mission failed (see Miller 1993\textsuperscript{108}). And here again we see a rich source of slippages that culminated in a tendency to view dissent in one realm (i.e. civil, ecclesiastical, or domestic) as a potential threat to another, making it easier to justify harsh sanctions for seemingly menial breaches (see Schweber 1998). It was the authority to enforce compliance coupled with the capacity to ‘fix’ boundaries that rendered legal remedies best suited to deal with a multitude of perceived threats, for the outcome of these battles had to end in conformity to the Rule. And this is what gave legal communicate the authority of the bearer, and all excess beyond what was needed to communicate this authority was discouraged.

\textsuperscript{107} The ‘Indian’ not only threatened physical harm, but also spiritual disorder and rational chaos (see Kamensky 1999; Kibby 1986; Roberts-Miller 1999).

\textsuperscript{108} Because the community was judged as an organic whole, disorder could bring God’s wrath upon the entire community, punishing regenerates and reprobates alike (Heyrman 1984; Miller 1993). Only through one’s relationship with God was justice assured for the elect…and even they had to defer gratification to the Hereafter. This meant that natural events were often interpreted as signs of God’s favor or disapproval (see Merchant 1989).
remedies an appeal that ecclesiastical remedies lacked\textsuperscript{109}, for as the community became larger and more heterogeneous, congregational discipline failed to have the desired effect (Miller 1993; Konig 1979). It was in this way that increased codification and harsher penalties became the answer to a host of diverse social problems\textsuperscript{110}.

And here we can see why the magistrates would not have been able to enforce compliance without the original charter and the Royal clout that stood behind it. For what was required was backing from a regulatory body powerful enough to hold in check a potentially ‘dangerous’ servant underclass, and a rather fractured array of political dissenters and rabble rousers (see Kamensky 1999; Konig 1979). The authority that this drew from had to be unambiguously legitimate (or at least secure) if peaceful compliance was to be achieved. This meant that there had to be clear justifications for the sanctions administered that were 1) easily understood and readily accessible, and 2) viewed as just within a community that considered itself as both reasonable and good. Laws that were in keeping with biblical principles and established custom fit this bill. And here again we see that the need to maintain conservative ties to established custom produced a practical entanglement between the church and the legal apparatus that when combined with fears over violence and disorder exacerbated a pervasive intolerance for dissent and/or

\textsuperscript{109} Since the church had no formal authority beyond excommunication or censure it could not ultimately force compliance (Demos 1970; Konig 1979; Morgan 1966). Not only were church sanctions insufficient in dealing with obstinate trouble makers, it had a weakened impact on non-members (Konig 1979). Although the church was a powerful force in the community through its pervasive influence on community members, its sphere of authority was restricted to interpreting Biblical principles, arbitrating civil disputes, correcting moral ‘error’, and augmenting the efficacy of law by attesting to the moral character of litigants and defendants.

\textsuperscript{110} This was as true in the ecclesiastical as in the secular realm. See Foster (1984:17) on the ‘covenant renewals’. Devised to minimize divisions and contestation, these documents expanded and codified informal arrangements and rules. When possible dissenters would be assimilated, when not they would be exiled, but they were not to be tolerated.
difference\textsuperscript{111}. This was reinforced by a model of justification that resulted in a rejection of any but the most benign deviations from established norms.

Consequentially, dissent (overt challenge) and ‘obstinacy’ (repeated non-compliance) were dealt with harshly in and out of court (see Hall 1998; Konig 1979). A group that had once stood in opposition to governmental abuses was now a rich source of them. Yet if my analysis is correct, why is the New England settlement so often cited as the seed bed of democracy and/or, as Pleck (1987), and Nelson (2005) both suggest, a site of humanitarian ‘concern’? Why have historians been so divided on this issue?

These questions cannot be answered without acknowledging the significance of history as an \textit{interested} endeavor. History is and should be viewed as a politically charged project, one that cannot ignore its own entanglement with power. Visions of the present that hearken back onto an idealized past can create an artful re-visioning that obscures contradictions in the here and now. This underlines the importance of a more critical analysis of the past and present, one that is skeptical of its own assumptions. Hall (1998) cautions against the pitfalls of assumption when he warns against a static notion of liberty that would have us conflating past conceptualizations with current ideals. While I believe he assumes more than he should about “private visions of the good”, he makes evident how essential it is to interrogate our terms.

New England Puritans, like so many immigrants to the New World who would follow, crossed the North Atlantic in pursuit of liberty. But the liberty they sought was instrumental rather than substantive, liberty for something quite specific rather than simply liberty for various individuals to pursue private visions of the good. New England Puritans sought liberty to create a holy commonwealth, and those who partook of their vision could be

\textsuperscript{111} Even when the churches authority began to slip, its ideology remained useful.
partakers of the same liberty. But the only freedom guaranteed
by the Puritans to religious dissenters was, as Nathanial Ward
put it succinctly, the freedom “to keep away from us”\(^{112}\) (Ward

The above quote warns against a singular reading of liberty, devoid of social
context. Roberts-Miller argues that the monological reasoning that Puritans relied on
made it impossible for them to see difference as anything other than a threat. If peaceful
compliance could not be secured, force was justified.

It was toward this end that legal remedies were increasingly relied on as the
population became larger and more heterogeneous, and informal methods failed to exert
the desired control (Konig 1979; Parkes 1932). It was also in this way that the
relationship between the Puritans and their government became further codified in the
*Book of the General Lawes and Libertyes Concerning the Inhabitants of Massachusetts*
(1648).

Commonly referred to as the *Lawes and Liberties*, this latter document replaced
the former *Body of Liberties* (which was from the start fashioned as an interim
measure)\(^{113}\). It is clear from its introduction that what is framed in the language of rights
is simultaneously intended to establish authority.

That no man’s life shall be taken away; no mans honour or good
name shall be stayned; no mans person shal be arrested,
restrained, bannished, dismembered, nor any wayes punished; no
man shal be deprived of his wife or children; no mans goods or
estate shall be taken away from him; or in any ways indamaged
under colour of law or Countenance of Authoritie unless it be by

\(^{112}\) This quote by Ward is particularly revealing. Ward was a founding member of the community, an
influential magistrate, and the author of the *Body of Liberties*. Most importantly these sentiments were
widespread (see Konig 1979).

\(^{113}\) For more on the relationship between *Body of Liberties* and the *Laws and Liberties* see Cahn (1989),
Coquillette (1994) and Haskins (1986).
the virtue or equity of some express Law of the countrie
warrenting the same established by a General Court &
sufficiently published; or in the case of a defect of a law in any
particular case by the word of God (Italics mine).
(opening statement to the Lawes and Liberties in Coquillette

The new decree was explicitly concerned with the “Countenance of Authoritie”,
‘countenance’ representing either justice or tyranny depending on whether authority was
legitimate (sanctioned by God and state) and/or appropriately exercised according to law
and/or religious custom (see Coquillette [1994]). The possibility of tyranny erupting from
within the community is addressed through the tightened limits placed on authority,
coupled with the increased importance assigned to the codification of crimes,
standardization of punishments, and a systematized recording of court proceedings (see
Schweber 1998). Since secular law was modeled on God’s law, it would have to be
exacting and unerring. This was a path fraught with difficulty for it “would be as
wrong to forbid what God allowed as it would be to allow what He forbade” (Morgan
1958:72). It was through a confluence of practical and ideological concerns that a
rigid response replaced a more flexible one.

114 Not everyone in the community agreed that the above method was the way to proceed. Winthrop (the 1st
governor) argued that maintaining discretionary power was more in keeping with God’s methods. God
delegated authority and the authorities that were delegated were therefore equipped to judge and set
punishments (see Miller 1993; Morgan 1958). Although freemanship had been extended, power was to
remain in the hands of a ‘chosen’ few.

115 For an excellent discussion of the problems related to establishing evidence of truth under these
principles, including an account of the even more problematic shifts in the last quarter of the century see
Hoffer (1997) The Salem Witchcraft Trials: A Legal History. Hoffer argues that under these early standards
proof of an offense was to be “convincing and sufficient”, but the lack of a rigorous method for
establishing certainty left much up to speculation, gossip, assumption, and suspicion.

116 See for example Coquillette’s (1994) observations on bond-slavery. In the Laws and Liberties it dictates
that “[i]t is ordered by this court and authoritie therof, that there shall never be any bond-slavery, villenage
or captivitie amongst us… unless it be lawful captives, taken in just warrs, and such strangers as willingly
sell themselves, or are solde to us” (Laws and Liberties in Coquillette 1994:203) (it is noteworthy that the
term ‘stranger’ refers to those community members that are not eligible to participate in church government
because they were not sanctified in the eyes of the church). My point is that all Puritan law was believed to
If the *Body of Liberties* was a set of management principles, the *Laws and Liberties* was an administrative technology designed for a more systematic and precise distribution of justice. Composed in the form of a handbook, topics were arranged in alphabetical order for quick reference (Cahn 1989:131). This facilitated the application of law according to a readily identified standard, and in doing so, satisfied very disparate agendas. It 1) curbed magistreal discretion through increased codification and standardized punishments; 2) facilitated the expansion of the justice system by providing a practical guide for inexperienced justices; 3) satisfied a demand for harsher punishments; 4) provided the laity with an easily accessible guide to their rights (while surreptitiously educating them of their legal obligations); 5) further formalized the function of the family head; 6) bolstered the authority of the courts, and 7) transformed community members into legal subjects now tied to the dictates of a written code.

be ‘rational’ and therefore good and right. The twin concepts of ‘error’ and ‘disruption’ helped to reconcile several contradictions within Puritan law. God’s law was to take precedent over civil law within the community. On the surface of things this allowed for dissent and open contest, a right Puritans had been denied in England. At the same time there is compelling evidence that the Puritans suppressed dissent, reframing it as ‘disruption’. Scheber’s (1998) empirical examination of punishment and legal practice strongly suggests that this kind of ‘disruption’ was a main focus of concern in the meting out of punishment and negative sanctions. Admission of the defendants ‘error’ (as evidenced through public displays of repentance) helped to mediate responsibility for wrong doing. This diminished culpability when ‘error’ was involved served the dual function of restoring the offender to the community, and also legitimating the law itself. On a practical and ideological level, this served to distinguish their own recent history of ‘dissent’ from the ‘disruptions’ they prosecuted. This importantly shielded them from having to acknowledge the legitimacy of alternative perspectives (see Roberts-Miller 1999 on monological reasoning).

These two documents were structured very differently from one another, a fact that is perhaps more significant than first appears. The *Body of liberties* was structured more in accordance with Ramist logic, its structure closely corresponding to the hierarchical relations that it established. The *Lawes and Liberties* were designed for efficiency and application. The emphasis here was more on a systematic method that was increasingly divorced from any material correspondence. This efficient and easily accessible code was in and of itself a structural shift in logic that corresponded to new legitimating principles. While it is beyond the scope of this paper to explore this more thoroughly, suffice it to say that it was a less contentious method for determining order within an increasingly heterogeneous population that may have felt more comfortable with secular ‘rules’ than with the informal processes of a monopoly faith. While this may not seem immediately relevant to my topic, these tensions played out in the way that laws were interpreted and enforced across time. Because of this a specific law can have a particular effect at one point in time, and a very different one at the next.
Given the heterogeneity of the population, the harshness of the environment, and the recent cultural displacement of an immigrant community, maintaining order wasn’t easy (Kamensky 1999; Konig 1979). There was a fair degree of conflict and community discord as evidenced by the court records (Konig 1979; Parkes 1932; Schweber 1998). Litigation became an acceptable way to work out grievances and to arrive at a settlement that was, if not amenable to both parties, then at least binding.

Although not all immigrants to the new world were Puritans, and not all Puritans were orthodox, Puritan standards of conduct and morality prevailed (Hall 1984; Konig 1979; Morgan 1958; Parkes 1932). Cultural hegemony was accompanied by political hegemony, with restricted community status granted to ‘outsiders’ or ‘strangers’ as they were commonly called (see Konig 1979). Before 1684, the franchise was dependent on church membership, and new membership required a letter of ‘dismission’ attesting to the character of the new resident (see above). While this practice operated as an effective control on town residency in the early years of settlement it failed miserably as towns grew, church attendance waned, and migration became more difficult to control. The desire to control community membership was strong as the above quote by Ward illustrates. It was believed that only then would the towns become “strong and of a homogeneous spirit and people, as free from dangerous persons as we may be” (Winthrop [1635] cited in Konig 1979:30).

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118 Cahn (1989:121) notes that in the early years the General Court attempted to restrict the immigration of ‘strangers’, however this proved impossible to control as servants gained their freedom and newcomers took up residence in the established communities.

119 Winthrop argued that in order to avoid the fate of Ipswich town leaders, “awakened…by the confluence of many ill and doubtfull persons”… other towns would have to be “carefull on whome they bestowe lotts” (Winthrop [1635] cited in Konig 1979:30). This sentiment was in part tied to issues of maintenance. Given the Christian notion of charity, residents of the town were obligated to help their neighbors in times of
A corresponding hostility had also developed among those who can aptly be described as ‘on the margins’. In many cases this quite literally involved those who lived on the ‘boundary’ of the community, for as Konig notes, there was a tendency for ‘outsiders’ to settle on the outskirts of town (1979:30). In some cases communities attempted to bring these ‘moral stragglers’ under the town’s watchful eye by preventing newcomers from building more than half of a mile from the meetinghouse. Although this practice was abandoned as towns grew, it illustrates how town settlement patterns (and language itself) ends up mirroring social relations.

This problem of maintaining hegemonic control became even more problematic as immigration increased and the servant underclass began to earn their freedom (ibid.). It also became more of a threat as the Quaker community grew and challenged religious orthodoxy in the 1660’s and 1670’s (see Heyrman 1984). Heyrman (1984) illustrates the tensions that were created by desiring to keep one’s enemies close, and wanting them as far away as possible. Reexamining the connections between religious intolerance, and increased criminal accusations, she argues that geographic propinquity, as well as family ties to Quakers made one vulnerable to legal harassment. Not only did social, familial, and geographic proximity to dissidents place one at risk for religious contagion, it was also politically dangerous as the witchcraft trials illustrate (Karlsen 1987).

need. To get around this, a custom of ‘warning out’ developed, backed by legal clout. The poor were thus discouraged from settling in particular areas (warned out) before they could technically become residents and thus ‘eligible’ for such charity (see Abramovitz 1989; Konig 1979). This leaves us with a better idea of the functional nature of these dictates and technicalities, and also why law became the perfect instrument to both refine and augment them.
While organized rebellion was rare, resistance and protest were not (Karlsen 1987; Morgan 1966). One of these problem groups was the very large population of servants, some of whom were no longer bound by contract and had since taken up residency next to their previous ‘masters’. Resentment over class and race fueled the comment by Edward Johnson in 1654, who exclaimed “many hundreds of laboring men who had not enough to bring them over, [were] now worth scores, and some hundreds of pounds” (cited in Morgan 1966:132). Parke estimated that in the early years the proportion of the population that fell into the broad category of ‘servant’ reached close to twenty percent (Parkes 1932:435). Given the harsh conditions of their servitude and the degree of discretion that the household head was granted in meeting out discipline, despite blatant political exclusion, the above hegemony did not go unchallenged (see Heyrman 1984; Parkes 1932: 433-434). At a town meeting in Fairfield [1653] a previous bondsman argued that it was time he and others like him look after their own interests, for they were not politically represented: “the court sent to the towne for deputies, but they were the churches deputies, and who must choose them[.]: the freemen; then saith hee, wee are bondsmen, and so will our children bee, therefore it is time for us to look to it” (cited in Parkes 1932: 433-434). Although this ex-bondsman was granted the opportunity to speak up in this town meeting, in the end he was fined, ‘bound over’, the penalty mitigated only after he publicly confessed to wrong-doing (ibid:434).

One could become a servant by various means. This could occur through prearranged indenture, through debt, as a penalty inflicted by the courts, in exchange for apprenticeship or training, or in rare cases one could be sold into servitude (see Morgan 1966: 109-132). Being a servant was both an identity and a legal category under the Body of Liberties; a category that was further refined under the Lawes and Liberties. As a result there was no clear distinction made between the different kinds of servants other than those terms laid out in the contract itself. Under the 1648 dictate the servant was not allowed to “sell or truck any commoditie whatsoever without license from their master…under fine, or corporal punishment…[they] shall work the whole day allowing convenient time for food or rest…[and] when any servant shall run from their masters…such persons [will be pursued] and [brought] back by force of Arms (Morgan 113-114). Their sexuality was tightly controlled in most cases under threat of fornication charges (most male servants did not have the means to marry, and female servants required the permission of their ‘masters’). As with the category ‘wife’, the category of servant had religious connotations that extended beyond the duties performed. A servant was to be submissive to his/her ‘master’ who was given this authority by God to "further[ ] their Servants in a blameless behavior; and in restraining them from sin” (Wadsworth cited in Ibid.115). In this way a ‘masters’ authority was both spiritually and legally legitimated, while simultaneously restricted within established bounds. While a ‘master’ was not allowed to use cruel methods when lesser force would avail, and when a servant was maimed or disfigured through such a ‘correction’ he was to be set free (Morgan 1966:116). On the other hand, a servant’s indenture could be extended if he or she were insubordinate or ran away. In one case a man’s indenture was extended due to “his wife’s running awaye and charges his master was put to thereby” (Essex Court Records in Morgan 1966:128, footnote 120).
this relationship was often strained, marked by resistance and reprisal (Konig 1979; Morgan 1966). Fear of reprisal from servants was one of the factors that fueled the demand for harsher sanctions for those who challenged or slandered authority (Konig 1979). When faced with the threat of servant ‘increase’, fears were exacerbated and a more clear delineation of boundaries was demanded.

2.3 Summery

Distinguishing itself as a religious community founded on moral principles and Godly order, 17th century Massachusetts law was intended to reflect the limits placed on worldly power, and would in this way reflect divine will (Haskins 1986; Cooper 1996). Just as man was subject to the will of God, he was also subject to the rule of law within a puritan worldview that punished both heresy and treason in the same courtroom.

Religious imagery of a sinful Adam coupled with the memory of Royal abuses to reconcile politics to religion in a not so seamless alliance between civil legal code and religious precepts (and here we see the source of many slippages). I am in no way attempting to reduce the significance of the tensions, negotiations, and debates that took

69). This latter case indicates that a man was still responsible for keeping his wife in check even if they were both subordinate to another.

122 Threats of witchcraft were often used as a form of resistance or counter-control to the harsh treatment of servants by their ‘masters’. Konig argues that it was effective because it was feared and taken seriously (1979:148-150), however his own class bias is revealed in the explanations he gives for such behavior. Morgan (1966) is more politically astute in recognizing that these threats and other forms of ‘mischief’ were actually an exercise of power that could be an effective check on their ‘masters’ ill treatment precisely because servants were relied on for essential services, which gave them a certain degree of leverage. A servant could cause a great deal of problems for the ‘master’ if they were angry enough.

123 ‘Increase’ appears to have a double meaning in Puritan rhetoric. Associated with reproduction (multiplication and population), it was also associated with production (success and prosperity). Success in one realm was understood to signal success the other.
place within and between church government, the magistrates, freemen, or community members in and around this codification process (see Cahn 1989; Cooper 1996; Haskins 1986; Nelson 2005). I wish only to stress that the interests of these groups often bled into one another through slippages that effectively reconciled political skepticism with religious idealism. All placed a high premium on order, most favored strong sanctions, and all defined disruption as a breach of the hierarchy upon which ‘order’ itself was defined.

This ‘ordering’ was accomplished in both church and civil government (Cahn 1989; Cooper 1996; Coquillette 1994; Nelson 2005) by carefully balancing the authority of the ‘governors’ with the liberties of the governed, all within the bounds of a strictly defined hierarchy that legitimated this structure as it simultaneously delimited the authority of those within it. The aforementioned ‘liberties’ cannot be understood apart from this broader project. When the law against wife beating is framed in this way it can be viewed as having a very different political intent than the one that presents at face value. What has at times been interpreted as a “humanitarian concern” for women can alternatively be read as the structural mapping of the hierarchy itself, the prohibition against wife beating serving to reiterate a husband’s authority over his wife while simultaneously placing him under the authority of church and state. The social geography that resulted was far from liberating. What was produced was a complex set of management principles delegating authority and micro-managing social life. The network of surveillance that was set in place left even the governors effectively governed.

124 “All power that is on earth [must] be limited… church power or other…They will be like a tempest if they be not limited” (cited from John Cotton’s church sermon [1639] in Cooper 1996).
By placing women under the authority of their husbands, and husbands under the authority of the state, the authority of the husband was affirmed through law. By augmenting the authority of the state through acknowledging the authority of its male citizens, the authority of the state was confirmed and new standards of justification applied. By limiting the authority of the husband under the authority of the state, the supremacy of the State was reinforced. Through this complicated process the appropriate relationship of the citizen to the new state was established. As above so below. In the Puritan community all social relations were to mirror Divine law, and all social posturing was to reflect the deference to authority that these laws established…and this is of course where women came in.

The pious and deferential woman was not only a model for the submission necessary for citizenship (although she was denied it), she was also a model for the faithful Christian’s relationship to the Divine (see Cheney 2002; Porterfield 1992). It was in this way that her flesh-and-blood value would pale in comparison to her importance as symbol. And of course all of this makes more sense if we abandon the notion that flesh-and-blood women were ever really the target of legal concern. When we place the

\[125\] I am in no way suggesting that this was a conspiracy or even that there was a cohesive state to conspire, I am merely pointing out that the Puritans were aware that ungoverned men could be dangerous, even if they were themselves governors. And here it is important to keep in mind that the above move established a civil government distinctly different than that of Royal rule. The questions to be addressed are who were the law makers protecting, and what were they protecting against? And perhaps most importantly, what new mechanisms of power did this establish?

\[126\] Winthrop used this comparison explicitly (see Ulrich 2001:15).

\[127\] This is perhaps most transparent in the eulogies and epitaphs that were intended to represent a wife’s life followed her death. The epitaph’s that Ulrich (1991) notes were not only longer but also more flattering (by Puritan standards) than the men’s. There is a distinct focus on moral worthiness and humility. Cheney (2002) suggests that the only way that real wives could sustain such piety was to die. This is confirmed in accounts of the way that real women were spoken of in the community.
above law prohibiting wife assault in this broader context a proliferation of new insights emerge…

While much of the research I have examined thus far employs some combinations of the above explanations for why ‘order’ was a central preoccupation within this community, very few have taken seriously the significance of ‘the wife’ as a symbol of that order/disorder, the practical role that she played in reproducing it through her day-to-day activities (see Ulrich 1991), and the significance of the female reproductive process as a powerful metaphor for the social and physical transformations necessary to transform a ‘wilderness’ (‘a savage nature’- a ‘monstrous birth’) into a Godly order (a ‘righteous community of saints’). In 17th century Massachusetts, these female ‘functions’ were neatly aligned through a complex system of regulatory controls and discursive slippages. The ways in which women were caught up in and participated in these ‘civilizing’ rituals was very much dependent on their social position, their race, and the degree to which they were able and/or willing to conform128. Kibbey argues that just as the ‘goodwife’ was linked through allegory, simile, and metaphor to piety and submission (God’s grace), violence (the Perquot war) and atrocity (monstrous births) were linked to race, sexuality, and reproduction, with explicit references made to the female genital form (1986:108-11). These factors combined to structure the roles women were assigned, and had serious implications for those who refused them.

Here it is perhaps necessary to make absolutely clear that in no way am I attempting to reduce ‘women’ to their reproductive functions or social roles. I am rather

128 For more on the significance this had on nature and the ‘uncivilized other’ see Kibby (1986:108-11); Merchant (1989). Also see below.
instead arguing that flesh and blood women, as both an instrument and effect of these processes, were rendered *effectively* invisible through a displacement that rendered them more symbol than reality. Because this symbol all too often opposed their interests in practice, flesh and blood women were not only subordinate to it, they were subordinated by it. Since their subjectivity was fixed through a complex of practical imperatives, discursive administrations, and formal controls that upheld this value while denying them, what was accomplished was the amplification of the symbol over and above the referent. This is an important departure from common interpretations of this process, and problematizes the whole issue of visibility. What is sometimes read as having positive consequences, the amplification of women’s status through the amplification of woman as symbol\footnote{Auerbach’s (1982) *Woman and the Demon* provides a good example of this. In a feminist rereading of Victorian iconography she attempts to dissuade us from viewing what have often been read as passive or negative female representations or types as simply subjugating. Using numerous examples taken from literature and art she importantly notes the instability of these representations, and the various ways they have been used to subvert and contest Victorian notions of gender and power. While her work important challenges a reductionist reading of signification and its translation into iconography, examining this topic almost exclusively through the lens of art and literature, colors the conclusions that are drawn. While it is critically important for feminists to draw attention to the ways in which such representations were subverted or resisted, it should in no way detract from the broader context of women’s oppression, for such strategies were often employed by women when subjugation was most profound. While Auerbach begins by arguing that myth should not be uprooted from its historical age, she appears to do just that by first locating history in the realm of cultural production, and then paying undue attention to the tangible impact it had on flesh and blood women diversely placed. As an example she argues: “Once we have reconstructed the Victorian woman and restored to her her demon, I hope we shall find that we have not, after all, stitched together a monster from fragments of bodies, but that we have resurrected a hero who was strong enough to bear the hopes and fears of a centuries worship” (1982:10). While Auerbach is importantly underlining the irony that is involved with such ‘worship’, she inadvertently contributes to it through her own idealization of reversals. While she importantly stresses the tensions that such a reversal involved for those who initiated it, she contributes to its obfuscation through the idealized imagery she herself promotes, and her failure to adequately qualify its limitations.}129, should more accurately be read as subjection, the subjection of women to the symbol to which she must now subordinate herself.
Chapter 3
Logic, Religion, and Signification

I have thus far concentrated on the realm of law itself. Very clearly this is not enough. Law is not simply a code. It gives codes a fixity that they otherwise lack. In order to explain how women’s roles were infused with religious and political meaning, and in turn, what relation this has to law, we need to know more about the complicated logic of Puritan contraries and correspondences, for here lies the genesis of a great deal of slipperiness in the meanings attributed to the goodwife/scold. Humans are both meaning makers and corporeal creatures. Therefore worldviews (and their meanings) have a nasty way of inscribing themselves onto bodies—gendered, racialized, reproductive bodies. The discourse that is produced is thus played out on multiple levels. To ignore this is to ignore the contradictions that this arrangement makes possible. Contradictions have their genesis in social relations and their justification in slippages that mirror these relations and make sense of them. Therefore we need to know more about this sense–making process within Puritan culture.\footnote{This is not to suggest that there was only one reference point in Puritanism, or even that the dominant perspective was homogenous in all ways. Instead I am arguing that within the early Puritan culture of Massachusetts there was a dominant perspective that was not only promoted but in this case enforced. Here I’m attempting to unravel a contradiction that appears not to have seemed like a contradiction to them.}

Within the Massachusetts Bay communities strict gender roles were held in place by informal sanctions, obligations, and conceptual slippages that blurred the line between flesh and blood women and the wife as religious symbol (see Cheney 2002; Roberts-
Miller 1999). What I will refer to here as a ‘double intention’ was discursively accomplished through a kind of double speak that not only reflected Puritan logic and language use, it reflected the orthodox view of the order itself. An epistemology that reduced all difference to dualities coupled with a worldview that read all dualities through a religious lens (i.e. elect/non-elect, sacred/profane, and good/evil) to render even minor contestation dangerous. The practical contradictions that this gave rise to could not be reconciled (as in Catholicism) through spiritual transcendence, but were to be literally ‘worked through’ in what amounted to a righteous performance of the principal or ideal. The suffering that resulted was a sign that one was getting it right.133

A Ramist preoccupation with structure permeated all aspects of Puritan social and religious life. This structuring took the form of hierarchically ordered categories moving from the most complex downward to the most simple (Morgan 1966:22; Roberts-Miller 1999). These same categories could alternatively be described as concentrically ordered, the most simple embodied within the more complex categories above it.

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131 While Cheney deals almost exclusively with the wife as a religious metaphor, I will be extending these insights to the secular realm. Whereas Robert-Miller is more interested in the discursive consequences of Puritan epistemology and ontology, I am more interested in its practical effects. While we are all focused on this “double speak”, I argue that it must be ‘situated’ within a much broader dynamic to be understood. 132 One immediately thinks of Judith Butler’s (1990) work on performity here, although Puritans took this toward a very different end, and gave it very different meaning. 133 See Cheney (2002) on the spiritual suffering of Joanna Drake. As Cheney (2002) makes clear, death provided the ultimate metaphor for this model because there would be no disconcerting evidence to suggest that sainthood had not been achieved. Also notice the tension that existed between a covenant of grace (determined by divine election), and a covenant of works (determined by effort and will). In the New England Puritan’s case, the ability to perform one’s role well was a sign of Grace, not a road to Grace. Although this distinction became blurred at times this error was serious and could cost one their life (see Miller 1993). 134 Peter Ramus was a 16th century Cardinal, philosopher, and mathematician who attempted to establish the basic “units” of social relations through logic and reason in order to identify (and thus promote) the appropriate ordering of these relations in the form of a hierarchical template or structure. His influence on new England Puritan’s is noted in the work of both Miller (1993) and Roberts-Miller (1999).
Symmetry was achieved by the matched pairing of ‘contraries’ (Morgan 1966:22), each forming its own category. The significance attributed to each category was a reflection of its place within the hierarchy. In other words, this structure could be arranged vertically as a list-like outline, or alternatively it could take the form of concentric rings nested one within the other, each boundaried category balanced by the matched pair within it.

If we think back to the *Body of Liberties* we can see that it corresponded very closely to this structure. It began with a general statement of governance, followed by categories that contained a bipartite pair (governor/governed) arranged categorically. Each category or level of governance was concentrically contained within the category before it. Not only was each category governed by the category that preceded it, but each of the two aspects of the bipartite pair was either governing or being governed by the other (e.g. within the category of children’s ‘liberties’, the wife is given authority over the children, but the husband is given authority over her). We can see that this structure is in fact structuring, and that there are no individuals, only relationships, none of which are ‘private’ or autonomous in the way that we understand those terms today. Most importantly this structure was believed to ontologically determine (as opposed to define or prescribe) the ‘relatives’ within it. In this way, it broadly described the state/citizen, the church/regenerate, the husband/wife, the parent/child, the ‘master’/servant, and even the relationship a household was to have toward their livestock. At each level, from the

commitment to the correspondence between thought and practice is reflected in the “Puritan errand”, and in the quest for a truth (logic structure) that corresponded to ‘natural’ (and thus Godly) arrangements.

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ground up, the authority that was established at one level was subsumed within the authority attributed to the next. The social geometry that was established was bound together by structural principles that took the form of codified rules or laws (ecclesiastical, juridical, administrative). Like mathematics, it was hoped that law could provide ever more exacting and precise principles corresponding to God’s law and thus God’s will (Roberts-Miller 1999:50). Puritans viewed their community as a complex and balanced whole…and perhaps more importantly, they believed God would judge it that way (see Miller 1993).

Within this conceptual apparatus, logical ‘relatives’ were thought to be particularly significance. ‘Relatives’ were affirmative contraries related to each other through mutual causation; Morgan refers to them as “opposites of a particular kind” (1966:23), and quotes Richardson [1657], who describes them as “well matched [pairs] striking downright blows” (cited in Ibid). Relatives, unlike ‘adverses’ did not demonstrate a strictly dichotomous logic (e.g hot/cold, virtue/vice), but asserted a relationship that was mutually engendering but not equal (e.g. buyer/seller, husband/wife). They were complimentary in the sense that “whoever perfectly knows the one, knows the other” (ibid.). While this gave logical relatives a “partial agreement”

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135 In some ways this ordering of social relations according to religious dichotomies resembles Taoism in the emphasis that both religions place on gender…but importantly, they diverge in the kind of ‘symetry’ that they are attempting to achieve, in the claims made, and the effects produced.  
136 Ulrich (1991) seems to suggest that role dependency provided the broad outline for this type of ‘relation’. It also provided the rhetoric around which subordination was justified, and democracy condemned, for as Cotton exclaimed “If the people be governors, who shall be governed?” (John Cotton cited in Morgan 1966:25). If as Morgan argues, Ramist logic was “a club to beat the dogs of democracy and prelacy” (Ibid), it also provided the club to beat uppity women, for relatives were never merely ‘well matched’, they were ‘ordered’ according to characteristics that were deeply embedded in tradition. Each had their respective place defined by the placement of the other, and keeping ‘order’ meant keeping it that way.
that adverses lacked (ibid.), it is clear from Richardson’s comment that this relationship
was not without conflicting interests and tensions. Balance (or Ramist symmetry) was
created through their mutual interdependence not through a one to one equivalence. And
here is where things begin to get interesting, if not downright dangerous for women.

As both Morgan (1966) and Roberts-Miller (1999) have made painstakingly clear,
the above logic combined a hierarchical worldview with the notion of God as the cause of
all things to result in a severely restricted notion of power.

If all causes resolve to God, all power to cause anything also lies
with God...Power is an entity of limited quantity that runs in one
direction. That is, all power comes from God and is used by him
on or through beings lower in a hierarchy. In this system, only
two possible positions exist in regard to the exercise and use of
power: one holds it and uses it in order to compel obedience to
one’s will, or one is the object of someone else’s use of power
and obeys that person’s will (Roberts-Miller 1999:29).

Because God is the cause of all things man can be either obedient or disobedient
to God’s will but he cannot determine his own fate. He could not alter his relationship to
God (just as a wife could not alter her relative position to her husband). Within this
framework it was perfectly logical to conclude that humans could not exert power
(Roberts-Smith 1999:29). To suggest otherwise was to commit heresy. Here we can begin
to understand the significance that Puritans placed on authority and also how it
functioned to both legitimate and eventually displace Royal prerogative. And it is at this
point that I depart from Roberts-Miller to suggest that it was the profound slipperiness of
power within this framework that gave it a political utility and productive capacity that is
masked by her analysis, and indeed by the framework itself. Paradoxically, this power
was maintained as much by the instability of signification as by the rigid codes and structured logic required to ‘fix’ it. This paradox is introduced by a structural mapping that posits correspondences between the material and metaphysical world.

The Ramist logic that undergirded all Puritan social and religious institutions had ontological as well as epistemological dimensions. “Everything and every event ha[d] a purpose and that purpose [was] its true cause” (Roberts-Miller 1999: 28). Orthodox Puritans believed that “[r]eason [was] not merely a mental faculty that enable[d] a person to order Being, nor to infer some more or less hidden taxonomy; instead reason [was] being. Reason [was] the static hierarchy of things created by God; logic [was] the art that describes the true relationship of those things because it has the same set of relations within it” (Roberts-Miller 1999:36). Under these conditions, logic was no mere instrument to order social arrangements, it was, according to Morgan, “a copy of reality” (1966:22). ‘Logic’ corresponded to what was ‘real’, and what was ‘real’ was Godly- and therefore orderly and good.

This arrangement was marked by a proliferation of structural correspondences that facilitated what Kibbey has identified as “a commitment to unstable signification” (1986:100), and culminated in what Roberts-Miller has referred to as “an infinite number of signs” (1999:147). The same hermeneutics that was applied to Biblical exegesis was to be applied to all areas of social life. As Kibbey argues, text and reality became interchangeable “as the literal sense of the scripture’s truth verified [] its allegorical representation in the drama of [] experience” (1986:29). This led to an incessant prefiguring that touched all aspects of Puritan culture.
At the level of representation it culminated in metonymic interchange (substitution) and metaphoric appropriation (multiplication) to create a house of mirrors where nothing was as it seemed but was posited as straightforward and ‘literal’ none-the-less. Not only did this result in more than one level of meaning to negotiate, but on a practical level, as Cheney suggests in reference to family, faith, and government, it constructed a “tight rhetoric circle” whereby seemingly disparate realms reflected, and mutually reinforced one another (2002:9). Ironically it also led to a method of religious ‘demonstration’, referred to as ‘plain speaking’¹³⁷, intended to communicate how simple and straightforward this logical structure and preordained reality were.

While this slipperiness was made possible through the positing of structural ‘correspondences’ undergirded by a preordained logic, it was put into play through the use of figurative language that bolstered the interpenetrability between the civil and spiritual realms. In this way, a religious logic, or spiritual worldview was given practical application. Technically this involved a mechanism that has in literary terms been identified as ‘typology’, and what Luxton imaginatively refers to as “literal figures”, or

¹³⁷ Demonstration was distinguished from rhetoric in the certainty that it established, and in the structure it assumed. Whereas rhetoric is designed for persuasion, demonstration was designed for a static worldview that posited a universal Truth that could be known by the elect. It was not intended to convince, but to awaken through recognition or reason. This awakening constituted the conversion experience (see Roberts-Miller 1999:10-43). Demonstration could not effect election, but it could strip away what was unreal (Ibid. 54). Knowledge was submission not acquisition. The knowledge of what was right and “True” could be demonstrated through a particular style of rhetoric that established the appropriate relationship between objects, just as logic established the appropriate relationship between statements, order established the appropriate relationship between bodies, and molecules in the air warned of rain. Truth could only be demonstrated through a command of logic, a rhetorical style that was structurally consonant with it, and by one who had manifest this knowledge through their social comportment (illustrating their knowledge of relatives). In other words, to know Truth (the logical structure of all things worldly and Divine) was to know one’s place in the world. To challenge this placement was to challenge Truth itself. As Roberts-Miller (1999) makes clear, this way of representing reality makes no clear distinction between the kinds of things to be known. All True knowledge was a direct representation of reality and a sign of God’s covenant with the elect.
“allegory that denies it is allegory” (1995:22). Allegories that are typological assert their own temporal logic through a prefiguring that is posited to be more real than the actual objects or events (Luxon 1995). When this occurs, the actual object or event is read as sign, and the object or event prefigured is read as the true origin or referent. In other words, and at the very least, a permeability is facilitated whereby the ‘meaning’ of one bleeds into the other. Numerous signs may prefigure the same phenomenon, and when they do, all are considered to be of the same ‘type’. What is important is that this discursive structuring initiates a reversal whereby the actual phenomenon becomes of less significance or importance than that which it represents or prefigures. Most disturbingly, it can effectively be displaced by it. In the Puritan world this relentless play of meaning was not only artful, it could be deadly serious.

For the orthodox Puritan, “Truth” (like history) was understood as the material manifestation of God’s will. Knowledge was explained by the straight forward correspondence between the material order and the syllogistic logic that God created as a vehicle for man to know it (Roberts-Miller 1999). Because this knowledge manifests in objects through Divine will, it could not be acquired through reasoned argument or persuasion\(^\text{138}\); it could only be acquired through perception and communicated through contact.

Now man not being able to take this wisdom from God, which is most simple, therefore it has pleased the lord to place it in the things… As flowers doe send out a sent, or odor that doth effect our sense of smelling, so every precept of Art doth spirare a sweet science to our glasse of Understanding. So wee know that

\(^{138}\) This was consonant with the doctrine of predestination. One was or was not among the elect, and if they were not they lacked the restraint necessary to avoid sin. Neither ‘works’ nor ‘reason’ could change this.
that Logicke carries from the thing to man (Richardson [1658] in Roberts-Miller 1999:36).

Here we can begin to see why Puritan discourse was laced with reference to contagion\textsuperscript{139}. What we have is the foundations for a belief in sympathetic magic where ‘contagion’ is logically and politically reinforced. Consider the following quote from Nathanial Ward:

> Prudent men, especially young should doe well not to engage themselves in conference with Errorists, without a good calling and great caution; their breath is contagious, their leprey spreading: receive not him that is weak, saith the apostle to doubtful disputations; much lesse may they run themselves onto dangerous Sophistications. He usually hears best in their meetings, that stops his ears closest; he opens his mouth to best purpose, that keeps it shut, and he doth best of all, that declines their company as wisely as he may (Ward cited in Roberts-Miller 1999:38).

Here also it becomes much easier to understand the threat that “ffooles” posed to the social order. A dissenter or “ffoole” was not only a threat to order through the disfavor God might cast upon the entire community, he/she was also a practical threat through the potential spread of dis-ease and dis-order that they quite literally represented. This disease could manifest on the body (as it had in the plague), within the government as it had in England (Foster 1984), within the church (as it had with Catholics), or within the household (as it had disturbingly taken root in the Hutchinson home)\textsuperscript{140}. Even more problematically, what erupted in one domain could quickly spread to another. It was, again to use Kibbey’s expression, “the Puritan commitment to unstable signification” that rendered even the smallest threats a sign of something bigger (1986:100).

\textsuperscript{139} For more on Puritan fear of contagion see Kibbey (1986).
\textsuperscript{140} See below. Also see Kamensky (1999).
This manifested in an order that was as threatened by disorderly speech acts and ominous signs, as it was by overt violence (see Kamensky 1999; Kibbey 1986). All exhibited the same disorderly structure and therefore all signaled the same threat to order. Given this worldview, difference could not be explained by equally valid perspectives; there was one Truth, and all else was either denied or demonized\textsuperscript{141}. “[T]here [was] no disagreement, only disobedience” (Roberts-Miller 1999:59). For the orthodox Puritans, one was either with God, or against him, for predestination beliefs ruled out a vision of ‘liberty’ that was predicated on freedom from God’s will; a will that could only be demonstrated by those who had shown signs of election.

Within this framework, ‘sin’ was at best an ‘error’ of logic (a fate even the elect fell into from time to time), at worst it was disobedience, signaling the absence of Grace. Persistent refusal to conform was always a bad sign because Logic was not believed to reside in things ungodly. And here again we can see the symbolic significance placed on ‘obstinacy’. To be shown one’s error and to refuse compliance was to have turned one’s back to God. Such action didn’t create reprobates (for this would have suggested a doctrine of works), it merely marked them as such. Persons who persisted in acts that were not consonant with God’s will were most surely in league with the devil - and ironically, the more their arguments resembled reason, the more evident this trickery was. This had very serious repercussions for those who made use of this rhetoric to defend a breach of accepted norms, especially when their facility for logic exceeded their social

\textsuperscript{141} See also Roberts-Miller 1999:55-59.
station, when their ‘comportment’ did not reflect their capacity for logic, or when they were simply the wrong sex (see Kamensky 1999).

But what does all of this have to do with domestic violence?

As Porterfield argues, “marriage as a trope of grace” was often conflated with marriage, the social construct, to invest this-worldly relationships with other-worldly significance (1992:4).

The tendency to view this-worldly marriage through an other-worldly lens had its roots in early European history and medieval Christian theology, and was not unique to Puritanism or the New England context (see Anderson & Zinsser 1988; Hufton 1995; Ruether 1993). Referential reversal (and therefore reverential confusion) was an unwelcome by-product of this incessant doubling. The corrective in Puritan terms was to promote rigid prohibitions against idolatry, coupled with a broad definition of what constituted such acts. This prevented one from forgetting that the corporeal realm was a corrupted copy of the ‘real’, and God forbid that the map be mistaken for the territory.

For this reason Cheney claims that the good wife was a status only achievable through death (2002:150). While accounts of husbands’ devotion toward their wives litter the historical records, these post-humous love letters should not to be read as reverential respect for flesh and blood wives. The ‘good wife’ was to be read as the sign of a ‘good citizen’, a ‘good Christian’, the Christian church. Effectively displaced through this incessant doubling, the ‘figure’ of the ‘good wife’ could never be one with her body or

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142 This confusion is perpetuated in those recent accounts that insist on reading the Puritan’s praise of the ‘good wife’ literally.
her intellect without signaling danger. She was to be read (by definition and decree) as passive and/or empty. And what is more passive (and thus ideal) than the dead wife?

When this over-signification combined with a dualistic ontology, an unmediated literalism, and a devaluation of women’s traditional roles, it operated as an instrument of oppression, tethering flesh and blood women to expectations associated with their ‘ideal’, or ‘pious selves’. Given that this ‘ideal self’ served as a popular metaphor for religious and political submission (Cheney 2002; Porterfield 1992), in a characteristically circular way, it justified women’s subordination, while simultaneously obscuring the real-world burdens placed on them. Since men were not Gods and women were not angels this spiritual drama seldom played out without some degree of discord.

Ultimately this fostered a distrustful posture toward even the ‘good wife’, for beneath her pious veneer lay the corrupted body of a scold. This double image was tightly tied to protestant theology and a sinful Eve. In keeping with Luther, Puritans believed that the sexes had been equal before the fall.

Woman through the fall and in punishment for the fall, lost her original equality and became inferior in mind and body. She is now, within fallen history, subjected to the male as her superior. This subjugation is not a sin against her, but her punishment for her sin. It is the expression of divine justice. Any revolt, or even complaint against it by woman is a caviling refusal to accept the judgment of God (Ruether 1993:97).

The punishment imposed on women was travail in childbirth. We can see here again, that what was previously associated with women’s sacred nature has undergone a transformation and has come back to impose itself on her, justifying not only her subordination, but her punishment and suffering in accordance with Divine will.
Calvin gave this a somewhat different spin than Luther, maintaining women’s inferiority while also underlining the need to place her under supervision.

The subordination of women… reflects the divinely created social order by which God has ordained the rule of some and the subjugation of others: rulers over subjects, masters over servants, husbands over wives, parents over children. This hierarchical order is not a reflection of differences of human nature, but rather of differences of appointed social office. The man rules not because he is superior but because God has commanded him to do so. The woman obeys, not because she is inferior, but because that is the role that God has assigned her. Social offices are necessary for good order in society… For Calvinists, even more than for Luther, however, domination and subjugation represent the originally divinely created order of things. Far from being annulled, that order is restored in fuller spiritual from in Christ. Sin, therefore, can only be a rebellion against this rightful dominance and subordination. Any effort to change this order and give women equality with men would itself be a sinful rebellion against God’s divinely enacted ordinances of creation and redemption (Ruether 1993:98-99).

Both elements of the above discourse were absorbed into Puritan rhetoric. Orthodox Puritans believed, in accordance with Luther, that women had been corrupted by the fall, but that they were still among God’s elect. This election was tightly tied to Calvin’s scheme of order, as their vision of the little commonwealth illustrates. The comportment of the ‘goodwife’ was a sign of election when coupled with the conversion experience. A rebellious ‘scold’ was a woman’s problematic double, and the bane of an orderly community. The scold was recognizable by her lack of deference to authority and her unwillingness to submit to what ‘God” had in order for her.

What I have attempted to illustrate is that there can be no uncomplicated correspondence assumed between the treatment of women within a particular culture, and woman as religious symbol. The puritan context suggests that this correspondence is
anything but straightforward. Not only was a woman’s subordination over-determined through this signification process, the flesh and blood woman was displaced in importance by that which she was purported to represent. Because the religious realm was believed to be more real than the corporeal realm, it was imperative that her flesh and blood value pale in comparison to that which she symbolized\(^{143}\). Here we begin to see the significance of Richardson’s comment concerning relatives, for we can now understand how this arrangement might come to “downright blows” within a household. We can also see why this devaluing took on such a ritualistic character. What is not yet clear is the powerful threat that the scold (or uppity wife) represented, or the way she was subdued.

As argued above, the Puritans believed that good government was facilitated and made efficient through discipline and compliance not force. It was toward this practical end that Puritan husbands had a stake in “securing the cooperation of women in their own subjection” (Ruether 1993:172). By avoiding characterizing all women as evil, the category of good wife functioned to minimize rebellion in this life by promoting the promise of salvation in the next.

But Puritans also tied good government to the authority that makes force or coercion possible. Too much leniency was viewed unfavorably and could lead to disorder. In this way a husband’s ability to govern had this-worldly as well as other-worldly significance (it marked him as among the elect, and therefore could affect his position within the

\(^{143}\) While it is beyond the scope of this paper to give more detail to this argument I have attempted to outline the general tenets upon which my analysis depends. I will be picking up on this again below in order to illustrate what impact it had on domestic life. For more on Puritan religious views and the logic
community). Most importantly, in keeping with the Ramist logic of relatives, the ‘good wife’ defined the ‘good husband’ (for who-so-ever knows one knows the other).

Thus far I have attempted to situate a very specific shift in a much broader field of relations. I have suggested that the logic that accompanies this shift is not the same as our own. I have referred to this logic as a kind of double speak that both plays on the boundaries of meaning, and facilitates the play of meanings through the correspondences it relies on.

And this brings me to the centrality of the Puritan notion of consent and the role that it played in justifying subjection. Consent was to be facilitated by a binding system of rules that made one’s obligations to the community and to authority explicit. In this way, written legal codes paralleled the Bible in both form and content. This system of rules bound one to the community through a kind of covenant or contract closely paralleling one’s covenantal relationship to God, and/or the marriage covenant/contract. The form the document assumed signaled this relationship. While humans lacked the capacity to exert power (all things determined by the will of God) they could do God’s will by accepting their place in the preordained hierarchy. The only sense of agency or choice that this allowed for was a consciously obedient performance. Performance in this sense should not be equated with insincerity but rather with consenting to active duty. Within this framework, reason was conflated with ‘knowing one’s place’, while choice was expressed through prescriptive performance options.144

that undergirds them see Cheney 2002; Kibbey 1986; Luxon 1995; Miller 1993; Morgan 1966; Porterfield 1992; Roberts-Miller 1999).

144 This was tricky as spiritual submission meant a true surrender of one’s interests in favor of reason.
Miller (1993) notes the spiritual significance of the Puritan’s “errand into the wilderness”. He explains the origin of the term ‘errand’ and its double meaning as (1) “a short journey in which an inferior is sent to convey a message or perform a service for a superior” (man portrayed as a mere vehicle for God’s will), and (2) the medieval adaptation of the term to signify an activity that is willingly engaged in out of personal duty (Miller 1983:3). Miller argues that the Puritans of New England were on an errand of the first order, and that by the end of the 17th century they began to fear that this spiritual mission had become increasingly profaned. I argue that the Puritan’s ‘mission’ and its somewhat ambiguous relationship to issues of responsibility, accountability, and agency is best understood if slippages between the above two meanings are taken into account.

Predestination beliefs fostered a sense of insecurity that transformed all earthly matters into signs (see Roberts-Miller 1999). In this way the notion of ‘errand’ not only served as a metaphor for the spiritual mission (see Miller 1983), it produced politically useful slippages in the notion of ‘duty’ and ‘consent’. These slippages not only reconciled a belief in election (faith), with the notion of enterprise (works), it left the elect accountable for a mission that they consented to but were forbidden to take credit for (see Morgan 1966). This model of consent was able to reconcile a religiously dictated ‘submission’ with a political ‘duty’ to govern and be governed. Most importantly it constrained a dangerous political will by offering only two options for agency: duty to govern, and/or obedience to governance145, and since ‘duty’ also implies a willing

145 See below on the significance of binary logic.
submission to a higher authority, both options reinforced discipline and submission (not to mention government from ‘above’) 146. Most importantly, this model necessitated a conscious performance of duty; a duty that was both practical and necessary but was to be disassociated from personal pride or immediate reward. This performance had dramaturgical dimensions that were both ritualized and gendering. This was made particularly clear in the ritual acts of public apology required to mitigate punishment 147.

The elect were expected to subject themselves to a higher authority if the spiritual code were to be honored 148. In a very slippery sense, the ‘errand’ can be therefore viewed as signifying the regenerate’s covenantal relationship to God, the citizen’s legal obligations to the state, and also the ‘good wife’s’ duty to her husband. All involved a model of ‘consent’ that played on the line between determinism and agency, and all involved an active engagement if the ‘errand’ was to be successful 149. Within this framework there was always a danger that the ‘play’ involved would produce too much freedom, resulting in anarchy, or alternatively, too much determinism, thereby eroding the rhetorical basis upon which a peaceful compliance was secured 150. It was in this way

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146 It is for these reasons that I argue that this spiritual mission cannot be separated from the broader political project. This conceptualization of governance may have served as a way of grappling with individual willfulness within a community that was in the process of transitioning from a collectivist culture to an individualist economic order.
147 See Kamensky 1999 on “saying and unsaying”. This is a point I will return to below.
148 Morgan (1966:8-10) distinguishes between the elect and the “hypocritical” ‘civil man’ by explaining that the elect obeyed through faith, whereas the civil man was outwardly obedient, but inwardly corrupt. A ‘civil man’ could be kept in line by external constraints, but he was not sanctified and could not be made moral. In this way, any sign of non-compliance could be read as spiritual corruption, and an incapacity for obedience.
149 We can begin to see what a tight ‘fit’ this ideology had to women’s subordination. The model of ‘duty’ that this bound her to justified her lack of economic reward, while placing additional pressure on her to serve as an exemplar for the community.
150 In the former, a heretical pridefulness might develop, whereas in the latter too much control could backfire and result in open rebellion. Indeed many have cited the Antinomian crisis and the rebelliousness of Anne Hutchinson as bringing these concerns to a head (Kamensky 1999; Lindley 1996). Hutchinson not
that a belief in predestination gave a distinctive twist to the community’s orientation to agency and authority, to the ‘good wife’, and in turn to the prevailing attitude toward discipline, punishment, and ‘correction’. The paradox of predestination was that an individual could not determine their own fate, but they could behave as if that fate were determined (see Morgan 1966). Their capacity to do so was a sign of election, of the presence of a reasoning that corresponded to the order itself.

The ‘errand’ as metaphor not only described the regenerate’s covenantal relationship with God (see Miller 1993), but also the wife’s covenant with her husband. Both relationships involved the model of consent noted above. In this way, the comportment of the ‘good wife’ within the household corresponded to the comportment that was required for the ‘good Christian’ on a spiritual errand (see Porterfield 1992). She was expected to perform her duties without pride, or expectation of reward (Cheney 2002; Saxton 2003; Ulrich 1991), for “[p]rosperity would be bestowed not as a consequence of labor, but as a sign of approval upon the mission itself” (Miller 1993:6)\textsuperscript{151}. The consent that was called for was not only difficult but sometimes perilous, and indeed the more perilous it was the more favorable it was to God and therefore the community\textsuperscript{152}. And this is where piety infused suffering with moral significance\textsuperscript{153}. The

\textsuperscript{151} And even here, one must beware not to confuse sanctification (living by God’s law) with justification (election) (see Morgan 1958), for achievement alone was never enough.

\textsuperscript{152} This raises questions concerning the relationship between the Puritan’s drive for an almost legalist stability and their romantic notion of a spiritual mission fraught with hazard. While this can be accounted for by reference to their profound capacity for what I will refer to as ‘double-speak’ or polesemic iteration, it is beyond the scope of this paper to adequately explore why this particular configuration and why then. It
Puritan wife who ‘submitted’ (not only to authority but to *suffering*) was more than a ‘good’ wife, she was a spiritual exemplar (see Saxton 2003)\(^{154}\).

What is important is that while female piety might bring prosperity to the ‘household’ and indeed the entire community, a woman could expect no earthly reward for her sacrifices. And here contradictions begin to insert themselves...for as Saxton (2003) makes clear, suffering *did* give some women a limited degree of social capital and was therefore reinforced. Alternatively rebellion brought God’s wrath upon her here on earth.

The contradictions that were called into play by such maneuvers challenge the modern imagination. They signaled new configurations of power and translated into new methods of governance. The melding of religious ‘values’ with political ‘reason’ had serious implications not only for the slippages that were made possible between the civil and religious orders, it affected the kind of authority that was sanctioned for husbands to exercise over their wives. The liberatory significance of ‘rights’ is effectively negated within a framework where power can only be legitimately accessed through rituals of deference/dominance. Under these conditions what becomes masked under the guise of rights discourse, is the social and historical genesis of the power relationship, and the multiform modes of subjugation upon which it depends.

\(^{153}\) Authentic suffering could be transformed into ecstatic union when subsumed within the Divine project, but this was always a bit tricky, and could invite accusations of heresy. It was therefore best left until one was close to death (see Cheney 2002).

\(^{154}\) This is perhaps more significant than it may at first appear given the logic of predestination. Women, as well as men, were counted among the elect. Both were viewed as God’s deputies on Earth; while their earthly obligations were very different, their commitment was expected to be the same. This meant that
The suggestion that Puritan wives were expected to be subservient to their husbands is not new (see Demos 1970; Koehler 1980; Morgan 1966; Pleck 1987; Porterfeld 1992; Salmon 1986; Ulrich 1980, 1991, 2002), however what I have attempted to establish through this new line of enquiry is a more complex understanding of the way that gender relations were authorized, regulated and maintained through a process that on the surface extended formal rights to women while effectively limiting access to such rights through the informal expectations, obligations, and sanctions placed on them as wives. What I will refer to here as a ‘double intention’ was discursively accomplished through a kind of ‘double speak’ that reconciled tensions by obscuring them.

The logic underlying these prescriptions precluded the possibility that any other action would be viewed as rational. With sin framed as the refusal of reason, a refusal of one’s duty was read as a rejection of the ‘order’ itself. Since the order was both Godly and civil this had serious consequences for dissenters and non-conformists; it also had consequences for the kind of power a husband could ‘reasonably’ wield over his wife. It also increased the expectations placed on women to submit to their husbands’ authority. There was no challenging God’s will. This was an orderly God with a rational plan, and a godly society would reflect this. Not everyone was among the saintly elect, but conformity could still be achieved through a strict and delineated code of behavior that would be harsh and strictly enforced if necessary. While law reflected this code, it was

Godly women were identified by their commitment to submission (not their ability to govern), this was their social capital and their justification for respect and support within the community.  
155 Notice the fine line that must be walked here in order not to fall prey to an ideology of ‘works’. Proponents of predestination rejected the theory of ‘works’ arguing that one is either a member of the elect of not. Therefore reprobates cannot be persuaded, saved or rehabilitated. Election fell outside of human
not synonymous with it. And this is where things get tricky in regard to the prohibition against wife abuse...

Disorder in the household could quite easily spread to disorder in the community. What could stave off disorder was a watchful communitarianism coupled with exacting rules and principles applied by those in authority through good government (as explained above)\(^1\). The ability to compel obedience was a sign of governmental authority, whereas any deviation from obedience was a sign of governmental weakness (Roberts-Miller 1999:30). Any source of authority not governmental authority was perceived as an attack on government power, rather than a difference in perspective or a healthy critique (ibid.:64). Since not all were among the elect, not all were equipped with the logic to grasp the beauty of this structure (a quality that marked one as a reprobate, and therefore worthy of a very different kind of ‘correction’).

For the Puritan male, it was the ability to govern that marked him as either a regenerate or a reprobate. For women, it was her capacity to submit. This model of authority is intimately gendered. In fact one can arguably insist that gender was the code. It explains how woman as sign could stand in for the relationship between the male citizen and the state, and how they could simultaneously stand in for the servant underclass... but in the family, they would become, quite literally, the territory upon which this politics played out.

\(^1\) Here we really see the mixing of a scientific worldview with a religious one.
Chapter 4
Ordering the Household

Here I will return for a moment to a very different depiction of women’s lives, but one that has entanglements with the aforementioned processes. It is all well and good to account for signification processes in reference to social processes, but signification, like law, always has its point of application. It is the way that signification plays out on the material and social planes (on women’s bodies and their lives) that renders social life (and subordination) so coherent and yet so difficult to account for. Most importantly, it is the slipperiness of meaning imposed on an equally fluid plane (the social) that reinforces the need for tight and secure rules and sanctions in order to fix it. And as I have argued thus far, fixing meaning is an inherently political endeavor. It both draws from the political, and produces it through the “vision” of order that it promotes and the “divisions” that it puts in place. For this reason there can be no claim to originary innocence in law…no starting point and no point of return.

The relationship of Puritan women to law is complicated by the unstable signification that marked them as potentially threatening, and also by that which marked them as needing protection. And here of course is where the justification for governance comes in. ‘Protection’ within this framework is double edged. It simultaneously communicates the need for protection from outside threat and also protection from the threat of sin within (in fact these two meanings are reconciled within this framework as I have attempted to show). Women’s inherent weakness for sin, understood as a reduced

capacity to reason within this worldview\textsuperscript{159}, thereby justified her protection (also framed as governance). And here we see the introduction of a very different kind of slippage, one that quite literally rendered women invisible under the law through marriage. Tracking these processes and making sense of them is particularly difficult given their entanglement with the practical imperatives of community life\textsuperscript{160}. This entanglement is rationalized and obscured through the rhetoric law employs.

In contrast to English practice, marriage in Massachusetts was a civil contract rather than a sacrament under the authority of ecclesiastical courts\textsuperscript{161}. Although it has sometimes been described as a contract founded on the free and voluntary consent of both parties\textsuperscript{162}, it was a relationship tightly circumscribed by law (Morgan 1966). Very few women in the colony chose not to marry\textsuperscript{163}. Given the narrow avenues of employment open to them, rigid notions of gender, and the legal dictate requiring all women to live under male authority\textsuperscript{164}, it was hardly an advantage for women to remain single. Those who did were stigmatized. If unmarried by twenty-three a woman was labeled a “spinster”, if unmarried at twenty-six she was called a “thornback” (Koehler 1980:44). Although men and women were both under pressure to marry, women were expected to

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\textsuperscript{158} What I mean by this is that there is no “getting back to values” in law…no romantic returns.  
\textsuperscript{159} See also Saxton 2003; Lindley 1996.  
\textsuperscript{160} These imperatives are always and inevitably selected and ordered in keeping with relations of power.  
\textsuperscript{161} Haskins (1960) argues that this arose due to an absence of ecclesiastical courts in the new colonies. It was justified because marriage was not a sacrament in the bible. Once again we see that this practice arose out of practical necessity, not because it was an improvement for women as has been suggested.  
\textsuperscript{162} See for example Smith (1973:424).  
\textsuperscript{163} Ulrich contrasts this with England, where nearly 10% of the population remained single during this time period (1991:6). See Koehler (1980:108-135) on women, work and poverty. While it was possible to obtain reputable outside employment as a domestic servant in the early settlement years, the status of servants deteriorated over the course of the century. Women were rarely independently employed in business, although tax records suggest that there were a few widows in this position.  
\textsuperscript{164} Even women who didn’t marry were required to live under the authority of a male head of household.
wed at a much younger age than men, and to marry five to eight years younger than their English counterparts\textsuperscript{165}.

A law against “inveigling” prevented a young woman from freely choosing her own suitors\textsuperscript{166}. This requirement gave the young woman’s father the upper hand in the affair and made this as much an agreement between the men involved as between the potential marriage partners\textsuperscript{167}. While a woman had the legal right to decline a proposal, in practice, this was strongly discouraged (Koehler 1980:45)\textsuperscript{168}. Once a woman had given her consent it was not easily withdrawn.

It appears from Morgan (1966:81-83) that in most cases a father’s decision to approve a marriage was based on economic as well as religious considerations. In this way, the compatibility sought was more financial than affective\textsuperscript{169}. Marriage between wealthier families was arranged almost entirely by the parents on both sides, the negotiation itself involving a fair degree of haggling (ibid.). Once an agreement was struck, a legal contract was drawn up, with final consent resting with the girl’s father. If

\textsuperscript{165} Women’s typical age at first marriage was between nineteen and twenty-two, whereas men’s was between twenty-five and twenty-seven (Koehler 1980:54).

\textsuperscript{166} Law required that male suitors first secure the father’s permission to court his daughter. Court records support that the law against inveigling (stealing away a young woman’s affections) was upheld, “as many [men] were punished for neglecting it” (Morgan 1966:79).

\textsuperscript{167} Morgan and Koehler are somewhat divided on this. Morgan argues that it was a mutual decision of all parties, whereas Koehler describes it more as a decision among unequals. Both describe the father having enormous powers of authority in the decision making.

\textsuperscript{168} There were many ways that a father might coerce his daughter to marry a particular man. He could withhold his consent to other proposals, he controlled the amount of her dowry, and he had the right as a father to ‘correct’ her in a multitude of ways that might make her life miserable (see Morgan on the control that Puritan parents wielded over their children (1966: 65-86). On the other hand, willful denial of “an untimely marriage, or an “unnatural severity toward children” was not supported by law (Haskins 1966:81).

We see here that the devil not only lies in the details but also in the way these details are interpreted by the courts.

\textsuperscript{169} At least in some families both parents took part in this decision (ibid.).
the contract was in some way breached following marriage, it was the girl’s father who would have to seek legal redress on her behalf.

Law defined the terms of marriage and the boundaries of acceptable behavior within the marriage (Koehler 1980). The regulation of marital relations is evident in the steps necessary to make it official. A civil service was to follow registration of the intention to marry, with consummation of the marriage reported no later than one month following the service (Morgan 1966)\textsuperscript{170}. Once married, in all but the most extreme cases, a couple was required to cohabit for the rest of their lives (see Haskins 1966:80), and the wife (but not the husband) lost her right to act as an individual under the law (Salmon 1986). ‘Unity of person’ left a woman economically dependent on, and under the immediate authority of her husband (Koehler 1980; Salmon 1986). When marriages failed, divorce was a legal option although it was difficult to obtain and socially frowned upon (Salmon 1986). In all but rare cases marriage was a contract sealed for life. This was particularly harsh for women when things went wrong.

Under the principle of ‘unity of person’, a wife was unable to own or manage property, including the property that she brought with her to the marriage (Koehler 1980; Salmon 1986). This property was instead her new husband’s to manage, and any land purchased subsequent to marriage was to be held in his name (Salmon 1986). While conveyances required her signature, Massachusetts law provided no safeguards against this type of coercion; a wife’s signature did not have to be witnessed\textsuperscript{171}. Given that all

\begin{footnotesize}
\textsuperscript{170}See Foster (1999) on the significance of male incapacity and its relationship to Puritan notions of governance.
\textsuperscript{171}The women of Massachusetts did hold dower rights to property purchased during the marriage. That is, they held the legal right to one third of the marriage estate to be surrendered to them as widow’s support
\end{footnotesize}
income that she earned during their marriage technically belonged to her husband, there was no way to escape financial dependency. The few rights a woman did retain were little compensation for those lost. She retained the right to dower (inheriting one third of her husband’s estate upon death, and the right to have any property that she owned previous to marriage returned to her upon his death or the dissolution of the marriage (Salmon 1986).

Law granted men the right to manage all of their wife’s legal and economic affairs (Koehler 1980:46). After marriage women were prevented from prosecuting suits in their own name, executing valid contracts without their husband’s signatures, acting as executors or administrators of estates, or holding legal guardianship (Salmon 1986:14). The logic underlying the prohibition against a wife contracting without her husband’s signature is most instructive. Given that a woman technically owned nothing (even her services belonged to her husband) no contract she signed was enforceable as there was nothing for the court to seize in the event of a breach (Salmon 1986:41). Sometimes this constraint was framed as a protection. “Judicial acceptance of coercion as a factor in the relations of husbands and wives made all financial transactions by women suspect, particularly those that directly affected their husbands. According to this reasoning, the

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172 This third share was protected against any debt owing on the estate (see Koehler 1980:48), however a third share prevented her from selling or renting the property in order to support herself.

173 This prevented a woman from making a contract with her husband as well, since it made no sense for a man to contract for what he already had a legal privilege to (see ibid.).
law acted for the good of the women by removing their contractual capacity” (ibid:42). The circularity of this logic is dizzying. This nicely illustrates the way that repressive laws mutually reinforce one another by reference to constraints that the law itself imposes.

Over all ‘unity of person’ disadvantaged women economically and socially, and had implications that extended beyond the boundaries of law itself. What is important is that these structural arrangements were held in place by law; women’s subordination mediated and administered through technico-bureaucratic advances that made it increasingly difficult for alternative domestic arrangements to arise\textsuperscript{174}. This hindered a woman’s ability to leave the marriage, and facilitated new and intersecting modes of abuse within the relationship.

What is most interesting is that these changes may not have had the subordination of women as their primary target. Salmon argues that ‘unity of person’ had the practical effect of simplifying land laws and court procedures (1986:188). She argues that the Puritan’s aversion to the procedures of Chancery Courts and their unwillingness to develop them in Massachusetts, left the existing courts ill equipped to deal with the complexities of equity disputes\textsuperscript{175}. Beard (1971) has this to say about the function of equity law in early England: “It was Equity administered by a special court, having no jury, that provided, in the name of justice, remedies for wrongs for which the Common

\textsuperscript{174} For example prenuptial agreements were not recognized under Massachusetts law and therefore were not binding. This decreased a woman’s leveraging power within the marriage and prevented her from developing an alternative means of maintaining control over the property she brought with her to marriage.\textsuperscript{175} See Salmon 1986:11-12,187. This often meant that even positive reforms (such as requiring women’s signatures on land conveyances) were not adhered to. It also discouraged the practice of prenuptial agreements, preventing the potential for separate estates. The courts were equipped to deal only with those
Law afforded no remedies. Equity enforced trusts and other understandings that assured to married women rights of property denied to them by the Common Law…” (Beard 1971:93). It was this arrangement that had allowed women to contract for separate and independent estates in England, securing rights otherwise denied them. The Puritans rejection of conflicting interests in marriage melded with an aversion to the rogue authority of Chancery Courts to render women’s ‘incapacity’ under the law a reasonable means to streamline legal process.

Women’s relation to law is never straightforward. Together the works of Haskin (1966), Koehler (1980) Konig (1979) and Salmon (1986) suggest that the structure of the colonial legal system was tailored to address local conditions in conjunction with the ideological concerns of the law makers. By denying women the legal power necessary to safeguard their own economic interests, Massachusetts Puritans were killing many birds with one stone. They were rejecting those aspects of English family law that condoned separate and conflicting interests in marriage (Salmon 1986:1987), they were giving practical teeth to the principle of family governance (thereby limiting the power of women within marriage and the community) (Koehler 1980), they were upholding custom and religious tradition through their adherence to a hierarchical model of authority, and they were tailoring land law to suit local conditions and concerns (Haskins 1966; Konig 1979). Together these factors conjoined in a piecemeal fashion to influence legal reform, judicial interpretation of the law, and women’s access to the limited rights equity issues that were in keeping with the existing laws, and were ill equipped to deal with conflicting interest disputes that arose out of private contracts.

\[176\] It is important here to remember the Puritans relationship with their homeland. While they relied heavily on the English system of government, they were also attempting to break from it. This break was most marked in the area of moral regulation.
granted her. Salmon’s (1986) study, much like Smart’s (1989), encourages us not to view law as a unified body of principles, or a linear force of progress, but to instead view any particular legal initiative as a complex amalgam of historically entrenched interests, inclinations, and contextual imperatives that may or may not serve women even as it purports to do so.

The economic lives of women and men were clearly differentiated, and their obligations and duties clearly delineated according to gender, custom, and law. As both Ulrich (1980, 1991) and Salmon (1986) make clear, as ‘help meet’ a wife might labor alongside her husbands, but the “key to economic power within the family [lay] not in work as such, but in the management, the control of the products of that work” (Ulrich 1980:394). Although wives were granted very limited authority to act on their own in Massachusetts, under some circumstances they could be authorized to act on their husband’s behalf. Acting as ‘deputy husband’, a wife could manage business, command service, and legally represent the household in her husband’s absence (Ulrich 1991). In many cases this represented an extension of the tasks she was ordinarily expected to perform. This practice arose out of practical necessity, but importantly allowed some

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177 Ulrich (1980) uses several examples to illustrate this point. One is a man who we shall meet again later, Daniel Ela, who refuses to return the cellar keys to his wife (the cellar the established domain of the wife) because she has chastised him for an unpaid debt (the debt management the prescribed domain of the husband) (1980:394). Sometimes assuming too much authority as a ‘deputy’ husband placed a woman in danger, as was the case with Anne Hibbens (see Kamensky 1999).

178 We can see how this closely models the delegated authority established by the state (see above). Ulrich (1991) provides a rich account of this phenomenon. Some women were able to develop skills and expertise that given rigid gender boundaries appear to have challenged established norms. However when one considers that the role of ‘deputy husband’ was carried out with the husband’s authority, as a necessity, often in his absence, under his name, and in addition to a wife’s other domestic duties, it becomes clear why Ulrich argues that ‘deputy husbands’ were acting in keeping with prescribed norms. This cautions us to take care in distinguishing between what this behavior means to us now, and what it may have meant to people then. As Ulrich (1980; 1991) and Karlsen (1987) both make evident, it was not that seventeenth
women the potential to develop skills that were generally deemed to be ‘public’ and therefore the territory of men. The exact nature of these activities differed from coastal towns to rural communities, from one decade to the next, and from one community to another.

Husbands could authorize their wives to operate a business or engage her services in a business he operated (Ulrich 1991). In these instances he might grant her the right to sign contracts that he remained legally responsible for. This allowed select women to conduct business and to generate family income from non-traditional tasks under the legal authority of their husbands. While labor outside of the bounds of domestic duty may indeed have given some women a measure of freedom and authority that they would lose in the next century, it is important to remember that first and foremost the Puritan wife was defined and measured by her domestic duties and the obedient posture she was to assume toward her husband (Cheney 2002; Porterfield 1992; Saxton 2003; Ulrich 1980; 1991). Lacking this prescribed deference placed her outside of the boundaries of the prescribed norms of ‘good’ behavior.

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179 Koehler (1980) notes that women’s participation in business has been generally masked because on paper her husband owned and controlled the venture. As helpmeet her contributions went unrecognized and unrecorded.

180 For contrast see the activities of seaport women described by Crane (1998), compared to the activities of rural women described by Ulrich (1991). Given that seaports were not only larger but also more heterogeneous, it follows that traditional values were much harder to maintain. This may have been because moral regulation was not as easily policed in the larger towns, underlining the significance of informal controls. We see a similar shift across time.

181 Here we are reminded that the existence of an exception does not displace the significance of the rule. Despite the limited autonomy this gave some women, it was the basis upon which others were constrained.

182 It is noteworthy that some women used the informal networks of trade that were established to carve out some measure of economic independence for themselves (see Ulrich 1980; 1991). As skilled preservers, producers, and craftsmen they were sometimes able to establish reputations that extended beyond their
In this way, a ‘woman’s place’ was determined more by the power that all women lacked than by the competency or reputation that any one woman might acquire. An overt expression of too much power could place a woman at risk regardless of the arrangement she may have had with her husband (see Barker-Benfield 1972; Kamensky 1999; Koehler 1980). Viewed as potentially disruptive, it could alienate her from the community\textsuperscript{183}, draw the negative attention of the church, and in severe cases leave husband and wife both vulnerable to legal charges (see Hoffer 1997; Kamensky 1999; Karlson 1987; Koehler 1980; Schweber 1998; Ulrich 1980, 1991). As Shammas notes, “the imperatives of community often outranked those of the individual household” (2002:46). Although the household was contained within this broader structural arrangement, at times it could be dangerously at odds with it.

Speech, like the order itself, was to be ‘governed’, and within this framework women were ‘subjects’ under the direct government of their husbands (Kamensky 1999). Nowhere were these dictates made more clear than in the antinomian controversy, and in the trials of Quaker women (see Barker-Benfield 1972; Foster 1984; Heyerman 1984; Kamensky 1999; Karlson 1987; Koehler 1974, 1980; Lindley 1996\textsuperscript{184}; Schweber 1998). prescribed identity as ‘helpmeets’. Yet even this limited autonomy was at the discretion of their husbands, and any income generated could be claimed by him (Ibid. 1980:396-403).

\textsuperscript{183} See Ulrich (1991). This could threaten the fragile interdependence that all women relied on for survival in a wilderness environment.

Quakers were a threat to the Puritan social order on several levels. While most researchers focus on the challenge to Puritan religious tenets, Lindley (1996) and Pestana (1983) draw our attention to the fundamental challenge that Quaker women posed to the Puritan family order. Quakers allowed for greater equality between the sexes in marriage and tolerated a more outspoken attitude from women. Women were allowed to speak at church meetings, act as traveling ministers, and hold separate women’s meetings. Perhaps most importantly, they allowed women to remain single, and therefore ‘ungoverned’. All of these aspects of Quakerism challenged the “little commonwealth”. On a broader scale Quakers refused the model of hierarchical authority that the Puritan order relied on.
Lest a woman forget ‘her place’, the banishment and subsequent death of Ann Hutchinson served as a stark warning (Kamensky 1999; Koehler 1974, 1980). Koehler (1974) argues that too many researchers have viewed Antinomianism as a religious movement rather than a social movement with a strong female element. Antinomians professed to have a personal revelatory relationship to the Divine, considered heretical by ‘orthodox’ Puritans. In the imaginations of the orthodox, Antinomianism was linked to sexual licentiousness and general disorder. Koehler (1974), like Kamensky (1999), argues that it served as a catch-all label for rebellious and disorderly women. Whereas Koehler (1974) focuses on the role that Antinomianism played as a religious outlet for women’s rebellion and therefore a forum around which resistance was organized, Kamensky (1999) cautions against romanticizing a movement that effectively ended in the death or banishment of so many of the communities most outspoken women.

A once respected midwife married to a distinguished community member, Hutchinson had gone too far. Accused of stepping “out of [her] place”, a minister listed the boundaries that she breached, stating “you have rather bine a Husband than a Wife and a preacher than a Hearer; and a Magistrate than a Subject” (Hugh Peters cited in Kamensky 1999:72). Thomas Shepard explained that “the Flewentness of [Hutchinson’s ] Tonge and her Willingness to open herself and to indulge her Opinions’ had resulted in ‘the infection of many’ in Massachusetts” (cited in Kamensky 1999:75).

185 For a more thorough account of women’s resistance to the patriarchal order during this time period see Koehler (1974; 1980). For a more in depth analysis of the role that ‘disorderly’ speech played in this social drama see Kamensky 1999.
186 Excerpt from the “Report of the Trial of Mrs. Anne Hutchinson before the Church in Boston [March 1638]”.
For ‘preaching’ (holding ‘public’ Bible study in her house), and for challenging the authority of the magistrates and the ministers, excommunication by the church followed upon banishment by the General Court (Kamensky 1999:72)\textsuperscript{187}.

Occurring just prior to the establishment of a printed body of laws, this crisis turned opportunity “offered the New England leaders a chance to define their own voices as the speech of authority by classifying the words of disorderly women as an archetype of social danger” (Kamensky 1999:73). This message was unambiguously communicated when seventy five of Anne’s followers were required to turn in their arms until they disavowed any allegiance to Antinomianism (Schweber 1998:378). Framed not only as a spiritual seducer, but a political and sexual seducer as well, the transgressive powers of Hutchinson were amplified, serving as a clear warning against the tripartite danger of all women.

In 1640, shortly after the Hutchinson incident Anne Hibbens was similarly chastised for very different offenses (see Kamensky 1999; Lindley 1996)\textsuperscript{188}. Like Hutchinson, Anne Hibbens was also from a reputable household within the community (Kamensky 1999:82). Hibbens was accused of being more of a boss than a “deputy” in handling household business, and for behaving in a combative manner with workman and court officials (see Crane 1998:80; Kamensky 1999:83). Her bold attitude and verbal forwardness opened her marriage to public scrutiny, much like the marriage of Hutchinson. As a result Hibbens was admonished for “exalting [her] Selfe agaynst [her]

\textsuperscript{187} Although Quakerism was not founded as a sect until 1647, many of Hutchinson’s most noted followers later became Quakers. There are clear parallels between the threat that Hutchinson posed and the ideology of Quakerism (see Lindley 1996), particularly in regard to family governance.

\textsuperscript{188} Hibbons continued to be contentious and was executed as a witch in 1656 following the death of her husband (Kamensky 1999).
guide and head” and thereby making a “whisper” of her husband (cited in Kamensky 1999:86). It is noteworthy that the husbands of both Hutchinson and Hibbens occupied visible positions of authority within the community.\(^{189}\)

Without reducing power to a singular trajectory, what Kamensky (1999) is able to illustrate is that the privileges afforded women of station could be double edged. Not only was she expected to comport herself with the authority due her station, she was expected to govern her tongue accordingly. The increased discipline that her station required was closely associated with the principle of female piety and was sharply contrasted to the despised and disorderly image of the female ‘scold’ (see Ulrich 1991). Female ‘privilege’ was to be *silently* expressed in the scarf a woman wore around her neck as a sign of her station, or the seat she was accorded in the meeting house,\(^{190}\) definitely not the voice or authority she was accorded there. By subverting authority within a family that stood for authority, Hutchinson and Hibbens challenged the very hierarchy upon which their husband’s authority rested.

It was in this way that overt displays of female power were not only dangerous to the ‘uppity’ wife, they could also be dangerous to the all-too-ungoverning husband. Since the Puritans took obligations seriously, and a breach of obligation even more seriously, husbands were admonished for not keeping a tighter rein on their wives. Context was

\(^{189}\) William Hutchinson was a successful merchant, “a deputy of the General Court, magistrate for small causes, town selectman, and Deacon of the First Church” (Kamensky 1999:74. William Hibbens was a “gentleman”, an elder of the First Church, and a magistrate (ibid.82). In Schweber’s study of punishment, adjudication, and the Puritan social order, he argues that seditious speech became a more serious offense when the offender was of high status (1998:395). Although threats and challenges involving religious speech and political speech were both punished, harsher punishments were meted out for politically threatening speech (ibid.:396).
everything when it came to issues of authority. One could be governing in one context, and governed in another. Refusal to govern could render particular men the target of increased governance. In this way, William Hutchinson was reproved and banished for failing to control his wife Anne, and for defending her character before the magistrates (Kamensky 1999).

Even under more ordinary conditions men could be held accountable for their wives’ transgressions.

Puritan legal practice reinforced the notion that a husband was his wife’s overseer, and therefore held him accountable if she stepped out of line. When a woman committed a minor crime the courts usually ordered her husband to pay for it, in a fit punishment for his indiscretion in allowing her to break the law. If a wife did not attend Sabbath services, for instance a husband was responsible for not bringing her to the meetinghouse. If she sold alcoholic beverages without a license, he paid 5£ to 10£ for tolerating her behavior. With the husband lay the decision of whether to pay the fine assessed against his wife or to subject her to a whipping instead (Koehler 1980:46).

Holding a man accountable for his wife’s behavior would, it is fair to assume under these circumstances, cause him to take his governing role seriously. By tying governance to masculinity and masculinity to a man’s capacity to bring his wife to submission, dominance was associated with masculinity, and failure to secure female submissiveness became closely equated with emasculation\(^{191}\).

It was in this way that gender norms were tied less to the task that one performed or even the body that one inhabited, than to the broader ideals and institutions that this

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\(^{190}\) Wearing a silk scarf could merit a fine if a woman’s husband were worth less than £300 (Karlsen 1987:96), and women’s seating in the meeting house was designated according to the station and prestige of their husbands (Dinkin 1970).

\(^{191}\) For more on the norms of ‘masculinity’ in relation to Puritan notions of governance, see Foster (1999) on male sexual incapacity. The notion of woman as threat is facilitated through slippages such as this.
body and these tasks represented. Most importantly, it was the way these ideals and these behaviors were framed in legal discourse and court decision making that tied them to authority and attached specific sanctions to them. Yet any claim one might make to absolute and all pervasive social control must be qualified, for the realities, strains, and opportunities of daily life could intervene in unexpected ways to undercut and confound these formal structural arrangements (see Ulrich 1980, 1991; 2001). The contradictions that this made possible inevitably led to authority being challenged (see Koehler 1980).

The authority that a head of household exercised over his charges required some level of negotiation if he was to utilize ‘his resources’ wisely and secure compliance without force. In reference to this, Morgan (1966) outlines some of the strategies that a servant might employ as an effective means of leveraging some measure of control over his or her circumstance. Rereading Winthrop’s journals through a feminist lens, Ulrich (2001) makes a similar claim about Puritan wives (see also Koehler 1980). She encourages us to view seemingly fixed categories (i.e. servant, wife) as contested (2001:3). While this is indeed the posture adopted by many feminist revisionists, on a more cautious note, the present analysis warns against an all-too-slippery tendency to read ‘contested’ roles as ‘fluid’. Resistance by definition operates on the terrain of constraint.

The case in point illustrates that the more rigid the category boundaries became, the more serious the sanctions for breaching them. Koehler reports that after the antinomian crisis there was an increased number of women who appeared before the General Court and the Court of Assistants, “an increase that seemed to reflect a greater rebelliousness in women and a hardening of magisterial attitudes” (1974:71). Whereas in
the first five years of settlement only 1.7% of persons convicted of offenses were female, after the Hutchinson incident this rose to 6.7% from 1635-1639, and 9.4% from 1640-1644 (ibid.)\(^{192}\). While this increase had the most serious consequences for those who challenged the authority of the courts or the church directly (see Schweber 1998), it also had implications for wives at odds with their husbands within the family (see Koehler 1980; Schweber 1998).

Just as the husband stood in for the state within the household, the state could stand in for the head of household in court, and this meant that more wives as well as servants were being brought before the court on charges traditionally associated with resistance\(^{193}\). Koehler reports that despite religious ideology that urged wives to be deferential, and a socio-legal system that penalized them, between 1630-1699, 278 New England wives were called before the courts for breaching the authority that their husbands attempted to exercise over them (1980:156)\(^{194}\). Schweber found that between 1629-1650, household offenses (including those related to marriage, family, and relations between servant and ‘master’) showed a double peaked pattern in the severity of the punishment assigned to household crimes, with 32% receiving physical punishment for

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\(^{192}\) There is only a 1% statistical probability that this was due to chance (ibid.).

\(^{193}\) See for example Chart 12.5, Massachusetts (Gen.ct.-ct. of Assistants), “Comparison of Female and Male increase in Offenses Other than Fornication,” (Koehler 1980:352), and also Koehler (1974:61).

\(^{194}\) Although Koehler does not break this number down for specific colonies, we know from other figures that he provides that roughly half of these occurred in Massachusetts (see Appendix 1, “Petitions for Divorce in New England: Massachusetts Bay Colony,” under “cause cited”, in Koehler 1980; see also Schweber 1998). Koehler notes that the number cited likely misrepresents the actual incidence, given that “such an admission reflected badly on [the husband’s] ability to ‘control’ his woman” (ibid.). He also argues that both secular and ecclesiastical reaction to such breaches had the effect of focusing the husband’s attention on his governance as opposed to his wife’s dissatisfaction. All of this made traditional modes of negotiation and resistance more difficult.
their offense (1998:380, Table 1). If the little commonwealth was to serve as a microcosm of the greater commonwealth, it follows that disorder in the household would not be tolerated by the state. Legal intervention into the affairs of household undermined traditional modes of negotiation and resistance by first increasing the power differential between husbands and wives, and then punishing breaches of authority.

While it was the husband’s responsibility to manage the ‘little commonwealth’, it was the wife’s duty to submit to this management. Therefore, in practice, any legal recourse she might have to community intervention and/or protection from him rested on his clear and unambiguous mismanagement of household affairs. This is a point best illustrated by examining the outcome of divorce proceedings.

In some instances Puritan women in Massachusetts were advantaged by law in comparison to their English counterparts. Divorce was more readily available in the colony given that marriage was regarded as a civil contract (see Cott 1976a, 1976b; Haskins 1960; Salmon 1986; Saxton 2003; Weisberg 1975). As a result, both marriage...
and divorce fell under the regulation of the secular courts. Remarriage following death or divorce of one’s spouse was common. In the forty surviving petitions for divorce in Massachusetts from 1639-1692, absolute a divortium a vinculo matrimonii decrees (full divorce with remarriage permitted) were granted in all of the successful cases (Weisberg 1975:185). Although legal justification for divorce was not explicitly spelled out until the end of the century (Cott 1976), court records suggest that divorce was granted on grounds of adultery, desertion, continued absence without a word, and uncontrolled enmity or cruelty when combined with other factors (Salmon 1986:61). Marriages were annulled on the grounds of consanguinity, bigamy, and sexual incapacity (Cott 1976:589). There appear to have been no decrees of separate bed and board (divortium a mensa et

1857 (Weisberg 1975:184). It appears that Massachusetts’ divorce law was predicated on this earlier decree (the Reformatio Legum Ecclesiasticarum of 1552) which made marriage a civil contract (see also footnote eleven in Cott 1976:589). For a more thorough examination of the genesis of this arrangements and its connection to the development of law in Massachusetts see Haskin (1960:194-195). For its implications for women upon divorce see Cott 1976a,1976b; Salmon 1986; Saxton 2003; Weisberg 1975).

199 Given the strains of reproduction under such harsh conditions, women were more vulnerable to sickness and death than men. In the early years of settlement this left many husbands without wives, and this created a moral danger to the community (Haskins 1990:195). A liberal divorce policy killed two birds with one stone. By ridding the town of problematic family heads and providing households with better ones, control over women and men was improved (see Haskins 1990, Weisberg 1975). Remarriage was not permitted for the party found ‘guilty’ of the offending violation, and the individual was asked to leave the community (Weisberg 1975).

200 Weisberg (1975) notes 40 between 1639-1692, Koehler (1980) lists 54 between 1620-1699. Of those noted by Koehler, 39 were petitions from wives, 10 were petitions from husbands, and 5 were petitioned from persons other than the husband or wife or by ‘unknowns’. Of these 42 were granted, 6 were denied, 2 marriages were annulled, and the outcomes of 4 are unknown (see Appendix 1, “Petitions for Divorce in New England: Massachusetts Bay Colony,” in Koehler 1980). Morgan (1966) notes 27 successful petitions between 1639-1692, 13 for combined desertion and adultery, 9 for adultery, cruelty, desertion, long absence, and failure to provide, and 5 unknown (1966:38).

201 By itself, adultery was insufficient grounds for women seeking divorce but not for men (Weisberg 1975: 187). Adultery was also considered a crime punishable by whipping, public humiliation, or death (Schweber 1998:385). Saxton (2003:69) notes that when it was made a capital offense in 1931 (just one year after settlement) a concerted effort was made to warn everyone about the new measures. This suggests that there may have been a problem with adultery (read as disorder) during this early period. Schweber (1998) argues that the stringent penalties for adultery were most likely attributable to the degree to which it was believed to be disruptive and threatening to the social order. It was most certainly tied to racism and sexism. The severity of the punishment was greater when it was cross racial, and more serious for cross racial female adulterers than for males (Saxton 2003:69). Schweber (1998:385) draws attention to the fact
thoro) granted in this jurisdiction until 1692 (Ibid.)\textsuperscript{202}. Haskins points out that this was a consequence of the belief that unattached individuals posed a moral danger to the community (1960:195). Absolute divorce \textit{a vinculo} left individuals free to remarry, and married individuals posed less of a threat to social order\textsuperscript{203}.

The number of women petitioning for divorce in this period was four times greater than men (Weisberg 1975: 185). What is perhaps most remarkable is that divorce was more likely to be granted to women than to men (Ibid.)\textsuperscript{204}. Weisberg argues that this development arose from “a peculiar set of conditions” given the inferior status that Puritans conferred upon women (1975:186). She attributes this seemingly progressive trend to the state’s concern with maintaining the family as an agent of social control, and the community’s eagerness to replace dysfunctional family heads with more effective ones (see also Haskins 1960).

Divorce was granted for sexual insufficiency, which had both social and political dimensions, particularly when it involved male impotence (Foster 1999; Saxton 2003:72). Sex was linked to the power and authority that men held in their homes and in the community. Sexual problems were associated with “the erosion of manly self mastery”, specifically a man’s inability to control his thoughts (Foster 1999: 740). The advice and

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\begin{enumerate}
\item Cott (1976) warns us that the records from this period are probably incomplete.
\item Under \textit{a vinculo} decrees, the individual deemed responsible for a breach of the marriage contract was prohibited from remarriage and often asked to leave the community (Weisberg 1975). Given that divorce during this period was granted more often to women than to men, this meant increasing the number of unattached men. This was dealt with by asking the offending party to leave the community. On the other hand, if Salmon (1980) is correct (see below), the real objective was to minimize the potential crisis created by desertion. Given married women’s legal and economic dependence, this allowed deserted women to remarry, thus releasing the community from the dictates of ‘charity’ or support.
\end{enumerate}
\end{footnotesize}
medical manuals, as well as divorce transcripts, suggest that sexual fitness was indeed linked to social fitness even when sexual dysfunction resulted from injury.

All the divorce record use language that equates the sexual failings of a man with failure in his most important role, husband. Divorce records use the terms ‘office’ and ‘duty’ to indicate a man’s sexual responsibility and “insufficiency”, “inability to perform”, and “incapacity” to point out his failure to shoulder such responsibility. Seventeenth century meanings of “insufficiency” included “inadequacy, inability to fulfill requirements”, “lacking in what is necessary or requisite”, and “wanting in strength or stability” (Foster 1999:741).

Once again, the ability of men to perform his duty within the household was believed to have broader consequences for the whole community.

Some breach of familial duties was the justification most often cited on the divorce petitions filed by women (Weisberg 1975:186; see also Koehler 1980). Desertion was the most common reason women noted on petition for divorce, with adultery, bigamy, and failure to provide also frequently cited (Ibid.:187). Saxton reports that women petitioned for divorce four times more often than men did on the grounds of desertion (2003:71). Out of fifty four petitions, twenty one explicitly involved desertion, and virtually all were granted (Koehler 1980: Appendix 1). Of these only two were filed by men. If we also consider the cases involving bigamy, long absence, and failure to provide (since all imply financial abandonment of one sort or another), the number of men in the colony who failed to provide for their wives as evidenced from divorce records is roughly doubled.

\[204\] The study by Cott (1976) suggests that this situation had shifted by the end of the century and that in the eighteenth century men were more likely than women to petition for divorce and also to have divorce granted.
Desertion and failure to provide importantly tie marital status to a woman’s increased economic vulnerability under the law (see Salmon 1986; Weisberg 1975). Desertion was actually facilitated by the degree of economic control a man had over his wife’s estate, while a wife’s ability to desert was correspondingly inhibited. “Only under certain circumstances, at particular times, in precise ways, could a wife exercise even limited control over the family estate, including what she contributed to it” (Salmon 1986: xv). Salmon (1980) suggests that women’s inferior status and enforced economic dependency made it more likely that they would obtain absolute divorce and the right to remarry, particularly in cases of desertion or failure to support. She concludes that this seemingly progressive shift probably arose out of practical and economic concerns arising from the negative impact that men’s desertion was having on community coffers. In part, divorce was liberalized in order to minimize the negative consequences created by a large economically dependent, subordinated class.

If Weisberg’s, Salmon’s, and Haskins’ insights are correct, we should not assume that women’s ‘rights’ during this period were necessarily issued out of humanitarian ‘concern’, for such a move could instead function as a stop gap measure to deal with the community crisis directly resulting from women’s enforced subordination. Actions of this type could minimize the practical effects of women’s inferior status on the community.

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205 Divorce was often accompanied by a detailed account of the financial settlement and terms of support (Schweber 1998:384). Despite this the literature is filled with accounts of women returning to court for non-payment.
without directly challenging the gendered order upon which this inferior status was based\textsuperscript{206}.

Magistrates were less willing to issue divorce on the grounds of a husband’s cruelty toward his wife and children (Saxton 2003; Ulrich 1991). The answer to marital discord was repentance and increased self control, not divorce (see Ulrich 1991:110). If divorce was not granted, the couple was expected to continue living together, and if it was discovered that they had separated, they were ordered to reunite (Schweber 1998:384). Having said this, many in the community believed that it was a man’s role to protect and care for his wife as well as to “govern and direct” her, the harshest punishments reserved for those men who refused to do so (Ulrich 2001:13).

\textsuperscript{206} We seldom approach the issue of subordination by asking what practical and administrative problems it created for the state, or how these practical concerns may have inadvertently shaped state initiatives in directions that on the surface appear to contradict the subordination itself.
Chapter 5
The Family as a Site of Gendered Violence

Koehler found that between 1630 and 1699 at least 128 men and 57 women were charged with some form of spousal abuse across New England, a total of 185 in all (1980:137). In 170 of these cases the abuse was regarded as serious enough to lead to prosecution (ibid.159). Of those, 59 men and 31 women (90 in total) were charged in Massachusetts, accounting for more than half of all those charged in the other five New England colonies combined, and more than three times that of any one colony on its own (ibid. 160). In addition, there were ten charges of murder or attempted murder of spouses across the colony, 169 husbands who refused to maintain or live with their wives and wives who left their husbands, 289 cases of adultery, and 109 divorce petitions (ibid. 159). Given the difficulty obtaining divorce, the prohibition against separation, and the practice of exiling the guilty party, I have found only one questionable case of post divorce assault. In 1656 a Massachusetts man was asked to provide a bond for good behavior for “molesting” his ex-wife. Three years later the divorce was voided and the courts ordered that “the said George Hasell shall have and enjoy the said Joan Hasell, his wife again” (McDonald 1986:54). It becomes clear from these figures that these communities were not the ‘beacon for a sinful Europe’ that the Puritans had once hoped they would be.

McDonald (1986) provides the most comprehensive account of domestic assault in Massachusetts, and is the only researcher to examine the domestic assault rate across time. She reports that there were “very few” reported cases of abuse between 1640-1660,
with rates increasing sharply in the 1660’s, increasing again but only slightly in the
1670’s, and falling off again by 1690 (ibid.54). It is noteworthy that the 1660’s and
1670’s was a period marked by fear of disorder generally and the threat of female power
specifically (a point I have addressed above in reference to the Quaker threat and one that
will become increasingly significant when these figures are later broken down into
gendered categories of husband and wife abuse)\textsuperscript{207}.

So far I have attempted to locate a very specific law within a broader social and
political climate, and to argue that we cannot assume that it was devised out of
humanitarian concern for women. As part of a much broader project of state building the
‘little commonwealth’ played an integral role in establishing and maintaining order. This
rendered married women legally and economically incapacitated and under the
‘government’ of their husbands. The hierarchical model of authority that was promoted
had implications for the household itself.

‘Correction’ was an obligation of all heads of household whose role it was to
guide, govern, and protect. Given that a refusal to be disciplined was commonly
understood as the absence of ‘reason’, this had implications for the kind of correction that

\textsuperscript{207} Murphy argues that the perceived loss of order in the 1660’s was followed by increased efforts to “assert
gendered authority”(1998:x). She notes a rise in fornication prosecutions as well as “family government”
cases to back her position up. The 1660’s and 1670’s was also the two decades when the Quaker threat was
highest. As I have argued above this ‘threat’ was tied in part to the increased power of Quaker women in
the congregations, their relaxed family structure, and the increased social mobility of Quaker women. This
may have exacerbated a fear of female power during this period, a position that is supported with the
introduction of a law prohibiting husband abuse in the 1650’s (see below). Together this makes it difficult
to know whether enforcement was stepped up during this period, or whether the reported increase was real.
We can assume with some confidence that the decrease beginning in the 1680’s was related to the
revocation of the colony’s charter and the temporarily imposition of English law (a law and a legal
apparatus that was very different than the one the Puritans had originally devised). On their own these
figures can tell us very little about domestic violence, in fact it is fair to say that they are misleading
without context. When these figures are broken down by gender a very different kind of analysis is made
possible.
was deemed ‘reasonable’ to mete out\textsuperscript{208}. Since all threats to authority were viewed as threats to the order itself, a wife who refused to accept ‘her place’ in this order signaled the threat of something bigger. A logic that interpreted all disagreement as dissent, and all dissent as dangerous rebellion became the conservative lens through which domestic violence was interpreted and dealt with. It was against this backdrop that husbands and wives fought, courts and neighbors responded, and the law was applied.

The first recorded case of ‘wife beating’ in Massachusetts appeared before the courts in 1638, three years before it was officially prohibited under the \textit{Body of Liberties}. Henry Seawell was charged with beating his wife after living separately from her for three years, and having been ordered by the court to provide support (McDonald 1986:53). He was merely admonished (most likely because he agreed to pay support) (Schweber 1998:387\textsuperscript{209}). In 1640, John Davies (ibid.) and Tobias Hill (Koehler 1980:138) were both called before the magistrates to account for “unquiteness” with their wives, a term specifically reserved for disruptive behavior that had spilled over into the community (ibid.).

Together these examples tell us that domestic violence did occur very early in the new settlement, and that at least in some cases, it was viewed as a social problem meriting intervention. The question is what kind of problem was it thought to be? And what kinds of interventions were thought necessary? In all three of these cases the men involved had caused a problem for the community. In the former case Seawell had

\textsuperscript{208}We are reminded that mitigation and harshness were the “twin pillars of justice”, that “correction” called for restraint, and that severe punishment was generally reserved for obstinate “ffooles” (Perkins cited in Cahn 1989:127).
breached his obligation to the community by refusing to provide his wife with support\(^{210}\) and in the other two cases the men had caused a disruption. Do the rest of these cases follow this pattern?

And it is here at the very beginning that we begin to run into methodological problems. Koehler (1980) and Mcdonald (1986) both note problems with missing and fragmented records, incomplete or missing data, multiple offenses listed under one category, and inconsistent and ambiguous reporting of offenses\(^{211}\). I myself have found it a real problem to sort out jurisdictional boundaries for this time period because they shifted several times over the course of this century. While McDonald (1986:53) argues that these problems only hinder valid conclusions on the extent of domestic violence, not on the existence or nature of it, there are reasons to be more cautious.

As I have argued above, in colonial Massachusetts the courts and the churches worked together to maintain order. A practical reliance on spiritual watchfulness and arbitration meant that as much as possible conflict would be handled through informal counsel and control. We know that the churches would sometimes handle less serious problems, and that the disputes of ‘gentlemen’ were often handled in this way. While the courts dealt with all manner of disorder they were most likely to handle cases related to non-compliance and what Schweber (1998) refers to as ‘spill-over cases’: problematic

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\(^{209}\) In Schweber this name is spelled Sewall, but it is clear from the date and the description of the incident that it is the same individual.

\(^{210}\) Given women’s economic dependency, this caused a problem for the entire community, and one that they did not look on favorably (see Abramovitz 1989; Koehler 1980). See above on women’s forced economic dependency and the implications of men’s desertion.

\(^{211}\) McDonald (1986) suggests that the actual incidence of wife abuse may have been obscured under other charges such as drunkenness. We might alternatively conclude that drunkenness was the main target of concern. Elsewhere she suggests that the crime of ‘idleness’ may obscure the number of husbands who refused to support their families.
events, happenings, and disputes that spilled over into the community causing a disruption or threat. Therefore the courts by definition dealt primarily with problems of disorder. Given that there is no available data on what are probably the less serious forms of domestic discord (and also those in which the upper class were most likely to be represented), we cannot assume that the cases presented here are representative\textsuperscript{212}. Over all it is fair to say that they probably constitute the most serious cases and may be distinctive in ways that are not immediately obvious. Having said this, this does not keep us from examining the way that law was applied in these cases or from attempting to identify how relations of gender played out in these instances. Even if these cases were over-represented by the lower classes as Schweber (1998) suggests, it still tells us what cases were deemed most worthy of concern, while suggesting possible reasons why.

The questions I am attempting to answer here are broad and open ended. What does the social order have to do with domestic violence? What does domestic violence have to do with the social order? And what role does gendering play in this mix? Were these individuals singled out because their actions were morally blameworthy, as Pleck (1987, 1989) suggests? And if so, what kind of blame was assigned? Because the numbers are small, because the records are fragmented, and because our understanding of this community is less than perfect, this requires a bit of creative patchwork.

Unfortunately, there is very little information to work from and no one incident can tell us very much on its own.

\textsuperscript{212} Schweber (1998) reports that household cases were more likely to be over-represented by the lower classes. Unfortunately he does not break this category down further.
This is what the law had to say about domestic violence. In 1641 the *Body of Liberties* dictated that “Everie marryed woeman shall be free from bodilee correction or stripes by her husband, unless it be in his owne defence upon her assault” (cited in Pleck 1989:22). Immediately we see that ambiguity is inserted into this clause in at least three ways. ‘Unless’ qualifies what is otherwise a straightforward dictate. And this is where things get slippery. We know that speech acts could be considered ‘assault’ by Puritans, a fact that informs our understanding of ‘defense’ (see Kamensky 1999; Schweber 1998). We also know that verbal abuse was itself a crime that could merit public humiliation or whipping (McDonald 1986). Given the way that authority and gender were understood within this context, this had implications for the way that a wife’s speech toward her husband would be understood. For example Saxton reports that if a woman spoke out of turn to her husband it was automatically viewed as rebellious (2003:53), for in speech crimes it was not just the content of speech that was a problem, it was also the authority that was breached in the speech context (Kamensky 1999). Therefore when a woman appeared in court for ‘rebellious speech’ it was usual directed at a man or men (Saxon 2003:53). Here it becomes clear that ‘talking back’ could get women into a lot of trouble. Most importantly it could obscure important distinctions between the kind of ‘assault’ perpetrated by women toward men, and that perpetrated by men toward women.

The next ambiguity arises with the term ‘correction’. We know that the term ‘correction’ was used in reference to the punishment of children, the ‘disciplining’ of a wife by her husband, and the meting out of sanctions in the courts. So here it appears that the issue was not whether men had the right to ‘correct’ their wives (in fact they were obligated to do so), the issue appears to have been rather how they were to correct them
("free from bodilee correction"). Yet even here there is perhaps an alternative interpretation. This is clarified somewhat indirectly in this same section of the Body of Liberties. It was here declared that if a husband had “any just cause of correction complaint shall be made to Authoritie assembled in some Court, from which only she [a wife] shall receive it” (Pleck 1987:25). It appears that correction was to be first attempted by the husband in accordance with the principle of constraint, it was to be administered according to law and custom, and if the wife remained obstinate the husband was to surrender her to the court to ‘correct’. Very clearly this locates ‘correction’ along a continuum with harsher punishment now specified as the exclusive prerogative of the state. But again, we must remember how authority is framed within this culture. A household head was allowed some discretionary power over his family, and could act on this authority because he was authorized to “correct” those under his government. In this capacity, and under these circumstances, the husband quite literally stood in for the state… as long as his actions were aligned with state objectives (a sticking point for some husbands as we will see). Alternatively, this meant that the state now had the authority to correct wives for their actions within the household. As I have argued above, this expanded the power of the state, and as long as husbands abided by the unspoken guidelines, it expanded their power as well.

Ulrich argues that although wife beating was illegal it was “tacitly condoned” (1991:187). This is supported by the fact that it was never “enthusiastically or

\[213\] Here we again see the relevance of ‘deputies’ and delegated authority within this framework (see above).
effectively” enforced (Koehler 1980:140). Pleck argues that “the courts placed family preservation ahead of physical protection of victims, and that divorce was never granted on the basis of cruelty alone (1987:23, 24). “He beats her without provocation” was a phrase often found on divorce petitions (ibid.). This implies that the legitimacy of a husband’s actions hinged, at least in part, on popular understandings of ‘provocation’. Again, this points to ambiguities in the law, but not necessarily ambivalence. The issue was not whether a wife might sometimes need correction, but rather who should do the correcting, and how it would be accomplished. As I have argued above, the principles of good government dictated that correction should be lean and efficient, exercised with authority and constraint. Toward this end the state and the household head were sometimes at odds.

Ulrich (1991:186) claims that both authoritarian violence and defensive violence could be more or less legitimated in the New England colonies depending on whether it involved excessive force in the case of authoritarian violence (beyond what was necessary to acquire compliance) or whether it broke with established hierarchy or customary privilege in the case of defensive violence. In both of these instances the issue was not the violent act per se, but whether one had breached the authority granted them in a given context. It appears not to have been the violence itself that was at issue, but rather the legitimate right to exercise such violence.

From the whipping post on the town common to the pudding stick in the hand of the mother, colonial Americans accepted authoritarian violence as essential to social order. The most extreme forms were monopolized by the state, which had the power to kill as well as to whip, but masters, mistresses, masters, mistresses,

214 See also Weisberg (1975) and Cott (1976a).
schoolmasters, and parents, had not only the right but the obligation to administer physical correction if needed…Though wife-beating was technically illegal, it too was at least tacitly condoned by the society. In litigation it was not the right of the superior to use force, but the appropriateness of its administration. Presented with evidence of a bruised limb or a broken head, the court tended to ask: Did the citizen resist the constable? Was the child or servant incorrigible? Did the wife provoke her husband? (Ulrich 1991:187)

And given this, the perpetrator of violence could almost always answer Ulrich’s last two questions in the affirmative, because something had indeed instigated their actions. It was commonly believed that women provoked men (see Koehler 1980; Pleck 1997; Saxton 2003; Ulrich 1991) and for this reason, very few husbands actually denied the attacks on their wives (Koehler 1980). According to their accounts, their actions were not only called for, it was their legitimate right. The court appears to have supported this in some cases, as there is evidence that wives were sometimes explicitly blamed and punished for their husband’s actions toward them (Koehler (1980:143))215. Given this, the issue of dispute between these men and the courts appears to have hinged on whether their response was ‘called for’ (provoked). Again, this prohibition against wife beating appears to have been as much about men and the state, as it was about husbands and wives. And this is where men found themselves in conflict with the law.

Many husbands defended their right to correct their wives without interference. For example the above noted Tobias Hill (1640) complained that he had the right to “dispose of his wife as he saw fit”, announcing that he had “had enough of her”; so convinced of his marital privilege that he offered her out to fellow townsmen (a move that may well have been what sparked the courts concern) (Koehler 1980:138). William
Healey of Middlesex County beat his wife with a large stick, called her a “lying slutt”, and hit her in the face with his fist, leaving bruises (ibid.). Similarly, Ephram Joy kicked his wife and “bludgeoned her with a club when she refused to feed his pig” (Ibid), threatening those who came to his wife’s aid (McDonald 1986:55).

Francis Morgan struck his wife because she spoke to him abusively. He refused to ask for the magistrate’s assistance because “it was below him to Complayne to Authorities against his wife” (cited in Koehler 1980:137). As unremorseful as he reportedly was, he settled with his wife after he was ordered to pay £100 security216.

Daniel Ela lashed out at neighbors who were attempting to intercede at the request of his wife, asserting that he was “Lord paramount in his own house” (cited in Pleck 1987:30). He accused his neighbors of being “‘meddling knaves’ who should go home and order their own wives around and get even with them” (ibid.)217. He refused to denounce her to the magistrates as a “scold” because it would be “a disgrace to him” to have the magistrates whip “his servant and his slave” (a privilege he obvious felt was his own) (Koehler 1980:138). Similarly, McDonald reports that John Williams also defended his right to correct his wife without interference (1986:54).

What is noteworthy here is that all of these men felt entitled to correct, abuse, and control their wives, over and above any court dictate expressly prohibiting their actions.

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215 One of these cases involved a man who threw his pregnant wife out of the canoe and threatened to rip the unborn baby from her body (ibid.).
216 This case is interesting because of the very large bond that was required; either this husband was a respected member of the community and this breach of authority was viewed as more significant (see Schweber 1998), or he was not wealthy and the bond was a way of forcing him into servitude if he breached his agreement with the court. In either case it appears that the severity of the punishment was to a large degree due to his obstinacy and lack of deference to the court, not the actual assault.
217 After they left he again threatened his wife’s life and she was forced to flee at night in the middle of winter. This same man was witnessed on other occasions attacking her with a cudgel (Pleck 1987: 31).
“Each abusive situation undoubtedly had its own idiosyncratic behavior, but one common theme stamped virtually every case appearing before the courts: the husband’s belief that they could legitimately punish their wives for obstreperous behavior, whether imagined or real” (Koehler 1980:139). In all of the above cases, and in many more cited in the literature, these husbands’ stance appears to have hinged not on their undisputed right to govern their wives, but on the right of the community and the courts to tell them how to govern.

In some cases the courts appear to have agreed that men had the right to govern without interference. The courts welcomed church and community mediation in family matters (again, a practice tied to class), but ‘meddling’, a distinctly gendered phenomenon, could be unwelcome. In a most revealing case a man was charged with “carrying harshly to his wife”, while the neighbor woman who interceded on the wife’s behalf was ordered whipped for interfering (McDonald 1986:55). The issue here was clearly not whether the man’s actions were justified (for he was charged with the offense), it appears to have been that the neighbor interfered with a matter that was a man’s ‘dominion’ (not hers) and this was viewed by the courts as a more serious offense than his. In a less clearcut case, an abused woman’s mother was ordered to cease interference, move from her daughter’s house, or face imprisonment (ibid.). Yet in a very different ruling, Mark Quilter was fined for striking his wife and also for hitting a neighbor who became involved (Ulrich 1991:60).

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Koehler gives a psychological reading to this, suggesting that the Puritan religious worldview fueled feeling of male helplessness that evoked rage when a woman was insubordinate (1980:140). While he argues that cultural learning also played a part in this type of abuse, he insists that it was helplessness, not a sense of entitlement that precipitated the attacks.
We might conclude from this that neighborly ‘interference’ was sometimes welcome by the courts but sometimes not. This mixed message may help to explain why the neighbors of Ela, above, were unwilling to help his wife when she appeared at their doors beaten and in her nightgown in the dead of winter

It was only after she argued that she would die outside from the cold and that her death would be on their heads that they agreed to assist her (Ulrich 1999:188). Konig describes a similar case involving neighbors:

The Fannings consistently missed church and quarreled drunkenly with each other. Nevertheless their neighbors left them alone after one attempt to calm things had proved to be a mistake: Fanning brandished an axe at his incautious critic and “did swear God dam you and call him sun of a hoer and many such ugly names.” For some time after this incident, his neighbors tolerated his wild private behavior. It was only when the Fannings began to “live unquietly with their neighbors” and to disturb them that direct action was again attempted. The immediate occasion was another fight between the Fannings. But this time Mrs. Fanning staggered into a neighbors house with her throat cut, and it was decided that someone should “part them from fiting”… (Konig 1979:128).

When Fanning did end up in court it was on a charge related to theft (ibid.). Very clearly, ‘spiritual watchfulness’ had its own code of administration and its own limits of concern. Over time it became common practice to inform the magistrates of this kind of disturbance as opposed to ‘getting involved’ (see Koehler 1980:142; Konig 1979).

Given that so few abusive husbands chose to deny their actions (most attempting to justify their behavior), the cases of those who did are therefore interesting (Koehler

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219 Given the strict sexual code, the neighbors may have also feared letting a woman who was alone enter their home at night in her night dress. Alternatively, they may have feared her husband. What is most interesting about this case is that when it did go to court she recanted her previous testimony (Ulrich 1991:188).
In the following cases admission of guilt would have clearly placed the men involved at risk themselves. Demos (1982:74) and Koehler (1980:138-9) both report on the same man, Dibble, who when accused of assaulting his wife claimed that she had “sucked on her arms” to cause the discoloration, that bruises on her thighs were the result of witchcraft, and that she had “a witches teat in her “secret parts”. Dibble was attempting to escape witchcraft accusations himself which may explain his deception. Hugh Parsons and his wife also faced witchcraft accusations, and the issue of marital discord also came up as evidence in their trials (Demos 1982:74). Parson announced that his wife Mary had said “very harsh things against him before his face” and that he “never feared either to grieve or displease his wife anytime”, but that once he had “took up a block [of wood] and made as if … [to] throw it at her head” [Ibid.]. In these cases, witchcraft and disorder were closely linked, disorderly conduct carrying a high penalty. Facing very different charges Elias Row (1681) denied that he murdered his wife, who was found bloodied in their bed (Koehler 1980:139). In each of the above cases, admitting the crime of spousal abuse would have brought dire consequences to the men involved; both murder and witchcraft were punishable by death (Schweber 1998).

Although many forms of disorder and disruption became associated with witchcraft or possession in the latter quarter century, it was the illegitimate exercise of authority that caused the greatest alarm in these cases (see Karlsen 1987; Konig 1979; 220). This tendency to admit one’s actions may have been due to the role that confession and public apology played in mitigating punishment, however many men defended their action as justified. 221 This mistakenly identified witches ‘teat’ fits the description of a prolapsed cervix, most likely due to multiple births (see Koehler 1980). While the above bruising may indeed have been a result of an undiagnosed medical problem, a previous history of marital discord renders it suspicious. What is most important is that if he was believed, his wife might have faced the death penalty. 222 He was later released when the coroner could find no evidence of violence (ibid.).
Morgan 1966). Konig explains that when Goody Perkins described her husband as a “fooll” and a “devill” she was not simply railing, she was explicitly referring to his illegitimate exercise of personal power over her (1979:153). The term ‘devil’ was often used to describe either the unauthorized use of power toward a subordinate, or a subordinate who used power illegitimately to usurp authority (see also Morgan 1966). Once again, slippages from one realm had implications in another…and all too often this played out in the courts and on women’s bodies.

Karlsen (1987) argues that women charged with witchcraft were often viewed as “disagreeable women, at best aggressive and abrasive, at worst ill-tempered, quarrelsome, and spiteful” (1987:118). They often refused to adhere to behavioral norms of age, gender, class, or race, or to show the requisite deference to authority. She notes two types of dangerous trespass: 1) challenges to God’s authority; and 2) challenges to gender norms of comportment. In explaining why disorderly women posed a greater threat than disorderly men, she argues that “the male/female relation provided the very model of and for all hierarchical relations, and …Puritans hoped that the subordination of women to men would ensure men’s stake in maintaining those relations” (1987:181). After reviewing the punishments meted out in household cases, Schweber argues that “the severity of the offense correlated with the gravity of the threat that it posed to the order of the household rather than the moral blameworthiness of the conduct at issue” (1998:383).

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223 Crimes of assaultive speech and theft accounted for 61% of all charges against witches, compared to 27% in the general population of women (Demos 1982:78). It is noteworthy that both of these are noted among the resistance strategies employed by servants and wives (see Morgan 1966).

224 Women were charged with witchcraft more often than men (83% in non outbreak cases in New England, and 76% in outbreak cases) (Karlsen 1987:48) She attributes the lower number of women charged in the outbreak cases to the frenzied tendency to charge friends, family, and associates of the witch (see my comments on Puritan belief in contagion above).
Order in the household was directly related to the broader political order, and gender played a practical and symbolic role in maintaining that order.

So the issue of provocation must be read through this broader political lens, as should the issue of ‘defense’. To suggest that gender played a role in assigning blame in legal cases during this period is not new and has been addressed directly by Hemphill (1982); Kamensky (1999), Koehler (1974); and Schweber (1998). What I am suggesting here, is that the gender and comportment of the victims mediated the blameworthiness of the men. This was so not merely because women were undervalued (although that was indeed the case), but because the broader significance of women as symbol coupled with the hierarchical notion of authority to render ‘provocation’ (disorderly women) particularly threatening in the eyes of the courts. Just as the goodwife was a symbol of the good citizen, the unruly ‘scold’ was a symbol of disorder and rebellion. And this was one of the reasons why a woman’s reputation (and therefore her positive ties to the community) was so important. Once again we see important links between formal and informal mechanisms of control.

Given the Puritan tendency to read events typologically, the state could not afford open rebellion, but neither could they afford to have the general population interpreting violent reactions to these threats as in any way undermining the right to rule. The colony, like the husband, had the right to ‘defend’ against threat, and if the attack on the Pequot at Mystic is to serve as an example (or the reaction to Anne Hutchinson’s challenge), this

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225 Consider the following remarks from Benjamin Wadsworth, a Puritan minister: A woman who strikes out at her husband “provokes the glorious God, tramples his authority under her feet; she not only affronts her Husband, but also God her Maker, Lawgiver, Judge” (Koehler 1980: 142-143). This is only one of many quotes like this in the literature and sermons of this time period.
type of threat drew a swift and violent reaction (see Kibbey 1986:93-120). And it is here that we might ask whether the magistrates were intentionally ambiguous in the above clause? For again we see the same characteristic double speak used in the handling of the original Charter. If we think back to the magistrate’s position on discretion, we can see that the above noted ambiguity allowed for the flexible interpretation of law, while also justifying its rigid application when it was deemed necessary or desirable. Given the broader social backdrop and the meaning assigned to disorderly women, this would not serve most women caught up in domestic disputes.

This is supported by the fact that in 1650 the Massachusetts General Court amended the original prohibition to include a wife’s assault on her husband, designating a fine of up to £10 or a whipping as punishment for anyone, male or female who struck a spouse (Koehler 1980:137). We do not have any background on how or why this came about, and there does not appear to have been any high profile cases of husband assault surrounding it. Having said this, there were more women than men prosecuted for spousal abuse during the preceding decade (Macdonald 1986), but up until this new dictate there was no set punishment assigned to the crime.

Koehler reports that between 1630-1699, 59 husbands and 31 wives were brought before the courts for abusing their mates (a little more than half as many women as men).

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226 The Pequot were an indigenous people virtually slaughtered by the Puritans in an attack on a village containing only women and children. Kibbey (1986) notes the gendered significance of this attack and its extreme violence.

227 Here as elsewhere they were attempting to accomplish many things at once. They were attempting to preserve a model of authority that was consistent with the existing hierarchy, establish the legitimate use of force while legitimizing those who might use it, and eliminate threats to the order itself. The discretion that the magistrates sought was toward this end.

228 My previous comments regarding the ambiguity of ‘assault’ are particularly relevant here as will become evident.
(1980:160, footnote 6). This breakdown by gender roughly corresponds to the cases reported across the rest of New England (ibid). Comparing the pattern of the punishments meted by gender and severity informs our understanding of the significance that Puritans placed on the authority structure.

The consequences of conviction in those cases involving *wife-abuse* were generally less severe than those that involved *husband abuse*, and were seldom enforced according to the strict letter of the law (see Koehler 1980:140-142). For example, in Essex County the magistrates sentenced only two of the twenty-seven men charged with lashings. Respite was granted to Thomas Russell (1680) for showing the requisite repentance, a man who had kicked his wife “unmercifully”, struck her on the head, threatened to burn her, slit her throat, and kill her if she sought legal redress, (Koehler 1980:140). Five other men received rebukes, and the rest were fined between 10s to £2, well below the fines allowed. Similarly the Plymouth courts used admonitions, while the courts in Maine demanded that a bond of £10 be submitted to ensure good behavior (and these were cases that involved additional offenses as well). In keeping with Koehler, McDonald reports that punishments for wife abuse ranged widely from admonition, humiliation (stocks), whipping, and fines or bonds; with the most common punishments involving small fines or bonds for good behavior (and often these more serious penalties

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229 Koehler argues that the counties of Middlesex, Suffolk, and New haven dealt more harshly with errant husbands. Middlesex fined men £2 to £5 or required a bond of £10-£40. In the other two locales corporal punishment was ordered; Suffolk ordering ten to fourteen offenders whipped, while New Haven punished three to four men in this way. Many of these men paid fines of £5 to avoid the lashing, and nowhere in Massachusetts did wife-beaters pay the £10 fine called for under law (1980:140-41).
were applied in cases that involved intoxication) (1986:54). No husband in Massachusetts was ever forced to pay the full fine of £10.

There were twelve reported cases of wife abuse committed by nine husbands in the 1660’s (McDonald 1986:54). All but two included physical abuse. The punishments included fines and bonds of assurance. Those cases of wife abuse in the 1670’s also followed a similar pattern of physical abuse, two of these cases involving violent assaults upon pregnant wives. McDonald reports that the next decade was the most violent of all, with ten cases of physical abuse and two wives being forced from their homes (ibid.). Again, fines and bonds were the usual punishments (with penalties often assigned for drunkenness as well). She reports that these numbers dropped off by the 1690’s, but reports that a man who threatened to cut his wife’s throat during this period was punished with one hour in the stocks (ibid.:55). McDonald notes that over all, the penalties did not reflect the seriousness of the abuse (ibid.). In stark contrast to the Court’s policy regarding obstinacy, records did not indicate that harsher penalties were applied for repeat offenses (McDonald 1986:54).

Abused wives had little protection from their husbands even after such treatment came to the authority’s attention. If these punishments were intended as a deterrent, they provided little security for those wives who lodged complaints (or for those neighbors who may have attempted to assist them). In most cases the husbands were sent home after paying a small fine, or after having been admonished for failing to govern with moderation (Koehler 1980:141). Only in a few instances was a husband actually separated from his wife, despite a woman’s repeated complaints of maltreatment.
There are several cases of run-away wives being ordered home to ‘work it out’ (Koehler 1980; Pleck 1987:23).

Despite the severity, and continued threat of violence in some of these cases, the courts refused to allow couples to separate in all but two reported instances (one involving permanent separation, one temporary) (Pleck 1987:23; McDonald 1986:54). John and Elizabeth Williams were granted a permanent separation with Elizabeth still petitioning for unpaid support thirty years later (McDonald 1986:54). Although divorce was sometimes granted in Massachusetts (see above), it was impossible to obtain on the grounds of cruelty alone (Weisberg 1975). Even if granted, it did not ensure the end of a woman’s troubles. Edward Naylor was banished ten miles out of town as part of a divorce case in which he was charged with “[i]nhuman carriage and satanic cruelty” toward his wife and children. He was later allowed to return to the community upon securing a bond for good behavior, recover his estate, and “dispose” of his children as he saw fit (McDonald 1986:54). Whereas a divorced woman was required to live under the authority of a male head of household, a divorced man was free to live on and manage his own property (Koehler 1980:42).

In some cases the court cited both parties as culpable. These cases involved quarreling, verbal abuse, and physical assault (McDonald 1986:56). In these instances the couples were usually admonished and ordered to live peacefully together in the future (ibid.). In those cases deemed most serious, the couple was threatened with fines or imprisonment. One couple was fined and ordered whipped (ibid.). What is interesting is that there appears to have been few cases where husband and wife were held equally
accountable\textsuperscript{230}. Puritans liked to keep their boundaries firm, and toward this end the assignment of blame played a useful role in establishing the appropriate norms of behavior.

This pattern of tolerance changes drastically when we turn our attention to husband ‘abuse’. The punishments meted out in these cases are both interesting and informative when we compare them to wife assault. Having said this, there is considerable difficulty making sense of these figures because court authorities consistently failed to distinguish between defensive violence and assaultive violence when women were involved. Since women were by definition breaching authority by fighting with their husbands, in only very severe cases was ‘fighting back’ viewed as justified (Saxton 2003).

During the 1640’s, only two cases of wife abuse but five cases of husband abuse were reported (McDonald 1986:55). This is noteworthy given the Antinomian crisis in the late thirties and other high profile cases of women who defied court authority during this decade (see Barker-Benfield 1972; Kamensky 1999; Koehler 1974; Lindley 1996). Lindley argues that Puritan’s made a self-conscious and concerted effort to rein women in after the Hutchinson incident, which may explain the increased interest in uppity wives (1996:7). This pattern shifted somewhat in the 1660’s when both husband abuse and wife abuse rose, but husband abuse did not rise as drastically (McDonald 1986:55). By the 1670’s there were more cases of wife abuse than before but the number still did not rise

\textsuperscript{230} Again, this requires a qualification for it may have been that these cases were regularly handled by the church.
above that of husband abuse. McDonald does not give us a breakdown after this period but does state that there were no cases of husband abuse recorded in the 18\textsuperscript{th} century\textsuperscript{231}.

Comparing punishments meted out to husbands and wives, Koehler reports that across New England, 15.9\% of guilty men were sentenced to be whipped or fined, while 52.9\% of guilty wives were sentenced to corporal punishment (1980:155). He found that twice as many husbands as wives had their sentences reduced to admonishment (ibid). Unlike men, women were seldom given the option of a fine, and when they were the magistrates often ensured that they would still be whipped by setting their fines considerably higher than those of men (ibid.). Only in the most extreme cases of murder did Koehler find that the punishments of men and women were equal (ibid.).

In 1655, when Joan Miller was charged with husband abuse it was ordered that “she be punished at home for beating and reviling her husband and encouraging her children to do the same”, a whipping was ordered on a second offense, which she escaped by promising to behave in the future (McDonald 1986:55). Another woman was sentenced to “twenty lashes” after “railing” at her husband (ibid.). Here we again we see from the kinds of punishments imposed that a husband could indeed stand in for the state, just as the state could step in for the husband.

McDonald reports that in Massachusetts wives charged only with verbal abuse (the majority of the charges) were almost always given a choice of fine or whipping, and in some cases imprisonment (1986:57). Because of the disparity in the punishments

\textsuperscript{231} There were two important changes that occurred after the 1680’s that may help to explain this shift. We do not know what influence the witchcraft trials might have had on woman’s willingness to defy authority, and also, the original charter was revoked during this period and English rule was temporarily reinstated.
meted out to men and women, she concludes that a wife challenging the authority of her husband was viewed by the courts as more serious than a husband’s physical attack on his wife, even though by the later part of the century husband abuse was reportedly more likely to involve physical assault than in the earlier decades (McDonald 1986:56). Any straightforward reading of this latter fact is further complicated by Ulrich’s claim that women were likely to use hair pulling and biting in physical altercations with men (1991:190).

Saxton reports that twenty percent of male homicide victims were wives, but reports no husbands killed by their wives (Saxton 2003:54). McDonald (1986) does report one, and both she and Koehler (1980) report cases where spouses of either sex threatened or attempted to murder the other. After reviewing the material from all of the above sources, in those cases involving threats as well as attempted murder, women received harsher penalties than men over-all, even though the figures reveal that men were more likely to act on threats, and women were more likely than men to be injured or killed in physical altercations with their husbands.

Here I will diverge to talk about a very different form of abuse and coercion; one that is closely tied to the economic position of women but also sheds important light on the above cases. Under Massachusetts law husbands had the responsibility to support their wives, and given the harsh realities of women’s economic dependence the state apparatus had to ensure that this obligation was enforced or the entire system would fall into crisis (a point I have made above regarding divorce and remarriage)\textsuperscript{232}.

\textsuperscript{232}This was exacerbated by the fact that after marriage wives moved to their husband’s town of residence (See Smith 1973). Across New England, deserted wives made up 10% of the population of women requiring
Unfortunately the laws that were put into place concerning divorce, separation, and support were less than effective in achieving security or compensation for women, and more concerned with punishing disreputable men for these breaches (see Salmon 1998:77). For example, John Guppi was whipped for deserting his pregnant wife (a harsh penalty when we compare it to the punishments meted out in the above cases of wife abuse) (see Schweber 1998:383).

As Salmon (1986), Wiesberg (1975), and others have made evident, divorce and separation were the colony’s way of dealing with dysfunctional family heads and stripping them of their state sanctioned power by denying them remarriage. Similarly, when abusive husbands refused to provide their families with maintenance, forced their wives out of their homes, or in any way threatened to shift their ‘economic obligation’ onto the community, the courts reacted with sanctions and demanded that he remedy this to the court’s satisfaction (providing women with minimal levels of support). Unfortunately this ‘remedy’ was seldom satisfactory to the women involved. There are many recorded cases of family fights over support and property, and both Abramovitz (1989), and Koehler (1980) note that desertion was a common cause of women’s poverty. In light of this, consider the following comments by Salmon:

> occasional, slight acts of physical violence were not enough to gain judicial support for a separation, nor what today we would call mental anguish. Such things, although reprehensible, did not threaten life or limb. A woman could live with them. But when the degree of cruelty escalated to the level that required a wife to leave home, the courts acted uniformly in offering her help (Salmon 1986:77).

Koehler notes how reluctant communities were to provide assistance despite the dictates of Christian charity.
The issue here was clearly maintenance. Maintenance made cruelty an issue between the state and the male householder, not moral blameworthiness- despite what one may easily assume from the rhetoric reflected in religious tracts (see Lindley 1996; Saxton 2003). The ‘order’ that the courts consistently moved to maintain in household cases, reflected, preserved, and amplified women’s subjection…

Men were sanctioned to exercise a certain degree of force or coercion over their wives, whereas women were not granted the same authority over their husbands. Since all authority derived from the state, to “step out of place” was not only to challenge the husband’s authority, it was to challenge the entire structure of authority. This helps to explain why women who fought back were punished more severely than men who acted with the same degree of force. A scold was not only a cantankerous wife, she was a ‘devil’. She had not only breached the spiritual boundaries of submission, she had crossed the legal boundaries of authority. After reviewing a number of household cases in which authority was involved (wife assault, husband assault, child abuse, disobedient children, and master servant relations), Schweber (1998) argues that the punishments were most severe when the established lines of authority were challenged.

Women were given explicit instruction to bear the burden, and when they did they were entitled to “Rewards hereafter for it, as well as Praises here” (Winthrop cited in Saxton 2003:53). Winthrop instructed wives to find in their husband’s blows “love and correction” (ibid.). A wife was to please her husband, “comply readily with his demands, and remain supportive of his needs and interests even under circumstances…when the husband was abusive or cruel” (Mathers cited in Masson 1976:308). Both Mrs. Davis
and Mrs. Lyford were praised for remaining faithfully with their violent and abusive husbands (Saxton 2003:53). In reality it appears that women had little choice.

In keeping with this, Koehler states that any claim that a woman might have had to legal redress from her husband had to have been “based not on her ‘rights’ but on her supposed weakness or need of protection” (1980:48). While it makes sense that arguments based on women’s ‘vulnerability’ may well have functioned as a successful rationale given its consonance with the dominant belief system, the work of Salmon (1986) and Weisberg’s (1975) suggest that this may not have been the only concern of the magistrates. By examining the ways in which legal, economic, and ideological factors converge to form a complex network of constraints, these researchers draw our attention to the ways that relations of ruling are constituted and reconstituted at multiple junctures. By allowing for a more complex and dynamic depiction of power, they encourage us to explain contradictions instead of just acknowledging them. One of these contradictions was the way that protection and governance were reconciled under this distinctly gendered model of authority.

This raises issues that link previous discussion of law and authority in Massachusetts to the issue of violence in the domestic context. It suggests slippages that rationalize such violence while simultaneously limiting it to a ‘legitimate’ standard, determined by what was tolerable to the newly established colonial government. This was backed by a civil and religious moral code that increasingly privileged self-control over passion (Gildrie1994:94). Violence, like love, was to assume a rational character, and a
good ‘governor’ was to avoid discord where possible (see Morgan1966:52). When ‘correction’ was necessary it was to be meted out with a cool calculation and an instrumental efficiency. This ‘administrative’ approach both conflicted and merged with a worldview that interpreted all threats as signs. Out of this mix came a vision of ‘order’ that had husbands policing boundaries that their over-signified wives stood for. Indeed they were the boundaries, and gender was the code.

While Pleck (1987,1989) acknowledges many of the above factors in her analysis of domestic violence, she places a strong emphasis on moral regulation. While she takes issue with the way this regulation plays out, she does not attempt to explain it beyond its own explanation of itself. As I have attempted to illustrate, this absence of skepticism can lead to dangerous assumptions when it comes to women and the law. This is because meaning always exceeds what we have in store for it and what we have in store for it is always changing. Given the capacity of power to reconstitute itself in slippery and unexpected ways, women cannot afford to forget this, even when evaluating the most seemingly liberatory reforms.

There is one more bit of trivia concerning the author of the Body of Liberties that makes the above prohibition against wife abuse worthy of a second glance and underlines my comments about contradiction. Koehler quotes Nathaniel Ward as having this to say about women:

Nathaniel Ward found it hard to view woman as anything other than “feather headed” spendthrifts and “Squirrelly-brained friskers after the latest fashions, ladies...fitter to be kickt...then

233 Notice how slippery the terms ‘protection’ and ‘vulnerability’ are here. The proffering of ‘protection’ masks the social genesis of a vulnerability that is legally, economically, and ideologically imposed, while the need for ‘protection’ implies weakness, thereby superficially accounting for the increased vulnerability.
either honour'd or humour'd [italics mine]”. He called them “these nauseous shaped gentlewoman” no more than “gant-bar-geese, ill-shapen-shotten-shellfish, Egyptian Hyeroglyphics, or at the best…French flirts of the pastry… The world is full of care much like unto a bubble?Women and care, and care and Women, and Women and care and trouble” (Ward cited in Koehler 1980:35).

It is hard to imagine that this man would have women’s best interests at heart.
Chapter 6
Concluding Comments

I began by arguing against Pleck’s (1987,1989) claim that the Massachusetts Bay Colony had devised their law against wife beating for humanitarian reasons. I took issue with this on several grounds. I argued that it would be a mistake to assume that the logic that underlies this early prohibition against wife beating was similar to our own. I attempted to back this up by describing the socio-political context in which this law was one small aspect of a much broader and somewhat fragmented endeavor to assert ‘order’, to establish authority, and to establish a limited sovereignty. These projects are themselves political. Order is a power laden endeavor in which definitions, valuations (systems of exclusion/inclusion), and interests play a part. Establishing order is ‘messy’, and can be more aptly described as a historical collision of interests rather than as a linear trail toward progress.

While much of the research I have examined for this project employed some combinations of the above explanations for why ‘order’ was a central preoccupation within this community, very few legal historians have taken seriously the significance of ‘the wife’ as a symbol of this order/disorder, or the practical role that she played in reproducing it. In 17th century Massachusetts, these female ‘functions’ were neatly aligned through a complex system of regulatory controls and discursive slippages. The pious and deferential woman was not only a model for the submission necessary for citizenship (although she was denied it), she was also a model for the faithful Christian’s relationship to the Divine. It was in this way that her flesh-and-blood value would pale in
comparison to her importance as symbol. This merged with a hierarchical model of authority to obscure even the significance of her labor as ‘deputy husband’. And of course all of this makes more sense if we abandon the notion that flesh-and-blood women were ever really the target of legal concern.

Within seventeenth century Massachusetts, authority played a significant role in determining the boundaries of order within a community that privileged a hierarchical world view; more so perhaps than economic status or ‘land wealth’, in part because of the leveling tendencies of the environment, the availability of land in the early years of settlement, and a massive cultural displacement in which markers of status and privilege were less secure. Privilege was not displaced under these conditions, it was rather reorganized in ways that gave it a temporary ‘fixity’: codified, standardized, and administered through governing structures and law. This entire apparatus was held in place by a religious worldview and a ramist logic that infused it with new meaning.

This new hybrid combined aspects of traditional patterns of social organization with new mechanisms of administration to produce new modes of governmental organization that increasingly relied on ‘delegation’ to expand and facilitate power at the top. Within this structure, the family head played a practical and symbolic role. Against this backdrop gender played an ever more slippery role in reconciling political insecurity with religious idealism. What cemented family, church, and government was a power relation in which women and men served as sign, but what stabilized it was the codification that held this arrangement in place.

By placing women under the authority of their husbands, and by granting husbands this authority through law, the authority of both the husband and the state were
affirmed. By both limiting and confirming the authority of its male citizens, the power of the state was reinforced and new standards of justification for authority were applied. Through the rule of law the appropriate relationship of the citizen to the new state was established, but it was predicated on slippages that were formulated from a patriarchal model of authority within the family. Methods of governance merged with custom and tradition to render the family the central mechanism of social control.

I am in no way suggesting here that this was a conspiracy, or even that there was a cohesive state to conspire; complicating this further, the concept of ‘patriarchy’ can itself be an all too slippery one. I have merely attempted to point out that given their hierarchical worldview the Puritan elites were aware of their need to maintain power at the top. Toward this end, the head of the household served an ideological as well as a practical function, and here it is important to keep in mind that the Puritans were attempting to establish a civil government distinctly different than that of Royal rule. The complex network of delegated authority coupled with the codification process to make it possible to govern in ever-more efficient and exacting ways across an ever-expanding social territory. Inner ‘discipline’ was a conjoined objective of both church and state. While this was the ideal, in practice it was backed up with, and held in place by the threat of force…and all of this came together in a much more piecemeal and fractured fashion than any linear synopsis can capture.

What is important for the purposes of this paper is that the material and ideological subordination of women was justified through this process and a woman’s subordination to her husband formalized through law. This made it increasingly difficult for alternative arrangements to emerge within the family and the community. The well-
governed family served as both a map and a metaphor for this broader process: as above so below-in politics as in heaven. Given the dominant religious worldview all social relations were to mirror Divine law, and all social posturing was to reflect the deference to authority that the ‘good wife’ stood for. The good husband was to represent the governing yet benevolent state; the goodwife serving as the model subject. This patriarchal word-made-law did not translate well into flesh however. The complex and contested nature of social life cannot be reduced to the formulations that either law or the dominant ideology imposed; this and the messiness of domestic life generally, led to downright blows between the ‘relatives’. What I am getting at is that law surreptitiously justified this even as it prohibited it.

Here I have attempted to extend the work of Roberts-Miller and others to argue that within marriage, as elsewhere, there existed a sustained tension between the ideological and material; for social relations and material exigencies are too complex and demanding to be contained by the categories that meaning carves out. The impulse to codify is a reflection of this problem, for meaning always exceeds what we have in store for it. This is further complicated by the fact that what we have in store for it is always changing and is seldom a matter of consensus. While the complexity of social relations renders contradictions possible, the contested nature of meaning renders slippages inevitable. Humans are both meaning makers and corporeal creatures. What is written on the mind has a nasty way of inscribing itself onto the material world. We do meaning, and it is through this latter capacity that we act on the world. If we are not performing for God, we are most surely performing for ourselves.
I have argued that flesh and blood women, as both an instrument and effect of these processes, were rendered *effectively* invisible through a displacement that consistently read them as more symbol than reality. Because this ‘symbol’ all too often opposed their interests in practice, flesh and blood women were not only subordinate to it, they were subordinated by it. This was true whether the valuing scheme was positive or negative, or whether it was embraced by women or rejected by them. Since their social identity was fixed through a complex of practical imperatives, discursive administrations, and formal controls that upheld this value while denying them, what was accomplished was the amplification of the symbol over and above the referent. What is sometimes read as having positive consequences, the amplification of women’s status through the amplification of woman as symbol, should more accurately be read as subjection, the subjection of women to the meaning to which she must now subordinate herself. When we placed the above law prohibiting wife assault in this broader context a proliferation of new insights emerged.

By codifying what had previously been a matter of custom and negotiation, Puritan law solidified patriarchal relations and made new mechanisms of power possible within the home and the community. The regulations and sanctions that were now imposed interacted in ways that made it increasingly difficult for women to resist these changes, or to strike an alternative bargain for themselves. This is most evident in Salmon’s (1986) examination of property law. Without locating ‘protective’ laws within the broader context in which they become necessary, we can easily lose sight of the fact that these ‘protective’ maneuvers often obscure the subordination that law itself imposes. Most importantly, within this broader context, even the most progressive laws can take a
conservative turn. We see this in the law prohibiting husband abuse following upon those that prohibited wife abuse. As I have attempted to illustrate, the Puritan’s definition of abuse, their orientation toward breaches of authority, and the authority structure of the “little commonwealth”, resulted in harsher penalties being meted out to women than to men. This is what is too easily missed by focusing on the ‘ideals’ of law, rather than on the meanings that law relies on and produces within a given social context, the instrumental potential that it may hold toward diverse and contradictory ends, and most importantly, the actual impact that it has in the social and material world and on the lives of flesh-and-blood human beings.

Within this framework we can see that the law prohibiting domestic violence was used toward the increased regulation of women within and outside of the family context. Without paying close attention to the way this law was situated in relation to other laws, and to relations of ruling generally, we might easily miss the meaning that ‘assault’ assumed within this framework. As I have attempted to show, on a practical level, this interfered with a reading of women’s actions toward her husband as defensive, while promoting precisely this reading in a husband’s actions toward his wife. The emphasis on provocation within cases of wife abuse cannot be understood unless it is situated within the broader context of gender ideology. This is important because it helps to explain the harsher sanctions that were meted out to ‘husband abusers’, and the meager degree of future protection that female victims were afforded. Gender ideology affected the public’s reaction to her situation, and had implications for the help that she was offered or denied during and after the incidents themselves. None of this arose as a conscious conspiracy against women, but should perhaps more aptly be described as a historical
‘collision’ that had the most negative consequences for those who lacked the security that authority afforded. Even when law upheld a woman’s ‘right’ to protection in these circumstances, her profound subordination under the law provided no practical relief. This is perhaps where the marriage of economic arrangements and law comes into sharpest relief.

In the end I have shifted my lens back to the women whose lives this law affected. While they will most certainly remain strangers to us no matter what degree of diligence we employ in our methods, we must resist the impulse to be cavalier in the assumptions we make about their lives. The conclusions that we draw from the past have important consequences for how we understand and negotiate our way through the present. And for this reason, there is a pressing need to better understand the historical relationship of law to women’s status, not just those laws that explicitly subordinated women to men, but also, and perhaps most importantly those that purported to liberate them.

Said (1994:1) argues that appeals to the past are a common strategy employed in interpretations of the present: “What animates such appeals is not only disagreement about what happened in the past and what the past was, but uncertainty about whether the past really is past, over and concluded, or whether it continues, albeit in different forms…” This “interweaving” of the past and the present that Said refers to has implications not only for how we understand the past, but also for how we proceed in the present.
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