ORDER AND DISORDER IN EARLY CONNECTICUT: NEW HAVEN, 1639-1701

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ORDER AND DISORDER IN EARLY CONNECTICUT:
NEW HAVEN, 1639-1701

BY

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DISSERTATION

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the Requirements for the Degree of

Doctor of Philosophy
in
History

May, 1982
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ABSTRACT

ORDER AND DISORDER IN EARLY CONNECTICUT:
NEW HAVEN, 1639-1701

by

ROBERT W. ROETGER

University of New Hampshire, May, 1982

This dissertation assesses order and disorder in New Haven, Connecticut from its founding in 1639 to the introduction of Justices of the Peace in 1701. It juxtaposes concepts of the well-ordered society as expressed in puritan rhetoric with the reality of behavior as reflected in legal documents to illustrate the pre-eminent role assumed by law in ordering society. What emerges is a picture of society not rigidly caught up in the policies of perfection, but one characterized by responsive lawmaking, equally flexible enforcement, and reliance upon formal legal institutions to resolve private controversies.

The study begins with a portrait of the well-ordered society. It was a God-ordained social order dictated by the religiosity of New Haven's founders and based on voluntary covenants which defined basic social institutions. Yet this picture soon faded as settlers encountered the conditions of life in New England. Voluntarism gave way to a new order vii
as defined through law—local bylaws and colony statutes—that departed significantly from the Biblically based notion of law that helped delineate order in 1639.

Challenges to order mirrored the growth of law which was traditional and secular. An examination of 900 violations of local bylaws illustrates that most disorders related to the physical adjustments of life in America. Furthermore, the petty offenders who violated these ordinances were well-established members of the community who were prosecuted with a mixture of charity and pragmatism. So were individuals who violated colony statutes, thereby threatening moral order. Analysis of 550 colony violations indicates that New Haven had its share of social deviants who were excluded for their misconduct. But most moral offenders, specifically alcohol abusers, thieves, and fornicators, were punished with increased leniency by magistrates who assumed a realistic perspective on morality.

Finally, an assessment of 350 civil suits which challenged social harmony reveals that authorities utilized established law to resolve disputes equitably. Formal litigation promoted social order and was a chosen method of conflict resolution by litigants who rejected the "peaceful and loving" procedure of arbitration, so symbolic of the well-ordered society.
INTRODUCTION

The behavior of puritans has fascinated serious and not-so-serious students of history for generations. As a group, these religious enthusiasts who settled New England have also been frequently misunderstood, if not misrepresented. Yet every November they are memorialized as schoolchildren participate in pageants where blunderbusses and dreary costumes are standard props. Indian corn is displayed on doorways across the country. And John and Priscilla Alden-like figurines embellish Thanksgiving tables. For better or for worse, puritans have been characterized as being uncompromisingly severe in literary works like Hawthorne's *The Scarlet Letter* and in films, such as Victor Seastrom's 1926 adaptation of that classic. Indeed, one of the greatest attractions for tourists who visit historical sites in New England are the stocks and pillory--testimony to an image of puritans that pervades the popular mind.

Misimpressions have not been restricted to the general public. For years antiquarians and historians have interpreted puritan society differently, thus lending credence to the notion that every generation writes its own history. It is not that historians have disagreed with one another consistently, rather that they have had either different interests or training which have found expression in their
writings. Beginning with the filial pietistic writers of the mid-nineteenth century, like George Bancroft who viewed puritans as precursors of political and religious freedom, historians have portrayed the saints from numerous perspectives. Even in the shadow of the whigs, researchers like Brooks and Charles Francis Adams offered different assessments; for the first time, puritans were condemned for their apparent intolerance.¹

With the turn of the century came still new perspectives. James Truslow Adams interjected elements of determinism into the growing body of literature on puritans by suggesting that the founders of New England communities were motivated more by economic considerations than by religious fervor. Adams' thesis was challenged by Samuel Eliot Morison who, along with others, placed greater emphasis on what Adams rejected: the religious orientation of the Great Migration. Indeed, the 1930s signalled a ground swell of intellectual history epitomized by the work of Perry Miller. More so than any scholar of his generation, Miller argued that puritan behavior was a by-product of their ideas. Among other things, this led him to conclude that the first three generations of New Englanders were wedded to an unbroken unified body of thought. Clearly there were other writers during the twenties and thirties who blazed new paths of their own by stressing, as did the imperial school of historians, the network of relationships that tied New England to the mother country. But it was the so-called Miller paradigm that has provoked the greatest
interest—and criticism—by historians in recent decades. As noted by Edmund Morgan, Miller's monolithic view of New England has sparked exhaustive research generated "by the insights in a single paragraph."²

Just as Morison and Miller departed from the perspectives of their predecessors, historians of the sixties and seventies emphasized an aspect of New England history largely neglected by professional scholars—society. Younger writers especially began moving away from the puritan's thought by analyzing their behavior. This entailed a fresh look at sources—tax lists, vital statistics, and court records—that had been under-utilized in recent years, but which suddenly seemed more manageable with the advent of computer technology. If the labors of these social historians have been next to monumental, so too have their contributions. They have taken readers well beyond the "pots and pans" social history of the late nineteenth century by providing far-reaching insights into the lives of early New Englanders. Pioneering studies by John Demos and Philip Greven have illustrated how markedly family life changed over time. Darrett Rutman and Kenneth Lockridge have documented the erosion of utopian ideals characteristic of many communities at the outset of settlement. And a host of other studies including those by James Henretta, Richard Bushman, and David Konig have explored various aspects of New England society. All have aided immeasurably in breaking down stereotypes about puritans that for years existed in lay
and academic circles. With the exception of Konig's work, however, few have focused on law and puritan society exclusively. Nor has a single topic promised to contribute as much to our understanding of puritan behavior.

From an historiographical point of view, "legal" studies of seventeenth-century New England generally have followed three avenues of inquiry. The oldest and most traditional is the study of law per se and the way it developed in the new world. The earliest of these works were written by lawyers and thus in part explains their proclivity for examining law, but not necessarily other aspects of social control. Noteworthy is the work of Julius Goebel Jr., who argued that much of the law in early Plymouth, Massachusetts was customary and therefore traceable to practices followed in English rural communities. So too was the network of courts "transplanted" by the settlers of New England. Both of these notions were reinforced and expanded upon by George Lee Haskins whose Law and Authority in Early Massachusetts: A Study in Tradition and Design is a classic in the field of early American legal history. Haskins' analysis displays a deep appreciation for the way various sources of law were interwoven within the fabric of puritan society. And he is to be credited with the first in-depth exploration of written codes which were, by the last quarter of the seventeenth century, well entrenched features of the colonial legal milieu. Both these and other works helped lay the foundation for the study of law in New
England. But despite their contributions, they had little to say about how law was actually enforced.

This has been the avenue taken by another group of writers whose principal interest has been crime and punishment. Again, Massachusetts was the setting for these works. The first full-length examination of crime was written by Edwin Powers who offered readers a "documentary history." But, it was little more than that—a chronological catalog of laws, crimes, and punishments which did not help to alter the perception that puritan lawbreakers were socially maladjusted criminals whose behavior was punished severely. Although his *Wayward Puritans: A Study in the Sociology of Deviance* tended to reinforce this view, Kai T. Erikson provided readers with a more complex analysis. *Wayward Puritans* is the product of Erikson's training in the field of sociology and it utilizes modern theories of deviance to explain the behavior of puritans in Essex County, Massachusetts. Erikson correctly contends that all societies single out individuals for deviance through a variety of means and for a number of different reasons. However, his study is flawed by the assumption that Essex men and women who appeared before county authorities were summarily labelled as deviants. Once so designated, the argument goes, lawbreakers were locked into deviant roles which precluded reintegration into society. Clearly this was true with some, but not all, offenders. Erikson's conclusions appear to have been based on a marriage between the theory
of deviance and an overly literal interpretation of puritan theology. This gave rise to the notion that malfeasance was a sign of damnation and hence a basis for assessing deviant behavior. More recently, however, a study of Middlesex County, Massachusetts by Eli Faber suggests a different conclusion: most offenders were "treated with leniency after they had been punished" and few were actually excluded.  

David Konig concurs, even though his principal consideration is not crime and punishment. Indeed, Konig is thus-far the lone traveller along the third avenue of legal scholarship that twists and turns through the unfamiliar landscape of civil litigation. Like Erikson, Konig chose Essex County as the setting of his analysis. But unlike previous writers who have speculated that legal conflict was detrimental to social stability, Konig argues that "litigation was a useful agent of orderly and desirable social change." Law and Society is the most recent in a series of legal studies undertaken in the past two decades which has broadened our understanding of puritan behavior.

The present analysis of order and disorder in early Connecticut merges all three avenues of legal scholarship to assess the role played by law in ordering the society of New Haven from its settlement in 1639 to the introduction of Justices of the Peace in 1701. Among other things, it will be shown that challenges to order encountered in the new world were transcended by imaginative lawmaking and
realistic enforcement that had little in common with the solutions envisioned by the founders of New England.

The first of five chapters thus begins with an examination of the well-ordered society as defined by leading figures of the errand into the wilderness. Included in this group were New Haven's co-founders Theophilus Eaton, a London merchant, and John Davenport, the spiritual guide of the town for 30 years. To their way of thinking success in the new world required unswerving adherence to a Biblical concept of order that reflected their religious ideals. They believed that it was possible to erect a "city upon a hill" grounded upon a voluntaristic commitment to a God-ordained vision of society. And to a large measure they succeeded. New Haven's early domestic, ecclesiastical, political, and legal institutions conformed to what has been described as the "policies of perfection." But we also know that the ideal, though not the commitment to order, crumbled in the face of new world conditions. It therefore seems appropriate to ask: If puritan rhetoric alone could not maintain order, what did?

In part, the question is answered in Chapter 2 which addresses the evolution of law and suggests that the majority of laws formulated in New Haven bore little resemblance to the Mosaic or Biblical law upon which the community rested. A close look at lawmaking reveals that most laws were not adopted to restrain sinners, but were traditional responses to disorders adapted to fit conditions of life in New
England. This is seen most explicitly on the local level where the town meeting passed bylaws aimed at preserving physical order. These ordinances dealt with problems such as fire prevention and livestock control considered necessary to survival in the wilderness. Laws were also passed by colony officials and then codified in an effort to promote order through legal uniformity. It was on the colony level that the "fundamental laws" of puritans were delineated. But even here, Biblically based statutes were in the minority. Moreover, it becomes clear that within years of settlement the God-ordained vision of the properly ordered society was supplanted by one grounded on a combination of traditional and homespun secular law.

This view is reinforced by the first of two chapters devoted to disorders as seen through law enforcement. Chapter 3 analyzes the context of petty crimes—violation of town ordinances—which thusfar have been left unexplored by legal scholars. Yet patterns of prosecution are crucial to an understanding of how order was maintained because they illuminate the disorders that gripped the community. As it turns out, most of New Haven's "criminals" violated laws unlike those anticipated by architects of the New England Way. The greatest contributors to disorder were well established members of the community, recidivists and non-recidivists alike, whose lack of attention to bylaws caused them to be prosecuted in great numbers. Significantly, they were not marched off to the stocks or whipping
post. Rather they received mild punishments and were often treated with leniency.

So too were those who compromised the moral order by transgressing colony statutes—the subject of Chapter 4. To be sure, the conduct of a handful of individuals was considered so threatening that exclusion for deviance was employed successfully as a strategy of social control. But most moral offenders, contrary to impressions made by puritan rhetoric, retained their membership in the community. These lawbreakers constituted New Haven's delinquent population. They were not, however, in the modern sense of the word, part of a delinquent sub-culture that bred career deviants. Instead, they were the descendants of the founding fathers whose "fall from grace" was brief and considered temporary. And their punishments reflected as much. Increasingly, the town's drunks, thieves, and illegal fornicators received mild sentences by magistrates who were empowered to, but did not, subject them to corporal punishment. Even God's rulers on earth came to realize that morality could not be legislated.

The fifth and final chapter examines disorders caused by private controversies. Moreover, limiting contention in a "peaceful and loving" manner was just as important to social harmony as controlling crime. And while there is ample evidence of "vexatious" civil suits between New Haven residents, authorities utilized law and the courts to resolve disputes equitably. But beyond the obvious ramifications of litigation, there were others which suggest further
that law played an increasingly prominent role in maintaining order. One, is that litigation was "a useful agent" in promoting social stability, because certain lawsuits called to attention the need to pass bylaws which in turn regulated conduct. Another relates to the method of conflict resolution chosen by litigants. Rather than embracing fully the non-binding process of arbitration, as first generation rulers had hoped, disputants came to rely on formal legal institutions exclusively. This is yet further evidence that the policies of perfection failed to withstand the vicissitudes of life in the new world. It is with those policies that this investigation begins.
NOTES

1. See, for example, Bancroft's History of the United States (10 vols., Boston, 1834-1874); Brooks Adams, The Emancipation of Massachusetts (Boston, 1887); and Charles Francis Adams, Antinomianism in Massachusetts Bay (Boston, 1894).


9. Law and Society, 124.

10. Ibid., xiii.

CHAPTER I

THE WELL-ORDERED SOCIETY

Included in the intellectual baggage transported to New England in the seventeenth century was a profound reliance upon the concept of order. The puritans steadfast devotion to the righteousness of order, frequently epitomized by historians in the thought of John Winthrop, represented a long standing and continued veneration of a social vision which was decreed originally by God. To early modern Englishmen, whether a country gentleman, a rural peasant, or a merchant of the emerging urban middle class, order was conceived of as a network of hierarchical relationships fused together for the common good. Contemporaries were fond of likening the many parts of society to those of the human body to emphasize, as Winthrop did in his "Modell of Christian Charity," that each part functioned to serve and nourish the whole. Even though Winthrop and other first generation New Englanders like John Cotton and John Davenport believed that old England was no longer being nourished properly, they by no means discarded their vision of an ideal, highly ordered society. In fact, it may well have been that many of the planter's traditional beliefs were fortified by disorders in the mother country and their trans-Atlantic voyage.\(^1\) Certainly the concept of order was and once transplanted in New England it served as the
keystone which gave society its form and texture. This meant, among other things, a devotion to order that colored the puritan's family organization, ecclesiastical arrangements, political institutions, and fundamental laws.

The belief in the efficacy of order was by no means invented by the religious non-conformist leaders of the Great Migration. They were merely clinging to a traditional and seemingly instinctive sense of order which had its immediate origins in the medieval past. It was probably this deep commitment to "order" that enabled the saints to establish viable communities which remained reasonably close to the founder's initial ideals for nearly a century. But what perhaps makes the puritan's interpretation of the well-ordered society so intriguing, was the apparent strength of their commitment to an abstract definition of reality which was in many ways inconsistent with actual human behavior. Nevertheless, the order which the puritan perceived to be real, that which he revered and obeyed as best he could, was defined and delineated in the scriptures by an unparalleled authority—God. He had created what one writer has described as a "cosmic division of labor" within which each of His creations was allocated a particular place and given an assigned function. It amounted to nothing less than a majestic blueprint for human conduct intended to aid man in his principal function of glorifying God. It was this plan that John Winthrop addressed in his famous message aboard the Arbella in 1630. "We are commanded this day to love the
Lord our God, and to love one another," the governor wrote; "to walk in His ways and to keep His commandments and His ordinance, and His laws." Disobedience to His plan meant "that we shall surely perish out of the good land whither we pass over this vast sea to possess."  

Obedience to God's injunctions and to His laws was an integral component of the puritan's conception of the well-ordered commonwealth. Their departure from England was prompted by a sense of mission which called for the creation of a visible kingdom of God in the wilderness of the new world where "a smooth, honest, civil life would prevail in family, church, and state." The puritan's insistence upon organizing and sustaining ordered and regulated communities in keeping with the Creator's grand design can be explained primarily by their intense religiosity. That is what distinguished them from the average Englishman also steeped in the tradition of order. Moreover, the pervasive and persistent emphasis on order in New England towns and colonies went beyond a tradition common to all Englishmen. In short, the puritan's commitment to order was certainly grounded upon tradition, yet in America it was reinforced to a degree missing in England based upon the rudiments of their theology, particularly the notion of the covenant.

Members of the puritan fellowship in England and America were all too familiar with the consequences of breaking God's laws. From early childhood New England puritans recalled the lines of their primers which reminded them that "In
Adam's Fall, We Sinned All." Again and again they read in their Bibles and heard from their ministers that man had forfeited his opportunity for salvation by disregarding the terms of his original agreement or covenant with God. But they were also reminded that their God of love and mercy had given man another chance at salvation. A new covenant had been contracted with Abraham which promised salvation for faith alone rather than for any particular works or deeds. The conditions of this new contractual obligation, the covenant of grace, formed the central core of puritan theology and it was utilized in America to a significantly greater extent than it had been in England.⁶

In practice this meant that New England puritans had to be extremely vigilant and concentrate assiduously to adhere to the terms of the covenant. Even though a puritan might be fairly certain that he had been elected, or chosen, for salvation, he also realized that he retained some of Fallen Man's degenerate characteristics.⁷ The disposition to sin lurked constantly within the inner reaches of one's soul and was capable of manifesting itself at the least instance of spiritual weakness. When a person did sin, it could not change the nature of his relationship with God because He had predetermined which men would savor the wonders of heaven and which would suffer the torments of hell. However, the act of sinning, of, for example, committing a crime, could very well call into question one's convictions about one's status with God. Such doubts were
capable of illiciting psychological unrest and members of the puritan fellowship sought to ease this stress by leading lives worthy of truly visible saints.

The concept of sanctification in many ways explains why puritans insisted upon upholding order in their Christian Commonwealths which were, after all, based upon the laws of God. In a very fundamental sense, sanctification may be described as good social conduct that affected both regenerate individuals, or members of the chosen few who had been elected for salvation, and unregenerates, those damned individuals who constituted a majority even in seventeenth-century New England. Moreover, the saints were bound to good behavior because they believed that sanctification followed justification. This meant that they kept their covenant with God through obedience to His injunctions. Outward acts of proper conduct were not the means to grace, but were interpreted as being an indication of the infusion of saving grace into the soul by God. Sanctification was therefore of utmost importance to the visible saint. Disregard for God's laws as set down in the Scriptures could indicate an unsanctified way of life. Essentially, then, the absence of sanctified behavior became a sign of damnation.

Correct moral conduct, especially when viewed in the context of sanctification, was an essential ingredient in the formula of success in the Bible Commonwealths of New England. As suggested, it was applicable to both regenerate
and unregenerate members of society. Once again, the reasoning behind this points to the covenant of grace. The stipulations of Abraham's agreement with God applied to each of his descendants, whether covenanted or not. Accordingly, visible saints felt it was their obligation to engender Godly conduct in all members of their society. Boston's John Cotton explained that obedience to God's injunctions was undertaken not just for the elect, "but in behalf of every soul that belongs to us... our wives, and children, and servants, and kindred, and acquaintance, and all that are under our reach, either by way of subordination, or coordination."¹⁰ Lack of proper conduct on the part of the saints, and their failure to restrain the corruptions of those around them, was a strong indication that they were destined for something other than salvation. Psychologically this must have had a disquieting affect on the saints, since it was believed that God's wrath was aimed at the entire puritan commonwealth, not simply towards the unregenerate sinner. Consequently, the restraint of sin and the firm correction of gross offenders was required of the saints according to the terms of their covenant with God.

The puritan's insistence upon maintaining order in New England communities thus emanated more from their religious convictions than it did from a medieval tradition of order which was shared by most early modern Englishmen. The definition of order to which they adhered most rigorously originated with God, an indisputable authority in their eyes.
The commitment to order was intensified by the puritans who migrated to the new world and who grounded their social institutions upon the word of God. Once settled in New England they erected these institutions and enacted laws which were designed to inculcate sanctified behavior in all the people participating in their unique social experiment. And for many New Englanders, proper order and good conduct began in the family, which was viewed by the saints as "the germ of all political and ecclesiastical authority."  

Because families were regarded as the "nurseries of society," well-ordered households became a fundamental goal of New England leaders. For nearly a century, ministerial tracts like John Cotton's *Spiritual Milk for Boston Babes* (1656) and Benjamin Wadsworth's *The Well-Ordered Family* (1712) established guidelines considered necessary to satisfy these expectations. The public was reminded repeatedly that the well-being of the commonwealth rested upon foundations laid in the family. If familial control were allowed to become ineffectual, if husbands and fathers neglected their families, if wives and mothers failed to catechise their young, if children disregarded the fifth commandment, and if apprentices and servants were not introduced to viable trades by their masters, leaders were convinced that evil would spread like an uncontrollable cancer and infect the different segments of society. When, for example, New England was plagued by a host of problems in the 1670s,
ministers argued that lack of discipline in the family was a principal cause. Civil authorities sometimes had to make family life their business by intervening in family disputes and by correcting circumstances of family organization which they perceived to be out of order. Under ideal circumstances, however, well-ordered families required little magisterial or ministerial intervention. Preservation of family harmony was the responsibility of household heads; parents were regarded as "governors" of their "little commonwealths," and as such were due the respect and authority also claimed by civil and ecclesiastical officials. Not surprisingly, disrespect for family authority was viewed as an offense as grievous as contempt for political authority. Moreover, an offense against a family ruler violated God's commands, deviated from the basic values of the community, and thus constituted a threat to the social order. Yet if all family members fulfilled their roles successfully and satisfied their obligations, order would inevitably result.

Proper order in the family began with the relationship between husbands and wives. An acknowledged feature of their union was the superiority of the husband over the wife. This meant, among other things, that the principal responsibility for maintaining order in the family rested on the shoulders of the husband. Patriarchal control was a traditional custom and one which fit neatly into the network of hierarchical relationships which was, again, part of the Creator's master plan. Members of society were
familiar with the plan; they had been told that God created man superior to all other creatures and that in the realm of human relations, men were superior to women. One need not look far to find a reaffirmation of this attitude in seventeenth-century New England. When the defiant Anne Hutchinson clashed with Massachusetts' leaders in the 1630s a fundamental consideration in her case was that she had "gone out of her way and calling to meddle in such things as are proper to men." When the sister of Thomas Parker "published" a book, her brother told he that it was beyond the custom of her sex and it "doth rankly smell." During the witchcraft craze in Salem, the majority of witnesses who testified against the middle aged females accused of Satanic practices were men. Indeed, not only was the position in which women stood in relation to men understood in a general way, but in the case of husbands and wives, it was solemnized through a marriage covenant. Moreover, the only natural union between man and woman had been engineered by God for Adam and Eve, and that relationship had been tainted by the corrupting influences of the female partner. However, the basic duties implicit in their union still applied to all marriages. New Haven's John Davenport argued that an acknowledgement of these duties was made when voluntary covenants were undertaken by men and women at the time of their marriage. Through these important oral agreements, which were followed by legally prescribed "announcements," espoused couples were essentially making public statements
of their commitment to the values of proper relationships and well-ordered families.

The commitment to order may be conceived as the fulfillment of a series of related obligations governing the relationship between husbands and wives. Love was a basic ingredient in the recipe for a successful marriage, indeed, for the puritan experiment in general. Sincere affection was the foundation of a healthy relationship, a source of order in family life, and in some respects the backbone of the body constituting the entire community. But, because love is such an elusive emotion and at the same time very personal, historians face limitations in their attempts to portray accurately the intimate details of married life in the seventeenth century. They can reason from their own experiences that love and order are closely related. And they can make use of fragmentary evidence related to love found in personal documents. But for the most part they must be satisfied with an intuitive sense that love was a very real and important mutual obligation.

Hand in hand with the requirement of love was harmony. Because court records contain shreds of information on how civil authorities tried to control family disorders, historians are able to get some idea of what the duty of harmony entailed. The principal means of maintaining a harmonious family life was for heads of households to provide safe and secure environments for their dependents. When it became evident to New Haven officials that Ebenezer Brown
failed to satisfy this obligation, he was directed by the court to secure a suitable dwelling place for his wife. The reasons for the order are clear because the Brown's unsettled state of affairs had led to "wicked carriages one towards the other in their married relation together." In addition to providing support for their families, husbands were also required to live with them. Single adults in general were viewed as a source of disruption in the community. Those who were married and living apart simply compounded that threat. Thus in 1667, when New Haven magistrates learned that Richard Nicolls, a laborer at the East Haven ironworks, was married to a woman in New York, they "ordered him to attend to his duty and return to her." Harmony in married life was also achieved when husbands and wives did not abuse one another or force their partners to engage in unlawful acts. This is why the New Haven Plantation Court promptly convicted Thomas Pinion in 1666 for promising a friend the use of his wife's body. Even though Mrs. Pinion had previously faced the bench for her own misdeeds, in this instance she justifiably protested that her "husband had no such power over her to make her sin." Quite simple, harmony between spouses was best secured when circumstances like these were avoided.

The logic of hierarchical relationships that governed husbands and wives also applied to the relationship between children and adults. Because the framework of the social order rested upon foundations laid in the family, it was
extremely important for parents to control their offspring. Moreover, in terms of regulating human conduct, children were viewed with trepedation, and it was essential that both parents and their progeny uphold the guidelines which defined their relationship, one in which youngsters occupied a position inferior to that enjoyed by their elders. And as in the case of marital relations, the observance of mutual obligations was required of both parents and children. The principal familial duty of young puritans was to adhere to the terms of the often quoted command: "Honor thy father and mother." Essentially, youngsters were expected to follow the dictates of family rulers. If not, then legal recourse was at the disposal of parents. It has been suggested, however, that few parents would have enjoyed the humiliation associated with making family discipline a public spectacle. For the most part the umbrella of parental authority covered a variety of domestic situations and applied not only to children, but to young adults as well. When parental control lapsed, as it was bound to on occasion, civil officials stepped in, as was done in the case of 21 year old Samuel Brown who was fined 10s for participating in a drinking party "without leave of [his] parents." If parents and other family members fulfilled their roles successfully, order would inevitably result. Indeed, certain obligations were actually specified in legal documents and thus served as reminders of familial duties. New Haven Colony officials compelled parents to prevent their children
from becoming "barborous, rude, and stubborn" by legally requiring frequent catechism so that youngsters would "understand the main grounds and principals of Christian religion necessary to salvation." And in an effort to direct children and apprentices in some honest and lawful calling, labor, employment, profitable for both themselves and the colony." Legal obligations of this sort make perfectly sound sense when placed in the context of the well-ordered commonwealth as it was perceived by New England lawmakers. If family life was properly ordered, then magistrates would have little cause to intervene in domestic affairs. And they rarely did. Although there must have been occurrences of parental neglect in Connecticut communities, these particular laws never had to be enforced in New Haven. For the most part it seems that parents were aware of both legal and moral obligations required of them and of the importance of their role in maintaining a well-ordered community.

Parents were frequently masters as well, and their affiliation with servants was meant to be ordered in a fashion similar to their own kinship relations. Servants, like all children, occupied a position in life inferior to that of their masters and mistresses. As such, they were expected to adhere to the commands of household rulers. Obedience was exceedingly important because ordinarily servants resided and interacted with families on the most intimate of terms. In order for their relationships to be "smooth, honest, and civil," masters and servants had to contend
successfully with the problems of youth and adolescence in addition to the social and psychological adjustments associated with servitude. To help make that relationship viable, the obligations required of both master and servant were spelled out in written covenants or indentures.

For their part, masters were expected to provide servants with security akin to that afforded their own children. A glance at one of the few extant indentures from New Haven illustrates the point. The agreement was recorded in 1659 on behalf of John Winston, a local cooper, and 15 year old John Jagger of Stamford, who was being "putt" out by his recently widowed mother. As master, Winston agreed to instruct the youth in the "art of coopery, of keyne and set-work, to provide him with meat, drink, apparel, washing, and lodging, meet and convenient for such a servant in all civility." Beyond the terms of formal covenants, masters were obliged to catechize younger servants and to eschew maltreatment of any sort. Masters who neglected their obligations were accountable to civil authorities, as was Henry Bishop who, in 1653, abused his servant Samuel Andrews because, among other things, "he would piss and foul his bed and breeches." More charitable behavior was expected by masters than that shown by Bishop, and judging from extant records it appears that most New Haven masters lived up to their expectations.

Servants were a somewhat different story when it came time to fulfilling obligations. Servants and apprentices,
like their masters, were familiar with the duties implicit in their positions in society. John Jagger, for instance, must have understood that for a period of six years he was required to obey his master "as a good and faithful servant." His indenture also stipulated that he avoid "unlawful games, taverns, and alehouses," and at all times to do what an obedient servant ought to do.  

Many servants unquestionably observed the terms of their indentures to the satisfaction of their masters. Yet a simple understanding of a covenant did not guarantee that it would be followed to the letter, especially if you were male, 15, and thrust into a strange community. Some of New Haven's servants were disobedient, given to tipling, theft, and fornication. Because adolescents were prone to pride and sensuality by nature, it seems that a certain amount of misbehavior was tolerated by charitable (and perhaps realistic) masters. This in part explains why, in 1677, Abraham Dickerman pleaded successfully with the court to have his servant's punishment reduced from whipping to a bond for good behavior, or why, ten years later, the master of Abraham Johnson adopted a similar course of action.  

In so doing masters exhibited the same compassion for their servants as was shown to their offspring. In each instance the ultimate aim was the preservation of household harmony and order in the community. Because family life was considered paramount to the well-being of society, each of its various relationships was grounded upon Christian love and mutual obligation. In and
of itself, this is not particularly unique, but when coupled with the religiosity of New Haven puritans, family life was afforded what seems to be an exaggerated position of importance. Patriarchal authority of the kind described by Philip Greven in his study of Andover, Massachusetts, rested upon concepts of order and hierarchy which governed each household relation from that of husbands toward wives, masters toward servants. Presumably, as long as family rulers commanded the obedience of their subordinates, the social order would remain unblemished. But New England's religious and secular leaders knew all too well that even patriarchs were subject to temptation. Consequently it was necessary to provide other institutions of control to counteract sinful urges. Perhaps the most important of these was the church.

The contractualism that delineated familial relations also played a primary role in ecclesiastical affairs. The covenant of grace, which was mentioned earlier to emphasize the saint's strong commitment to order, became an acknowledged feature of the so-called "congregational way." The institutional church was likewise a significant part of the puritan's concept of the well-ordered society. It too, like all other components of the commonwealth, had been decreed by God in the Old, and, as some divines argued, the New Testaments. Indeed, for many congregational ministers, covenant theology was inseparable from the voluntary covenants undertaken by the saints for the "foundation work" of the
in institutional church. Together the covenant of grace and the church covenant became the basis for the ecclesiastical order and discipline prevalent in many New England communities.

This fusion of the two covenants was, according to Perry Miller, "the ultimate triumph of the New England mind." For most first generation ministers the union was a logical corollary to God's agreement with Abraham. Since God commanded his children to go out and form churches, the saints, by virtue of their covenant with Him, willingly followed His decree by forming their own. It may well be that the most significant aspect associated with the formation of covenanted church groups was that the process was voluntary. This meant that individual saints agreed to follow His injunctions religiously, as well as conform to the decisions of the majority in fellowship with them. The church covenant as it was practiced in New England elevated church membership to a special level, so unique that it was condemned by prominent non-conformist ministers in England. It is quite possible that their criticisms were justified on technical grounds. Yet the fact remains that in communities like New Haven, where the franchise was dependent upon church membership until 1665, political power belonged to the elect. Even through the saint's influence eroded over time, the first generation leadership enjoyed remarkable control over all New Englanders.

The keystone for much of this claim to power lay firmly.
embedded in the congregational polity. The actual form which served as a guideline for many New England churches, including the New Haven church, was specified point by point in the Cambridge Platform of Church Discipline, published in 1649. The Platform summarized the work of leading ministers who, in 1646, convened a synod in part to answer the criticisms of English theologians. The major disagreement between the two groups centered on church government. The New England ministry equated congregational polity with voluntary covenants and thus institutional freedom from sources of external control, especially in the realm of discipline. A brief reference to some of the most conspicuous positions of the Platform illustrates precisely the church order practiced in New Haven.

Considering the religious zeal of the saints, and of John Davenport in particular, it is hardly surprising that the organization of the church pre-dated the establishment of New Haven town government. The church was gathered in the summer of 1639 following 14 months of reflection and humiliation. During this period of inward searching the settlers congegated into small groups "and prayed together and conferred to their mutual edification," so as to best judge "whom they found fittest to nominate" for the foundation work of the church. Eleven men were nominated and all, including Richard Malbon who was questioned "about taking an excessive rate for meal," were found suitable. Of these, seven were selected as "pillars" of the church and entered into covenant with one
Another. 37

The Cambridge synod followed the founding of the First Church by seven years, but the theory enunciated at the gathering was already practiced in New Haven. John Davenport, along with other ministers who met in Cambridge, believed that the saints "by calling must have a Visible-Political-Union or else they are not yet a particular church." Even though they had entered into covenants with God on an individual basis, the New Haven pillars, while "squared, hewn, and polished," were not a house until "compacted and united," not a church "unless orderly knit together." When it came time to found churches, as in all other particulars deemed so important to the puritans, proper procedure was decreed by God and revealed in Scripture. The covenant was essential, because it was what made "the family of Abraham and the children of Israel to be a church." Specifically, "the Visible Covenant, Agreement, or Consent," was required by the saints so that they could "give up themselves unto the Lord to the observing of the ordinances of Christ together." 38

Church covenants of the variety used by the saints were instrumental in securing ecclesiastical independence. Although unusually brief, the Charlestown-Boston covenant of 1630 is illustrative of these agreements:

We whose names are hereunder written,... promise and bind ourselves, to walk in all ways according to the Rule of Gospel, and in all sincere Conformity to His holy Ordinances, and in mutual love, and respect each to other, so near as God shall give us grace. 39
Covenants like this became the basis for the properly gathered church, and, because they were voluntary, tended to serve as instruments of control through the pledge of the signatories to lead sanctified lives.

More than just a signature was demanded of the saints if they hoped to become full fledged church members. Both the Boston and New Haven churches required a "personal and public confession, and declaring of God's manner of working upon the soul" before one was received into church fellowship. Professions of faith were both "lawful and expedient," and had to be made by those "that were never in church society before."

Therefore, when Nathaniel Turner desired to become the eighth member of the First Church, he had to make a public profession which suited the original pillars. A genuine saint had to be a "tender and broken hearted Christian," or "a tender hearted soul full of fears and temptations but truly breathing after Christ," before gaining admission to Davenport's church.

Cotton Mather wrote of Davenport that so strict "were the terms of his communion, and so much, I had well nigh said, overmuch, were the golden snuffers of sanctuary employed by him in his exercise of discipline," towards those seeking admission "that he did all that was possible, to render the renowned church of New-Haven like the New-Jerusalem." More recent scholars have concluded, along with Mather, that Davenport was perhaps the most "exacting" minister in New England.

Davenport's own confession, which was made publically at
the gathering of the New Haven church, was a comprehensive statement touching upon some 20 points ranging from his personal relationship with God to his role within the framework of the institutional church. Although ordinary members' professions were not as detailed, Davenport's must have served as the standard. During his ministry at the First Church, New Haven's visible saints constituted a minority of the total population. This is partially explained by the assiduous screening of applicants. But it is also explained by space, for there was not enough to embrace the entire community. In 1647, for example, when the first seating plan was issued, the 189 available seats could not accommodate New Haven's 219 adult males, not to mention the town's women and children. Evidently many New Haven residents were denied access to the church on the basis of physical restraints alone. For others, membership in the church was denied because of the requirement of rigorous confessions. A major part of New Haven's population was, therefore, not subject to as much influence or discipline as leaders would have liked. But for those who had been admitted into fellowship with Christ, discipline was an important and required obligation.

Even saints were capable of error, and on such occasions were in danger of polluting the entire church body with their transgressions. Accordingly, a viable means of ecclesiastical discipline had to be implemented in order to vindicate "the honor of Christ and his church." if and when delinquent
saints violated the terms of their covenant. The two forms of disciplinary action adopted by the New Haven church and specified in the Platform, were admonition and excommunication. They were the most effective "Censures of the church," and had been "appointed by Christ for the preventing, removing, and healing of offenses in the Church." The "offenses" were not always specified, but must have included activities ranging from slander to sodomy. In addition to the perceived seriousness of an offense, the question of which censure was to be brought to bear on the wayward member by the congregation was determined in part on the basis of whether it was a private or public miscarriage. 46

Regardless of how serious the offense, brethren labored to reform the sinner and effect a public confession and sincere acknowledgement of wrong doing. A good example of the disciplinary process at work in New Haven can be found in the 1644 proceedings of the church against Anne Eaton, the wife of Theophilus Eaton, a local magistrate and governor of the New Haven Colony. She was charged with 17 private errors which collectively stood in violation of the third, fifth, sixth, and ninth commandments. After lengthy examination the congregation wanted her to be "cast out" for her sins, but Davenport persuaded the brethren to settle on a public admonishment because it was not certain that she was afflicted by "a habitual frame of sinning." Mrs. Eaton was accordingly admonished and told "to attend unto the several rules... broken," and "to hold forth... repentance according
to God." Much to the sorrow of the church members and their officers Mrs. Eaton "did continue offensive" and "neither came up to the acknowledging of the particulars for which she was admonished, nor held forth repentance" to the satisfaction of the congregation. When she appeared before the church, "she behaved herself without any show of remorse" and expressed herself in an ostentatious fashion. After nine months of waiting, during which "no fruit of repentance appeared," the members felt compelled, by virtue of their covenant, to further censure Mrs. Eaton. Therefore, with "much grief of heart and many tears," the church cast her out, whereupon "God showed a wonderful presence to the satisfaction of all that were present." 47

The patience accorded Mrs. Eaton was characteristic of the charity required of members in their relations with one another. Indeed, on occasion, even excommunicated individuals, like Henry Glover, were re-admitted as members of the church in good standing. 48 Less charity was shown in instances of "a more heinous and criminal nature," as in the case of William Potter who was excommunicated for bestiality in 1662 "without gradual proceeding." 49 Discipline remained an essential aspect of church government because it punished individuals for prophaning the seals of the covenant. Moreover, if disorders were permitted to go unchecked, then the church itself faced the possibility of dissolution, and its members something even more unimaginable: the wrath of God.
The church covenant, the profession of faith, and the ability of each congregation to discipline its own members, were all important components of the properly ordered church. These were considered basic for the success of the errand into the wilderness. An elect society of visible saints was believed to have been decreed by God and for many a first generation religious enthusiast God's blueprint was meant to be followed vigorously. Few were able to envision, in 1639, that the institutional church which they pondered over and wrote about so meticulously would, within a generation, be altered so dramatically. Among those alterations was the dropping of the church membership requirement for the election of civil officials who were charged with overseeing the activities of all members of the "secular society."

The authority associated with the church was not enough to completely preserve order in New Haven. Even the most energetic puritans believed that civil authorities were necessary to uphold the social order. Ecclesiastical and secular authority were, therefore, to work in conjunction with one another. They were, moreover, designed to exist as "coordinate states in the same place reaching forth help mutually each to other, for the welfare of both, according to God." Although the two "states" were meant to work in harmony, it was the civil rulers who, from the outset of colonization, shouldered the primary burden of social control in New Haven. And as patriarchal prestige waned and
as the church "declined" over time, the responsibilities of civil authorities multiplied. Because the function performed by secular officials was considered so vital, the settlers of New Haven and other plantations moved cautiously when it came time to found political institutions and to choose men to assume positions of leadership within them.

Unlike the settlers of Massachusetts, New Haven's planters lacked a charter to provide a legal basis for a civil government. Both John Davenport and Theophilus Eaton were members of the Massachusetts Bay Company, however, and they had spent enough time in Boston to be influenced by the form of government which had been erected in the Bay Colony. Their Boston experiences and their familiarity with the manuscript of John Cotton's Discourse About Civil Government were both factors which helped shape the political institutions they created in New Haven. But before they could be given life, an agreement needed to be reached amongst the free planters of New Haven relative to those principles of government which they were willing to accept.

There was little doubt in the minds of New Haven leaders like Davenport and Eaton that the principles underlying civil government were originally decreed by God. They were convinced that following Adam's Fall God had created civil governments in order to retrain the conduct of individuals who could not be trusted on their own to adhere to the order specified in His divine plan. The foremost task of the leaders was to convince New Haven's 200-plus adult males to
accept this as the guiding light for the political institutions they were about to create. Naturally the person best qualified to persuade the planters was Davenport, and it was he who presided over a gathering of the settlers in 1639 which terminated with the signing of New Haven's "Fundamental Agreement."

The agreement was important because it became the foundation of the government established at New Haven. And it was arrived at through a series of questions which were posed by Davenport and then voted on by the entire company. The first of the queries was particularly suggestive of the direction to be taken in the meeting: "Whether the Scriptures do hold forth a perfect rule for the direction and government of all men in all duties which they are to perform to God and men as well as in the government of families and commonwealths as in matters of the church." This first principle was agreed to by all, "no man dissenting." The second question was equally significant for it requested planters to reaffirm the "covenant solemnly made by the whole assembly... of this plantation the first day of extraordinary humiliation which we had after we came together." This was New Haven's plantation covenant and it promised that "in all public offices which concern civil order, as choice of magistrates and officers, making and repealing laws, dividing allotments of inheritance and all things of like nature we would all of us be ordered by those rules which the Scripture holds forth to us." The planters once again
unanimously accepted the terms of the covenant "by holding up their hands." By acknowledging that scriptural rule was the best and that it was most suited to the ordering of government in New Haven, the planters moved a step closer to accepting political institutions which would be dominated by the elect.

The third query was again a prelude to those which would follow. After the planters had renewed their covenant, they were asked if they desired to be "admitted into church fellowship according to Christ as soon (as) God shall fit them thereunto." The response was once again both positive and unanimous. Perhaps the planters would not have been so accommodating had they realized that less than half their number would eventually join the church and that even fewer would become freemen. Yet they nevertheless agreed to the next question which bound them to establish a "civil order as might best conduce to the securing of purity and peace" for themselves and their posterity "according to God." The stage was set for a vote on what was perhaps the most crucial question and one which was surely considered to be the foremost means of securing order in the community: "Whether Free Burgesses shall be chosen out of church members," and whether only they should have the privilege of voting and holding office? "This was put to vote and agreed unto," but the planter's hands had barely been lowered before "one man stood up," and expressed displeasure with the most critical condition of Davenport's query. The individual, most likely
the Reverend Mr. Samuel Eaton, agreed that leaders of the commonwealth should be God fearing men and that they were normally found within the body of the church. He did, however, warn those assembled not to surrender the power to vote "out of their hands." In other words, the dissenter threatened to breach the foundation of New Haven's civil government before it had had time to set.

This unexpected turn of events must have caused a moment of anxiety in the seemingly unflappable Davenport. The fact that he was being questioned was bad enough. But by another minister? By a man of prestige and influence? Fortunately, however, Davenport received support from those participating in the meeting. One planter rose and stated that "nothing was done but with their consent." Theophilus Eaton likened the circumstances to those in England where "the companies of London chose the liveries by whom the public magistrates are chosen," and where consequently "the rest are not wronged because they expect in time to be of the livery themselves, and to have the same power." Had Davenport needed to bolster his position further he was well equipped to do so. More than likely he would have concurred with John Cotton who perceived a true danger in giving political power to non-members because they were capable of creating cults, subverting faith, and supporting heretics. He could have utilized examples from Scripture like Paul's condemnation of judges who were not saints as "destitute of righteousness" and utterly lacking morality, in contrast to those
who were saints and "consecrated to God and to his ends in all things." And was it not Paul who had said that the saints shall judge the world? But instead of belaboring the issue Davenport simply requested the planters to consider what had transpired since the initial vote and asked for another, if they were convinced that the foundation of government he proposed was truly in the mind of God. The second time around once again proved positive; Davenport probably breathed a sigh of relief and New Haven finally had a "Fundamental Agreement."

By affixing their signatures to the agreement, New Haven's planters accepted rule by the elect as the cardinal principle underlying their political institutions. The civil order they erected fit neatly into the broader notion of order which characterized other puritan institutions. What this meant in practical terms was that a majority of New Haven residents "gave out of their hands" the right to participate in the political decision making process. And it remained that way until 1665 when the church membership restriction was dropped. Political power thus lay firmly in the grasp of the elect for nearly a generation. Only those adult male members of the church who had taken the freeman's charge were granted the honor of choosing magistrates, deputies, and selectmen, the principal office holders of the community. Not surprisingly, the election of these leaders was considered no mean task. The electorate, despite its special status, was required to be well informed about potential
rulers. It was for this reason that Davenport devoted time in the 1639 meeting to discussing "what kind of person might be trusted with matters of government." The source of his exhortations was the Old Testament: "Choose wise, understanding, and experienced men, according to your tribes, and I will appoint them as your heads" (Deut. 1:13); "you may indeed set as king over you him whom the lord your God will chose" (Deut. 17:15); "moreover choose able men... such as fear God, men who are trustworthy and who hate a bribe, and place such men over the people as rulers" (Exodus 18:21). Thirty years later Davenport was still urging thoughtful consideration in the choice of rulers, men who must rule in fear of God which is "a sanctifying gift of Grace, wrought by the Holy Spirit in the hearts of the elect." Clearly in Davenport's view, the men elevated to leadership positions by New Haven's freemen had to be chosen carefully and had to be of the highest caliber. They were, after all, God's viceregents on earth and as such were due proper deference and respect. If any spoke out against their rule, as was done by Thomas Blacksley in 1646, punishment would surely follow for "neglecting the image of God in magistrates." Contempt for authority, in addition to being disrespectful and setting a poor example for others, was viewed by the saints as a threat to the civil order they had fabricated.

Along with the family and the church, magistrates, the guardians of New Haven's civil society, were viewed as
being especially important. More so in fact than the institutions entrusted to their care. This is not to suggest that the principal political institutions of the community were unimportant, rather that their effectiveness hinged on the quality of the individuals who were placed in positions of authority. This is a major reason why so much attention was devoted to the choice and the character of magistrates in New England, why the magistracy was considered to be such an important office. But another line of reasoning is also suggestive. The actual organs of local government erected in New England towns were, with some variation, transplantations of English borough and shire institutions. They were part of a tradition common to all Englishmen, regenerate and unregenerate alike. Consequently, there was little need to justify the necessity of political institutions that the majority of colonists already accepted, that were part of their collective heritage. Political rule by the elect, in contrast, was uncommon; it is what needed to be defended, indeed extolled. This is why it was crucial for the foundation of secular government to be constructed through a process that was voluntary. This explains the care and sequence inherent in the process which led to New Haven's "Fundamental Agreement." And it was consistent with the forethought given to the creation of institutions on the county and colony levels of government. It was a deep seated sense of order, intertwined with the religiosity of the saints, that characterized the foundation of a civil
government, much in the same way it defined familial obligations and influenced the gathering of a covenanted church group. This staunch commitment to order was reflected also in the fundamental laws of New Haven.

There can be little doubt that New Haven's earliest laws were those that the "Scriptures held forth" as fitting for a society of saints. The concept of order to which they adhered and which played a prominent role in the organization of other institutions also determined the character of their laws. This is consistent with the opinions of legal historians who subscribe to the notion that at any given time the most powerful ingredients in law are the current values, convictions and emotions of those responsible for making, repealing, and enforcing laws. In the case of New Haven it is clear from the preceding discussion of the family, the church, and the magistracy, that these attributes manifested themselves in what amounts to a predictable sequence of reasoning and events. In each instance, the cardinal source of both information and inspiration was the Bible. And, so it was with law.

Less can be said, however, about the legal edifice erected at New Haven in 1639 than was the case with other institutions for the simple reason that very little was written about law at the time. This is not a problem with New Haven evidence exclusively, for the earliest records of other New England towns are equally barren of either
legal theory or enumerations of fundamental laws. This explains the lack of consensus in legal scholarship over matters concerning the character of law during the Great Migration. A point made two decades ago by George Haskins typifies the problem: "Massachusetts law in the colonial period was a syncretization of Biblical precedent and a complex English heritage which included not only the common law and the statutes," but also practices "of the church courts, of justices of the peace, and of the local courts of manors and towns from which the colonists came." In other words, a virtual grab-bag of explanations has been utilized to describe the foundations of law in the region. A few references to Mosaic law or common law or local custom have seemed to satisfy scholars of the early colonial period. In response to the lack of explicit descriptions of law in its inchoate stages of development, current assessments have drawn heavily from law codes which, although complex, tended to postdate settlement to a significant extent. In the case of Plymouth, where the earliest code in New England was compiled, the lag-time was 16 years. In the Massachusetts, Connecticut, and New Haven colonies, it was 20. But to describe the fundamental laws of New England communities on the basis of several years of accumulated experience is, it seems, to minimize the importance of the settler's concepts about law and society before this accumulation actually occurred. Moreover, the legal foundations that existed in New Haven and other communities at the
outset of settlement consisted of laws that were far more limited in scope and far more "fundamental" than those embodied in subsequent codes.

These limitations can be traced to a pair of sources. The first was a complete lack of experience with new world conditions. The legislation which was ultimately required to meet these novel circumstances, however, was incorporated into later codes. The second, and perhaps more important source, was the mind set of the planters, particularly the leaders of the puritan mission. The process of immigration provided unique opportunities for New England's rulers to create a legal milieu based upon voluntary agreement and was therefore in keeping with their larger world view. 62

The basis for scriptural rule in New Haven was established when the planters consented to Davenport's first query which, when considering the fact that it was the foremost principle underlying the town's laws, church, and government, received what appears to be extraordinary mileage. Despite its apparent limitations, the foundation of New Haven's corpus juris was the Bible, just as it had been for the other components of the New England Way; each was cast out of the mold which had been crafted by God. This does not mean that the saints failed to anticipate problems which would arise over time and for which there were no Biblical equivalents, but rather that the Scriptures were meant to serve as a guide for the conduct of individuals in their relations with one another—and with God as well.
Consequently, it was with sincere conviction that New Haven leaders determined "that the judicial laws of God as they were delivered by Moses... shall be accounted of moral equity, and generally bind all offenders, and be a rule in all the courts... in their proceeding against offenders, till they be branched out into particulars hereafter." This provision was extremely basic, but at the same time it was broad enough to cover a multitude of sins, each of which was capable of damaging the carefully constructed social order. Hence if a member of the community were to rise up and take the life of his neighbor, he could be put to death. If a young adult should neglect his duty and steal from a parent or master, he was required to make restitution. Or if a stranger in the town disturbed the peace, he could be taken to a stranger's court and be punished accordingly. Moreover, the framers of New Haven's fundamental laws adopted those which they believed would best preserve harmony and which, after all, were in keeping with the formula for success in New England. To suggest otherwise, to imply that a "syncretization" existed at the time when the fundamental institutions were being implemented, does not do justice to the broad commitment to order which served as a foundation not just for law, but for family life, churches, and political bodies as well.

The character of New Haven's fundamental laws was but one indication of a broad vision of order transported to
the new world in the seventeenth century. On the one hand, this vision was part of a tradition shared by most Englishmen, one in which notions of hierarchy and the "commonwealth" held very prominent positions. On the other hand, it was strengthened substantially by a religious commitment to a "cosmic division of labor" that colored the institutions created by the vanguard of the errand into the wilderness. The nucleus of the overall concept of order was one's personal relationship with God; it was the covenant which bound saints to lead sanctified lives and to set examples for those around them in "subordination or coordination." The success of the puritan mission rested upon the ability of the elect to regulate the conduct of those in fellowship with them, and perhaps above all, of those who were not.

The surest means of achieving this goal was to fashion the basic components of society to the specifications of the master architect himself—God. And because families were considered the nurseries of society they became important sources of proper behavior. Moreover, these "little commonwealths" mirrored larger society to the extent that, from adult male heads of households down to the inferior servant, a network of hierarchical relationships and a corpus of divine commands existed which delineated the true and proper structure necessary to nourish the well-ordered society. Often written and oral covenants played a significant role in highlighting familial obligations. Indeed, the saints utilized voluntary covenants in a variety of
settings to help stress the mutual love and charity they perceived as permeating their society. Perhaps the most visible use of the covenant lay in conjunction with the gathering of ecclesiastical institutions which were completely autonomous, even though they were not synonymous with the membership of the entire community. Nevertheless, both the form of the church and the requirements of those who wished to join, were stipulated in Scripture. The purity of the properly ordered church was linked closely to its independent status and, nested within this, the ability of each congregation to discipline its own members. It was not, however, the elect who played havoc with the psychological insecurities of rulers. The unregenerate "civil man" posed the most formidable challenge to orthodoxy. This is why secular government performed such a central role in upholding the social order. And in New Haven and other communities, the contractualism upon which the church rested also formed the basis of political institutions. New Haven's "Fundamental Agreement" was reached through a process of voluntarism which placed political power in the hands of the elect. In 1639 the town's free planters chose to impose extremely high qualifications for citizenship and agreed to follow the laws set forth in Scripture and enforced by a small group of God fearing magistrates. Everyone knew that they were the laws of God, and they became the cornerstone of social control.

All of this, of course, represented an ideal, one almost too good to be real. But it was real, at least in the minds
of the puritans who presided over the founding institutions in New England. And although the ideal would crumble in the face of new world conditions, it did have an impact on subsequent generations of New Englanders. Additionally, the puritan notion of order became the standard by which to judge social change. In the past few decades a number of studies have been devoted to change in the areas of family life (Greven), religious life (Miller), and community organization (Lockridge). In each instance an ideal view of order has performed a basic task in explaining patriarchal control, religious principles embodied in documents like the Cambridge Platform, and the policies of perfection inherent in a utopian commune. The character of fundamental law in New Haven also reflected the ideal. It is against this that alterations must be measured. The wait will not be a long one, for in New Haven, the process of change began when the law "branched out into particulars" in an effort to order more completely a society confronted by challenges associated with life in the new world.
CHAPTER I

NOTES


2. Bushman, From Puritan to Yankee, 3-6.


7. Faber, "Puritan Criminals," 86.


12. Ibid., 149.

13. Ibid., 115-116. Although courts in New England had legal jurisdiction over certain facets of family life, John Demos has noted that they intervened infrequently and then usually in the capacity of mediators of conflict. A Little Commonwealth, 102. Foster, Their Solitary Way, 25. Perhaps the most familiar example of family life that was out of order concerns the regulation of single persons who, in the 1640s, were ordered by New Haven officials to "betake themselves... to some families,"
and thereby decrease the possibility of social disruption. See Charles J. Hoadly, ed., Records of the Colony and Plantation of New Haven, From 1638 to 1649 (Hartford, 1857), 47. Hereafter, New Haven Records, I.


16. For more on the logic of relationships consult Morgan, Puritan Family, 21-28.

17. Winthrop quoted in Erikson, Wayward Puritans, 82.

18. The Copy of a Letter Written... to His Sister (London, 1650), 13, quoted in Morgan, Puritan Family, 44.


24. Ibid., 211.

25. Ibid., 182.

New Haven among those individuals for whom demographic data are available (N=435) and who appeared before the courts on criminal business, 30% were 21 or younger; 49% 25 or younger.


30. *Town Records*, II, 441-442. Jagger seemed to have behaved himself as a servant. Only once, when he was 20, did he come close to legal trouble as the result of a quarrel "when Mr. Davenport was in his sermon." *Ibid.*, 114.


33. *County Court Records*, I, 100 and 163 respectively.

34. *Four Generations*, see Part I.


42. "Life of John Davenport," *Magnalia Christi Americana*
(London, 1702), Book III, 292-301, 298.


44. The Profession Of The Faith Of That Reverend and worthy Divine Mr. J.D.... (London, 1642) reprinted in Isabel M. Calder ed., Letters of John Davenport Puritan Divine (New Haven, 1937), 68-75.

45. For the plan see New Haven Records, I, 302-304. Of those seated, including both males and females, 116 or 61% were members. Compare the plan with Franklin B. Dexter, comp., Historical Catalogue of the Members of the First Church in New Haven, Connecticut (New Haven, 1914), 1-12.


49. Ibid., 227-228. On the particulars of Potter's case see New Haven Records, II, 440ff and Chapter 4 below.


51. In his The Behavior of Law (New York, 1976), Donald Black argues that "law varies inversely with other social control," that as traditional institutions like the family weaken, the state takes on a more prominent role (107).

52. Unless otherwise indicated all quotes used in this section appear in New Haven Records, I, 12-15.

53. T.H. Breen has noted that the founding of political institutions in New Haven is a "dramatic example of the voluntaristic nature of civil government in New England." See his The Character of the Good Ruler: A Study of

54. Bruce Steiner identified the man as Rev. Peter Prudden of Milford. See "Dissension at Quinnipiac," 29. The man was certainly not Theophilus Eaton as stated by James Truslow Adams in The Founding of New England, 208.


56. A Sermon Preach'd at the Election... 1669 (Boston, 1670), 8. A facsimile has been reprinted in the Colonial Society of Massachusetts Publications, X (1907).

57. New Haven Records, I, 271


60. Law and Authority, xi.


64. For further examples of order and the ideal see John

65. A clear example of the shattered ideal can be found in Rutman, Winthrop's Boston.
CHAPTER II

ORDER THROUGH LAW

On a December day in 1647 New Haven's Plantation Court devoted an entire session to the resolution of private controversies. Of the several suits heard, the case between John Meiggs, a New Haven tanner, and Henry Gregory, a Stratford shoemaker, proved to have a significant impact on the writing of law and hence the maintenance of order in the community. As plaintiff, Meiggs sued Gregory for damage to "his name and estate" stemming from a breach of contract. Meiggs charged that the 14 dozen shoes he bargained for were poorly made, thereby damaging his reputation (he claimed that some consumers thought that he was "worthy to be put in prison") and to his livelihood because other sales he had pending fell through once word spread that the shoes he was selling were inferior. Specifically, Meiggs claimed that the shoes fell apart almost immediately upon use, that he never received any with wooden heels as the contract stated, and that some pairs were designated as size ten when in fact they were a size smaller. Gregory's defense was that the leather he had received from Meiggs to make the shoes was of extremely poor quality, thus, to his way of thinking, shifting the blame back to Meiggs.¹

The broad manifestations of the case emerged when
witnesses appeared and it became clear to authorities that consumers were left unprotected from fraud or poor workmanship. Because so many shoes were involved and because many of them had been sold, it was easy to locate witnesses. For the most part, all the testimony pointed to the same thing: inferior shoes. John Parmely of Guilford testified, for example, that the pair he had bought fell apart within days. Jonathan Sargent reported that after wearing his recently purchased shoes on three occasions one of the soles fell off. A Mrs. Blackman claimed that after wearing her pair for a few days, "the leather was like flaps of a shoulder mutton."

It was clear from most of the testimony that the shoes were poorly made. However, the question of blame was still at issue. Each party was able to produce witnesses who spoke convincingly on his behalf. One of the plaintiff's backed up his claim that flax rather than hemp was used to bind the shoes, thus tending to weaken them. By the same token, Gregory's son Juda testified that the original leather was poor and as such could not be worked properly. As to some of the specific charges: Gregory admitted that no shoes with wooden heels were delivered, but, echoing his son, he also argued that the sizes had originally been marked by Meiggs and that the leather marked size ten was so poor that it could not be stretched to specification. As for the charge of inferior quality, witnesses for the defense repeatedly claimed that the leather was "tainted"
and that it could be torn easily.

Following the testimony of witnesses for the plaintiff and the defendant, other tanners and shoemakers were called to examine the shoes from the perspective of the quality of the leather used and of the workmanship itself. According to the "experts," both parties appeared to have been at fault. On the one hand, they determined that the raw leather was in fact poor, indeed, untanned. For this Meiggs was liable. On the other hand, they also concluded that the workmanship was sub-standard because the stitches were too long, the flax was unwaxed, and the awl holes were too large for the thread. The decision of the court mirrored that of the experts: both parties were to blame and in the process the "country was much wronged." Most of the fault was placed on Meiggs for providing Gregory with untanned leather. Consequently he was fined £10 and ordered to satisfy wronged consumers. Yet the shoemaker had also "transgressed the rules of righteousness" and for this he was fined £5, court charges, and was told that he could not recover his lost labor.

Although Meigg's suit had begun as a private issue pending between two parties, it escalated quickly to include numerous New Haven residents as well as those of neighboring communities. From a legal perspective, what is significant is the speed with which authorities responded to issues raised in the case. Within two months of the trial legislation was passed which was intended to regulate the quality
of leather used in the community and protect consumers from "unrighteousness." The chosen response to the problem was the creation of the position of public sealer to inspect and seal all leather sold to shoemakers. And, so that the "buyer be not deceived," cobblers were ordered to mark their shoes "upon the lap within side below the place where they be tied," or face prosecution and punishment at the discretion of the court.  

Meiggs v. Gregory is one of the more dramatic examples of the way laws were framed in early New Haven. The case called to attention a basic problem facing the community—lack of consumer protection—and it generated a direct legal response to a source of potential discord. In short, it epitomized the "branching out" that characterized lawmaking and legal change throughout the seventeenth century.

Because this kind of legal cause and effect relationship had such an important bearing on the maintenance of order in New Haven (and presumably other communities), it is surprising that legal historians have not analyzed such connections in greater detail. Typically, their energies have been channelled in the direction of colony level law codes which, in New England, tended to postdate the settlement process by at least 15 years. Thus by emphasizing formal codes almost exclusively, legal scholars have virtually ignored the evolution of law on the local level and therefore the context of community bylaws which had a pervasive impact on the lives of New Englanders.  

Furthermore, they
have also neglected to emphasize the connection between law and its enforcement. So too have historians of crime in early America. While their studies have documented the enforcement of law, they have not generally analyzed the obvious link to the legislative process. 4

This is also somewhat surprising because in New Haven and other locales both criminality and litigation were closely related to legislation. In England, for example, the Clandestine Marriage Act of 1723 altered the legal definition of marriage and thus had an impact on prosecutions for illegitimacy. Similarly, a sixteenth-century Act of Parliament restricting the use of benefit of clergy is thought to have produced a reduction in the number of thefts involving breaking and entering. And it has also been argued that the re-definition of law, which sometimes causes changes in normative boundaries, can have an instrumental affect on the production or reduction of rates of deviance. 5

Since New Haven experienced the kind of legal interplay illustrated by the foregoing examples it is necessary to synthesize the concerns of legal scholars and historians of crime in order to appreciate fully the context of social control.

This is perhaps best accomplished by approaching law and order the way the planters of New Haven did: on two distinct, but interrelated levels. First, order was promoted on the local level through the implementation of penalty-bearing town ordinances or bylaws. These originated within
the context of local needs and were approved in the town meeting by freemen. Generally magistrates and other town officials took the initiative in pushing for the adoption of local ordinances, but they were doing so in response to the concerns of local residents who felt that their daily affairs could be better served through bylaws aimed at reducing sources of disorder within the community. This had been the case with the regulations formulated in the wake of Meiggs v. Gregory. On other occasions, the initiative can be linked more directly to local residents who openly clamored for the adoption of certain laws. This proved to be the case in the late forties, for example, when the control of livestock had become problematic. Regardless of who took the initiative the actual bylaws shared common characteristics: they tended to be "secular" responses to local problems and were universally punishable by small fines. Furthermore, the enforcement of these bylaws generally took place on the local level and as such was strikingly similar to the situation that existed in English communities. In essence then, it was a traditional strategy for maintaining order.6

But because New Haven was one of six towns which, after 1643, comprised the New Haven Colony, its residents were also bound by the laws of this larger jurisdiction. The laws of the colony were passed by magistrates and deputies (representatives) of the respective towns and were eventually incorporated into formal, written codes. The New Haven and Connecticut Colony codes were patchwork collections of
procedures and laws which were designed to promote uniformity and order. It was not uncommon for the codes to include some of the rules and regulations which originated on the local level. Indeed, the sections of the New Haven Colony code concerning shoes and shoemakers can be traced back to *Meiggs v. Gregory*. However, it was on the colony level that one encounters the "Judicial Laws of Moses" and numerous other laws ranging from gaming to drinking that were meant to regulate the passions of the saints and civil man alike.

Broadly conceived then, each level of lawmaking in early New Haven attempted to promote order through law by addressing different sources of disorder. Local officials were concerned primarily with problems peculiar to their community. Although colony officials focused on a wider range of legal matters, largely in the interest of uniformity, it is nevertheless important to recognize that they had the task of legislating morality. Because the character of law on the local and colony levels was so different, it is not surprising that patterns of criminal conduct as reflected through enforcement also varied. Moreover, by approaching New Haven's legal milieu from this dual perspective it is possible to achieve a deeper appreciation of why, when, and how laws were enforced. Ultimately it will promote a better understanding of the way order was defined and maintained in this early New England community.
In October, 1639 when the Plantation or Town Court of New Haven convened for the first time, the recently elected magistrates who presided over the session did so without the benefits of positive or established law. In 1639 the "Judicial Laws of Moses" served as the only guide by which to conduct legal affairs. Biblical law was, of course, consistent with the leader's perceptions of how best to preserve order in a society of saints. And it was a principal feature of John Cotton's "Moses His Judicials" which was presumably carried from Massachusetts to New Haven by John Davenport. The so-called Cotton Code was compiled by the Boston divine in 1636 and was meant to serve as the first legal code of Massachusetts. Although the compilation was rejected by Bay Colony legislators, it is thought to have had a positive influence on the New Haven leadership. Yet both the Cotton Code and New Haven's reliance upon Biblical injunctions not included in the code had obvious limitations, especially when placed within the context of controlling the lives of ambitious settlers in the new world environment. To be sure, in certain instances Scriptural rule suited the community's judicial system quite well. For example, New Haven magistrates were able to rely successfully on the word of God when prosecuting Nepaupuck, a local Indian, for taking the life of an Englishman: "He that sheds man's blood, by man shall his blood be shed." Accordingly, the native's head was cut off and "pitched upon a pole in the market place." But where were the
When the circumstances of their environment forced New Haven leaders to adjust to their new milieu and create laws that were decidedly secular in nature, they by no means intended to compromise the foundations of order upon which the welfare of the community rested. In all likelihood they did not believe that they were, for even the most enthusiastic saint realized that Biblical equivalents could not be found to govern the variety of conditions present in seventeenth-century America. Indeed, a part of their English heritage included the notion that simple regulation was a function of good government even if it were not divinely inspired. There was no way of avoiding secular regulation even if the saints wished to because control over the daily activities of regenerate and unregenerate men, women, and children was a necessity if the community was to survive the initial years of settlement and hope to prosper in the future. Very quickly secular law and its enforcement, not spiritual exegesis and admonition, became the principal means of controlling disorder in New England towns like
New Haven. No amount of catechizing could ensure against starvation when forests had to be cleared. Though grievous, sabbath breaking would be tolerated if it meant that a section of fence would be repaired and unruly livestock kept from a tender crop. Properly hewn and covenanted pillars would come to mean very little if caught in the path of a raging wilderness fire. And the regulation of labor, of fencing, and of fire control equipment became, especially in the 1640s, major features of New Haven's branching out and were all crucial elements of what amounted to an increasingly secular legal milieu.

The 1640s were, without doubt, the most important decade of legal growth in New Haven. Certainly more orders or non-penalty directives and more bylaws were passed than during any other period of the town's history during the seventeenth-century. Between 1639 and 1698 the town adopted a total of 114 bylaws aimed at regulating the conduct of community members. Over half of these addressed the two most pressing and persistent problems which faced the town prior to 1701—livestock control and military obedience. As indicated in Figure 2.1, the vast majority of bylaws (53%) were written in the first decade of the town's existence. Moreover, with the exception of a trifling increase (1%) for the decade beginning in 1689, the percentage of total laws passed by the local government declined steadily from the peak of activity in the 1640s.

Of all the bylaws passed in the first ten years, a
total of 30, or 50%, were placed on the books prior to the first attempt at codification in 1646. This initial branching out reflects the need to go beyond Biblical foundations in order to safeguard the welfare of the community. For example, one of the earliest dangers facing new world settlements like New Haven was fire. Because fires in fireplaces and ovens, as well as on houselots, were commonplace the possibilities of kindling an uncontrollable blaze were numberless. It was therefore imperative that some measures be taken to prevent and control fire. The first effort came in the form of an order in 1641 specifying "that fire hooks shall be made for the common use of the town, at a common charge." It is not known with certainty if there were any major fires during this period, but in the same year that the hooks were ordered a law was passed that stipulated "that every house in the town shall have a ladder (in length to suit the height of their chimney)... to stand ready by their houses, under penalty of 5s fine." One can reasonably surmise, therefore, that there had been chimney or roof fires that were damaging to individual dwellings and perhaps threatening to the town itself. Quite simply, lawmakers wanted houses to be equipped with ladders so that unwanted fires could be extinguished. Those who failed to comply with the law were brought to court and reminded through newly imposed penalties that they had better conform to fire control standards. This is exactly what happened to Samuel Hotchkiss Sr. and seven other residents
Figure 2.1

New Haven Local Laws by Decade, 1639-1698

Sources: New Haven Records, I & II; Town Records, I-III.
who, in 1643, stood in violation of the law and were consequently fined 5s each "for want of ladders."^{13}

This small clustering of convictions is noteworthy on two accounts. First, it represents roughly 20% of all the cases prosecuted in 1643 and is indicative of local priorities. Second, it illustrates the dynamics of the relationship that existed between legislation and petty offenses. The following scenario recreates the association: community members express concern over dangers inherent in the constant use of fire; a few fires occur which are jarring enough to warrant appropriate directives (hooks) and legislation (ladders); all but a few of the residents equip themselves with ladders; those who do not are fined and then go on to meet the necessary fire control and prevention regulations. In this particular instance the mechanisms of social control (law and enforcement) ran smoothly enough to suit the needs of both rulers and ruled, and to a decided measure functioned in such a way as to help preserve physical order as well as promote peace of mind in the community. Fire control laws comprised but a portion (3%) of those formulated on the local level during the seventeenth-century. There were, however, other needs of the evolving community that were equally if not more important in maintaining order and as such were addressed through the legislative process.

One of the clearest example of the relationship between
community needs and law comes under the heading of military affairs. Nearly 30% of the bylaws passed during the seventeenth century dealt with military matters, from prohibitions on selling arms to Indians (£5 fine) to arriving late for watch duty (1s fine). Of the 31 military bylaws passed before 1700, 24 or 77% were placed on the books prior to 1666 and New Haven's absorption into Connecticut. And just over half of these appeared during the first decade of settlement when the need for protection and military discipline was perhaps the greatest.

At various times during the course of the century the colonists had good reason to fear attacks from the Dutch, and, perhaps with greater cause, from coastal Indians. The most well known period of danger from the natives is King Philip's uprising in the 1670s. New Haven lawmakers did respond to the dangers associated with that period of anxiety, but by 1675 local residents had nearly 40 years of accumulated legislation and experience which enabled them to mobilize effectively against King Philip's threat. The 1640s were a completely different story. Indeed, the actual settlement of New Haven followed the conclusion of the Pequot War by only a few years. It is not unreasonable to suggest that the decade following that conflict was marked by underlying paranoia. The trial and execution of the "savage" Nepaupuck in 1639 was symptomatic of this pervasive fear. To New Havenites the image of the noble and friendly Indian so frequently epitomized in modern
literature by Squanto was inconsistent with many of the realities of coexisting with a people whose behavior and cultural heritage differed so dramatically from their own. And, to fuel the apprehensions associated with the aftermath of the Pequot conflict, several valid threats were posed by Indians in the 1640s which prompted community leaders to take action and come to grips with the perceived menace. Not surprisingly, legislation was considered the most responsible means of meeting the challenge.

Given the prevailing atmosphere it did not take authorities very long to lay the foundation for military preparedness. As early as 1639 the first law was passed: "It is ordered that everyone that bears arms shall be completely furnished with... a musket, a sword, bandoleers, a rest, a pound of powder, twenty bullets fitted to their musket... under the penalty (of) 20s fine for every default." Over the course of the next five years ten more laws and a total of 70 orders were issued in an attempt to meet the military requirements of the community. Among other things, those needs included the creation of a watch, the working out of a training schedule, and the formation of an artillery company. Each of these laws, together with the sanctions associated with them, were part of a body of secular regulation aimed at forcing community members to meet the minimum standards of readiness. Although the barrage of orders issued during this half decade carried no penalties, they clearly lent support to the actual legislation. For
example, an order of 1642 specified that under alarm condi-
tions "every soldier in the town is to repair to the meet-
inghouse forthwith." In 1644 the town's "Great Gunnes" were
ordered to be put "in readiness for service." The following
year another directive was issued that required the gun-
smiths "to lay aside all other business and get those guns
repaired that are defective." These orders and others
like them were important sources of support for recent leg-
islation and therefore aided in the community's social con-
trol endeavors during the initial years of settlement.
Throughout this period leaders had directed their energy
towards meeting a major challenge--Indians--posed by the new
world environment. By choosing law as the best response to
crisis local rulers broadened the town's legal edifice to
embrace new aspects of order not provided by the "Judicial
Laws of Moses."

The military legislation of the 1640s left the community
with most, but not all, of the bylaws needed to check the
dangers of an Indian attack. When new situations arose
which called for additional laws local officials once again
responded in a direct and meaningful manner. A good example
of this is seen in the legal response to King Philip's War.
Like the crisis of the 1640s, that of 1675-1676 once again
made military preparedness a local priority. And at the
time of the war there had not been any military legislation
in New Haven for a decade; no laws had been passed because
none were needed. This changed dramatically when the war
began. Very quickly six new military regulations, or 85% of those passed between 1666 and 1701, were placed on the books. Few of the new ordinances, however, were aimed at controlling trainband disorders, the keeping of the watch, or repairing defective arms, as had been the case earlier. Either these provisions were covered adequately enough by previous legislation or the issue of enforcement had not become serious enough to cause revisions or amendments of original laws. The first priority of community leaders in 1675-76 seemed to fall in another area of preparedness: fortifications. That is why the town formulated new bylaws specifying that a stockade be built and that any individual failing to contribute to its construction (able body males over 14) be fined 5s. Much of the wood used to erect the "fortification line" came from a vigorous effort aimed at clearing underbrush from the area so that it would not become a "shelter to the enemy." The process of clearing began under an order issued in the fall of 1675 which at the time carried no penalty. Authorities considered the clearing project important enough to issue subsequent orders and warnings as a means of achieving compliance. Within a month, however, it had become evident that these informal approaches to the problem were not effective. The town therefore responded by passing a law which carried a 1s penalty for every rod not cleared. And to make it more meaningful several individuals were appointed to oversee the operation and report violators to the authorities.
This underbrush legislation was only temporary— one of a handful of bylaws so designated during the seventeenth century. However, what is significant about the military bylaws of the 1670s is that they were passed in direct response to a crisis facing the community. In fact most of the 31 military regulations formulated during the century, whether in the 1640s or 1670s, were similar in that they represented a response to local problems and thus a branching or broadening of the legal milieu beyond Biblical foundations.

Another area of concern that generated a similar legal response to disorder was the control of livestock. As proved to be the case with military affairs, the control of livestock through proper fencing and other means became a topic of utmost concern for members of the community during the first two decades of settlement. The first mention of livestock control— and hint of a problem— was made at a Town Meeting in January 1640 when it was suggested "that some speedy course shall be taken to keep hogs out of the neck." In many respects this order summarizes the central purpose of livestock control: permitting animals to roam in certain areas and restraining them from entering others. Within a few years of this initial directive, others were made which were aimed at controlling the animal population of New Haven in different ways. In 1643 the court ordered two separate pounds to be constructed and directed the neck to be fenced and fitted with gates. In 1645 one of the earliest live-
stock control bylaws was passed; it prohibited goats from roaming off private property and Thomas Caffinch was fined for failing to control his.\textsuperscript{23} By 1646 town officials had issued 23 orders and passed six laws all in an attempt to restrain and otherwise control livestock.

Yet during this initial phase of legislation the authorities were unable to bring the disorders under control; in fact, the entire problem had been faced in a somewhat informal manner. Although orders had been made and laws passed, there existed no meaningful agencies of control to carry them out. The principal burden of livestock management before 1646 fell on the shoulders of fence viewers who were responsible for overseeing fences in their neighborhoods or "quarters." This decentralized and informal approach to the problem was ineffectual, so much so that the town passed a law which carried a 2s penalty for viewers who failed to carry out their "appointed" task.\textsuperscript{24} The need for viewers originally arose in 1644 in response to a complaint made by Thomas Nash, a local gunsmith, "of damage done in his corn to the value of nine bushels by hogs."\textsuperscript{25} Lack of diligence on the viewers part may also explain why Thomas Caffinch was the only resident prosecuted for violating livestock statutes prior to 1646. More often than not, the problem of regulation manifested itself through civil litigation. Quite simply, the lack of effective enforcement made the problem worse and this forced residents to drag their neighbors into court. John Owen, for example,
was left with no alternative in 1642 after his corn had been damaged by unrestrained cattle. Two years later William Thompson entered a complaint against Thomas Gregson, a leading member of the community, because of damage done to his crop. The court ruled that several individuals were at fault for allowing their fences to "lay down," and each, including Gregson, was ordered to pay Thompson six bushels of corn. Had the viewers been doing their job correctly, the litigation may well have been avoided.

By 1648 the problem had become serious enough for magistrate Theophilus Eaton to lament publicly "that many are discouraged from the labor of husbandry, because their corn, when they had sown it, is spoiled." In response to what was considered to be a serious problem, the town devised an effective agency of control, passed a number of new laws and supportive orders, and, by virtue of these changes, a greater number of violators were prosecuted.

The pivotal step towards resolving the problem was made when leaders introduced to the community the position of public pounder or pound keeper which was considered to be the "best way" to "prevent damage done by swine and fences." John Cooper accepted the position, and, in addition to the traditional duties of a pound keeper, he was entrusted with the responsibility of viewing fences on a weekly basis and of notifying owners of their defects. The appointment was indeed a significant step in combating the problems of livestock control because for the first time the town had an
effective "middleman" capable of linking private residents, and thus violators, to the courts.

Because the magistracy considered the position of pound keeper to be so important, a series of new bylaws and orders was undertaken in the post-1648 period. For instance, in an effort to aid the pounder in his duties, residents were ordered to mark their fences so that violators could be readily identified. Within months of his appointment Cooper discovered "that he finds great difficulty in viewing fences" because of residents who left town without making some provision for the maintenance of their fences. Consequently the court ordered that caretakers be designated by owners before they left town for long periods or face prosecution. And in 1652, after a law had been passed that enumerated penalties for missing posts and rails, another was added which carried a 12d fine for convicted fence violators who had not paid their original penalty.

In addition to laws focusing exclusively on fences, others were passed which were aimed at restricting further the movement of livestock. Based on information provided by the pound keeper and upon a series of complaints that "Indian corn is spoiled, and more like[ly] to be, if some other course not be taken," a bylaw was passed that specified that if any "swine be found in the fields or streets unyoaked, the owner shall pay 12d a piece for them beside damage." Because the control of swine had become especially troublesome by the early fifties, authorities were
constrained to limit the number that could be owned in direct proportion to the amount of land held by local residents. And eventually, an order was made that "no man but such as are admitted planters here shall keep any swine or cattle" within the limits of New Haven without first having obtained the "Townes consent."\footnote{35}

The problems associated with controlling livestock were not completely solved by the late 1650s. Indeed, the town would pass 15 more laws—as circumstances required—and go on to issue many more orders before the turn of the century. Yet it was during the late forties and early fifties that the problem of control was recognized for what it was—a threat to order—and that the position of pound keeper was created to address the situation in a realistic and meaningful fashion. And among other things, the formulation of new bylaws and their enforcement meant that the degree of contention between individuals also diminished, and so too, the kinds of public disorders community leaders hoped to avoid.\footnote{36}

Overall livestock control bylaws accounted for 41 or 35% of those passed during the seventeenth century. Volume alone should be an indication that correcting disorders related to livestock became a priority in New Haven. What should not go unnoticed, however, is the myriad of isolated instances of lawmaking which, while perhaps not related to a major crisis, nevertheless reflect legal responses to potential sources of disruption. In 1641, for instance, before ferry
service had been established for crossing the Quinnipiac River, disorders arose when settlers "borrowed" canoes without owner's permission. Unwanted litigation resulted and the town responded by passing a law which forced individuals found guilty of taking a "boat or canoe without leave" to pay a 20s fine or appropriate damages to the owner. When, in 1650, the activities of a stranger named Elisha Weeden became a source of disruption, another ordinance was passed which required transients to receive permission from town authorities to remain. While the bylaw was aimed at regulating the presence of "outsiders," officials were quick to note that it was not designed to exclude "friends who in a way of love come to visit." And when the need arose in 1663 to regulate the speed at which horses could be ridden through town, another law was passed which corrected the disorder.

Whether town ordinances were written in the wake of isolated events such as borrowing canoes or in the midst of more prolonged periods of crisis concerned with military preparedness, one basic characteristic of attempts to promote order through law on the local level emerges: law-making was a secular response to specific needs of the community. Some of the bylaws, like those regulating the cutting of timber, can be traced to English manorial law and thus were traditional. Others, such as military regulation, were more novel insofar as they were direct responses to new world conditions. Most of the 114 local statutes, 78 or 69%, were passed prior to 1659 when the
need to "branch out" was greatest. Additional ordinances were passed before 1701 as amendments or new legislation was required to meet new conditions. However, most of the law-making in the post-1659 period did not occur in clusters which may be an indication that physically the town was better ordered in the late going than at the outset of settlement. If this was the case, then it follows that most of the enforcement of local statutes would have taken place during the initial years when disorders were more prevalent. Since the enforcement of bylaws generally was carried out on the local level, it should come as no surprise to find that patterns of petty crime were inextricably linked to the priorities of the community.

The enforcement of bylaws was only one aspect of the overall attempt to maintain order in New Haven. As suggested earlier, New Havenites were also bound by a set of higher, more universal statutes which were incorporated into a series of law codes found on the colony level. Colony codes touched on an array of legal matters, but specifically those governing morality which were never fully addressed on the local level. During the century residents of the town were exposed to four codes, each of which was more elaborate and realistic than its predecessor.

The initial experiment with codification came in the mid-forties and was made in direct response to a pair of recent events. The compilation was made in part because New Haven's
public notary and secretary Thomas Fugill, had been convicted of land fraud by tampering with the records. This was a clear violation of public trust and it caused officials to lose confidence in his work.\footnote{41} Perhaps having a greater bearing on the codification attempt was the formation of the New Haven Colony in 1643 which, in addition to New Haven proper, included five neighboring communities. Quite naturally officials believed that a single body of laws and procedures would be less confusing than six different collections of rules and regulations. Once begun, the standardization and revision process took nearly a year to complete. The original directive was issued in 1645 when magistrates and deputies were instructed "to view all those orders which are of a lasting nature, and where they are defective, to mend them and then let them be read in the [general] court [so] that the court may confirm or alter them as they see cause."\footnote{42} The work was completed by early 1646 with the formal collection of old and new bylaws, orders, and procedures.

On the surface the 1646 code was little more than a collection or compilation of previous legal efforts. In this sense the revision pre-figured the more elaborate codes of 1656 (New Haven) and of 1650 and 1673 (Connecticut), which were also compilations. Yet to describe the 1646 revision and subsequent codes as simple updates is to slight their importance to the architects of the New England Way. On the one hand, and in a broad sense, the codes which
appeared during the seventeenth century reflected a desire for precise delineation of law which originated with puritans in England who perceived themselves as victims of Stuart tyranny. On the other hand, and closer to home, the codes were considered a means of promulgating order in New England towns and colonies through a reaffirmation of fundamental values and the benefits afforded by recorded, positive law.

Not surprisingly, the 1646 revision began with a restatement of the legal foundations devised to suit the needs of the well ordered community: "The judicial laws of God, as they were delivered by Moses, and expounded in other parts of Scripture... shall be a constant direction for all proceedings here." Beyond this general statement, however, the revision did not enumerate laws and punishments relating to moral conduct. Following this reaffirmation of values, all the other laws, orders, and policies of the first few years "that were of a lasting nature" were incorporated into the revision. Significantly, many of the bylaws and procedures used in the town of New Haven served as the basis of the code; what was good for Davenport's and Eaton's community was evidently good for the other five colony towns. This was especially true with generalized regulations like voting procedures and franchise requirements, both of which were reiterated in the revision. Other general policies, like those governing land were rerecorded. The methods used for determining assessments of "all rates
and public charges" were also explained and placed on the books. In addition to policies, orders that were considered to be of special value to the communities were embraced in the revision. These included provisions for the "better training up of youth in this town" and the allocation of a salary for the town's first schoolmaster Ezekial Cheever. 45 Because "of the trouble and hindrance which sundry, both of this town and other plantations find and undergo in getting over the East River," an order was incorporated into the code that called for the development of a ferry system which could alleviate the problem. Moreover, these are but two examples of codified orders ranging from the keeping of a book of warrants to providing bounties for wolves and foxes.

In addition to policies and orders, the revision also included a restatement of old bylaws and the inclusion of a few new ones where necessary. A total of 12 new statutes, mostly concerning military affairs, were added during the compilation process. For the most part, the new military legislation was designed to lend support to the bylaws passed prior to 1646. For example, in 1640 an ordinance stipulated that individuals who arrived late at training exercises were to be penalized. Yet no legal provision had been made to keep militiamen there once they had arrived. It was in the wake of a series of inconvenient and disruptive early departures that a bylaw was added to the 1646 code that penalized residents 5s if they were convicted of leaving the exercises prematurely. 46 Similarly, because
there had been disputes growing out of the recording of names of those who attended the exercises, a new statute specified that anyone who arrived late must notify the company clerk. If they failed to comply, they faced possible conviction and a 5s fine. And no earlier bylaws had sought to govern the behavior of soldiers at the exercises. This oversight was corrected through the addition of a law which empowered magistrates and their deputies to punish disorderly militiamen at their discretion. Essentially, each one of the new military bylaws was designed to promote order in the communities of the colony through effective regulation and enforcement of military affairs.

Although the revision of 1646 attempted to bring a measure of order through legal uniformity, it was by no means a full fledged code of law. It was important because it provided the basics needed to tie the towns of the colony together, but it was also vastly inadequate as an overall handbook of positive law. Indeed so many aspects of regulating the conduct of individuals were left untouched in the revision, that officials eventually decided to "publish" a more complete code of laws. This occurred in 1656 and was also prompted by the fact that each of the "puritan" New England colonies had already compiled formal codes that transcended the peculiarities of local communities. Thus moved by a desire for further uniformity and by the need to codify or otherwise define crimes of a capital nature, the New Haven Colony General Court requested Governor Theophilus Eaton to
view the laws thought "most necessary to continue here," and then have them "sent to England to be printed." By the fall of 1656 500 copies of the so-called Eaton Code had arrived in New Haven and they were ordered to be distributed to the colony's towns.

Known formally as New-Haven's Settling in New England, the code of 1656 resembled the earlier revision insofar as it was a compilation of procedures, orders, and laws. But Eaton's code departed from the collection made in 1646 in two important ways. First, it was less original because Eaton was authorized to borrow from the Massachusetts Colony's Laws and Liberties of 1648. Secondly, the Eaton Code finally specified penalties for moral offenses (such as fornication and drunkenness) which had always been undefined and discretionary.

The code consisted of 69 different categories of laws and procedures ranging from "actions" to "wolves" which were collectively designed to generate a uniform body of practices for conducting legal affairs in the colony. Of these, 37 (54%) were procedural in nature. For instance, if a New Haven housewife wished to sue her neighbor for slander, she could consult the portion of the code dealing with "actions" and find information concerning legal fees and, depending upon the value of her suit, the proper court in which to file her cause. By the same token, if a Branford farmer killed one of the colony's most dangerous predators, he could turn to the section on "wolves" and
discover that in return for the animal's head he was entitled to a 20s bounty. Standard procedures such as these were clearly important in promoting uniformity and safeguarding the liberties of Englishmen in the new world, but they represent merely a portion of the code. Another 32 (46%) of the principal headings were a combination of both procedure and law. Falling under these were a total of 64 laws to which specific penalties were attached. For example, under the heading "Ecclesiastical" there were two laws, each of which carried a different penalty: a fixed fine of 5s for church absence and punishment by magisterial discretion for anyone convicted of reproaching religion.

In order to trace and identify probable sources of the laws in Eaton's compilation, the various headings must be dissected in a manner that will isolate individual statutes. Once this is done it becomes evident that even the rather generalized laws of the colony were formulated in response to specific circumstances encountered in the new world.

The one exception to this was the block of 20 laws (31%) for which the Bible was the primary source. Not surprisingly, most of these were "universal" laws punishable by death. Seventeen were capital offenses which were taken directly from the Old Testament. In many respects these "Judicial laws of Moses" represent the Biblical foundations or "constant direction" upon which both the town and colony rested. The well-ordered Bible Commonwealth was originally perceived as one free of those sinful deeds committed by miscreants
who specifically violated the commands of God. Thus, convicted murderers could be executed (Lev. 24:17), as could adulterers (Lev. 20:10), and rebellious children who rose up against their parents (Deut. 21:18-21). Yet each of the seventeen capital laws found in the code were highly generalized and most were never violated and therefore enforced with any regularity. The actual role they played in maintaining order in the colony's towns was limited. More applicable to New England communities were the Biblical laws covering theft (restitution) and fornication (marriage), but in practice the punishment for these offenses rested on broad magisterial discretion and thus departed literally from Scriptural injunction. In terms of both application and quantity the laws of God were overshadowed by those which were secular responses to specific problems facing the colony and its towns.

A little over two-thirds of the laws in Eaton's code were either traditional or original secular pieces of legislation. Nine (15%) can be traced directly to lawmaking that began in the town of New Haven. For instance, the law regulating leather for shoes evolved out of *Meiggs v. Gregory* in 1648. Four military laws in the code date back to the rash of legislation undertaken during the 1640s in New Haven. And the principal law governing the conduct of strangers can be traced back to the circumstances surrounding Elisha Weeden in 1650. Moreover, when local legislation (which Eaton had originally had a hand in creating) was considered general
enough to fit the needs of the colony, it was freely incorporated into the code.

So too were similar secular laws from Massachusetts. An additional 15 (24%) were borrowed directly from the *Laws and Liberties*, something that was in keeping with Eaton's instructions from the General Court. The reliance upon the Bay Colony for some legal advise was not altogether new in 1656. During the late forties Eaton had written to John Winthrop and requested information on taxation and how best to define the obligations of transient seamen. Because the ties with the Bay were especially close it seemed only natural for Eaton "to send for one of the new book of laws... and to add to what is already done as he shall think fit." Most of the borrowed laws fell under the general heading of entertainment—something that had never received full attention by New Haven authorities. These laws were quite similar to those passed on the local level in New Haven, insofar as they were responses to problems that Massachusetts leaders encountered prior to 1648. For example, the laws against tippling which were adopted by Eaton had been passed by the Massachusetts General Court in May of 1645; the penalty for lying was established in the same year, and those for gaming were written shortly thereafter. The Bay Colony laws that were incorporated into the Eaton Code provided an additional element of positive legislation and strengthened those that had already been formulated by New Haven Colony officials.
The sources for twenty (31%) of the remaining laws in the New Haven compilation are difficult to identify with certainty. For the most part they appear to have been a collection of customs and precedents practiced in the colony since its inception, but never specifically recorded. This was similar to the situation involving Biblical law, which was practiced in New Haven prior to the code, but which remained nevertheless unrecorded. It seems clear, however, that generalized laws like that requiring colony residents to provide strong enclosures for cattle were original to the Eaton Code. The same can be said of laws governing Indian affairs, like the sale of land, and of new legislation bearing on the education of children in the jurisdiction. Still the Eaton Code was, first and foremost, a compilation of laws and procedures that were, by 1656, in need of formal recording and clarification. As such, Governor Eaton turned to the Bible, to appropriate legislation from his own community, to the Laws and Liberties, and to the customs practiced within the colony as a means of putting together the colony's first formal body of laws.

The Eaton Code was but one of two major legal changes which affected residents of the town of New Haven during the late fifties and sixties. The code added another layer of rules and regulations that community members were bound to follow. It provided leaders with a set of uniform laws which they could use to hold residents accountable. By the same token, however, it provided the colonists with a
clearer understanding of what was expected of them and, importantly, with a guide which they could use to protect their own rights and interests. Although lawmaking on the colony level did not end with the publication of the code, Eaton's compilation, which was more secular that Biblical in nature, remained the principal body of laws governing behavior for the last decade of the colony's existence.

A second major change to occur during this period can be traced to the dissolution of the colony in 1665. The formal absorption into the Connecticut Colony brought an end to nearly a quarter century of "puritan" rule by men like John Davenport and Theophilus Eaton. Although the latter's code had had an impact on the lives of all colony residents, it ceased to exist legally after 1665. So too did the discretionary Court of Magistrates on the colony level and the Plantation Court on the local level, both of which had heard cases without the use of juries. From a legal perspective, absorption by Connecticut meant that New Haven residents were exposed to a new body of laws (the "Ludlow Code" of 1650) and to a new court structure.

In practical terms the transfer of power from New Haven to Hartford was accomplished with little difficulty. There was some resistance in the years immediately following 1662 when leaders like John Davenport first learned of the impending change. But for the most part New Havenites seemed, if anything, indifferent to the jurisdictional alteration. There was, consequently, also little difficulty
involved in erecting the new court system which remained in force for the balance of the seventeenth century. The new structuring provided the town with a local or monthly court as before, with jurisdiction over misdemeanors and over civil suits under £20. The principal distinction between the new inferior or Commissioners' Court and the old Plantation Court was the use of juries in actions amounting to 40s or more. Also new to New Haven residents, indeed to all inhabitants of the colony, was a network of county courts which heard appeals from the inferior courts, administered estates, and acted on grand jury presentments in all cases "excepting life, limb, and banishment." The jurisdiction for these more serious punishments rested with the new Court of Assistants which also handled appeals from the County Courts. The creation of both courts was significant because together they shared a case load which had been previously the responsibility of a single quarterly court in Hartford. This fact, when coupled with the increased accessibility afforded by the County Courts, meant that the entire network became more responsive and more efficient. Finally, the court of last resort remained, as it had during the New Haven Colony years, the General Assembly.

In addition to a new court system, New Haven residents were also exposed to an entirely new code of laws. The collection of procedures and statutes in force in 1665 was the one compiled by magistrate Roger Ludlow some 15 years
Although it was new to New Havenites, the code was not radically different from Eaton's either in format or content. Because of this, the Ludlow Code more than likely had less of an impact than did Eaton's when it was originally distributed.

Although the Ludlow Code, along with post 1650 legislation, provided legal guidelines for New Haven residents immediately following absorption, this changed in 1673 when Connecticut officials ordered a new code to be written. The revision process was put into motion in 1671, when colony authorities requested John Allyn to "prepare a draft of laws of this jurisdiction now in use with such amendments and additions as he shall find necessary." The code was compiled inside of a year, whereupon the governor and his assistants wrote a preface and ordered the new body of laws to be printed.

Connecticut's new code, "published" in the colony's towns in 1673 and distributed in book form a year later, was more extensive than either the Eaton or Ludlow compilations. All of the codes were similar in format, yet the 1673 lawbook contained a substantially greater number of headings (141) than either of its predecessors. Within these were nested 87 different laws, about a third more than found in the Eaton Code. As far as sources of law are concerned, both the Eaton and Connecticut Codes were similar. Both borrowed freely from the Laws and Liberties of Massachusetts; 31% of Connecticut's statutes can be
traced to that document, compared with 24% for New Haven. Both codes relied extensively on a combination of local law and colony precedent—49% for Connecticut and 40% for New Haven. And each code utilized the Bible as a source for their "universal" laws. In the case of the Eaton Code 31%, whereas 20% of Connecticut's laws were drawn from Scripture.

That fewer of the laws in the Connecticut compilation are traced to the Bible is, in part, indicative of amendments which reflect both changing social conditions and values. For instance, in the Eaton and Ludlow codes, adultery was considered a capital offense (Lev. 20:10). By 1673, when the new code appeared, the punishment for that crime had been reduced to whipping and stigmatization—a subtle redefinition which was perhaps necessitated by changing patterns of adulterous behavior. Indeed, the inclusion of a number of new provisions in the code that had no equivalents in earlier compilations suggests a response to recent social developments in the colony. Neither of the earlier codes contained bastardy laws, probably because the birth of "natural" children was uncommon. By 1673 the activities of a promiscuous second generation had necessitated new legislation. The offense of "night-walking" by young adults had become so prevalent by the 1670s that it too became a new addition to the code. Moreover, the practice of enacting new laws to counteract changing circumstances was by no means original to the code of 1673; it had taken place before and would continue to in
the last decades of the century as Connecticut authorities responded to social disorders through new, appropriate legislation.

Finally, it should be noted that while some of the laws included in the new code regulated individual conduct in new ways, there were others that remained unchanged. Punishment for theft was as severe in 1701 as it was in 1639. The same was true with penalties for fornication—a major moral offense. Importantly, in the case of both of these crimes, magistrates continued to possess discretionary powers in sentencing offenders. Many of the capital laws like bestiality and rape also retained their original form. And, so too, did a multitude of laws which defined petty crimes and minor procedures ranging from the gauging of "casks and cooper" to bounties for wolves and foxes. Indeed, on both the local and colony levels laws of a constant nature together with those that were written in response to change not only defined, but more frequently redefined notions of order in seventeenth-century Connecticut.

If there is one prominent theme of the many introduced in this assessment of promoting order through law, it relates to legal change; it reinforces the concept that law, unlike puritan rhetoric, was far from being cast in concrete. Some of the legal changes, like the reorganization of the court system in 1666, were made in response to external or jurisdictional changes. But most of the altera-
tions that occurred came from an internal source, from the needs of the people and the circumstances of life peculiar to the new world which necessitated legal adjustments on two levels.

First, there was change on the local level. The context of lawmaking illustrated by Meiggs v. Gregory (1647) is central to the notion of legal change and the way social order was defined in early New Haven. The case emphasized the need to "branch out" beyond Biblical foundations and pass laws which protected consumers from unscrupulous artisans. Those laws enacted in the aftermath of the case (1648) also came at a crucial juncture in the town's legal evolution—the first decade of settlement when 60 or 53% of the 114 bylaws were written. Nearly all of the town ordinances passed during the century were similar insofar as they were secular responses to particular problems facing the community. The most serious of these—livestock control and military preparedness—produced 72 (62%) pieces of new legislation. The remaining bylaws, although not passed in clusters during periods of crisis, were nevertheless practical responses to conditions in New Haven. Thus whether new legislation took the form of a series of livestock control ordinances or were more isolated responses to the presence of strangers in town, fires, or the "borrowing" of canoes, law seemed to function best "as a response to the concrete needs of society."^72

Second, there was notable legal change on the colony
level. Here too, change was a pervasive theme. The codes which affected New Havenites during the century were more than updates of older statutes; they are dynamic examples of the flexibility of colonial law. The Revision of 1646, for example, closed loopholes in earlier legislation in an effort to better order the affairs of the colony. The Eaton Code did not merely copy the Laws and Liberties, but included statutes and procedures original to conditions in the New Haven Colony. And the Connecticut Code pragmatically discarded antiquated laws and penalties in favor of those which more accurately reflected the needs of Connecticut society in the 1670s. One of the most striking aspects of these compilations is the extent to which they departed from Biblical foundations. With the exception of universal or capital laws delineated in the codes and traced to the Bible, the statutes were clearly secular. If one is willing to accept the argument that colonial codes were the "registers of social values most sensitive to the needs of society," then the legal guidelines of the New Haven and Connecticut colonies were overwhelmingly secular. 73

Although the bylaws of the local community and the variety of statutes embodied in the colony codes illustrate the degree to which definitions of order branched out beyond the Bible and the rhetorical concerns of the founding fathers, they alone do not provide us with a satisfactory understanding of which laws were most instrumental in defining social order in early New Haven. More analysis of
the context of colonial law, specifically the enforcement of local bylaws, colony statutes, and civil litigation, is needed to provide additional insights into those disorders which posed the greatest challenges to the well-ordered community.
CHAPTER II

NOTES

1. Unless otherwise indicated, details of the case may be found in New Haven Records, I, 345-353.

2. Ibid., I, 356-357.


4. This includes Faber, "Puritan Criminals;" Greenberg, Crime and Law Enforcement; and Powers, Crime and Punishment.


10. The 1640s was a period of equally important legal development for Massachusetts. See Carol F. Lee, "Discretionary Justice in Early Massachusetts," Essex Institute Historical Collections CXII (1976), 120-139, 120ff. The importance of the 1640s in New Haven is revealed in the following breakdown of bylaws:
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<td><strong>Totals</strong></td>
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12. Ibid., I, 52.

13. Ibid., I, 121. Eight years after the ladder law was passed the town was warned that it faced prosecution if its buildings remained unequipped with ladders. Ibid., I, 428.


16. Ibid., 33-40, 76, and 158 respectively. For more on voluntarism and new world militia companies see Breen, "English Origins and New World Development."

17. A complete analysis of the enforcement of bylaws follows in Chapter 3.


20. Ibid., 346-347.


22. Ibid., 82.

23. Ibid., 160 and 164 respectively.

24. Ibid., 154.

25. Ibid., 144. More on litigation, lawmaking, and enforcement follows in Chapter 5.
26. Ibid., 81, 152-153. David Thomas Konig has argued that Essex County (Mass.) residents frequently turned to the County Court as a vehicle for forcing non-resident landowners to maintain proper fences. Law and Society, 65-70.


28. Ibid., 405-407.

29. Pounders were not always popular with local residents. Cooper, however, did not suffer the same fate as an English counterpart whose nose was bitten off in 1618 as he attempted to impound a horse belonging to Thomas Cox that had wandered into a cornfield contrary to an order of the Wiltshire County Court! M.J. Ingram, "Communities and Courts: Law and Disorder in Early Seventeenth-Century Wiltshire," in Cockburn ed., Crime in England, 110-134.


31. Ibid., 426.


33. Ibid., 217.

34. Ibid., 101.

35. Ibid., 116.

36. Ibid., II, 62.

37. For the bylaw see New Haven Records, I, 48; 58 and 80 for its enforcement.

38. Town Records, I, 22. One advantage of positive law was that specific statutes could be read to transients who were unfamiliar with community regulations. See, for example, Ibid., II, 211.

39. Ibid., 62.

40. A complete analysis of enforcement follows in Chapter 3.

41. Calder, New Haven Colony, 121.

42. New Haven Records, I, 155. The laws of the town of New Haven became the standard for those used in other communities.

not seem to have the same aversion to codified law that John Winthrop did. See Lee, "Discretionary Justice," passim.

44. New Haven Records, I, 191. The revision is found on 191-219.

45. Ibid., 210. Cheever was subsequently excommunicated and excluded from the community. He removed to Ipswich, Mass., and in a 1651 letter to Rev. Peter Prudden of Milford described himself as "an afflicted outcast." New England Historic Genealogical Register, XLI (1887), 66-68.

46. New Haven Records, I, 45 and 202 respectively.

47. Ibid., 202.

48. Ibid., 203.

49. Ibid., II, 146, 154.

50. Ibid., 186. New Haven town authorities required every family to obtain a copy of the code at the cost of 12d, payable in wheat or peas. Town Records, I, 280.

51. New Haven Laws, 14 and 56 respectively.

52. Ibid., 29-31.

53. Ibid., 18-20. There were four executions for violations of capital laws between 1639 and 1701.


55. Ibid., 25-26, 33-40 and New Haven Laws, 43-46 respectively.

56. Ibid., 52-53 and Town Records, I, 22.


59. Compare the original legislation in Nathaniel B. Shurtleff ed., Records of the Governor and Company of
Massachusetts Bay in New England, (5 vols., Boston, 1853-54), II, 100, 104, and 180 respectively with New Haven Laws, 38, 40-41, and 32.

60. Ibid., 21, 35-37, and 25 respectively. Isabel Calder's comment in her New Haven Colony (p. 121) that the jurisdiction was never "original in its lawmaking" is therefore incorrect.

61. The New Haven Colony never experienced bitter debates over the use of magisterial discretion. Although most of the penalties in the code were "fixed," at least a quarter of them did provide for some degree of discretion by colony officials.


63. Ibid., II, 25, 35, 39.

64. Ibid., 28-29.

65. Ibid., I, 509-563.


68. Ibid., 215. The town complied immediately by beginning the reading in the meetinghouse and finishing it in a local tavern! Town Records, II, 315.

69. The General Assembly specifically directed the old law to be changed in 1672. Connecticut Records, II, 179.


71. It had not grown less severe as suggested by Holdsworth in "Law and Society," 313-314. Compare New Haven Laws,
17-18 with Connecticut Laws, 81-82.


73. Foster, Their Solitary Way, xiii.
CHAPTER III

CHALLENGES TO PHYSICAL ORDER: PETTY CRIME

In February 1649, eighteen individuals were convicted at a session of the New Haven Plantation Court "for not bringing their weights and measures to be tried upon the appointed day." The reasons for not observing the court's instructions undoubtedly varied. Perhaps the lawabiding but litigious merchant John Evance was away on business. Shopkeeper William Peck might have found the "appointed" time of eight a.m. on a mid-November day downright inconvenient. Or the recently widowed Jane Gregson may well have found it emotionally difficult to gather her late husband's measures and cart them across the street to the meetinghouse for inspection. Whether intended or not, the oversight cost each of the offenders 12d.¹

There was nothing unusual about a court ordered viewing of weights and measures. By the late 1640s it had become a custom in New Haven. Indeed, well before New England had been settled, similar accountings had come to play a traditional role in English commercial life. What is novel about this snippet of New Haven history is that a group of well-kenned residents had failed to comply with the court's request. It was unusual because the 17 men and one woman fined in 1649 were the only inhabitants of the town known

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to have violated this practice during the seventeenth century. Although it was uncommon in its particulars, the scene and its players are nevertheless illustrative of the more general drama of social control acted out by New Haven residents between 1639 and 1701.

The "legislative" segment of the chronicle of order and social control in this Connecticut community has already been told. Residents of New Haven promoted order by relying upon the traditional practice of formulating bylaws designed to meet the needs of the community. For the most part laws were written when crises or other problems posed discernable threats to social stability. The series of 35 livestock control laws is but one example. These and other bylaws governed daily activities in early New Haven and when they were violated authorities moved swiftly to enforce them.

Enforcement of local statutes is thus an important portion of the overall story of order and social control. The prosecution of residents who violated community bylaws is as central to an appreciation of order as the writing of the ordinances themselves. While lawmaking sheds light on the process of promoting and defining order, the enforcement of law reveals much about how it was maintained. One aspect of an analysis of enforcement is that it provides a realistic view of the sorts of disorders prevalent in the community. These in turn help explain how order was perceived, perhaps more convincingly than the lofty sermons of New Haven's celebrated divines John Davenport and James
Pierpont. Indeed, the famous writings of New England's "articulate few" might provide insights into the ideals of the well-ordered commonwealth, but not always its realities. Analysis of law and its enforcement is the equalizer; it contributes to the balance needed to depict accurately the nuances of order and social control on the local level. Patterns of "criminal" conduct reflect realities, not ideals; the rhetoric of magistrates and ministers, just the opposite. Yet when both are considered simultaneously, one finds that most of the disorders requiring control bore little resemblance to the "corruptions" that the articulate few expected to undermine order in the community.

This does not mean that the town was free of the disruptions associated with the behavior of alcohol abusers, fornicators, and thieves—those who violated the codified law of the colony and about whom the spokesmen of the New England Way warned. Yet the lion's share of the enforcement effort seems to have been directed towards the control of petty offenders who violated local bylaws. It may well have been that the true sources of disharmony in the community were not the servant or transient who stole some lace or drank excessively, but rather the widely known and generally respected resident whose fence lay in disrepair or who inadvertently fell asleep during his watch duty. This is why it was suggested earlier that the weights and measures violations enforced in 1649 were "illustrative" of social control in New Haven. The majority of the offenses known to
have been prosecuted during the seventeenth century were similar; they were violations of local ordinances and were generally punishable by small fines. Indeed, it may well have been that offenses like these played a more prominent role in shaping the well-ordered community than hitherto imagined. It is therefore necessary to reconstruct as best as possible the patterns of local enforcement recoverable from extant records in light of questions pertinent to the maintenance of order. Which laws were violated and with what frequency? When were the violations? What was the connection between new legislation and enforcement? Once the violations occurred, how were they resolved?

It is also necessary to go beyond offenses. If the majority of the violations in New Haven were similar to those for which the 18 planters of 1649 were punished, what of the offenders themselves? How typical were they? Were most petty offenders recidivists, as was each of this group save John Evance? How typical was the career of carpenter and selectman William Andrews, whose three court appearances spanned a twelve year period: in 1648 he was accused of missing a military training exercise and his case was dropped; in 1649 he was convicted of the weights and measures violation; and, in 1662 he was acquitted of missing a session of the town meeting. Indeed, what was it about these law-breakers, aside from the types of bylaws they violated, that enabled them to retain their membership in the community? What does this suggest about the maintenance of
order? Answers to these and other questions about petty offenders and the different disorders they had a hand in promoting are requisite for a clear understanding of social control in early New Haven.

In the period from 1639 through 1698 New Haven residents appeared before authorities on 897 known occasions for infractions of community bylaws or variations thereof. Usually an appearance was made before the Plantation Court, a local tribunal which sat without a jury, was essentially discretionary, and which at times could be quite informal. Occasionally, for reasons not altogether clear, petty offenses were heard before sessions of a superior court. For the most part, however, violations of local laws were handled by local authorities; social control was principally a local endeavor. Roughly 88% of the appearances were processed through the Plantation Court (before 1665) or (after 1665) the Commissioners' Court, both of which had original jurisdiction over petty offenses. Furthermore, most of the known prosecutions by local authorities occurred prior to 1666, the year in which the County Courts were established. Because New Haven was a county seat it seems as if many of the minor transgressions of law which took place in the town after 1666 were tried in the County Court as a matter of convenience. Perhaps sessions of the local courts were postponed when the County Court sat.

Regardless of which group of authorities local residents faced, their appearances had two fundamental meanings
and a variety of possible resolutions. Either an individual stood accused of violating a bylaw and appeared involuntarily, or an appearance was made voluntarily to conclude some unfinished business. In the case of the latter, this meant filing an appeal from an inferior court decision or applying for remission of an earlier penalty, most likely a fine. In both instances the possible outcome was limited to either a "yes" or a "no." There was somewhat more variation involved when appearances were made involuntarily. Generally one of four things happened. Offenders could be haled before the court and convicted (which was usually the case with petty offenders) or they could be acquitted. It was also possible to have a case dropped or even postponed (often, as it turns out, indefinitely). There were other conceivable resolutions, such as being told to post a recognizance, but as in the case of remissions and appeals, deviations from the four just described were infrequent. Although there were a number of possibilities associated with making an appearance before the bench, a little over three-quarters of those who did so involuntarily ended up being convicted of their minor violations. The majority of these decisions were determined by local authorities and this suggests, in part, that the control of petty offenders was indeed the responsibility of the town, not the colony.

When viewed over time, the distribution of court appearances for petty offenses points towards the same
conclusion. They were unevenly distributed, with an overwhelming number occurring during the initial years of settlement and thus acclimation to new world conditions. This particular distribution is strikingly similar to that of community bylaws, most of which were passed at an early stage in the town's legal development. As illustrated in Figure 3.1, fully 43% of the appearances for petty violations in seventeenth-century New Haven took place before 1649. An additional 36% were heard before the town celebrated the twenty-first anniversary of its planting. Moreover, by the end of 1658, 713 or 80% of the total number of known bylaw infractions had been tried by local authorities. The peak in appearances was reached in 1644 when members of the Plantation Court handed down 118 decisions. And 1649 was also a busy year for local officials, who prosecuted another 101 cases. The 219 appearances made during these two years alone represent a quarter of the total number made for violations of local laws over the course of the entire century. As was so with the formulation of bylaws, the 1640s were clearly a crucial decade for their enforcement. Although it is difficult to determine what constituted a "heavy" or "light" caseload, certainly the number of cases handled by town and county officials declined steadily after the late 1640s. Whereas enforcement efforts in all courts uncovered 385 violations in the first decade, similar attempts at control yielded only 17 in the last.

Although the distribution of petty offenses reflects a
great deal of activity in the early decades, it would be a mistake to conclude that it all but ceased during the second half of the century. The reason is twofold. While it is correct that the vast majority of known appearances for petty violations after 1666 were made before the County Court, it does not mean that local rulers relinquished their claim to social control; they still passed bylaws and they continued to prosecute petty offenders. Yet the important and regretfully unanswerable question remains: precisely how much law enforcement took place on the local level after the County Courts were established? The last known prosecution of a petty offense by the town court was in 1670 when Jonathan Lampson was reproved for violating a 1658 law governing the "pressing" of residents for work at the town mill. Although local court proceedings disappear from town records after 1670, it is paramount to recognize that Commissioners' Courts continued to be held in the town. Frequent references to "inferior courts" and occasional appeals from them dot the County Court records and signify that social control was indeed taking place on the local level in New Haven and its surrounding communities.

The second reason for not concluding that local enforcement ceased in the post-1666 period involves subtle changes in the apparatus of control utilized by the New Haven town government. Even if there were complete and accurate records of all the Commissioners' Courts, the story of enforcement would still be incomplete because
Figure 3.1

Percent Distribution of Petty Offenses

By Decade, 1639-1698

Sources: New Haven Records, I & II; Town Records, I-III; and County Court Records, I.
some cases were heard by yet less formal agencies of control. For as the workload of the town meeting and Plantation Court increased in the 1650s, portions of their combined authority were delegated to other bodies, the most important of which were the selectmen.14

This group was given a variety of tasks which the other local institutions considered time consuming and perhaps unpopular. During the mid-fifties, for example, a great deal of time was spent addressing problems associated with livestock control. Rulers responded to the disorders by passing local ordinances, devising a new agency of control (the public pounder), and prosecuting individuals who contravened the new legislation. Most of these violations occurred when the lack of order seemed to be worst. For instance, in a five year span from 1649 to 1654, 80% of the total number of livestock control prosecutions took place. And, perhaps not so coincidently, it was at the end of the period, in 1654, that a small but significant change affecting social control and modern perceptions of it occurred: selectmen were given "power to hear complaints concerning fences which are defective and make orders... and levy fines for the same... as if the court did it."15 It is not certain that the selectmen or townsmen, who became a part of the system of New Haven governance in 1652 were given this responsibility because the court was overburdened; the records do not explicitly indicate as much. That, however, is what they imply. Indeed, the office of
selectmen had been formulated to absorb some of the business transacted at town meetings; it was borrowed from neighboring communities so "that these meetings which spends the town much time may not be so often." In fact, in 1652 the selectmen were given certain powers to "order" matters about fencing and swine. The action taken in 1654 was, it seems, a logical corollary.

For modern observers of life in premodern New England communities subtle changes in enforcement procedures are problematic. On the one hand, it is evident that violations of livestock control ordinances continued after 1654 because they are recorded irregularly in published and manuscript records (the last case was heard in 1693 by the County Court). On the other hand, the records of the New Haven selectmen, which begin in 1665, do not include mention of violations by petty offenders. Yet, at a town meeting held in 1665, direct reference is made to active participation by the selectmen in the control of livestock and the maintenance of fences. Moreover, the townsmen were enforcing livestock control laws, but unfortunately they were not recording the violations. Thus, while it appears that social control was continuing to take place on the local level, the extent to which it was undertaken remains a mystery. For this reason the distribution of known petty offenses illustrated in Figure 3.1 must be assessed with caution. Is, for example, the precipitous drop in court appearances that began in the early fifties to be explained by changes
in approaches to enforcement, like the delegating of authority to selectmen? Or, is it simply a question of real decline in the number of bylaw violations by New Havenites?

The answer to both of these questions is the same: to a certain degree, yes. Chances are quite good that available records underreport the total number of court appearances in seventeenth-century New Haven. If, indeed, selectmen or military officials were given a hand in controlling certain aspects of conduct in the community, then it is reasonable to assume that there were more than 897 appearances for violations of local laws. In other words, there was more enforcement taking place within the confines of the community than surviving records indicate. If anything, this adds credence to the notion that social control was fundamentally a local affair. To an extent, however, it is quite probable that the downward trend suggested in Figure 3.1 is correct, that changes in the apparatus of control which contributed to the underreporting problem were only partially responsible for the overall decline in appearances after 1649. As will be seen through analysis of the distribution of different kinds of violations, the post-1649 plunge seems bonafide. But first, a more precise understanding of the types and quantity of laws violated is necessary.

Local authorities enforced a veritable potpourri of laws during the seventeenth century. The offenses they handled ranged from numerous and varied military infractions
to a solitary violation of the 1663 bylaw regulating the speed at which horses could be ridden through town. Some of these violations, such as those relating to fire prevention, seemed to pose a more serious threat to the community than did others. A great number of the petty offenses were prosecuted within a short period of time, while others were distributed in a more random fashion over the course of the century. This is an important distinction because ordinances which were enforced in clusters signify the gravest disorders facing the town and say something of how they were corrected.

One of the highest priorities given to the enforcement of local law fell under the heading of military affairs. As indicated in Table 3.1, military offenses were prosecuted most frequently. They tended to occur in the initial years of settlement when New Haven was susceptible to attacks from the Indians and the Dutch. As many as 394 (85%) of the known military violations occurred prior to 1657. Of these, 157 were infractions of the 1639 law requiring militiamen to be properly armed. Faulty equipment, it appears, was not tolerated which is why Edward Parker was fined 1s in 1646 for carrying a "defective gun and touchhole," and why Benjamin Wilmot was assessed the same penalty for a "defective socket and bullets." Complete or partial absence from training exercises accounted for an additional 113 violations. Jointly, breaches of bylaws within these two categories amounted to 270 or 58% of the military
violations known to have been prosecuted. It is noteworthy that most of the militia cases were heard between 1645 and 1660, when 64% of the military bylaws were passed. Not only were ordinances being written at a healthy pace, but apparently they were being enforced assiduously.

Because of the insights regarding social control afforded by evidence associated with this rash of military violations, it will be examined in more detail below. So too will other types of violations which were known to have occurred either in great quantities or in isolated clusters. Livestock control laws, for instance, received more than casual attention during the first decades of the town's existence. Most of the violations, 91 or 93% of the total, were prosecuted prior to 1660. This was also the period marked by the heaviest livestock control legislation; indeed, 51% of these agriculturally-oriented bylaws, mainly governing swine and fences, were passed in the first two decades. During this period residents like magistrate Matthew Gilbert, who was fined 8s for "defects" in his fence in 1650, were nearly always convicted once their cases found their way into the formal court system. Individuals like Gilbert, Parker, and Wilmot were, however, only three of many local residents whose "criminal" activity constituted 68% of the total number of appearances made for violating local regulations.

Although violations of military and livestock laws were the most frequently enforced in early New Haven, by
Table 3.1
New Haven Petty Offenses, 1639-1698

<table>
<thead>
<tr>
<th>Offense Category</th>
<th>No.</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Military</td>
<td>461</td>
<td>51</td>
</tr>
<tr>
<td>Livestock</td>
<td>102</td>
<td>11</td>
</tr>
<tr>
<td>Trade</td>
<td>54</td>
<td>6</td>
</tr>
<tr>
<td>Court Absence</td>
<td>46</td>
<td>5</td>
</tr>
<tr>
<td>Contempt</td>
<td>45</td>
<td>5</td>
</tr>
<tr>
<td>Timber</td>
<td>25</td>
<td>3</td>
</tr>
<tr>
<td>Measures</td>
<td>18</td>
<td>2</td>
</tr>
<tr>
<td>Fire</td>
<td>17</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>135</td>
<td>15</td>
</tr>
<tr>
<td>Totals</td>
<td>897</td>
<td>100</td>
</tr>
</tbody>
</table>

Sources: New Haven Records I & II; Town Records, I-III; and County Court Records, I.
no means did they hold a monopoly on the time local officials spent controlling disorders in the community. Not only did magistrates have to contend with inhabitants who violated the colony's laws, such as those prescribing gaming or fornication, but with a myriad of other violations (334) of local bylaws. Contempt of court, which represented five percent of the total, is one example. Despite the fact that no laws were designated as such, individuals were charged with contempt for transgressing one of the town's other ordinances. James Stewart, for instance, "was complained of for several disorderly expressions and contempt of the magistracy" in New Haven by refusing "to help mend some of the town highways" when pressed by authorities.21 Over the course of the century, 44 other appearances were made for either questioning or ignoring the judgements of local officials. Because the magistracy was considered to be such an important component of the well-ordered commonwealth, at least to New Haven's "pillars," contempt for authority in any form was an offense which rarely went unpunished. When combined, crimes like contempt of court and the related court absence comprise a significant portion of all known petty infractions. Yet while they might not have occurred with a much frequency, other minor offenses, like fire prevention violations, are perhaps more illustrative of social control because of their timing. Indeed, further analysis will demonstrate that the circumstances surrounding the prosecution of specific offenses reveal much about
the way order was maintained in this Connecticut town.

Thusfar something has been said of the kinds of offenses that were tried in early New Haven and how, as a group, they were distributed over time. Most of the prosecutions were handled by local authorities in the Plantation Court. Most of the cases (76%) resulted in convictions. And an overwhelming majority of these appearances occurred prior to the publication of the Eaton Code. Among other things, this suggests that the enforcement of law was a local matter and that most of it took place during the important years of acclimation to new world conditions. This process of adjustment figured prominently in how and when bylaws were enforced. As it turns out, local ordinances were enforced selectively in New Haven. Evidently vigorous enforcement took place only when a grave problem jeopardized the community. Nowhere is this seen more clearly than in the attempts to control military disorders during the forties and early fifties.

Correct ordering of military affairs proved to be one of the most challenging and time-consuming obligations facing local officials in the 1640s. Military preparedness was elemental to the physical welfare of this wilderness hamlet and its still untested inhabitants. Within a year of settlement two principal strategies had been adopted for safeguarding the community. The first was proper training and arming of the local militia. The second, the establishment
of a military watch capable of alerting unsuspecting residents, whether asleep in their beds or deep in prayer on the "Lord's Day," of dangers posed by Indians or fire. There were also a variety of tangential military matters with which local officials grappled and which, as a result, led to the prosecution of parties offending military discipline. For the most part, however, military business and associated violations related either to the watch or training.22

The first "order" governing military affairs in New Haven also became one of the first bylaws passed in the community. In December 1639, everyone who possessed arms (males between 16 and 60) was ordered to report to the market place for an inspection by Nathaniel Turner and Robert Seely "under the penalty of 20s fine for every default or absence." This group of New Haven males formed the nucleus of the town's trainband which had its second review the following spring. By the fall of 1640 a regular training schedule had been instituted and the original penalty was reduced to a more modest 1s for defective arms and 5s for missing an exercise.23 In addition to formulating bylaws, a number of ancillary matters had come to the attention of local officials before the end of the decade. Pikes, for example, had to be made at the town's expense for use in training exercises. In return for "giving out and laying up the pikes from time to time," rulers excused Mark Pierce from further training. Other requests for
exemptions, like those granted to Robert Abbott and Richard Hull in 1643 "by reason of their bodily infirmities," also required consideration by town fathers. And on occasion civil rulers, in conjunction with military officers, served on a council of war to coordinate trainband activities with those of other regions. Efforts like these, while they may not have been exactly routine, illustrate the type of involvement local authorities had in matters pertaining to military training. When considering, too, the amount of time that was also expended prosecuting military violators, it is little wonder that a certain amount of authority was eventually delegated to the militia company.

Involvement by town officials in business concerning the watch during the early decades was similar. Moreover, they had the initial responsibility of formalizing the watch, which ran from an hour after sunset to thirty minutes past sunrise. As in the case of the trainband, this was accomplished through legislation; early in 1640 laws were passed and penalties were fixed so that backsliders like Daniel Fuller could be fined for "neglect of his watch." Because the watch was unpopular, officials were burdened with the task of granting exemptions, requests for which were made regularly as was true with training. Other details relative to the watch, ranging from determining the number of men required to stand duty to providing wood for the watch house in cold weather, became additional responsibilities of New Haven town officials.
Many of these tasks appear mundane and unimportant. They should not be underrated, however, because experience in ordering military affairs proved helpful in times of crisis and it allowed authorities in New Haven to control disorders when they arose.

An understanding of how the mechanisms of social control functioned is perhaps best attained by first gaining an appreciation of the context of events which set them in motion. As suggested in Chapter 2, New Haven experienced a series of military crises beginning in 1643. Unrest among the Indians in the Connecticut-New Amsterdam region had led to the spilling of "much Christian blood." New Haven officials were initially informed of the situation when the Dutch requested military support for an expedition against the Indians. Although they refused to become actively involved, on the grounds that it would undermine the effectiveness of the newly formed New England Confederation, New Haven authorities nevertheless began taking precautions on a regional basis. The election of Theophilus Eaton and Thomas Gregson as United Colony Commissioners took place months before it was scheduled so that if an invasion occurred, representatives from New Haven could attend the Confederation meeting without first having to wait for normal balloting. Officials were not out of sympathy with the Dutch, but it is clear that lawful cooperation with Confederation members was preferable to independent action. When the commissioners convened in September, they did
address the crisis and their recommendations were adopted by the General Court of the New Haven Colony the following spring.26

Meanwhile, the Court had been busy apprising local residents of the dangers and they in turn took their own precautions. After receiving news that Stamford planters had suffered "many injuries from the Indians," town officials ordered the militia squadrons to "come to the meeting every Sabbath completely armed" and instructed that those who "walk the rounds shall have their matches lighted" during public worship.27 The conviction of Richard Lovell in January of 1644 "for want of match" may well reflect the enforcement of this order. More disconcerting information about the unruly natives was passed along to New Haven residents the following spring. They were told of an Englishman who "had been cruelly murdered of late by the Indians," enroute from Stamford to Fairfield. And in June, they heard of a Stamford goodwife who was attacked by an Indian wielding a lathing hammer.28 This information must have had an unsettling affect on New Havenites; in July a local artillary company was formed and in August another general muster was ordered. When this review was called, local leaders were still uncertain about the future. Would they be asked by colony officials to provide men "to go against the Indians?" Were the heathens going to set upon them first? As it turned out, autumn came and went without any further incidents; the town's first crisis was
over by December.

Although nothing came of this military alert, law enforcement officials were doing their part just in case something had developed. Their fundamental task was to enforce military bylaws. Only by controlling or regulating individuals who shirked their responsibilities could the town hope to become proficient in "military art." Moreover, while the town meeting was busy ordering musters and ironing out details concerning the watch, members of the Plantation Court were energetically prosecuting anyone who was presented to them by militia officers. Over the course of the two year alert (1643-1644) more residents were tried for military violations than in any comparable period for the entire century. In 1644 alone, 124 inhabitants appeared before authorities; 122 were convicted, while two appeared voluntarily to request moderation of previous penalties. Significantly, there were no acquittals. Not only does the large number of prosecutions reflect concentrated efforts at controlling military disorders during an alert in a general sense, but the fact that most of the violations (86%) took place in a seven month period (September 1643 to April 1644) suggests both the need to achieve preparedness quickly and the pervasive unpopularity associated with participating in military exercises during the winter. Most of the court appearances made during this period were for training infractions or watch disorders. Typical were Thomas Yale's "late coming to trayne" and
and Matthew Hitchcock's "willful neglect to walk the round when officers called him." Both men violated bylaws which were, in a time of crisis, considered to be especially important to the physical welfare of the community.

Military readiness was indeed a high priority of leaders during the first decade and a half of the town's existence. Between 1640 and 1658, a year did not pass without someone being punished for military laxity. As might be expected, the degree of enforcement differed from year to year. Yet, it is necessary to recognize not just the existence of a great disparity in the number of appearances made in a given period, but also why it existed. The violations of 1643-1644 reflect both assiduous enforcement during a crisis situation as well as the fact that the alert was the first (and perhaps most frightening) of many sounded in the early years of settlement. But, by the same token, the 19 appearances made in 1650 occurred in the absence of a military crisis. And the outcome of these appearances is revealing. Only 12 (63%) resulted in convictions--a far cry from the 100% of the early forties. It appears as if the mechanisms of control--issuing orders, lawmaking, and enforcement--were thrust into high gear when circumstances necessitated an uncompromising ordering of conduct. It also seems, however, that once conditions changed and a given situation became less critical, the social control apparatus wound down and underwent a correction of sorts. To be sure, by-laws continued to be enforced, but apparently with less
enthusiasm than had been the case during periods of crisis.

There is ample evidence to support the notion that social control in early New Haven was, as suggested in Chapter 2, responsive to the needs of the community. It has already been illustrated, for example, how much of the lawmaking that took place on the local level resulted from authorities responding to particular situations. The military ordinances of the forties, the livestock control legislation of the fifties, and the Meiggs case are the most graphic examples. The enforcement of military bylaws during the first alert is yet another indication. Moreover, the sudden jump in the number of appearances from three in 1642, to 124 in 1644, back down to 21 in 1645 was not accidental. Indeed, similar increases and decreases in the number of appearances took place when the town experienced subsequent threats from either the Indians or the Dutch.

The period from mid-1645 to late 1646 is a case in point. Once it became obvious in late 1644 that the first crisis had run its course, authorities adopted a more lenient posture in their treatment of offenders. In January several individuals who had been fined "for not bringing their arms to public worship" had their fines remitted—the first for military violations in the town's six year history. In February additional remissions were granted, as in the case of Matthew Crowder who was able to prove that he "was sick at the training from which he was absent." Over the course of the next few months a few
isolated appearances were made for missing training or the watch, or, in the instance of Robert Johnson, for having a "defective gunstock." First and last the spring months were not characterized by the frenzied prosecution of the preceding year. Yet, this changed abruptly in June when it became evident that there was a need to send "some soldiers to strengthen Uncas against the Narragansett Indians" and a council of war was formed. Thus New Haven and her neighbors sounded another, albeit less serious, alert. At the August town meeting several steps were taken to provide for the "common safety." Gunsmiths were urged to postpone their normal business and "get those guns replaced that are defective." Henry Peck and William Basset were asked to set the "great gunnes" upon good strong carriages. And all farmers in the possession of butter and cheese were informed that both might be needed for "public service." 32

In the renewed crisis special attention was again given to military discipline. Residents like Anthoney Stevens and John Thomas, presented for violating watch and training bylaws respectively, became the focus of law enforcement efforts. 33 Most of the violations associated with this second alert showed up in the records in the spring of 1646 following what may well have been the first training exercise since winter. 34 Beginning in April and running to a session of the court in early October, some 69 militiamen were presented for their disorders. In all, more than three times the number of appearances were made in
1646 than in the first eight months of 1645. And as was so with the first alert, there were no acquittals during the second. People like Richard Marden, found asleep on watch duty, were presented and fined unceremoniously. Although some violators offered excuses for their misconduct, they tended to fall on deaf ears. Throughout the century, periods of military alert were characterized by the lack of leniency displayed toward offenders.

A good example is found in the serious but short lived alert beginning in 1649. As was the case in other periods of perceived danger, the authorities moved swiftly to achieve preparedness. Many different people were involved in the process. Because of the "pride and insolence" of the Indians, more members of the community were required to stand watch than was usually the case. Governor Eaton had to levy a special tax, payable in goods ranging from wheat to pork, in order to provide for the colony's "defense against the Indians." The town drummer was charged with extraordinary responsibilities during the emergency. Farmers were instructed to keep their weapons out of sight "least the Indians break in and steal them." Workmen were "desired to mend the ladder" to the platform atop the meetinghouse so that a sentinel could stand watch during "days of public meeting." The alert was real and it fostered a mobilization effort that embraced people from a variety of callings. And among those agencies of social control which swung into action was the Plantation Court.
Although the Court normally met once a month, its members had an increased workload in October and November because of a rise in the number of presentments for violating military bylaws. Of the 37 appearances made for military infractions in 1649, well over four-fifths occurred in the fall--after the alert had been sounded. Everyone who appeared before the bench after September was convicted. One case, which was postponed at a November session, was continued the following year when Isaac Beecher was finally convicted of his offense.\textsuperscript{36} Two other postponements (from May) were also resolved in the fall. "For going into the watch-house and lying down by the fire and sleeping, when he should have stood sentinel," Samuel Hotchkiss Sr., was convicted, as was John Bishop, for a similar crime.\textsuperscript{37} All of the military offenders, with the exception of John Brockett whose case was postponed before the alert began and never continued, were punished by the court for their lack of diligence. The normal punishments for training and watch violations were fines. But two watchmen were whipped--an indication of the seriousness with which the local authorities took the alert. James Clements and Nicholas Slooper, two transients of dubious character, decided that it was in their best interest to seek shelter in Thomas Mix's barn rather than walk the rounds exposed to the brisk autumn night air. Perhaps under normal conditions, if convicted, they might have only received a fine. Indeed, it is possible that they might not even have been
reported by the master of the watch. Yet, during a "time of danger" Richard Hull had little choice; they were presented, tried, and punished. 38

What was true of 1649 was true during other periods of alert. Quite simply, military and law enforcement officials appear to have been unwilling to tolerate violations of defense-oriented bylaws. Although the number of appearances decreased with each alert—124 in 1644, 69 in 1646, and 37 in 1649—there was one thing that remained unchanged; during each of the alerts, between 98% and 100% of the offenders were convicted. Military emergencies turned into periods of genuine concern for members of the town. As such, leaders fulfilled their obligations to the best of their ability through the restraint of military disorders. They led the town meeting in issuing orders designed to confront the "common danger" and they promoted order through the adoption of bylaws (68% of which were passed before 1650) which were then used to prosecute individuals who were ill-prepared during alarms.

But what happened in years when no alerts were sounded? What do the years of calm reveal, if anything, about controlling disorders in early New Haven? In many respects, evidence culled from court records pertaining to law enforcement during times of peace, is as helpful in understanding control as is that found in the years of danger when disorders were widespread. Laws were still enforced in years marked by normality in military affairs, but the
resolution of many of the cases was notably different than in periods of crisis. Disorders still surfaced; they were merely resolved differently by authorities. Among other things, convictions declined and acquittals increased, thus indicating further, that the mechanisms of social control were flexible.

Thusfar it has been suggested that occasions of military alert signalled prompt and efficient prosecution of offenders. Recall, for instance, the period from late 1644 to early 1646. The late winter months of 1644-1645 were characterized by a certain amount of leniency on the part of local officials. Individuals who violated bylaws during the crisis of 1644 were granted remissions the following spring, once conditions had returned to normal.39 The spirit of charity vanished, however, in late 1645 and early 1646 when another crisis arose. And a rise in the number of convictions followed. When the alert had run its course, authorities, so it seems, consciously resumed the practice of showing leniency. And when the need to tighten the net of enforcement arose again, it was done. Yet by the same token, when circumstances changed, the enforcement net was loosened accordingly.

This is seen most explicitly after the danger of 1645-1646. It would be two years before another alert was sounded and the patterns of enforcement during the interregnum are most interesting. As expected, there was an immediate drop in the number of appearances--from 69 in
1646 to 20 a year later. Whereas during the alert each offender was convicted, in 1647 less than half of those presented were punished. Three individuals made requests for remission of earlier penalties. Those made by Richard Marden and John Walker were granted; the one made by Samuel Hotchkiss Sr., "for going away from training in the afternoon without leave," was denied. Four other cases were postponed and two of them were never continued. Perhaps the most significant turn of events was the acquittal of three violators. Although his case was originally postponed because he was absent from court, Roger Knapp was eventually acquitted of the charge of "not bringing his arms one Lord's Day." When Knapp's case was continued, he explained to the court that "his wife had been sick the Lord's Day before, and she desiring now to go to meeting, he stayed home." Knapp was clearly guilty as charged, yet because the court found his excuse satisfying, his offense was "passed by." So too was that committed by an unidentified servant of Mrs. Nathaniel Turner. The man neglected his watch duty because his mistress asked him to help care for two oxen that were injured and "in danger to die." And at the session of the August Plantation Court, Michael Palmer was acquitted of charges that he failed to observe his watch. Importantly, these three were the first acquittals for military infractions and it is significant that they were granted immediately after a period of danger.

The apparent leniency practiced in 1647 carried over
into the following year—another marked by peace with the Indians. Indeed, in 1648, 61% of the appearances were resolved by acquittal, dismissal, or postponement. Only 20 of the 51 military offenders presented were actually convicted. Sixteen had their cases dropped because of incomplete evidence or procedural violations. Thomas Hogg, for example, "was warned to the court for not coming to watch..., but it appeared he had not sufficient warning," and the case was dismissed.\textsuperscript{43} Eight other residents had their cases postponed, but only one was taken up again. In 1648 militiamen like Martin Tichnor, presented for insufficient arms but whose case was "respited until next court," generally never had their cases continued beyond the initial session. The one exception in that year was the case of Joseph Guernsey whose hearing was resumed and who finally was fined 5s "for want of arms."\textsuperscript{44} The cases of John Thomas Sr. and six other individuals had a happier ending. Although Thomas was late to the meeting with his arms one day, he was acquitted ("the court judging it a work of mercy and necessary to be done") because he had a sick child who required his attention. Earlier, at the same session of the July court John Whitehead, a servant to Jasper Crane, was acquitted of charges that a piece of pine was missing from the lock of his gun. Crane, who argued on behalf of his servant, maintained that "it was no other defect than hath passed these eight years," and explained that "the gunsmith said it was sufficient."
Later in the year, John Benham Sr. was complained of for being "absent at two general training days." Benham said that on the first occasion he had to leave after the names were called because "news came that there was many oxen in his corn," and as a result he was excused by the court. On the second occasion he neglected his training because his harvested corn "lay in danger of being eaten." This time, however, he was ordered to pay half of the 5s fine.\textsuperscript{45}

Whether one's case was dropped, ended with an acquittal, or was postponed and never continued, it is clear that the court did show "mercy" and lenience towards most of the offenders who appeared during the years of peace. It is important to recognize, however, that in 1649, when the town experienced another alert, everyone who appeared before the bench for military violations was convicted. Quite simply, authorities were willing to bend in times of peace, but remained inflexible in the face of a crisis. Indeed, beyond the raw data on crime there is further qualitative evidence to support this conclusion, such as a resumption in the granting of military exemptions or the relaxation of the watch in 1648—a reflection of the change in attitude regarding military affairs.\textsuperscript{46}

Despite the apparent leniency of authorities in those years free from the uncertainties associated with alerts, it nevertheless seems evident that offenders had to earn the acquittals they received. Indeed, of the 38 acquittals handed down between 1639 and 1665 all but one had to be
earned; offenders had to offer some explanation or excuse for their misconduct. They essentially had to persuade officials not to punish them. That is precisely what Benjamin Ling and eight others did in the fall of 1648 after they had been charged with arriving late at a training exercise. More than likely it was Ling who, on behalf of the group, argued that "they was there before the body moved." The court in turn acquitted each of them "because it hath been the usual course to count no man late until the body has been removed." Had the men said nothing in their own defense it is probably, based on the militia captain's presentation, that they would have been convicted and fined. Most cases which ended in acquittals included similar verbal defenses by the accused.

There is one other factor which needs to be considered in conjunction with acquittals—timing. Figure 3.2 illustrates the percent distribution of military convictions, defenses, and acquittals. It was not until 1647, following an alert, that the first acquittals were handed down. And as suggested earlier they had to be earned. Moreover, as the number of explanations offered by violators increased, so too did acquittals. Conversely, when defenses declined, there was a corresponding drop in acquittals. What Figure 3.2 does not show is year by year distributions of a specific nature. It should be recalled that during periods of crisis, almost all military offenders were convicted regardless of whether or not a courtroom defense was offered.
In 1646, for example, Thomas Munson, a militia company officer, was presented for impressing three men to help him "fetch hay" during the course of a training exercise. Although he clearly violated the law, Munson attempted to convince authorities that it was more important to bring in his hay than it was to train. His plea fell on unsympathetic ears and he was fined. Similarly, during a short lived alert in 1656 Samuel Hotchkiss Sr. tried to explain his way out of not having adequate amounts of powder. As in other instances where excuses were offered during the course of an alarm, Hotchkiss was unsuccessful in his endeavor to sway the judgement of the court. What is notable is the apparent lack of difference between the kinds of explanations offered in times of danger or in periods of peace. From a legal standpoint, John Benham's neglect of training because of his desire to tend to his crop was no different than Thomas Munson's. Both men clearly violated an established bylaw. The difference lies in the timing of the infraction; Munson's was during an alert and Benham's was not. The latter, however, was acquitted, while the former was convicted. New Haven authorities simply refused to allow military order and discipline to be compromised during times of crisis, yet were willing to back-off and act with compassion and flexibility when conditions warranted such action.

When viewed on an individual basis military infractions appear innocuous at best; they are far less dramatic than
Figure 3.2

Percent Distribution of Military Convictions, Activity, and Acquittals, 1639-1665

Key: Interrupted solid line: Convictions
     Plain solid line: Activity
     Broken line: Acquittals

Sources: New Haven Records, I & II; Town Records, I & II.
cases of "deviant" misconduct, which is perhaps one reason why crime on the local level had failed to capture the attention of historians. Although not very sensational, violations of military bylaws in early New Haven appear to have posed a greater threat to the maintenance of order than hitherto imagined. This is especially true when placed in the context of problems encountered by authorities in the first decade of settlement: More than half of all prosecutions of petty offenses in the seventeenth century were in some manner linked to military affairs. This reinforces the notion that social control on the local level was a time-consuming but evidently flexible enterprise. When the enforcement pattern of military bylaws in New Haven is considered in conjunction with other elements in the social control equation, like the formulation of bylaws, the role accorded the regulation of military disorders looms even larger.

Because military violations accounted for as much as 51% of all petty crime in New Haven between 1639 and 1701, their management has served as a good example of how the mechanisms of control functioned in the community. The same kind of flexibility can be discerned in the efforts made by rulers to control livestock disorders. Some of the difficulties inherent in controlling livestock have been addressed in Chapter 2. As in the case of military affairs, the problems local officials encountered while attempting to control livestock were formidable. That 31%
of the town's bylaws—more than any other category—were directed expressly at this problem illustrates the deep concern shared by authorities and their constituents alike. Not surprisingly, when it came time to enforce these ordinances officials were kept extremely busy.

The preoccupation with livestock control violations was short lived, however. As was the case with military misconduct, the overwhelming majority of known livestock infractions occurred in a relatively concentrated period of time—principally during the late forties and early fifties when, not so coincidentally, most of the livestock bylaws were written. Of the 102 violations (11% of all petty crime) recorded in the century, 93 or 91% were prosecuted in the decade beginning in 1649. Perhaps more dramatic and indicative of the problems of control is the fact that 79 or 77% of the violations occurred in a five year span between 1649 and 1654. In order to understand why this happened an investigation of the particular setting within which enforcement was carried out in necessary.

The typicality of "crisis management" in New Haven is caught in the circumstances surrounding the acquittal of John Benham. After being charged with missing a training exercise, Benham explained that the "many oxen in his corn" forced him to miss the muster. The justices of the Plantation Court were receptive to Benham's plea and the local brickmaker was acquitted even though he had patently violated established law. The leniency displayed by officials
reflected the fact that the town had recently returned to normal conditions following a military crisis. The oxen in Benham's cornfield, however, is indicative of a different threat which was, in the early fifties, griping the town: control of livestock. The general characteristics of this new threat to order in the community can be gleaned from the particulars of Benham's case: either he or his neighbors had insufficient fencing. What this meant in realistic terms was that crops were threatened. So too was harmony, for crop damage was the source of many civil actions. While it remains uncertain as to who was at fault in this instance, it is known that Benham was convicted in 1650 "for seven lengths of fence being down or defective" and was ordered to pay a 7s fine.⁵¹

Benham was not the only resident to be presented in 1650 by pounder John Cooper and subsequently punished. In all there were 41 presentments, each of which ended with a conviction. In two respects this renders 1650 analogous to 1644 and as such points again to the way problems were resolved by local law enforcement officials. First, both years were similar insofar as each offender prosecuted for violations of certain laws was convicted; in 1644 it happened to be residents who ignored military regulations; in 1650 it was those who disregarded livestock control bylaws. Second, both years were similar because they were characterized by the perception of a crisis. When local problems appeared to reach levels of danger, as was true in both
years, authorities moved swiftly and uncompromisingly to restore order in the community.

Even though livestock disorders lacked the hair-raising peril associated with an Indian attack, the fact remains that they were problematic and consumed the energy of officials on a variety of levels ranging from fence viewer to magistrate. The problem in its embryonic stage can be traced back to 1640 when leaders noted "that some speedy course" was needed to exclude hogs from the neck. For the next eight years numerous orders were issued and 13 bylaws were written in an effort to bring a measure of order to what must have been, in the early years of settlement, a spatially disorganized community. Orders like those in 1643 requiring the construction of two pounds and in 1647 requesting that fences be viewed after storms illustrate the range of concerns over time. Bylaws such as those passed in 1648 which set penalties for damage done by cattle and hogs suggest that land had not been enclosed to the satisfaction of town authorities. That the disorders were permitted to persist for a decade or more is in part due to human nature and the lack of enthusiasm people shared when asked unofficially to perform a certain task. But it also reflects the lack of a meaningful agency of control. The decentralized neighborhood fence-viewing committees of the early forties were merely charged with notifying owners of defects, who then became liable for damages. It was not until 1648 that damages were fixed by
law and that John Cooper was chosen as pounder. And it was only then that enforcement of livestock bylaws was begun in earnest.

It is fair to say that the problems associated with fencing and livestock which had plagued the town during the 1640s came to a head in 1649 and 1650 when two-thirds of the 102 violations were prosecuted. The climax of the problem is illustrated graphically in the events of March 1649 and the spring of 1650. At the March session of the town meeting magistrate Eaton reported that "he hears there is great remisses and neglect in setting up fences according to the order made in November last." He went on to remark that "some stricter order" would have to be made if residents failed to act on Cooper's warnings. Ultimately it was stressed that any individual who was fined and did not pay immediately would be subject to seizure of "part of his estate." Before the year was out, 30 New Havenites were convicted for violating recent livestock legislation.

The following year still more presentments were made. Indeed, in 1650 John Benham and forty of his fellow residents were convicted of similar violations. In April, Eaton once again presided at a gathering of the town's planters and reiterated a familiar theme: "Fences lye down so much about the corn fields, that some men are discouraged from planting, or sowing, and therefore some speedy course must be taken...." Several individuals present at the meeting openly voiced their support for more
meaningful control because they feared any corn planted under existing conditions "would be eaten up." The discussion led to several new orders, one of which allocated pounder Cooper a salary derived from fines and specified the precise methods to follow in presenting violators to the secretary.

And he did just that. In May, 26 residents were fined for failing to maintain strong fences. The list of offenders reads like a "who's who" of the First Church of Christ: Deputy-Governor Stephen Goodyear was fined 3s "for 3 lengths of fence being down," Matthew Gilbert, one of the original "pillars" of the church and community, was ordered to pay 2s 12d for his neglect, and Mrs. Isaac Allerton, wife of the Mayflower pilgrim, was fined 12d for her lack of diligence. And there were many other permanent, albeit less illustrious, members of the community who were convicted by the court. There was John Meiggs (of Meiggs v. Gregory fame), fined 5s for five defective lengths; William Basset who, between 1644 and 1650, appeared before the court every year for a total of ten infractions; and John Benham who in the same period made six appearances before the Plantation Court. Whether celebrated or not each of the violators presented by Cooper was convicted. The complete lack of favorable decisions for the accused replicated the posture of the bench during the military alerts of the 1640s. Once again, when it became imperative to gear-up the mechanisms of social control, to take
"some speedy course" in the face of a crisis, authorities did so with little hesitation and they achieved what appears to be a reasonable degree of success.

One indication of the successful resolution of the livestock problem is the sharp decline in the number of violations recorded after 1650. It may well have been that the energetic enforcement of livestock control bylaws served its purpose. Between 1650 and 1664 there were an additional 22 violations, but only half of these resulted in convictions. This too bears a similarity to the way military cases were handled in the aftermath of a crisis. Matthew Moulthrop, for example, was accused of keeping more swine than permitted by law. His case was postponed because he was absent from court. It was never continued. At the same session of the August court John Jones was charged with the same infraction. Although he was subsequently convicted (in 1655) the court was willing "to be favorable to him" and he received a reduced fine. Additional cases after 1654 were postponed but never continued, and finally, in 1656, the first acquittal was handed down. After having his case postponed in November of 1655 William Davis was acquitted the following February of charges that his fence was defective. As depicted in Figure 3.3, it was well after the cathartic period from 1649 to 1651 that authorities were willing to either let cases slip into the limbo associated with postponements or grant acquittals. All available evidence relating to both livestock and military
violations points in one direction: rigid policies of enforcement during crises, followed by leniency once the most serious problems had been overcome. 58

Over the course of the century violators within these two categories accounted for 62% of all petty crime recorded in New Haven. There were other kinds of offenses which, when viewed from the perspective of the context within which they were committed, were similar in theory if not in quantity. The 25 timber violations, for example, also occurred in clusters and reflected a current concern amongst officials. "Disorderly cutting," a charge leveled against each of the violators, became a problem because residents failed to properly "clear away tops and bodies," thus cluttering fields and pastures. The case of William Judson is typical. In 1654 Judson was "complained of for falling eight trees in the ox-pasture contrary to order," and was fined 16s. Judson pleaded ignorance of the order which authorities said he "had no ground to do seeing it was made publically." Judson was merely one of a group of 21 prosecuted between 1654 and 1659. 59

Local officials expressed their concern about fire through periodic enforcement of fire prevention bylaws which led to a similar concentration of violations. There were two clusters of infractions, one in 1643, the other in 1649, encompassing all but one of the fire control offenses in the century. Both occasions for enforcement can be tied directly to increased concern for the physical welfare of
Figure 3.3

Percent Distribution of Livestock Case Resolutions, 1640-1664

Key: Solid line: Convictions
      Broken line: Other Resolutions

Sources: New Haven Records, I & II; Town Records, I & II.
the community. The eight individuals tried and convicted in 1643 because they did not own ladders is a manifestation of the concern which had produced fire prevention legislation a month earlier. Then there was no action or enforcement until 1649, when the impending resignation of the chimney sweep rekindled interest in adherence to fire prevention bylaws. At that point eight more residents were presented to authorities; three were convicted, three were given postponements which were never continued, and two were granted acquittals, including Edward Camp whose ladder "was not in sight when the marshal" made his inspection. Finally, the conviction of Thomas Johnson in 1654 for burning rubbish on his houselot owes itself to complaints made by neighbors who felt that open fires were dangerous as well as illegal. Johnson and each of his fellow residents were haled before the Plantation Court because of legitimate fears about the spread of fire.

It was just a few months prior to Edward Camp's acquittal that Mrs. Gregson and company were convicted of the measures violations which introduced this analysis of petty crime in New Haven. Unlike cases reflecting disorders related to haphazard cutting or dangers associated with fire, the enforcement of the weights and measures bylaw cannot be linked with as much certainty to a major problem in the community. One suspects from its timing that the prosecutions in 1649 were tied to an uproar over proper measures stemming from Meiggs v. Gregory some 13 months earlier.
Following the conclusion of that spectacle, officials expressed an increased interest in diminishing the possibility of fraudulent practices by local merchants. A new bylaw covering the marking of shoes was written in 1648; later in the same year every cooper was ordered to "make his ware tight and good" and in so doing create a "just gauge." And a bylaw of April 1649 directed "that all men that use measures with strikes, shall get strikes well made... under the same penalty that the measures are." Based upon extant evidence, there is no way of knowing why Mrs. Gregson and her neighbors failed to comply with the court ordered viewing of their measures. Nevertheless, the context within which the convictions took place is suggestive of most of the enforcement which occurred in early New Haven: the maintenance of order in the community on a priority basis.

Whether it was the prosecution of 18 people who violated a weights and measures ordinance or several hundred who failed to follow military bylaws, three basic characteristics stand out about how and why law enforcement functioned on the local level.

First, most infractions of local bylaws occurred in separate and concentrated periods of time which were related to specific disorders plaguing the community. Sometimes these periods ranged over several years, as witnessed by the military violations of the 1640s. In other instances, the enforcement of particular laws was restricted to shorter
periods as exemplified by the weights and measures violations of January 1649. These isolated periods of enforcement accounted for as much as 70% of the petty offenses prosecuted in New Haven during the seventeenth century and they can be attributed directly to particular problems facing the community. Clusters of violations appeared and disappeared, signalling both the existence and resolution of specific threats to the social order.

Secondly, although unquantifiable in a statistical sense, it appears that there was a relationship between the formulation of bylaws and their enforcement. Rather frequently, periods of vigorous enforcement followed the "branching out into particulars by just a few years. A clear example can be seen in the fire prevention legislation and the prosecution of residents who lacked ladders. Essentially, most of the community bylaws were written in response to a specific set of circumstances. When the majesty of the law itself was not enough to nudge residents in the direction of conformity, uncompromising enforcement was the solution. It seems more by design than coincidence that 58% of New Haven's bylaws concerned military and livestock affairs, as did 62% of the petty offenses prosecuted during the century.

Third, the flexibility of social control on the local level should be recognized. It has already been demonstrated that bylaws could be adapted to meet the needs of the community. Enforcement, too, was related to need.
Roughly a quarter of all petty crimes, like absence from the town meeting or land use violations, were prosecuted on a random basis. Yet the overwhelming majority of infractions (70%) were linked to identifiable problems. The mechanisms of control could, when necessary, be unflinchingly rigid. This can be seen most readily in years like 1644 and 1650 when 100% of the offenders were convicted. But by the same token, the mechanisms were capable of winding down and becoming rather loose once the foremost aim of enforcement (resolution of the problem) had been achieved. Military and livestock violations which ended favorably for violators—whether guilty or not—reflect this flexibility. Moreover, the disorders which surfaced and consumed the time of local officials really bore little resemblance to the kinds of dangers that the architects of the New England Way warned about and endeavored to prevent.

Finally, it should be added that petty offenders were not criminals in the traditional sense of the word. The typical petty offender was what could be described as a social insider; he was a person who tended to share common values and who had strong ties to the community. Most of the militia consisted of permanent residents and they were the ones prosecuted for missing watch duty or a training exercise. Those who appeared before the bar for fence violations were land owners. And individuals who were warned to court for fire prevention violations were residents who owned homes which by law were required to be equipped with
fire buckets and ladders. Indeed, it is fair to say that being a permanent member of the community was nearly a prerequisite for violating local bylaws.

John Allen, a saddler, is typical of New Haven's petty offenders. He is one of a group of 100 whose age at first appearance as a violator, along with other attributes, is known. Allen was 31 when he was convicted by the Plantation Court for missing a training exercise. He was born in 1629, the same year that Davenport and Eaton signed the famous Cambridge Agreement, and travelled to New England a decade later with his older brother Roger. In 1652 he married Ellen Bradley, fathered nine children, and lived the remainder of his life in New Haven, dying in 1691. Allen was one of 63 individuals in the sample to appear before the court only once. Although he was admitted to the First Church in 1658, he was but one of 27 who became members. Most nonrecidivists in this group were similar to Allen; they were slightly over 30 years of age, they had what might be considered middle-class professions, and they were married. Church members and freemen were in the minority. Significantly, recidivists, 37 in number, were not all dissimilar. Members of this group averaged three appearances before the court. They were also in their early thirties and married. For example, the first of John Holt's three appearances came in 1675 when he was called to answer for a trade violation committed by his wife Elizabeth. Holt was thirty and had been married for two years. In 1677 he
again appeared before authorities on a voluntary basis; he requested a remission of his original penalty and he was successful in getting it reduced from 20s to 10s. Holt's final trip to court was in 1687 when he was fined for another trade violation. Like Allen, Holt spent the rest of his life in New Haven, dying in 1733.

Residents like Allen and Holt were permanent fixtures in the community. They were like countless others who appeared before law enforcement officials because they had violated one or more of a host of bylaws which were designed to maintain physical order in New Haven. They were, like magistrate Stephen Goodyear or selectman William Andrews, part of a large group of well known planters who subscribed to the principles of the Fundamental Agreement. Although plentiful, their offenses did not undermine the basic moral values of the community. This challenge came in the form of a smaller group of deviants and delinquents.
CHAPTER III

NOTES


3. Prosecutions of colony level law and consideration of social deviance and exclusion as a strategy of control follow in Chapter 4. To avoid misunderstanding, violations of local laws which found their way into the colony codes are included in the present examination.

4. A major reason for this is that most significant studies of social control have focused on the colony or county levels, and therefore have never really addressed the issues vitally important to the individual community. This includes Erikson, Wayward Puritans; Faber, "Puritan Criminals;" Greenberg, Crime and Law Enforcement; Konig, Law and Society; and Powers, Crime and Punishment. Some of the more recent English social history has examined crime and disorder within the context of the local community. See, for example, J.A. Sharpe, "Crime and Delinquency in an Essex Parish, 1600-1640," in Cockburn ed., Crime in England, 90-109.

5. Even though the present analysis concentrates on violations of local laws, the 903 infractions between 1639 and 1701 were distributed in five different courts: New Haven Plantation Court (N=787 or 87%); New Haven County Court (N=106 or 12%); and in the Magistrates', General, or Special Courts of the New Haven Colony (N=10 or roughly 1%).

6. Informal enough to be held in the home of magistrate Theophilus Eaton. And the practice was not unique to New Haven. In 1639, for example, John Winthrop fined three individuals 3s each for "loytering and sleeping" during a militia exercise. Rutman, Winthrop's Boston, 233.

7. Apparently, however, the local courts were more responsive to individual needs and as such were more likely to hand down acquittals than were the formal sessions of the county courts.

8. Individual initiative was, as best as can be determined, rather infrequent. There were few remission
requests, about 53 or 6% of the total appearances, and a minuscule number of appeals (2). The lack of appeals is not unusual given the nature of petty offenses.

9. The outcome of the appearances was as follows:

<table>
<thead>
<tr>
<th>Resolution</th>
<th>No.</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conviction</td>
<td>642</td>
<td>71.5</td>
</tr>
<tr>
<td>Acquittal</td>
<td>85</td>
<td>9.5</td>
</tr>
<tr>
<td>Postponement</td>
<td>84</td>
<td>9.5</td>
</tr>
<tr>
<td>Remission</td>
<td>53</td>
<td>6</td>
</tr>
<tr>
<td>Dropped</td>
<td>30</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>.5</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>897</td>
<td>100</td>
</tr>
</tbody>
</table>

10. Based on the population of involuntary appearances (N=841), 76% resulted in conviction.

11. Unfortunately, direct statistical comparison of the two is impossible. Residents were occasionally punished for violations of laws that either do not appear in local records, or, more likely, never existed. Informalities like this were bound to have occurred in New England towns and are thus frustrating, but not surprising, to researchers.

12. Town Records, II, 273. For the bylaw see Ibid., I, 355. Lampson was no stranger to either the local or county courts. Between 1661 and 1683 he appeared before the latter on five occasions; before the former, on seven. Jonathan seems to have followed in his father's footsteps who appeared on 10 occasions. Both were well above the average three appearances made by New Haven recidivists.

13. An example would be the case of Joseph Baldwin who appealed "the judgement of an inferior court held at New Haven." County Court Records, I, 213.

14. Workload should not be confused with "caseload" of criminal offenses. The Plantation Court also had jurisdiction over civil suits and in matters of probate.


16. Ibid., 101.
17. Ibid., II, 144.

18. David Allen has illustrated the accumulation of power by Watertown, Mass., selectmen who, among other duties, fined individuals for "infractions of bylaws and rates." See, In English Ways, 155-159, esp., 158. In New Haven, selectmen were granted authority to prosecute in areas other than just livestock control. Examples would include fire prevention and regulation of timber cutting. Cf., Town Records, I, 380 and 337. It also appears that the militia company was given the responsibility of punishing recalcitrant soldiers sometime in the 1650s. See suggestive references in Ibid., I, 317; II, 200.


21. New Haven Records, I, 262-263. For his indiscretion Steward was ordered to pay a £5 fine and be "imprisoned [at] the court's pleasure;" an unusually stiff sentence, but one which is perhaps explained by the fact that he had appeared before the bench on eight previous occasions for offenses ranging from theft to partial absence from a trainband exercise.

22. Violations of watch and training regulations, or variations thereof, amounted to 361 or 78% of the total number of military infractions. "Variations" include sleeping while on watch duty which technically is "neglect" of watch, but for which no specific legislation existed, as was the case with many military offenses.


24. Ibid., 76, 86, and 167.

25. Ibid., 38 for the violation, 35 for the bylaw.

26. Ibid., 133-134.

27. Ibid., 122 for the violation, 119 for the order.

28. Ibid., 135. Winthrop, who recorded the incident in his chronicle, noted that "the woman recoverd, but lost her senses." Busheage, the Indian, was subsequently tried and executed. According to the governor of Massachusetts, it took the executioner (armed with a falchion) eight blows to strike-off the condemned man's head who, in the process, remained "upright and stirred not all the time." John Winthrop, History of New England from 1630-1649, James Savage ed., (2 vols., Boston, 1853), II, 231-232.
29. Nine of the offenders are unidentified because, for example, they were listed in the records as "3 men" or something equally as vague. Richard Perry and Roger Knapp, whose arms "was burnt in Delaware Bay," were the two men whose original fines were moderated.

30. New Haven Records, I, 122 and 125 respectively.

31. For the rash of remissions see Ibid., I, 152. Crowder was one of those convicted during the crisis. See Ibid., 123 for the violation and 153 for the remission.

32. Ibid., 167-168.

33. Ibid., 170.

34. For New Haven's training schedule see Ibid., 202.

35. Ibid., 481-485.

36. Ibid., 498 for the continuation and Town Records, I, 1, for the conviction. Isaac was Lyman Beecher's Great Great Grandfather.

37. For their postponements see New Haven Records, I, 456; convictions, 487-488.

38. Ibid., 488-489. The watch misconduct was compounded by lying—thought to be the "working of Satan." Magisterial discretion in the punishment of gross military misbehavior was provided for in the Revision of 1646 in Ibid., 205.


40. For Marden and Walker, New Haven Records, I, 281. For Hotchkiss, 378 for the offense, 428 for the refusal. The remission denial is perhaps explained by his proclivity for violating military laws, which was the cause of seven of his eight appearances in the courts between 1643 and 1646.

41. Ibid., 310 and 317. Knapp was also fined for missing a squadron training at the same court session.

42. Ibid., 322.
43. **Ibid., 378.**

44. For Tichnor see **Ibid., 400.** It is perhaps noteworthy that the one person in the group with a prior record of severe punishment was Geurnsie, a one-time servant who evidently left town in the fifties. See 239 for the original offense and punishment; 380 and 384 for the postponement and conviction for his military infraction.

45. **Ibid., 392, 391, and 412-413 respectively for the acquittals.**

46. **Ibid., 374, 381.** Later, when the 1649 alarm was sounded, the watch was again increased because it was "not safe" to continue according to the provisions of the 1648 order, 481.

47. **Ibid., 411.**

48. In the period from 1639 to 1665, 343 or 97% of all military convictions occurred, 133 or 96% of all military related defenses were made, and 41 or 91% of all the military acquittals were granted. The breakdown for Figure 3.2 is as follows:

<table>
<thead>
<tr>
<th>Three Year Mid-Point</th>
<th>Convictions</th>
<th>Defenses</th>
<th>Acquittals</th>
</tr>
</thead>
<tbody>
<tr>
<td>1640</td>
<td>8</td>
<td>2.3</td>
<td>0</td>
</tr>
<tr>
<td>1643</td>
<td>135</td>
<td>39.3</td>
<td>0</td>
</tr>
<tr>
<td>1646</td>
<td>84</td>
<td>24.4</td>
<td>19</td>
</tr>
<tr>
<td>1649</td>
<td>65</td>
<td>19</td>
<td>58</td>
</tr>
<tr>
<td>1652</td>
<td>31</td>
<td>9</td>
<td>30</td>
</tr>
<tr>
<td>1655</td>
<td>6</td>
<td>1.7</td>
<td>6</td>
</tr>
<tr>
<td>1658</td>
<td>8</td>
<td>2.3</td>
<td>14</td>
</tr>
<tr>
<td>1661</td>
<td>1</td>
<td>.5</td>
<td>3</td>
</tr>
<tr>
<td>1664</td>
<td>5</td>
<td>1.5</td>
<td>3</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>343</strong></td>
<td><strong>100</strong></td>
<td><strong>133</strong></td>
</tr>
</tbody>
</table>

49. **New Haven Records, I, 230.**

50. **Town Records, I, 264.**
51. Ibid., 27.

52. In Rowley, Massachusetts, during the same period, livestock control was also problematic. Special overseers had to be assigned to enforce livestock and fencing bylaws. Allen, In English Ways, 53.

53. For the orders see New Haven Records, I, 82 and 305; for the bylaws, 407.

54. Ibid., 445-446. In January Eaton threatened residents with a "more severe fine" if disorders continued, 427.


56. Ibid., 26-27.

57. For the Moulthrop and Jones postponements see Ibid., 219; for Jones' reduced penalty, 244, and for the bylaw, 101.

58. For the Davis postponement and acquittal see Ibid., 259 and 266 respectively. The breakdown for Figure 3.3 is as follows:

<table>
<thead>
<tr>
<th>Three Year Mid-Point</th>
<th>Convictions</th>
<th>Non-Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1641</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1644</td>
<td>1</td>
<td>1.2</td>
</tr>
<tr>
<td>1647</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1650</td>
<td>64</td>
<td>83.4</td>
</tr>
<tr>
<td>1653</td>
<td>11</td>
<td>14.2</td>
</tr>
<tr>
<td>1656</td>
<td>1</td>
<td>1.2</td>
</tr>
<tr>
<td>1659</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1662</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>77</td>
<td>100</td>
</tr>
</tbody>
</table>

59. Judson's fine was partially remitted in 1655 because of a counting mistake by officials. Town Records, I, 219 and 254 for the remission. For the orders see 154 and 223. For the other violations, 237. David Allen has addressed cutting infractions from the perspective of the value placed on different kinds of timber. In English Ways, 76-77.


62. Absence from the town meeting could have just as easily been linked to an enforcement priority of officials. In 1670, for instance, a strong warning was issued because "there was a great neglect in not attending the time of these meetings." Planters were told that they "must expect the penalty will be required if there not be better attendance in the future." See Town Records, II, 257.

CHAPTER IV

CHALLENGES TO MORAL ORDER:
DEVIANTS AND DELINQUENTS

More than likely New Haven's meetinghouse was filled to capacity in May of 1655 as a session of the Magistrate's Court was being called to order. The attraction was not the reading of the last will and testament of Anthony Tompson "late of New Haven deceased." Nor was it the civil suit pending between Edward Higby and Jonas Wood. A criminal case involving William Ellit and Hannah Spencer for "filthy carriages between them in William Benfield's boat" probably generated more interest than either the probate matter or the civil dispute. However, what surely must have been considered the "main event" on that morning in May was a case centering on John Knight, charged with "filthiness in a sodomitical way with Peter Vincent, his master Judson's boy, of the age of fourteen years or somewhat more."

John Knight, a person of ill-repute had been to the bar before. In 1651 he was fined 5s because his "rest was broken and his gun rusty," rendering them both useless. Earlier the same year he was identified as one of several "young men" who participated in drinking parties with an unsavory fellow named Thomas Langden. On at least one occasion Knight's absence from a training exercise caused his master, William Judson, to be fined. And he had faced
colony authorities at a prior session of the court for "loathsome filthiness" with the children of Francis Hall, "for which he was then near death and therefore sentenced (beside other punishment) to wear a halter about his neck." If his general demeanor had not already set him apart from other residents of this community of saints, then certainly the halter served that purpose. Knight was different from other residents of the town anyway insofar as he was an outsider, a servant with no known ties to the community other than his physical presence. Whether he was hated, feared, or viewed with pity is, at this juncture, only speculation. And if John Knight had not yet been labelled as a deviant by local residents, he was now. Convicted, he was characterized by the court as a "lewd, profane, filthy, corrupting, incorrigible person... tending to the very destruction of mankind." Because there seemed "to be no end to his filthiness nor means to reclaim him, whether public punishment or private warning" the court determined that he was unfit to "live among men" and agreed that a rope, not a halter better suited John Knight's neck.¹

Three years prior to the Knight case an "extraordinary" session of the court was held to examine three youths also charged with gross sexual misconduct. Samuel Miles, Esborne Wakeman, and John Frost were charged with certain unspecified homosexual acts (perhaps sodomy) as well as with some of a more explicit nature. These included the accusation that they whipped each other and "handled on[e] anothers
members." The court records suggest that under ordinary circumstances deviations like these would be taken up privately. Yet because this behavior "was spread abroad among several youthes" the court felt the community would be better served if the boys were all "publically witnessed against." A trial was held, they were found guilty, and they were ordered to be whipped severely "according as their age and strength will bear."\(^2\)

One wonders exactly how much punishment the youths "years" would in fact bear: Miles and Frost were twelve and ten respectively, while Wakeman, the son of a deceased Hartford planter, was roughly the same age. Not surprisingly it was their first appearance before local authorities, but, importantly, it did not mark the beginning of three deviant careers. Young Wakeman never appeared before New Haven magistrates again; he fulfilled the terms of his indenture to William Davis and removed to Stratford where he was listed as a freeman in 1669. The son of Richard Miles, a well regarded New Haven resident, remained in town where he married and pursued his trade. Samuel's only other appearance before the court was in 1672 when he was charged with making public speeches on the Lord's Day and ordered to post a bond for good behavior (from which he was released six months later). Although the career of John Frost was somewhat more delinquent, he too seems to have remained a member of the community in good standing until his death in 1700. During adolescence, however, he came dangerously close to being
excluded permanently. When he was 14 he burned his master's house to the ground. During his trial, which ended in conviction and severe punishment, Frost claimed that he had been "knocked" and "whipped" by his master and that the fire was his means of revenge. Frost appeared before the bench for the last time in 1662 when he was again accused of sexual misconduct, this time with John and Mercy Paine. Despite his uneasy passage through adolescence, John Frost, like Miles and Wakeman, seems to have been treated with charity and understanding by members of the community.3

These dramatic but different examples of misconduct raise two major questions about the maintenance of order in early New Haven. The first concerns flexibility. In Chapter 3 it was suggested that a proper ordering of the pragmatic aspects of community life was achieved through flexible and responsive enforcement of bylaws. In most instances, local ordinances were actually formulated in response to particular problems facing the community. That enforcement on the local level should be equally responsive is hardly surprising. However, does this also hold true when addressing the more universal statutes embodied in colony law codes? Unlike local laws, which were ever changing, those governing morality tended to be more rigid; they were "fixed" in codes at specific points in time (1650, 1656, and 1673) and for the most part were all similar. For example, laws governing sodomy in each of the codes required the same penalty: death.4 How then was it possible, given
the rigidity of the law, for Knight to receive one punishment while his younger counterparts received another? It is this kind of flexibility which must be addressed when analyzing violations of colony law.

Clearly related to the issue of flexibility is a second element of enforcement touched upon in the two cases of sexual misbehavior: exclusion for deviance. Indeed, was exclusion utilized as a means of maintaining the moral order? Judging from the Knight case one is tempted to conclude that it was; he was stigmatized as an individual "unfit to live among men" and promptly executed--an extreme form of exclusion. But where does this leave the three youths who, despite their sordid crimes, retained membership in the community? Although the trio must have been viewed with displeasure by their parents and masters, as well as by other residents, it is highly probable, considering their age and kinship ties, that their "fall from grace" was temporary. Unlike Knight, it seems that these youths were considered to be capable of being reclaimed. They were delinquent; Knight was a deviant.

In many respects, it was New Haven's delinquents, not its deviants, who made it difficult for leaders to maintain moral order. Generally, exclusion for deviance affected individuals with few ties to the community, of low social standing, or those of different racial backgrounds. It was easier for all involved to make difficult decisions about these "outsiders." Where notorious conduct became a problem
was with the off-spring of the saints. Local residents could not exclude their own flesh and blood, hence in the end there was little that could be done to control the pilfering, drinking habits, or sexual appetites of New Haven's rising generations.

Most of the appearances made before authorities for violations of colony laws were related to sex, drinking, or theft. In the period from 1639 to 1698 offenses within these categories totalled 330 or 61% of the 541 known appearances made for transgressing colony statutes. Most of the trials were heard before local rulers at sessions of the Plantation Court. Officials of New Haven punished fornicators and thieves, just as they did negligent planters whose fences were defective. Yet while 88% of the petty offenses were tried on the local level, only a slim majority (52%) of the colony offenses were. Many more of these colony infractions were heard at the county level (39% to 12% for petty crimes) and still more (93% as opposed to 7%) were handled in other sessions ranging from the Court of Assistants to "Extraordinary" Courts. On the surface it may seem unusual that so many colony violations were heard by the local tribunal. However, until 1665 when New Haven was absorbed by Connecticut, the Plantation Court had jurisdiction over cases involving punishment that did not exceed whipping or fines of £5. Thus, prior to 1666 nearly every kind of crime was handled at the local level by justices who knew, and at
times co-habited with, offenders. Thereafter, petty crime became the nearly exclusive province of the Commissioners' Courts, while more serious offenses were tried in the County Courts.  

As was the case with petty offenders, deviants and delinquents appeared before court sessions either on a voluntary basis to request, for example, remission of a previous penalty, or involuntarily, in which case violators were convicted, acquitted, or had their cases dropped and postponed. Of those who appeared involuntarily, 92% were convicted compared with 76% for petty offenders. And whereas authorities displayed frequent leniency with the latter, the opposite was true with deviants and delinquents. While 85 or 9% of the cases of petty crime ended in acquittals, only 10 or 2% of those accused of violating colony statutes did. And evidently, persons charged with colony misdemeanors were acquitted as a result of insufficient evidence rather than because officials were acting charitably.

The distribution of colony law violations also differed from that of petty crime. It should be recalled that roughly 80% of all prosecutions of the latter occurred during the first two decades of settlement. To a large degree this is explained by the crises of the forties and fifties, but it also reflects the loss of mid-century inferior court records. Colony infractions, in contrast, were distributed much more evenly (Figure 4.1). During the first decade of settlement, 16% of all violations were recorded; during the
last decade of the century, some 15%. Following a flurry of enforcement during the 1640s, when the commitment to order was perhaps most pronounced and when deviants and delinquents received their harshest punishments, prosecutions dropped. But they rose again, to a century high in the decade between 1659 and 1668 (29%) when New Haven's second generation was coming of age. In the 1670s and 1680s, prosecutions again declined, then began to increase in the 1690s when another generation began to experience the trials of adolescence. Not only were offenders of colony law fewer in number than petty offenders, but it appears, judging from the general distribution, that there was not the distinctive clustering of enforcement that was associated with what has been termed a "crisis management" approach in prosecuting those who violated local ordinances.

As was the case with the distribution of petty offenses, the question of the authenticity of the distribution of colony infractions must be addressed. It is quite probable that the distribution depicted in Figure 4.1 is an accurate representation—certainly moreso than the one for petty crimes. Underrecording was a problem with petty offenses because the records of the Commissioners' Courts, the selectmen, and other informal tribunals, like the militia company, are non-existent or contain little information on the prosecution of offenders after the mid-fifties. By comparison, the superior court records—General Courts, Magistrates' Courts, Courts of Assistants, and County
Figure 4.1
Percent Distribution of Colony Offenses
By Decade, 1639-1698

Sources: New Haven Records, I & II; Town Records, I-III; and County Court Records, I.
Courts—are for the most part complete. The one exception is for the ten year period 1643 to 1653 when only partial records remain for the New Haven Colony. A second reason for greater accuracy in recording colony infractions is that they were considered more serious and consequently were unrecorded on only the rarest of occasions. Based on the surviving records and on the nature of the offenses, it is reasonable to assume that the distribution of colony violations is indeed representative of actual enforcement.

What remains unanswered is whether recorded violations accurately depict deviance and delinquency in early New Haven. Again, as was true with petty offenses, there must have been an undetermined number of colony infractions that escaped the attention of law enforcement officials (and even nosey neighbors). Moreover, there had to have been young men who drank themselves silly unbeknownst to authorities. There must have been adolescents whose pre-marital sexual encounters went undetected. And there were surely instances of pilfering that were, for a variety of reasons, never reported. Although these unreported offenses clearly existed their omission from surviving records is probably not significant enough to alter either the general distribution or distributions within particular categories.

As suggested earlier, the most frequent offenses were those related to sex, theft, or alcohol abuse. Together, fornication and drunkenness accounted for 191 or 35% of the total number of colony infractions (Table 4.1). These two
crimes will be assessed in more detail below. So too will the 76 prosecutions for theft which constituted an additional 14%. Beyond these, there was an assortment of other colony law violations (274 or 50%) that also caught the eye of law enforcement officials. These ranged from isolated instances of "unnatural" sexual behavior, like bestiality, to profaning the sabbath "by sinful servile work or by unlawful sport," with six recorded cases. Both crimes carried a maximum penalty of death. There were a few cases of arson or attempted arson that resulted in whipping and fines for the "said criminals" like John Watson, Hannah Little, and Sarah Chatterton, each of whom was convicted by the County Court in 1695. For the most part, however, profound sexual offenses or gross crimes against property were infrequent.

Other colony infractions related to maintaining a semblance of order amongst local residents. Offenses which seemed to threaten this the most were miscarriages of the peace (60 or 11%) and "nightwalking" (43 or 8%). From a legal standpoint, disturbing the public peace, in addition to violating the sixth commandment, covered a wide range of activities. Both the New Haven and Connecticut Colony codes stated that whosoever disturbed the peace "by his own tumultuous and offensive carriage, traducing, reproaching, quarelling, challenging, assaulting," behavior would be subject to a wide range of penalties from a simple fine to banishment. Practically any kind of conduct that the rulers found objectionable could fall under this heading.
Typically, misbehavior between two or more people seems to have been the rule. For example, in 1678, Henry Brooks was convicted of disturbing the peace and imprisoned at the pleasure of the court. A complaint made by his step-son Peter Blakesley led to a hearing which revealed that Brooks had been very "offensive to his neighbors" (probably by cursing). Following his conviction the court noted that such behavior was "not to be endured among any sober and Christian people."\textsuperscript{12}

Ordinarily peace-breakers received lighter sentences than the one handed out to Brooks. More typical of punishment was the 10s fine levied on John and William Collins in 1693 when they broke the peace.\textsuperscript{13} Among other things, this points to the legal fact that authorities had a variety of punishments at their disposal and were thus able to assess each case individually. Although both Brooks and the Collins brothers committed the same offense, the former received the stiffer sentence. Other options besides fine and imprisonment were available to justices. When extensive quarrelling between John Morris and Eleazer Peck fell into slander and defamation, their punishment was the drafting and signing of a covenant which acknowledged that they had been "uncomfortable to themselves and troublesome to their neighbors." They had to confess that they had been a "hazard to public peace" and agree "voluntarily" to desist. Officials could also order bonds of good behavior to be posted, as was done with the Hall brothers in 1673 after they caused a disturbance.
Table 4.1
Colony Infractions by New Haven Residents, 1639-1698

<table>
<thead>
<tr>
<th>Offense Category</th>
<th>No.</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Drunkenness</td>
<td>105</td>
<td>19</td>
</tr>
<tr>
<td>Fornication</td>
<td>86</td>
<td>16</td>
</tr>
<tr>
<td>Theft/Pilfering</td>
<td>76</td>
<td>14</td>
</tr>
<tr>
<td>Disturbing the Peace</td>
<td>60</td>
<td>11</td>
</tr>
<tr>
<td>Nightwalking*</td>
<td>43</td>
<td>8</td>
</tr>
<tr>
<td>Other</td>
<td>171</td>
<td>32</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td>541</td>
<td>100</td>
</tr>
</tbody>
</table>

*Includes "unauthorized" night meetings.

Sources: New Haven Records, I & II; Town Records, I-III; and County Court Records, I & II.
with Eleazer Morris. Finally, if the breach of peace was not too problematic the court could act with compassion and hand down no sentence whatsoever. That is what happened in June of 1690 after a 36 year old male delinquent made "humble expositions" acknowledging his evil" and was acquitted.14

Although not as disruptive, nightwalking also posed a threat to order and as such was prosecuted frequently. Specifically, the threat lay in what could happen if youths were permitted to travel about unsupervised by their parents. Drunkenness, theft, and fornication were high on the list of temptations capable of corrupting the offspring of the saints. That is exactly what happened when Isaac Moline carried off John Davenport's maid, Hester Clark, "on horseback to a farm... in the night after her master's family was in bed." During their trial the couple was told that such behavior was "directly contrary to the law of God and man."15

From a legal standpoint nightwalkers were individuals who convened "after the shutting in of the evening" in either "streets or fields," or in houses where no authorized adult supervision existed. In addition to "persons young or old... that are under parents or masters government," the law also applied to "sojourners and boarders" capable of exercising an evil influence over adolescents. Although provisions were made in earlier codes to prevent such "roaming about," nightwalking was only established as a separate legal category in the Connecticut Code of 1673--perhaps a reflection of growing concern over the independence youths were
seeking in the late seventeenth century. ¹⁶

Nevertheless, the offense was prosecuted regularly in New Haven beginning in the early sixties. In February of 1663 several youths were presented for holding "unseasonable night meetings" at the home of John and Mary Brown "contrary to their parents and masters consent or knowledge." Specifically, they were condemned for "playing at cards, singing, and dancing." After offering their excuses to authorities, the young men were told that they committed an offense against which "they had so often been warned in the public ministry" and one which was "contrary to the law here established and often published." To serve as a final reminder, the law was read to them and they were each fined 5s. ¹⁷ The same reasoning lay behind the decision to uphold an inferior court conviction of Jonathan Tuttle for "unseasonable travelling" on the sabbath eve "contrary to the good example [set] for him by his parents." ¹⁸ On occasion parents ended up paying the fines for offenses committed by their children. When Samuel and Martha Munson were fined 10s each for unauthorized night meetings in 1687, they were told that inability to pay meant sitting "in the stocks one hour as the law directs." Faced by the possibility of having his children publically humiliated, Mr. Munson paid the fines. ¹⁹

Whether or not the Munson children, 19 and 17 respectively, received further correction at home is unknown. Perhaps their father delivered a lecture on the evils of
nightwalking and told them that they had to work-off their fines. It is also possible that nothing was done; that the Munsons returned home and carried on as usual. After all, Munson's children were only doing what other New Haven teenagers were doing with increasing regularity. Nightwalking may have been considered a threat to order, but if punishment is an indication of how society viewed an offense, engaging in unsupervised activity did not evoke excessively strong feelings of displeasure by the community or the courts; fines were not much larger than those laid on recalcitrant militiamen. Nightwalking was, it seems, less troublesome than disturbing the peace and certainly less dangerous than theft or fornication. And even these traditionally grievous offenses were punished with less severity over time, yet another indication of changing values. Moreover, it was only on occasions when individuals appeared to have the potential for genuinely eroding the social order that extreme sanctions—like exclusion for deviance—were employed uniformly.

One does not have to look very hard to find evidence of exclusion in New England during the colonial period. Most readers of history possess at least a vague familiarity with the region's reputation for warning-out and banishing persons of ill-repute. The one name that comes to mind more than any other is Anne Hutchinson who was banished from the Bay Colony in 1637. But there were others who were excluded
because they offended authorities, committed crimes, or otherwise seemed to threaten the social order. John and Samuel Brown were banished from Salem for holding separate church services which utilized the Book of Common Prayer. There was Alexander Partridge who, after being cast out by Massachusetts authorities, travelled to Rhode Island where he suffered ultimate exclusion (trial and execution) by an angry mob. And there was, of course, John Knight who was deemed "unfit to live among men" and executed at New Haven.  

Exclusion through banishment, excommunication, and other means, like execution and branding, was not invented by the founders of the New England Way; it was part of an English tradition that was used with regularity as a means of social control in the mother country. It was transported to the new world in an exaggerated form because of the religious convictions of the saints. Indeed, it was apprehension over the behavior of "civil man" that prompted New England officials to formulate bylaws aimed at screening out undesirables before they had a chance to corrupt God-fearing members of the community. Because of severe labor shortages and other circumstances of life in America, persons of suspicious character and even with criminal records found their way into the covenanted communities of New England. Once there, continued criminal conduct or the simple suggestion of malfeasance could lead to exclusion very quickly.

Given this familiarity, it is surprising that more scholars have not focused on it as a mechanism of social
control. The most extensive analysis is Kai Erikson's Wayward Puritans. Unfortunately, Erikson miscalculated the extent of deviance in the Bay Colony by assuming that the Essex County Court was the "main agency for dealing with deviant behavior" in northeastern Massachusetts, that its records "provide a complete coverage of all deviant activities in the county." This has fostered the notion that most colonial law-breakers were truly deviant. Moreover, if one accepts Erikson's assumption, then it also holds true that petty offenders, like Joseph Swett's wife who was fined 10s for wearing a silk hood, were singled out and labelled as deviants. This simply was not the case. More recently an analysis of Middlesex County, Massachusetts Court Records led Eli Faber to suggest that individuals were offered several avenues of reabsorption into the community after a crime had been committed. Faber concluded that even though offenders were punished, puritan society "did not condemn them to exclusion and isolation for long years to come." Erikson and Faber are the only scholars to address exclusion directly. The sociologist takes one position, the historian another. With certain caveats applied, they are probably both correct, suggesting that actual practice fell somewhere in between.

Despite Erikson's liberal assessment of the size of Essex County's deviant population, his work is eminently suited for a discussion of what actually constituted deviance. As with other studies on the subject, Erikson
utilized the generally accepted definition that deviance refers to "conduct which the people of a group consider so dangerous or embarrassing or irritating that they bring special sanctions to bear against the persons who exhibit it." Importantly, he added that deviance is not a property inherent in any particular kind of behavior; "it is a property conferred upon that behavior by those who come into contact with it." "Those" is a significant qualifier because it suggests that every social group has its own methods for labelling deviants. Thus it is necessary to recognize that deviance encompasses a broad range of possibilities, so broad in fact, that "there are no objective properties which all deviant acts can be said to have in common—even within the confines of a given group." Rape is a case in point. Today, most people consider it to be an act of deviance committed by individuals who are severely maladjusted. Both legal and societal responses indicate that rapists are labelled as deviants. But this has not always been the case. In fourteenth-century Venice, for example, rape was viewed as a minor offense against both the victim and society. These kinds of exceptions to the rule help reinforce the notion that identifying or "cataloguing" deviants in any society is no easy task.

This is especially germane in the light of the fact that exclusion for deviance is not always determined simply on the basis of the given act. Other factors enter into the process. The social ranking of an individual is one.
His record as an offender is another. And so, too, is the shifting mood of the community over time. The presence or absence of additional variables tend to influence ones prospects for exclusion. For instance, there is a strong tendency to exclude individuals who lack close social ties to the community. Yet this does not entirely preclude exclusion of those with strong ties. There is a greater propensity to exclude for deviance persons who are perceived to reject commonly held values than there is for those who do not. But this does not mean that those who embrace those values are exempted from acquiring a deviant status. There is also a greater probability of exclusion for offenders who are uncooperative with authorities than there is for those who do cooperate. However, an "uncooperative" suspect may be trying to convince others of his innocence and in so doing successfully avoid exclusion. The list of propositions like these is endless. They contribute to our understanding of the labelling process, but are not definitive criteria that can be used to pinpoint the size of a deviant population three hundred years ago.

Seventeenth-century descriptions can help, but they too have noteworthy limitations. The puritans had a penchant for using the word "sin" to cover a wide variety of offenses from illegal trade to fornication. However, in keeping with the definition of deviance, it would be inappropriate to assume that all "sinners" were deviants. Catchall terms like this must be approached with caution.
Utilizing the law as a basis for assessing deviance can help, but here too problems arise. One might conclude, for example, that capital crimes can serve as a jumping off point for identifying deviant offenses. Yet in the Eaton Code the punishment for smiting one's parents was death.\textsuperscript{31} Does this mean that rebellious children were considered deviants? By the same token, does it mean that Aaron Stark, a Connecticut man whipped for bestiality before that offense became a capital crime was not? He probably was, especially when considering that he had previously been branded on the cheek with the letter "R" for sexually abusing Mary Holt.\textsuperscript{32} Although Connecticut's laws are useful in establishing norms, provisions did change over time and the strict letter of the law was not always followed. Given these inconsistencies, laws themselves cannot be used as the principal basis for defining deviance. Finally, there are comments by contemporaries, like the one made by a prominent Londoner who described sodomites as deviants who "ought to be excluded from all civil society and human conversation," but these surface too infrequently in surviving records.\textsuperscript{33} Moreover, as with modern propositions regarding deviance, contemporary evidence can help identify the existence of deviations, but they offer no ironclad rules for erecting models that can be used to single out individual deviants.

With so many variables inherent in the process of labelling deviants it is virtually impossible to inventory
New Haven's deviant population. But that is really not the issue at hand. What is important is to recognize that deviance existed and that seventeenth-century New Englanders viewed deviants as a particular class of people who were unlikely to reform. Moreover, the puritan tendency to view things in bi-polar terms—saved or damned, ruler or ruled, insider or outsider—strongly suggests that once a person was excluded for deviance it was "extremely difficult for him to resume a normal social role in the community." Thus it is more appropriate to ask: is there evidence that exclusion was used as a strategy for social control and to what extent was it effective?

The answer to the first part of the question is yes; exclusion was utilized as a means of preserving the social order. The most thoroughly documented example is found in the legal proceedings against George Spencer, a servant who was executed in 1642 after being convicted of bestiality. Importantly his trial marked the end of what may be described as a deviant career that began prior to his arrival in New Haven.

Shortly after he landed in the new world, Spencer was convicted by a Quarter Court held in Boston in 1637. He was charged with receiving stolen property from another undistinguished servant named William Broomfield. For his involvement, Spencer was censured, whipped, and, in keeping with Scripture, was ordered to make twofold restitution. Following his encounter with Massachusetts authorities he
removed to New Haven where, in early 1640, he was apprehended for conspiring to "carry away" the Cock to Virginia. Very quickly he had acquired a reputation for being "profane and disorderly in his whole conversation and an abetter of others to sin." On this occasion he was whipped and banished—in and of itself evidence of exclusion. Although he was "cast out," Spencer returned to New Haven within a year and hired on as a servant to Henry Browning. At roughly the same time, Browning sold a pregnant sow to John Wakenman and it was he who "acquainted the magistrate that a sow of his" had delivered a "prodigious monster." The pig was described as having "no hair on the whole body [and] the skin was very tender... like a child's; the head was most strange, it had but one eye in the middle of the face..., over the eye... a thing of flesh grew forth and hung down... like a man's instrument of generation." Evidently the deformed creature came as no surprise to Goody Wakenman because the "hand of God appeared in an impression" which prefigured the event. Curious and concerned citizens flocked to view the results of an autopsy that revealed "there was an apparent difference in all the inwards" from another pig of the same litter. After this public viewing "a strange impression" fell upon many others that one "George Spencer... had been [an] actor in unnatural and abominable filthiness with the sow." Indeed, so strong were these impressions that "divers upon first sight, expressed their apprehensions without any knowledge
what conjecture others had made." Why? Because Spencer "had but one eye for use, the other has a pearl in it, [which] is whitish and deformed, and his deformed eye being beheld and compared together with the eye of the monster, seemed to be as like as the eye in the glass to the eye in the face." Spencer, in otherwords, was being accused of grave sexual deviation on the basis of the pig's appearance.

An initial investigation into the event met with a denial by Spencer who was nevertheless incarcerated. While in the jailhouse he was questioned by magistrate Stephen Goodyear, who asked him what he thought of the creature and "whether he did not take notice of something in it like him?" Spencer then asked whose sow it was and the magistrate, "apprehending in the prisoner some relenting, as a preparation for confession, remembered him of that place in Scripture, he that hides his sin shall not prosper, but he that confesses and foresakes his sins shall find mercy." With that the confused and scared Spencer "answered he was sorry and confessed that he had done it." Subsequent examinations by Eaton and Davenport brought forth additional details. That the temptation had "been upon his spirit two or three days before." That the transgression took place in Browning's stable "about six o'clock in the evening, when the sun was set and the daylight almost shut in." That he was with the sow for two hours and that the act itself lasted 30 minutes, to which Spencer added that "it was the most terrible half hour that he had ever had." When asked how he could "do it
if he had no pleasure in it," Spencer remarked that "he was
driven by the power of the Devil and the strength of his
[corr] uption to do the thing."

During his imprisonment Spencer had many conversations
with officials who endeavored to discover the reasons for
his sin. Specifically, they were concerned about his
"atheisticall carriage" and his failure to turn to the Lord
in the face of temptation. Hadn't he prayed? Spencer re­
plied that he had not since he left England. Didn't he
read the Scriptures? He answered that his "master put it
upon him else not." And when asked "whether he found not
some working [upon him] in the public ministry," the pris­
oner admitted that it "did not abide with him." From
these examinations it became clear that Spencer, in addi­
tion to the crime itself, appeared to reject the values
upon which the community rested. As was the case with John
Knight, Spencer could not be reclaimed and was ordered to
be "hanged upon a gallows until he be dead."

Saturday, April 8, 1642 was chosen as the day of execu­
tion, of the final act of exclusion from society. It must
have been a day of both excitement and fear for local resi­
dents, most of whom were viewing their first hanging in
New England. As Spencer was being drawn to the gallows in
a cart he spoke to the youths about him, "exhorting them
all to take warning by his example how they neglect and
dispise the means to grace." Just prior to his execution
he again confessed the bestiality "in all its circumstances"
and "justified the sentence to be righteous." But his parting words were for William Harding, a sawyer, whose "pernicious counsel" had been a "means to hinder his repentance." On hand to view the hanging, Harding denied the accusation. Among Spencer's last words was his retort that "he was the cause of his soul's damnation." The sow was then run through with a sword and Spencer was hung, thus "leaving him a terrible example of divine justice and wrath." 

Spencer and Knight were not the only individuals in the vicinity to pay the supreme price for pronounced sexual deviance. In 1654 a 15 year old Milford servant, Walter Robinson, was also executed "for committing the horrible sin of bestiality, with a bitch, and therein abasing the nature of man in a most filthy way." Unlike Spencer's deed, an eye witness observed Robinson commit the crime. Edward Wilson testified that the youth "took up her hinder legs and pulled down his breeches and took his member in his hand and according to his purpose of unnatural copulation, put it in a little way into the bitch's body." The unwilling partner resisted so vigorously that Robinson was prevented from penetrating "so far as he might have done." Wilson warned Walter that he would be hanged. Robinson then released the dog, "pulled up his breeches, and ran away, but first feeling some grumbling pain in his member, he looked upon it, [and] he further said that he had heard that such filthiness with such creatures was death."
Indeed it was. Both the dog and Robinson were executed.

So too was William Potter, a seemingly upstanding citizen of New Haven who was charged in 1662 with the "sin of bestiality with sundry creatures." The disturbing thing about Potter was that he appeared to embrace the commitment to order shared by most members of the community. He was a church member (excommunicated for his bestiality) and a man of good estate. Yet as the proceedings of his trial suggest, he had intermittently copulated with animals since 1619 when he was an 11 year old apprentice in England. Potter reported to the court that his "temptations followed him" to the new world. Once in New Haven he engaged in a series of perversions with cows, a bitch (which he then hanged to free him of further sin), two sows, a yearling heifer, and three sheep. He even attempted it with "his old mare." Potter admitted that on each occasion he was "filled with shame and confusion for the dishonor he had done to God," and added that little could be done to reform him. Even after he saw "others put to death for the same acts" (presumably Spencer and Robinson), his heart remained hardened. Following his confession and testimony by his wife and son, the law was read to Potter and he was asked "why the court should not proceed to judge him according to the law," and he said no. Realizing that "they could do not otherwise," the magistrates ordered his execution.

Each of these individuals was excluded for what was
considered to be a grave sexual deviation. Comments in the proceedings against Spencer, Robinson, and for that matter, John Knight, indicate that their character or so-called deviant disposition made their acts more believable. William Potter was different. Unlike the others, Potter was accorded charity and understanding during his trial. Indeed, the phrase, "they could do not otherwise" reveals a hint of reluctance on the part of colony officials to exclude one of their own. They did so because they had to, but members of the fellowship of saints were excluded only on the rarest of occasions.

Most of those who were excluded were cut from a different bolt of fabric; Potter was the exception, not the rule. Execution was also the exception. Moreover, most individuals excluded in New Haven were not put to death. The very point of exclusion was to screen-out perceived deviants before they had an opportunity to undermine the social order. The process of exclusion was meant to call attention to conduct or personal traits deemed undesirable. In fact there may have been individuals of worse frame than Spencer or Knight who never had a chance to disrupt the moral order because they were warned out before they had a chance to commit a crime. That, however, may have been wishful thinking, which is why individuals like Humphrey Norton were apprehended, brought to trial, and excluded.

Norton was a Quaker whose reputation pre-dated his arrival in New Haven. Local and colony officials knew about
the "Quaker Invasion" of Massachusetts and on occasion had had run-ins with Quakers within the confines of the juris-
diction. Controlling the sect had become difficult in the outer reaches of the colony, especially in regions bor-
dering Southold. It was not surprising that this sleepy
town on the eastern end of Long Island became a target for the disciples of George Fox. Evidently it was to this part of the New Haven Colony that Norton travelled after being banished from the Plymouth Colony in the fall of 1657.

Once in Southold, Norton viciously attacked the local minis-
ter, John Youngs, as well as the magistracy of the colony. For this, he was transported to New Haven where, understand-
ably, he was not received warmly. Indeed, if we accept Norton's account of his treatment, it was downright inhu-
mane: he was confined to an open prison in foul weather
where, for a three week period prior to his appearance be-
fore the Plantation Court, he wore irons linked to 'a great lump of wood.'

At his well attended trial Norton was accused of slan-
der, of seducing the people "from their due attendance upon the ministry and sound doctrines of... religion," of spreading heretical opinions, of villifying the magistracy, and of disturbing the peace. Particularly grievous were his attacks on the magistracy and the ministry because they threatened to undermine the principles embodied in the Fun-
damental Agreement. Norton claimed, for example, that mag-
istrates were "devil's servants" who had no true power to
punish offenders. Although Norton's political views were probably not taken seriously, they tended to call into question powers held by magistrates. Ministers, specifically Youngs and Davenport, got an equally bad press from Norton in several tracts that he had composed. Basically, he condemned infant baptism, a central tenant of the New England Way, on the grounds that it lacked Scriptural support. In addition, he wrote that "men may be brought to perfection in this life, and those ministers which tell people they cannot,... tell an untruth." Another of Norton's writings was "full of errors and reproach to Mr. Davenport," who endeavored to address Norton's accusations "before a great concourse of people." When Davenport rose to answer the Quaker's charges "the said Humphrey was so unruly with his tongue" that the New Haven divine simply could not be heard.

After his examination, Norton was pronounced guilty and ordered to be "severely whipped and branded on the hand with the letter H, for spreading his heretical opinions,... and be excluded out of this plantation." Isabel Calder has provided a dramatic description of the scene:

He was immediately led forth to the stocks, and in the presence of a great crowd summoned by the beat of a drum, stripped to the waist and given thirty-six stripes. Next a pan containing burning coals and an iron was brought, and the letter 'H' for heretic was burned into the hand of the prisoner still held fast in the stocks, 'in malice... his right hand to hinder him from Writing.'47

Following his ordeal in New Haven, Norton returned to
Plymouth where, once again, he was prosecuted by authorities.

Judging from Norton's New Haven experiences it appears that he was excluded for deviance by being publically humiliated, branded (or what law codes describe as "stigmatized"), and banished. His trial, which must have been something of a spectacle, had served to reinforce the policies of perfection upon which the town and the colony were founded. By banishing the truculent Quaker, authorities controlled what they considered to be a dangerous situation. It seems that Norton was punished more for his heretical opinions than for any eccentricities (like unruliness during his trial) which figured in the exclusion of Quakers in the Bay. There, where the Quaker infestation was much more widespread, people were labelled as deviants for external behavior like wearing hats in the presence of magistrates, using unconventional language, holding private church services, and running naked through the streets. Persons displaying such behavior were routinely classified as Quakers and labelled as deviants. But while Humphrey Norton did not display any of these unusual characteristics, there were others in New Haven whose "ill-report" contributed to their exclusion for deviance.

This was perhaps the case with a Mr. and Mrs. Hunt who were warned out of town in 1643, even though they had not broken any law. In fact, their only crime may have been guilt by association. Specifically, the Hunts were asked to leave for keeping company with William Harding, for whom
they baked a "pasty[r]y and plumb cakes." They probably were regarded with suspicion anyway, because they had been "admitted to sojourn" in the plantation "upon their good behavior." Once they began associating with Harding (the same man George Spencer berated from the gallows), authorities may well have felt that it was time to weed them out before they could work their corruptions on others. Although there was no public exhibition, as would later be the case with Norton, the exclusion of the Hunts served a similar purpose: safeguarding the moral order.

The Hunts were not the only couple in New Haven who appear to have been excluded for deviance. In the mid-fourties, for example, William Fancy and his wife had some major encounters with local officials. In 1643 the woman was charged with "stealing divers things from sundry persons." In the course of her hearing, authorities alluded to previous misconduct in Connecticut where she had been whipped twice. Moreover, she was labelled as a "notorious thief and lyer" insofar as stealing "appears to have been her trade." In addition to making restitution to the victim of her crime (who was "at prayer" when the theft occurred) Mrs. Fancy was ordered to be whipped severely. This punishment did little to reform her. Three years later both she and her husband were examined for their "lewd and unclean passages." The case centered upon the attempts of several men to seduce Mrs. Fancy. Typical was the action of Mark Meiggs (brother of litigant John)
who on one occasion, being alone with the woman, "caught hold of her, put his hands under her coats... and told her he would give her" a string of wampum and 5s "if she would teach him to get a boy." When William Fancy was asked why he did not report the several attempts to seduce his wife, he claimed "that his wife having been publically punished for thievery, should not be believed." In other words, he was afraid that her prior acts and reputation would confirm that she enticed these men to seduce her. More than likely this was the conclusion reached by the court: she was sentenced to be severely whipped, and "for his being as it were a pander [e.g. pimp] to his wife," so was William Fancy.50

The Fancys were not banished as the Hunts were, but the pair evidently left town within a few years of their trial. They had clearly neglected the duties required of husbands and wives and as such set a poor example for the rest of the community. Although we cannot be completely certain that the Fancys were labelled as deviants, it may well have been that their conduct led to ridicule and even ostracism by local residents.

Beyond those accused of gross sexual misconduct, like Spencer or Knight, and others whose behavior was especially troublesome, like Norton, the Hunts, or the Fancys, there is little evidence of overt exclusion for deviance in early New Haven. In this regard Eli Faber's assessment of exclusion is perhaps more accurate than Erikson's. To be sure, some other instances of exclusion appear in court records
as, for example, when Edward Woodcliff, a servant, was whipped and "sent out of the plantation." For the most part deviants were members of a highly visible but reasonably small group of undesirables. During the course of the seventeenth century probably fewer than 50 people (or 7% of the total offender population of 669) were excluded for deviance. Moreover, individuals excluded for deviance tended to be true outsiders who lacked strong ties with the community. Nearly all lacked relatives in town. Few owned land, subscribed to the Fundamental Agreement, could vote, or were admitted members of the church. For the most part they were unskilled laborers or servants who had low occupational prestige. We can assume that because their commitment to the widely held values of the community were perceived to be so slight and because their behavior tended to jeopardize those values, such individuals were excluded.

Thus the answer to the first part of the question raised earlier is yes: exclusion for deviance was used as a means of promoting and preserving the moral order. The answer to the second half of the question is also yes: exclusion for deviance was effective on at least two levels. First exclusion removed from the community individuals whose conduct was "so dangerous or embarrassing or irritating" that special sanctions were brought to bear against them. People like George Spencer could no longer commit acts inspired by the Devil. Wayward youths like John Knight could no longer sexually abuse children. And fanatics like Humphrey Norton
were prevented from spreading the seeds of apostasy and rebellion. Moreover, exclusion protected members of the community from danger. Second, exclusion was effective because it called to attention the limits of acceptable behavior and as such provided clear examples of how not to behave, while at the same time reinforced the fundamental values upon which the community rested. New Haven was similar to other New England towns in that it had its share of social deviants who were condemned for their behavior and excluded. Yet recall that members of this "criminal" minority were responsible for but a handful of the 541 colony violations prosecuted during the century. The overwhelming majority of colony offenses were committed by individuals who may have been censured and frowned upon momentarily, but who by no means were labelled as deviants and excluded. In addition to peacebreakers and nightwalkers, one finds within the ranks of this group tipplers, thieves, and fornicators. It was they who constituted what may be loosely described as New Haven's delinquent population.

At the May 11, 1767 session of the Connecticut General Court special attention was devoted to the "sins" of the rising generation. In language that could have been lifted from the agreements, orders, and sermons of the 1640s, officials drew a bead on adults and youths who, with increasing frequency, failed to follow the path of righteousness. They claimed that the sabbath was being profaned; its
"ordinances rendered unprofitable, which threatens the rooting out of the power of Godliness and the procuring of the wrath and judgement of God...." To try and prevent further disorders, the penalty for profaning the sabbath was increased by 5s. Authorities were also disturbed about the "increase of drunkenness" in the colony and accordingly placed new restrictions on quantities of liquor retailers could sell. And because it was observed "that the sin of uncleaness" was proliferating in the jurisdiction, county officials were urged to prosecute offenders in hopes of stemming the tide of illegal fornication. Finally, because youths were "getting from under the government of parents and masters," a new law regulating that status of "boarders and sojourners" was implemented by the court. Nested within this series of warnings, which so much resemble the messages delivered by New England's jeremiads, Connecticut rulers were zeroing in on two of the colony's laws violated most frequently by New Haven residents and apparently those of surrounding colonies as well: drunkenness and fornication.

These offenses, along with theft, accounted for nearly 50% of the violations of colony statutes in New Haven between 1639 and 1698 (Table 4.1). Alcohol abuse topped the list with some 105 violations or 19% of the total. Fornication followed with 86 prosecutions (16%) and cases of theft accounted for an additional 76 appearances (14%). As will be seen shortly, these three offenses had something in common--
they were crimes committed by young adults who also happened to be the sons and daughters of the saints. For the most part, individuals presented for excessive drinking, for the theft of some lace, or for premarital sex, received mild punishments and tended to remain members of the community in good standing. Youths who committed these offenses (along with breaking the peace and nightwalking) have been referred to as being delinquent and indeed the term "delinquency" means little more than the fact that an offender had been negligent, that he or she had failed to meet certain obligations. New Haven residents violated laws governing morality regularly throughout the century and little could be done to prevent so-called delinquent conduct. Officials complained bitterly of "sundry evils," but their lamentations and warnings fell on deaf ears. Nearly a decade later authorities noted that the special laws passed in 1676 "have little prevailed to the suppressing of the growth of said evils" in the colony.54

But the hands of officials were not tied. If they wanted to severely punish tipplers, thieves, and fornicators, they were so empowered. Laws bearing on the latter, for example, were explicit enough: convicted offenders would be punished "either by enjoying to marriage, or fine, or corporal punishment, or all, or any of these, as the court or magistrates shall judge most agreeable to the word of God." The options for punishment were spelled-out in no uncertain terms, but it was left with law
enforcement officials to determine which of the penalties to impose. The same was true regarding sentencing for theft. Penalties included fines, branding, restitution, whipping, and, for those who were "incorrigibly unrighteous, and presumptuously profane," even death. Laws governing drunkenness and tippling were also similar insofar as a variety of penalties existed which could be meted out according to the discretion of the court.

Magisterial discretion was an important element in the social control equation. In his "Discourse on Arbitrary Government," John Winthrop made a persuasive argument on behalf of discretionary justice. Moreover, Winthrop claimed that it was unjust to punish a "youth of honest conversation" the same as an "old notorious lyer" even though the crimes they committed were identical. Essentially Winthrop was emphasizing that the character of an offender had to be taken into consideration when sentences were handed down. Without a certain amount of flexibility and discretion, justice would not be served. This kind of flexibility in sentencing was highlighted at the outset of the present investigation of deviants and delinquents. Although most of the penalties embodied in the Eaton and Connecticut codes were fixed, officials were granted ample discretion in cases governing morality. As much as 27% of New Haven's laws and 14% of Connecticut's statutes left the door open for discretionary sentencing. Furthermore, prior to the publication of the Eaton Code in 1656, New Haven officials
utilized wide discretion in all sentencing excepting cases involving violations of bylaws with fixed penalties. It is this kind of magisterial discretion which explains why Samuel Hotchkiss Jr. and Elizabeth Cleverly were whipped in 1642 for committing fornication, while 60 years later Gydian and Lydia Andrews were fined for the same offense. The law governing fornication in both cases was the same. The difference lies in the fact that officials simply opted for different punishments—an indication that notions or morality had changed over time. Thus while rulers complained of "sundry evils," they failed to use the resources at their disposal to punish offenders in such a way as to deter crime. Nowhere is this seen more clearly than in the treatment of delinquents who violated moral statutes.

When colony officials were complaining in 1676 about the "increase in drunkenness," alcohol related offense had already begun to decline in New Haven (Figure 4.2). And that trend would continue until the turn of the century. Actually, the period of greatest known alcohol abuse was the first decade of settlement, when 27% of the cases were prosecuted. This was probably due to the unsettled state of the community in the early 1640s when the concentration of transients seeking land or other economic opportunities was highest. Once the town became better organized—land divided, houses completed, and positive laws formulated—the number of prosecutions dropped off dramatically. Indeed, between 1649 and 1658 only three individuals were
presented for intemperance. But prosecutions rose with the second generation. In the two decades from 1659 to 1678 nearly 50% of all alcohol misuse cases were heard. Only when the offspring of the original saints began to settle down and have families of their own did prosecutions begin to decline once again.

Although drunkenness and tippling were frowned upon, extant evidence suggest that occasional misuse of alcohol did not cause excessive alarm. Drinking was a part of the settler's English heritage and the fact that New Haven's rulers were puritans did not mean that the enjoyment of moderate amounts of beer, wine, and occasionally "strong waters" was considered imprudent. In the early years of settlement attempts were made to find a proprietor for the local ordinary and individuals were granted licenses to retail liquor. The principal concern of leaders was that alcohol use be regulated. That is why the published laws of both the New Haven and Connecticut colonies specified where drinking could take place, how much liquor could be sold, and how much time patrons could spend in drinking establishments. Authorities also made special provisions for Indians because it was believed they were "addicted" to alcohol. The consumption of liquor became a cause for law enforcement only when individuals were delinquent by disregarding the "rules of sobriety."

Most people prosecuted for drunkenness or tippling were convicted because they drank (or were caught) outside
Figure 4.2
Percent Distribution of Alcohol Related Offenses By Decade, 1639-1698

Sources: New Haven Records, I & II; Town Records, I-III; and County Court Records, I.
the regulated confines of the tavern. Such conduct posed a variety of possible dangers to the well-ordered community. It meant that the chances of idleness increased. It served to undermine parental authority by luring youths out into the night. And it threatened to disturb the peace because very often drunkenness led to quarelling. Henry Brooks was probably the town drunk, but most of his 11 appearances before authorities were made for disturbing the peace. Above all, rulers saw a danger in alcohol abuse because it deprived people of their senses. This is made clear from the trial of one of the few members of the church to be presented for the "sin of drunkenness." In 1647 James Haywood was accused of getting drunk on a "Dutchman's vessel." There he drank so much that "he had not the use of his reason, nor of his tongue, hands, or feet." When asked about his offense, Haywood confessed that he had broken the law and had "dishonored" God. Among other things, authorities endeavored to discover whether or not Haywood "had been given to drunkenness." Because they determined that his was "an act only," magistrates used their discretionary powers to punish him with a fine rather than by whipping.

Most residents presented for drunkenness were similar to Haywood. Their offenses were "acts only." They did not display patterns of persistent intemperance. Of the 80 offenders who stood before the bar for alcohol abuse, only 14 (17%) returned to court to face similar charges. Eight of these made a second appearance and six appeared
on three occasions. Thus most of New Haven's delinquent drinkers were non-recidivists. As a group they were white males who were unmarried at the time of their initial appearance. Demographic data, available for slightly over a third of the group, indicate that the typical tippler was between 22 and 23 years of age. Four of the offenders were females ranging from 19 to 22 and they, too, tended to be unmarried. The remaining delinquents (11) included two negroes (one of whom was Theophilus Eaton's "neager" servant) and nine were Indians who, as a group, appeared more for alcohol misuse than for any other offense. Only one of the population of 14 recidivists was a native American.

The punishment delinquent drinkers received was, on the whole, rather mild. This applied to recidivists and non-recidivists alike. For both, fines were the penalties imposed most often. This is largely explained by the system of fixed sanctions that existed in the law codes. Furthermore, the fines were geared to increase with each subsequent offense. That is why Edward Bunce was fined 3s 4d for his excessive drinking in 1666, while his friend, John Thomas Jr., a second offender, was fined 6s 8d. Fully 80 (83%) of the 96 sentences handed down were fines, usually of less than 20s. Four less fortunate offenders were placed in the stocks or whipped, and 12 received other punishments ranging from imprisonment to an admonition. These lawbreakers were punished more severely because their cases merited special attention. Even in certain instances where fines
were called for, authorities used discretion to punish individuals for drunkenness based on the extent of their misbehavior. In 1644, for example, several residents were convicted for holding a "drunken disorderly" gathering. Two delinquents were fined 20s each for "being the authors principally." One, Edmund Tooly, who was John Davenport’s servant, was fined 10s "for fetching the wine." Another pair were fined 3s 4d each "because they were but occasionally present with the rest."65 Because so many cases of alcohol abuse were compounded by other degrees of delinquent behavior, discretion had to be used in the sentencing process. And it remained an important feature of the social control apparatus throughout the century.

Thus when colony officials railed against the "sin of drunkenness," they had within their grasp the power to initiate legal change and to punish delinquents in a manner which would discourage others from drinking excessively. But leaders did not use this power as forcefully as they might have. In retrospect, it appears that the most rulers did was complain loudly—and little else. Although disapproved of, occasional intoxication was recognized for what it was: a less than serious offense that was to be punished by a fine. Most alcohol abusers in New Haven were young, unmarried, and prosecuted only once. As a group the vast majority of delinquent drinkers were sentenced to pay fines. Some received stiffer penalties, but the use of stocking and whipping was rare and declined over time.66
This is partly explained by what must have been a softening of the official opinion relative to periodic alcohol misuse. But it was not an indication that justices let their guard down. They were ever wary of liquor consumption by Indians, of unsupervised "husking parties," and of the activities of Henry Brooks. Serious alcohol abuse was visualized as being capable of thoroughly corrupting and depriving individuals of their reason. In New Haven this never became a serious problem which is why drunks and tipplers were punished as mildly as petty criminals.

The situation with theft was somewhat different. If there was a single non-capital crime which predisposed God-fearing New Englanders to consider an individual deviant, it was theft. Indeed, some of New Haven's deviants had robbed at some point in their infamous careers; Mrs. Fancy, William Broomfield, and George Spencer are examples. Children read in their primers that "a dog will bite a thief at night." And the legal provisions for punishing convicted thieves included branding with the letter "B" for their first offense—an indication that thieves could easily be cast into deviant roles. Moreover, while cases of theft were prosecuted less frequently than drunkenness, thieves were punished more severely than drunks or tipplers.

Over the course of the century theft was an offense which was subject to a steady, if not slight, decline. As suggested in Figure 4.3, the crime was distributed rather evenly; it was not enforced with great variation which
proved to be the case with petty crime, alcohol abuse, or even fornication. The highest percentage of thefts occurred in the first and third decades of settlement and accounted for 42% of the cases prosecuted. There were never years or extended periods of time when the community was plagued by stealing. In fact, the most thefts recorded for a single year were six in 1665 and 1682.

Although thieves frequently received harsh punishments, most were not career criminals (like Mrs. Fancy) who were excluded for their unrighteousness. Between 1639 and 1698, 59 individuals were responsible for 76 thefts. These ranged from the theft of £5 17s in 1639 by Roger Duhurst and James Stewart, two servants who were whipped for taking the money out of their master's "chest on the Lord's Day in the meeting time," to a case of pilfering watermelons in 1682 by four yourths, each of whom was fined and reminded by authorities that "the law gives liberty for capital punishment." Most offenders were similar to this group of six because they stole on only one occasion; 26 (45%) never committed another crime, 21 (35%) violated other local or colony statutes during their residence in New Haven but stole only once, and 12 (20%) appeared for theft more than once. Of these, ten appeared twice and two made four separate appearances.

Nearly all of New Haven's thieves were convicted (96%) and the punishments they received was determined by the discretion of the court—as the cases of pilfering suggest.
Figure 4.3

Percent Distribution of Theft and Pilfering By Decade, 1639-1698

Sources: New Haven Records, I & II; Town Records, I-III; and County Court Records, I.
Each crime was assessed on an individual basis, thereby giving magistrates the option of meting out punishment fitted to the offense. In practice this meant that there was little distinction between the sanctions employed against recidivists and non-recidivists. One might expect that the former were punished more severely, but that was not always the case, even though the law directed recidivists to receive stiffer sentences. Indeed, as a group non-recidivists received a higher percentage of whippings (10 or 45%) and fewer fines (5 or 20%). For recidivists, the larger of the two groups, the figures were 16 or 35% for both whipping and fines. It should be noted, however, that, as in the case of alcohol abuse, discretion was used liberally because many cases of theft were compounded by other crimes, such as lying or stealing on the sabbath.

The typical thief was, like the drunk or tippler, also male, young, and unmarried. Forty-eight (81%) of the town's thieves were males, and based on very limited demographic data (5 cases) the average thief was in his mid-twenties. Nineteen of the group were servants (ages unknown). This suggests, however, that the typical thief was younger still. Eighteen of the offenders were married at the time of their first violation, while 21 are definitely known to have been unmarried. It is probable that the remaining 20 thieves and pilferers, which included five Indians and four Negroes, were also unmarried. The 11 females (19%) in the group tended to mirror the male
population. They were young (three whose ages are known were 17, 22 and 48) and unmarried. Five of the 11 were servants and there were no Indian or Negro females thieves.

New Haven's thieves therefore shared much in common with the town's alcohol abusers. Both groups of offenders typically consisted of a population of single white males under twenty-five years of age. Both groups had their share of female offenders, 19% and 5% respectively, and both had roughly equal percentages of racial minorities (15% and 13%). Most of these lawbreakers were similar to the extent that they appeared before authorities on but one occasion. As a group, they were not career criminals who merited exclusion for deviance. And whether recidivists or not, most of the sentencing which took place was done at the discretion of the court. Thieves were the more severely punished of the two, but that simply reflects the belief that theft was a more serious offense. Nevertheless, none of New Haven's thieves were actually branded for their initial offense as the law directed. The stiff penalties were written into the codes so magistrates could punish "incorrigible" thieves accordingly. And the same was true with other crimes as well. As it turns out, extreme sanctions such as branding, banishment, and execution were reserved for those considered truly deviant. New Haven's delinquents were fined, whipped, and stocked precisely because it was felt they could be "reclaimed." Perhaps a few, like Mrs. Fancy, would later be excluded for deviance,
but most retained their membership in the community.

The same flexibility and discretion that marked the sentencing of youthful tipplers and thieves also was used to control the growth of "uncleanness" in New Haven.

In the shadowy years of pre-code law in Massachusetts, Thomas Shepard wrote to John Winthrop and asked the governor to make a law "for the punishing of that sin which... will soon poison these societies." Shepard was referring to the "sin of fornication" and his concern would be echoed by Connecticut officials a quarter of a century later. Yet in 1676, society was not poisoned. True, King Philip's War was interpreted as having been a sign of God's displeasure with His chosen people. Church membership and religiosity in general had declined. And most of the architects of the New England Way had died. Society had changed, but, to repeat, it was far from poisoned. Towns continued to be founded and older settlements continued to expand. People seemed quite comfortable with their ever broadening economic horizons. And families still remained viable social institutions. Although fornication was clearly on the increase in the waning years of the seventeenth century, Shepard's gloomy prophecy was inaccurate.

Indeed, in 1642 and 1676, two years known for remonstrances against pre-marital sexual intercourse, prosecutions in New Haven were infrequent. In fact, the first and fourth decades combined accounted for but 10 or 12% of the 79 appearances made for fornication between 1639 and
1698 (Figure 4.4). These decades represented, in the scheme of a rather unequal distribution of fornication cases, periods of calm before two storms. Following the initial ten years of settlement, when 6 or 7% of the cases were heard, there was a steady increase in prosecutions which appears to have been tied to the sexual exploits of the rising second generation. In the decade from 1658 to 1668 when the settler's first born were entering their twenties, nearly a quarter (24%) of all the prosecutions for illegal copulation were made. Then, almost as suddenly as they rose, prosecutions dropped to a scant four (5%) in the decade ending in 1678 and seven (9%) in the next ten years. Then, even more precipitously than they rose in the 1660s, prosecutions climbed to a staggering degree in the 1690s when 36 or 45% of the cases heard for the entire century were prosecuted. Quite simply, another generation was coming of age.

Although this increase in fornication by the third generation may have shocked some of Connecticut's conservative divines and lawmakers, there were undoubtedly many parents and masters who took the misconduct in stride. In fact, many had experienced similar behavior when they were coming of age in the 1650s and 1660s; the third generation did not invent pre-marital sex. If there was one difference between the two generations, it lay with increased incidences of pre-marital pregnancy with the third. Second generation young adults whose sexual misconduct led to pregnancy were
Figure 4.4
Percent Distribution of Fornication Cases By Decade, 1639-1698

Sources: New Haven Records, I & II; Town Records, I-III; and County Court Records, I.
punished by the courts and then "enjoined to marriage."

With the third generation, most cases were discovered through the birth of a child who was conceived some months prior to marriage. Moreover, voluntary marriage of couples who intended to marry from the outset had become commonplace.73 Most scholars now believe that increased promiscuity was difficult to regulate and as such came to be generally accepted. Indeed, as David Flaherty has noted, late seventeenth-century delinquents came to be viewed "with a mixture of tolerance, amusement, and titillation."74

The best test of this tolerance lies not in the occasional lamentations of ministers and colony officials, but in the sentences that convicted fornicators received. Between 1639 and 1698, 71 individuals were responsible for 79 appearances before authorities. Slightly over half of the group (38) were non-recidivists. Thirty-three had violated other local or colony statutes in addition to committing fornication. But only six of these recidivists had prior records of sexual misconduct. Perhaps some of these, like Thomas Badger who had been severely punished before his fornication trial for "defiling himself by diverse unclean passages with one of his master's children not above six years of age," were excluded for deviance at the time of their second offense.75 However, none of the six appeared for sexual misbehavior more than twice; there were no overt career sexual offenders in New Haven. As such, there was little distinction between punishments
recidivists and non-recidivists received. As in the case of alcohol abuse and theft, magistrates assessed each case individually and made use of discretion when sentencing offenders. By law, this meant that authorities could, with the exception of death, punish delinquents as they saw fit.

Overall, 96% of the appearances resulted in convictions. Of the 70 punishments meted out, 23 (33%) were whippings, 43 (61%) were fines, and four (6%) included other forms of punishment, such as child support. A pair of cases typifies the trend in sanctions over the course of the century. In 1652 Robert and Susan Meaker were presented for a "high breach of the law of God, in committing fornication, defiling one another before marriage." The pair was convicted and ordered to be whipped. Twenty-two years later, in 1674, Robert Augur, the nephew of a local physician, and his wife Mary, the 23 year old daughter of magistrate Matthew Gilbert, were convicted by their own confession of fornication prior to marriage. For their misconduct, the couple was ordered to pay a £5 fine. Significantly, the provision for punishment was the same in each of the cases.

What had changed was the attitude of officials regarding the seriousness of the offense. Gone by 1674 was rhetoric about unrighteousness; the Augurs were tried and convicted unceremoniously. And so it was with most second and third generation offenders. Indeed, prior to 1669, 21 or 91% of the whippings occurred. Only on rare occasions, such as in 1692 when Cush, a Negro servant of Richard Rosewell who
was whipped at the "place of execution" for fornicating with a white woman (who went unpunished), was corporal punishment used. Conversely, only six or 14% of the fines were handed out prior to 1669. Furthermore, those that were levied in the early years of settlement tended to involve special circumstances. For example, Rebecca Turner was fined £10 in 1649 for fornicating with Thomas Meaks. She escaped a whipping only because a mid-wife testified that she had "sore breasts and a forward child." Over time, punishments like those inflicted upon the Meakers declined, while those received by couples like the Augurs rose.

In part, this is explained by changing values. But it is also explained by the fact that most fornicators in the last half of the century were descendants of the original "pillars" of New Haven. Few servants or members of other minorities were presented. Cush was the only Negro prosecuted. And although Margret Trowbridge and Mary Butler were both fined 40s in 1691 for fornicating, their mutual partner Robin, a "wicked Indian" who ran away, went unpunished. Robin was the only Indian accused of fornication; both he and Cush were atypical offenders. Most were young, white sons and daughters of permanent residents. Forty-one of the 71 fornicators were males whose average age at their trial (N=13) was 25. Their 30 female counterparts tended to be three years younger (N=11). In other words, they were, like delinquent drinkers and theives, well known
fixtures in the community who generally appeared before authorities on one occasion for morals violations. They also tended to be in their mid-twenties, white, and unmarried at the time their crime was committed. And the punishments these delinquents received were mild. Importantly, these were determined at the discretion of the court. If delinquency had been a true problem, offenders would have been punished severely. But they were not. By late in the century especially, the severity and rhetorical expostulations associated with trials in the early years had vanished. Officials had come to accept with reluctance the realization that morality could not be legislated and the increased use of mild sentencing bears testimony to the change in attitude.

Chronicling changing attitudes about morality is a difficult task at best. What is considered moral to one group or even subgroup at a given point in time varies considerably. The ideals and values of the Davenport household serves as an example. John Davenport, the author of the Fundamental Agreement and numerous sermons intended to guide the youth of New Haven along the path of righteousness, had a concept of morality and obligation that undoubtedly differed from that of his maid servant Hester Clark, who considered it acceptable to ride off into the night with Isaac Moline to savor fruits of the flesh. It also differed from that of his servant Edmund Tooly, who
participated in a "drunken gathering" for which he was fined. Davenport's servants were, like other young adults, passing through a stage of life that was understood to include a variety of temptations associated with coming of age. That different notions of morality could exist within the confines of a single household serves as a reminder that great variation must have existed in a large community over the course of a century. Moreover, if Davenport could not influence those under his roof enough to prevent them from engaging in delinquent conduct, how could authorities of the town or colony expect to be more successful?

In all probability they were not. Basically, all they could do was hope that violations of moral statutes did not get out of hand. Although most of New Haven's young adult population appears to have never compromised the moral order, there was a small group of delinquents who did. Members of this group did things like drink excessively, pilfer watermelons, and enjoy pre-marital sexual intercourse. These were individuals who for some reason temporarily rejected the moral values and obligations taught to them by their parents and masters. Their behavior took them beyond the bounds of the basic unit of social control--the family--and placed them in a setting where they had to answer to God's vice-regents, who were required by their covenant with Him and by law to punish offenders. In realistic terms, what could magistrates really do? Whip all thieves and fornicators? Stock all
drunks? Should they punish young people excessively for what amounted in actual practice to a single moral lapse?

Given the rhetoric of the puritans we half expect that they would. And indeed on occasion they did. Yet while all delinquent conduct was frowned upon by authorities, most offenders received mild penalties. Eighty-three percent of the alcohol abusers were punished by fines. For fornication and theft, the figures were 61% and 29% respectively. These varying percentages reflect the different types of penalties required by law, as well as their interpretation and application by magistrates who used discretion constantly. Magisterial discretion was a central feature of the social control apparatus because it permitted rulers to assess each case on an individual basis, to punish the "youth of honest conversation" differently from an "old notorious lyar." It is this kind of flexibility which allowed magistrates to punish delinquents one way and perceived deviants in an entirely different fashion, to rid society of individuals like John Knight, but continue to embrace younsters like John Frost, Esborn Wakeman, and Samuel Miles.

Although over time magistrates did little to stem the flow of delinquent behavior, they nevertheless vigorously screened out people whose conduct and character went beyond the limits of simple delinquency. Exclusion for deviance was an effective means of controlling serious breaches of the moral order, even though it was used
sparingly. The town's most notorious criminals underwent well-attended trials which became showcases within which the basic values of the community were periodically put on display. Some of the known deviants were, like John Knight or George Spencer, excluded for unnatural sexual misconduct. But there were others, like Humphrey Norton, whose religious and political views were so damaging that he warranted branding and banishment. Although we know little about their misdeeds, still others, like the Hunts or Edward Woodcliff, must have behaved so poorly that they too merited special sanctions. When it occurred, exclusion was useful because it punished deviants for their crimes and protected more God-fearing members of the community from their "baneful influence."

But most of those who violated colony laws were by no means considered deviant. Evidence of overt exclusion is so slight that it would not be inaccurate to estimate New Haven's deviant population at less than 50. Although there must have been deviants who stole and fornicated contrary to law, most offenders who seemed to compromise the moral order were young people reared in New Haven who at one point in their lives temporarily "fell from grace." Using alcohol abusers, thieves, and fornicators--in all 50% of those who violated colony statutes--as a base, it is clear that they were predominantly unmarried white males in their early-to-mid twenties. These delinquents differed from those who contravened local bylaws, for the
petty offenders of Chapter 3 were more numerous, typically ten years older, and married; they had already passed through the stage of life that produced most delinquent behavior. However, there is something that both groups shared in common: they all tended to be "insiders" who retained membership in the community. This was also a trait common to individuals who contentiously dragged their neighbors into court to settle civil disputes—something that forced authorities to address an altogether different threat to order.
CHAPTER IV

NOTES

1. For Knight's military disobedience see New Haven Records, I, 487 and 477; for the drinking, Town Records, I, 56. The records of his trial for abusing the Hall children are no longer extant (complete colony records begin in 1653), but his previous exploits were highlighted in the May session of the court which is found in New Haven Records, II, 137-138.

2. The proceedings of this case were omitted from Town Records, I, because they contained material "undesirable for publication" (n., 136), but can be consulted in the original Town Records, I, 101-102. In his study of homosexuality Robert F. Oaks suggested that sodomy was more widespread than previously thought. That some of these cases were handled privately and therefore never reached even manuscript records adds credence to Oaks' hypothesis. See "'Things Fearful to Name': Sodomy and Buggery in Seventeenth-Century New England," Journal of Social History (Winter, 1978), 268-281, 268-272.

3. For Miles' 1672 appearance see County Court Records, I, 55 and 58. For Frost's subsequent trials, New Haven Records, II, 169-171 and 466-467, plus omitted portions in New Haven Records, II, 328-332. As a post-script to lawmaking in New Haven it is worth mentioning that the first arson laws were written immediately following Frost's trial in 1656.


5. As noted earlier, Samuel was the son of Richard Miles, a deacon, deputy to the General Court and town selectman. Esborn was the nephew of John Wakeman, also a deputy and at one time, the town treasurer. Frost was the servant of community stand-out William Gibbard, a deputy and selectman who may have been entrusted with the care of the youth by a George Frost who returned to England in the 1640s.

6. In the years 1639-1698 a total of 1438 appearances were made. The overwhelming majority (62%) was for petty crime—the context and importance of which was discussed in Chapter 3. Although considered important, the moral order, judging from colony infractions (38%) seems to have been threatened less than previously thought.
7. New Haven Records, I, 113, for the jurisdiction of the Plantation Court; Connecticut Records, II, 25 and 108 for the County and Commissioners' Courts respectively.

8. Some proceedings of the colony between 1643 and 1653 appear in New Haven Records, I. More than likely the number of residents haled before the Magistrates' Court during this period, and thus unknown, was small. The reason is twofold. First, in the 12 year period beginning in 1653 only four individuals appeared before the court for violating colony laws. Second, if cases were serious enough to reach the Magistrates' Court, it was not uncommon for them to be mentioned in other sets of records.

9. Punishment for profaning the Sabbath was rather broad, including fine, imprisonment, whipping, and death. The provision for death, however, was deleted from the Connecticut Code of 1673. See New Haven Laws, 47; and Connecticut Laws, 132.

10. Evidently they burned part of someone's fence; County Court Records, I, 234.


12. County Court Records, I, 110. Brooks' wife, the former Mrs. Samuel Blakesley had her own troubles with the court. In 1673, two years prior to marrying Brooks and at the time a widow, Hannah was convicted of "lascivious carriages" with several people and of entertaining youths at "unseasonable hours." She received a £5, 10s fine, but the court noted that she should have been whipped but spared her because of her "frailty." Ibid., p. 72. Brooks was also an indigent. In 1686 after being convicted for fighting, he was sentenced to pay a 40s fine and post a £10 bond. Half of the fine was remitted because he could not pay it. Brooks' persistent misconduct led to forfeiture of his bond; on this occasion he was whipped and the court ordered notices prohibiting the sale of liquor to Brooks to be placed on "public posts." Ibid., 162-164.

13. Ibid., 205. It also appears that the court had quasi-admiralty jurisdiction because in 1671 William Collins was convicted of drunkenness and disorderliness on board the ship Recovery. Ibid., 42.

14. For the agreement see Ibid., 40-41; for the Halls, p. 58. More can be found on the illusive subject of bonds by consulting Paul Lermack, "Peace Bonds and Criminal Justice in Colonial Philadelphia," Pennsylvania Magazine
of History and Biography, C, (April, 1976), 173-191. And for the acquittal, which was one of ten received by those accused of violating colony statutes, see County Court Records, I, 177.


19. Ibid., I, 164.

20. Parents themselves were sometimes "delinquent" because they travelled away from home--sometimes for extended periods--leaving children unsupervised. Edmund Morgan noted that occasionally this led to prosecution of adults; Puritan Family 65-66. The aftermath of similar circumstances in New Haven illustrates why the practice was frowned upon. In 1666, Rebecca Potter, age 23 and the daughter of a convicted bugger, was given permission by her mother to house-sit for James Clark while he and his wife were away. She took care of the house, but 23 year old William Thorpe took care of her; nine months later she gave birth of a "natural child." Town Records II, 184.


23. See Wayward Puritans, 165-166 and his rationale on 167-170.


25. Wayward Puritans, 5-6.

variations existed. For instance, it was acceptable for elites (who made the laws) to rape women of low social standing, but unacceptable for a laborer to rape a noblewoman.

27. Erikson, Wayward Puritans, 7.


32. Jones, Congregational Commonwealth, 103.


34. Erikson, Wayward Puritans, 196-198; Foster, Their Solitary Way, 31-35.

35. Massachusetts Records, I, 203. During his bestiality trial (in 1642) comments by Spencer place his arrival in New England in either 1636 or 1637. Spencer was perhaps from Kempston, Bedfordshire, since he claimed he knew a New Haven resident from that locale before coming to the new world.

36. One of those Spencer drew into the conspiracy was his friend William Broomfield who was whipped and "ordered to wear irons during the magistrate's pleasure." A month earlier, Broomfield, who apparently journeyed to New Haven with Spencer, "was set in the stocks for profaning the Lord's Day and stealing wine from his master
which he drank and gave to others." New Haven Records, I, 28-29, and 31 for removal of the irons. Broomfield evidently left New Haven shortly thereafter and went to Connecticut where he was convicted of "drunkenness and striking a watchman" (in 1645) and was placed under a £20 bond. Connecticut Records, I, 130. Some months later a man was fined for "entertaining Broomfield."

That he should be referred to by his last name is significant because this seems to have been reserved for undesirables. Ibid., 135. Indeed, prior to his trial for sodomy, John Knight was identified by his surname. See New Haven Records, I, 403.

37. Unless otherwise noted, material from the Spencer case is drawn from New Haven Records, I, 62-73.

38. Similar "speeches" were made by other deviants prior to their executions. While Spencer's was only alluded to, that of a Boston woman convicted of infanticide was more complete; indeed it was published as a broadside. See The Declaration, Dying Warning and Advice of Rebekah Chamblit (Boston, 1733). Perhaps the most famous of these was the confession of Esther Rogers, a 21 year old executed for infanticide because of two illegitimate births resulting from fornication with Negroes. See John Rogers, Death The Certain Wages of Sin (Boston, 1711). A related account of such speeches is found in Ronald A. Bosco, "Lectures at the Pillory: The Early American Execution Sermon," American Quarterly, 30 (1978), 156-176.

39. Repentance by all condemned criminals, but especially felons was an important indication that the offender acknowledged his transgressions of the moral standards of the community and at the same time re-affirmed the justice inherent in his punishment. See Erikson, Wayward Puritans, 195 and Lee, "Discretionary Justice," 128-129. New Haven authorities evidently consulted Winthrop about possible sentences for Spencer. See Savage, ed., Winthrop's Journal, II, 73.


41. New Haven Records, II, 85-86. The issue of both penetration and ejaculation was important in some criminal cases. In England a person could be convicted of sodomy only if both could be proved with certainty—obviously a difficult task, which is why authorities had to sometimes settle on attempted sodomy which was easier to prove, but which carried a less severe penalty. Trumbach, "London's Sodomites," 21.

42. New Haven Records, II, 440-443. One aspect of exclusion for deviance is that it makes others aware of collectively
held values. Erikson, Wayward Puritans, 4. To authorities, it might have appeared that Potter's continued behavior in spite of previous executions for the same offense reflected a repudiation of the "policies of perfection."


46. Unless otherwise indicated, accounts of the trial proceedings are found in Town Records, I, 339-343.

47. New Haven Colony, 96.


49. New Haven Records, I, 84.

50. See Ibid., 89 for the theft, and 233-239 for the subsequent charges and trial proceedings.

51. Ibid., 35.

52. For more on the importance of boundaries see Erikson, Wayward Puritans, 10-13.


54. Ibid., III, 148.


56. Winthrop Papers, IV, 474-475.


58. David Flaherty observed that relaxation in punishments suggests growing acceptance by officials of certain kinds of immoral conduct. See "Law and Enforcement of Morals in Early America," in Donald Fleming and Bernard

59. The breakdown for Figure 4.2 is as follows:

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</table>

Totals 105 100


61. Forty-nine individuals appeared for other non-alcohol related offenses, leaving 31 whose single act of intemperance accounted for their only court appearance. One of the group of six who appeared three times before 1698 (Joseph Thomas) also appeared in 1700 and was placed under a £20 bond.

62. One of the females, Sarah Collins, was 20 and married when she made her first appearance in 1670 and was fined 10s.


64. Thus 90% of the cases ended in convictions. Nine cases resulted in acquittals (1), postponements which were never continued (2), were dropped (3), or were voluntary appearances made to request the remission of previous penalties (3).

65. County Court Records, I, 155 for the Indian, and New Haven Records, I, 133 for the use of discretion.

66. No stocking or whipping was used to punish delinquent drinkers after 1668.

67. The breakdown for Figure 4.3 is as follows:
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<tr>
<td><strong>Totals</strong></td>
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<td><strong>100</strong></td>
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</table>

68. For the theft see New Haven Records, I, 26, and for the pilfering, County Court Records, I, 136.

69. Seventy-three of the 76 appearances ended in convictions. One case was postponed and never continued, there was one acquittal, and one remission request.

70. Forty percent of the punishments non-recidivists received (classified as "other") included stocking, private correction, and pure restitution. Thirty percent of the recidivists received similar sentences. Only one of the group, Andrew Low Jr., was a career thief and it is possible that he was excluded for deviance. His repeated acts of theft (4) caused him to be placed in chains with a lock and to be severely whipped. He evidently left New Haven by 1650. See New Haven Records, I, 46, 56, 89-90.


72. The breakdown for Figure 4.4 is as follows:

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<tr>
<td><strong>Totals</strong></td>
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</table>
73. For more on pre-marital pregnancy consult Smith and Hindus, "Premarital Pregnancy in America."


76. There were seven postponements and two remission requests.

77. Of the 43 "fines," 14 or 32% were fines to which was linked the proviso that the offender could be whipped if he could not come up with the necessary cash.

78. Town Records, I, 124-125, and County Court Records, I, 81.

79. County Court Records, I, 203.


81. County Court Records, I, 194.
CHAPTER V

CHALLENGES TO SOCIAL HARMONY: CONTENTION

At a session of the Plantation Court held in December of 1645, "Hannah Marsh complained that Mr. Brewster called [her a] Billingsgate slut, and that she was sent for on shipboard to play the slut." Brewster's remarks referred to a voyage from Massachusetts to New Haven during which Hannah had allegedly been very "forward" and the "cause of much contention and unrighteousness." Although not specified in the records as such, the issue raised in Marsh's complaint was slander—the cause of 53 similar private disputes heard by local or colony authorities during the seventeenth century. Marsh initiated her suit because she desired the "repair of her reputation;" in the end, Brewster publically acknowledged that he was "sorry he spoke rashly, and that he intended no such charge against her."¹

Presumably Hannah Marsh was satisfied with Brewster's apology. There is no indication in extant records that their conflict was continued in subsequent sessions of the court. Local officials had done their part in resolving the contentious situation. Yet differences between individuals like Marsh and Brewster were a pervasive fact of life in early New Haven. Within months of the settling of government, Humphrey Spinnage and Thomas Saulle had appeared

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in court and requested local officials to settle a dispute. Their action was the first of 370 civil suits recorded between 1639 and 1701. Whether or not this is an indication that "by nature the puritans were prone to litigiousness," or that dragging one's neighbor to court "was a favorite form of indoor sport," remains to be seen. At the very least it suggests that civil disputes were plentiful and, by implication, that if left unchecked, threatened to compromise harmony in the well-ordered community.

There can be little doubt about the divisive aspects of litigation. The act of entering a complaint is _prima facie_ evidence of discord; plaintiffs sue defendants because they feel that somehow they have been wronged. Every civil action, whether centering on replevin or defamation, had the potential for drawing in others and disrupting social harmony. Indeed, it is quite possible that a bitter civil suit promoted more disorder than any single act of deviance, like bestiality, which in effect was a victimless crime. But notwithstanding the contention associated with litigation, it is possible that the process of resolving private disputes in court was a means of securing tranquility in the long run.

Recent scholarship on litigation suggests that this was one of its principal functions. In eighteenth-century Massachusetts, for example, civil actions were encouraged as a way of settling private controversies before they led to violent confrontations between disputants. A similar position
has been taken relative to litigation in early modern England where an increase in the number of lawsuits is believed to have "balanced a decline in the incidence and social acceptability of violence, and marked an important step towards a more peaceful and settled society." Closer to home, David Thomas Konig has emphasized that litigation in Essex County Massachusetts was a "useful agent of orderly and desirable social change," and that it reaffirmed the values and social norms of the well-ordered community. Thus, while it is accurate to say that civil suits were sources of tension and disharmony, it is conceivable that litigation also promoted order.  

Despite explicit recognition of this paradox by scholars, our acquisition of specific knowledge about the quantity, context, and resolution of private disputes is minimal. In order to assess the role litigation played within the local community we must ask questions about the distribution of lawsuits over time and the kinds of controversies which arose. What, if anything, do these reveal about the role litigation played in promoting order? Because the process of filing a suit was linked to law and legal procedure in general we need to know more about the resources litigants had at their disposal to pursue their interests in court. Furthermore, it may well be appropriate to try and discover if there was a relationship between private controversy and the evolution of law in the community. Is there evidence that litigation was in fact a "useful agent" of social
change? If so, this might have some bearing on the way disputes were resolved. Indeed, it may well be that changes in the process by which cases were concluded can shed light on the attitudes of rising generations, just as earlier a softening in the punishment for fornication indicated a new perspective on morality. Finally, the context of certain kinds of disputes should be examined. Is there an indication, for instance, that slander suits were a means of venting pent up aggression, as seems to have been the case in other locales? If so, how effectively were authorities able to control these potentially divisive situations? Only by first identifying and assessing these fundamental details about litigation can broad determinations be made about its relationship to order in early New Haven.

If the rhetoric of New Haven's "pillars" and the architects of the New England Way in general had been embraced faithfully, there would have been little need to resolve private disputes through law; residents would have been so righteous and "charitable" in their relations with one another that contention would have been non-existent. Although the founders of New Haven hoped that their Wilderness Zion could escape the kinds of disorders they had witnessed in England and Massachusetts, they were pragmatic enough to empower magistrates to preside over criminal and civil cases when they did arise. Most of the cases which came to their attention were criminal in nature. But between 1640
and 1699, officials did end up hearing 359 private disputes. As proved to be the case with criminal offenses, the overwhelming majority (216 or 60%) were handled by local authorities. Nearly all were heard in the Plantation Court prior to the absorption by Connecticut and the judicial reorganization giving birth to the County Courts in 1666. From that point on, civil causes ordinarily were entered in sessions of the County Court, although minor grievances were adjudicated in the Commissioners' Courts.  

It seems appropriate that lawsuits were resolved primarily on the local level since 95% of the cases involved New Haven residents. Only a handful of private disputes (18 or 5%) were filed by outsiders exclusively. Quite simply, controversies like the issue of debt in 1644 between Virginians Richard Catchman and Thomas Hart were heard in New Haven on only the rarest of occasions. For the most part, contention arose between local residents like Marsh and Brewster (239 or 66.5%). An additional 102 suits (28.5%) involved at least one New Havenite with one or more non-residents, as exemplified in a controversy in 1652 when James Rogers of Milford sued John Charles for "carrying" his servant to "Long Island, by which means he was suffered great damage." Most of these cases of split residence (75%) were similar insofar as they centered on economic issues like debt, replevin, and unspecified damages.

Once people filed their suits one of two things generally happened. Either their cases were resolved through a
specific decision for the plaintiff or defendant, or, for one of a variety of reasons, their cases never reached a conclusion. For those that did, the favorable verdict Christopher Todd received in 1665 when he sued Cornelius Williamson for debt on two bushels of meal was typical, plaintiffs won 195 (85%) of the 229 completed cases. Individuals who initiated actions tended to be better prepared with evidence that would stand up in court, had attorney-like representatives to plead their cases, or presented more reliable witnesses. Preparation like this, however, did not always guarantee a victory. Indeed, 34 or 15% of the cases ended in favor of defendants. In 1650, for example, Jeremiah How sued a resident of Southampton, Long Island for debt. How was unable to prove the £5 debt he was seeking to recover and as a result local officials awarded the Connecticut man 20s in damages (for the cost of his journey to New Haven) and ordered How to pay court charges.

Although 229 of the 318 cases with known resolutions led to a ruling, just over a quarter of the total remained unfinished in the sense that there was no known settlement. The reasons for this varied. In some instances, such as the dispute between Spinnage and Saulle in 1639, no explanations are given. On other occasions, cases were non-suited because plaintiffs failed to appear in court to prosecute their cases. That is what happened in 1686 after Nathan Tuttle had warrants served on fence viewers Samuel Munson and Jeremiah How Jr. "for neglecting their work to his great
damage." Still others, like a 1659 case of debt between another member of the Tuttle family and one of the Atwater brothers, were officially "withdrawn" after the pleading of the case by the plaintiff, who then ordinarily had to bear the court costs associated with the case.  

A handful of other cases were dropped for unknown reasons, were postponed and never continued, or were thrown out of court because at the time of the initial pleading authorities ordered the litigants to seek private resolutions by "advising them to get some friends to help issue it between them so that they may live in neighborly love together." Although the details concerning the ultimate resolution of these 89 "unfinished" cases are lacking, it is quite probable that they were settled to the satisfaction of both parties.

The 359 cases entered in the records between 1640 and 1699 were distributed unequally in time (Figure 5.1). Over the course of the century there was a downward trend in the percentage of cases that appear in extant records. The period of greatest contention occurred in the early stages of settlement when laws, economic relations, and physical organization in the community were still ill-defined. In the first decade of the town's existence, 100 or 28% of all civil suits were filed; for the second ten years the figures were 74 and 21% respectively. As will be seen shortly, some of the earliest lawsuits, like Meiggs v. Gregory (1647), had a bearing on the evolution of law in New Haven and hence the overall effort to create social stability.
Following this initial flurry of private disputes, the number of cases dropped off steadily for the next decade and a half, reaching a near low of but one case in 1661. The overall decline in cases continued until the last years of the century. Thereafter, however, as was so with certain moral offenses, like fornication, the number of cases increased to 66 or 18% during the 1690s.

The distribution depicted in Figure 5.1 is probably accurate. Indeed, it bears similarities to the highs and lows seen in the distributions of local and colony infractions. But as was true with these earlier representations, certain cautions must be noted. Three are particularly noteworthy because they may have an affect on our conception of the way lawsuits were distributed.

First, it is clear that cases were being heard in official capacities that also went unrecorded. Occasionally the County Court records include references to cases that had been tried originally in the discretionary Commissioners' Courts, for which no records remain. In 1700, for example, Thomas Wilmot appealed a previous judgement at a session of the County Court so that "it might be tried by a jury." A few years earlier, Joseph Baldwin appealed the ruling in a debt case heard at "an inferior court held at New Haven." Perhaps each man did so with good reason, because in both instances the initial judgements were overturned. References like these indicate that private disputes were heard on the local level after 1666, but were not being
Figure 5.1
Percent Distribution of Civil Suits in New Haven, 1640-1699

Sources: New Haven Records, I & II; Town Records, I & II; County Court Records, I & II; Court of Assistants Records.
recorded.

A second reason for suspecting that some controversies never found their way into official records relates to the informal process of resolving disputes known as arbitration. This out-of-court method of ironing out wrinkles in private relations was encouraged greatly in the early years of settlement. Normally disputants pleaded their causes in formal court sessions and a ruling would be made by magistrates or the case referred to arbitration. This procedure insured that the action was recorded, although the outcome of many arbitrated cases is unknown. However, there were also instances where this practice was not followed; cases were referred to arbitration directly and never appeared in formal court records. For instance, in March of 1667 John Hall Jr., sued William Bradly "for unjust detaining of an award given in arbitration." Their case is suggestive in two respects. First, the original arbitration had not been recorded, hence had Bradly paid Hall as stipulated there would have been no record of the case. Secondly, the fact that the case was mentioned only after the original attempt at arbitration failed hints that this method of non-binding conflict resolution was not especially effective.¹⁴

Finally, the regime of Sir Edmund Andros may have had an affect on the number of suits filed in the late 1680s. Between 1687, when Connecticut was incorporated into the Dominion, and 1689, when it was overthrown, only three civil actions were reported. A comprehensive reorganization
of the judiciary took place once the Dominion had been established and Andros traveled to Hartford in November of 1688 to order the County Courts dissolved. They were replaced by Quarter Sessions, which met sparingly before the Dominion fell. During that period no litigation was undertaken by New Haven residents. Based upon his analysis of Essex County, David Konig has posited the theory that colonists consciously "suppressed" their conflicts because the Dominion courts and the use of common law threatened their "accustomed system of determining title to land." Whether similar circumstances account for the absence of civil actions in Connecticut courts is, lacking more explicit evidence, pure conjecture. The reorganization nevertheless may have had an affect on the general distribution and for this reason is worth noting.

In the final analysis there is no way of knowing how many lawsuits went unrecorded because they were heard in Commissioners' Courts or were arbitrated independently of the formal court structure. Yet it is reasonable to conclude that many of these unrecoverable cases were similar in content to the other 359 disputes filed between 1640 and 1699. Indeed, the appeals from inferior courts and the case of arbitration just cited centered on the issue of debt. This is hardly surprising since most of New Haven's lawsuits arose over economic considerations (Table 5.1).

Heading the list was debt, the source of 118 or 33% of the cases. Throughout the century references like "John
Cooper entered an action of debt against Mr. Allerton. But there were also a number of tangential causes that were linked to the economic life of the community. Replevin, which accounted for 64 or 18% of the cases, was one of these. In 1652 Henry Morill sued two keepers of the herds for temporarily losing track of his cow. The damages he sought to recover were for "two days time he spent to seek her, beside the loss of milk." Morill felt the keepers "owed" him for his economic losses and the court agreed; he was awarded 3s 4d for his two days work, 12d for his milk he lost," and court charges amounting to 4s. Similarly, cases of nonfeasance tended to be filed because plaintiffs suffered monetary losses. When Richard Beach was sued in 1642 for "not performing covenant in the work which he undertook to do at the mill" authorities ruled that "he should make good the damage." If all the cases involving monetary losses are considered together, they accounted for nearly three-quarters of the civil suits filed in New Haven.

Although economic misfortune in one form or another may have been the source of most of the civil disputes, there were others which tended to generate contention. Slander is an example. Between 1640 and 1699, 54 actions of defamation or slander were filed. These represented 14% of all lawsuits—by far the largest portion of non-economic related cases. Slander was a broad term which included instances of simple name calling in the heat of an argument.
but also embraced more serious and calculated remarks aimed at damaging an individual's reputation. It appears that numerous slander suits grew out of neighborhood disputes, as proved to be the case in 1666 when Peter Mallory sued Elizabeth Hotchkiss because she claimed that the "work of the Devil was done" at the plaintiff's house. The court ruled on behalf of Mallory and in an effort to stave off related actions by residents of "the farms," advised all to "live more quietly and peaceably for the future, and not throuble the Court with anymore Vexatious suits." This admonishment sheds light on the way slander suits in general were regarded—that they were silly and often unnecessary. For this reason both the New Haven and Connecticut colony codes included provisions for punishing individuals who capriciously dragged someone to court. The laws, headed "Damages Pretended" or "Vexatious Suits," warned that false actions pretending "great damages or debts, to discredit, trouble, or vex his, her, or [an] adversary," would lead to a fine. Ideally, the kind of contention generated in Mallory v. Hotchkiss could be avoided if local residents pursued the "policies of perfection" in their daily lives. Failing that, legal provisions incorporated into the codes were aimed at discouraging suits of this nature. Yet when they did reach the formal setting of the court, officials endeavored to resolve the controversies equitably so that in the future, disagreements between the same parties would be less likely to occur.
Table 5.1
Civil Actions in New Haven,
1640-1699

<table>
<thead>
<tr>
<th>Action</th>
<th>No.</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Debt</td>
<td>118</td>
<td>32.9</td>
</tr>
<tr>
<td>Replevin</td>
<td>64</td>
<td>17.8</td>
</tr>
<tr>
<td>Slander</td>
<td>54</td>
<td>14.5</td>
</tr>
<tr>
<td>Nonfeasance</td>
<td>36</td>
<td>10</td>
</tr>
<tr>
<td>Unspecified Damages</td>
<td>22</td>
<td>6.1</td>
</tr>
<tr>
<td>Animal Damages</td>
<td>17</td>
<td>4.7</td>
</tr>
<tr>
<td>Unspecified Difference</td>
<td>15</td>
<td>4.2</td>
</tr>
<tr>
<td>Other</td>
<td>33</td>
<td>9.8</td>
</tr>
<tr>
<td>Totals</td>
<td>359</td>
<td>100</td>
</tr>
</tbody>
</table>

Sources: New Haven Records, I & II; Town Records, I & II; County Court Records, I & II; Court of Assistants Records.
In addition to debt, replevin, and slander, there were other lawsuits which arose in New Haven over the course of the century. None of these occurred with great frequency, however, and therefore they tend to reveal something about the kinds of disorders that in the main members of the community successfully sidestepped—especially in light of controversies known to have existed in other locales. In New Haven, for example, land boundary disputes were rare; there were but 10 or 3% of the total number of cases recorded between 1640 and 1699. In contrast, property litigation was pervasive in Essex County, Massachusetts communities. Trespass, which accounted for nearly 7% of the cases in Newtown, on Long Island, was the object of litigation on but six occasions. As was true with other categories of litigation, trespass could take a variety of forms. One of the most bizarre cases of trespass occurred in 1668 when William Edwards of Hartford sued New Havenite Joseph Baldwin for fornicating with his daughter-in-law. After being postponed several times, the case was dropped because of lack of evidence. Finally, there were a handful (5 cases) of what was called extortion but could be better described as unrighteous business practices. When a Mrs. Pembroke brought suit against Joseph Dormer in 1693, it was because he had cheated her on a business transaction: the pound of beeswax he sold her was later found to contain a stone embedded in its center. If the lack of cases citing shopkeepers and merchants with fraudulent dealings is any
indication, then it would appear that transactions were generally conducted in an above-board fashion.

Filing a civil action was basically very easy, although rules bearing upon pleading cases were increased over time. Prior to the publication of the Eaton Code in 1656 there were few procedures relating to litigation. Initially all an individual had to do was complain to authorities, the way Hannah Marsh did, and a case could be heard to decide "differences that may arise." Within a few years of settlement a system of set fees was established to pay the marshal for every warrant or attachment he issued. The first explicit statement of jurisdiction was made in 1643 when the New Haven Colony was formed. At that juncture it was officially noted that Plantation Courts could hear all civil causes which did not exceed £20 in damages. Suits for damages higher than that amount were reserved for the Magistrate's Courts.

That is where the procedures stood until the Eaton Code was compiled. Then it was specified that litigants had to be at least 21 years of age and that filing fees totaling 10s were to be assessed to each plaintiff. Essentially, these were the only procedures. Any adult with 10s could file to have a difference resolved. However, so that the poor would not be prejudiced against, the code provided for plaintiffs to sue "in forma pauperis." When the Connecticut Code was published in 1673 the section on "Actions"
was broadened somewhat to require "at least five days notice" to defendants to prepare their cases. Costs were also increased slightly and a section on "Small Causes" was added setting a 40s ceiling on cases heard in Commissioners' Courts which had a filing fee of just 2s. In all courts the plaintiff retained the right to non-suit himself before a verdict was reached.  

Overall there were seven provisions in the Eaton Code and twelve in the Connecticut Code directly bearing on litigation. Both codes reflect a verbatim borrowing from the *Laws and Liberties* of Massachusetts in matters pertaining to private law, although the Connecticut compilation did have some different headings. This is hardly surprising given the fact that it was written a quarter of century later. For the most part all three codes included sections relating to major categories of litigation. Those portions on "Bills and Specialties," stipulated what was considered to be a "good debt." In the case cited earlier where John Cooper sued Isaac Allerton, his principal evidence was "a bill dated November 5, 1653" which the court judged valid thereby enabling Cooper to win his case. Other sections of the codes dealt with actions ranging from "Replevry," whereby plaintiffs could "satisfy damage," to Suits Vexatious" and "Barratry," which were aimed at slanderers who were predisposed to drag neighbors to court on the least provocation. Though limited, these procedures and rules were included in the codes to help authorities resolve
private controversies in an equitable fashion. And the
codes were useful to litigants like Mary Osborne who was so
upset by an unfavorable verdict that she requested members
of the court to "consider of the law page 37" which em­
powered justices to alter awards granted by juries. On
this occasion her knowledge of the law worked to her advan­tage and the award was reduced.

While these provisions were formulated to establish
guidelines for civil actions, litigation in turn played a
role in shaping criminal statutes and regulations which were
designed to promote order in the community. Recall, for a
moment, Meiggs v. Gregory, where officials were confronted
by a novel set of circumstances which posed a threat to
order. From Meiggs' perspective, the issue in his suit was
nonfeasance. Yet as the details of the suit emerged, offi­
cials realized that more was at stake. The larger question
of quality control and unrighteous business dealings cap­
tured the attention of civil officials who perhaps came to
view Meiggs' cause of assumpsit as secondary. Although
they had encountered blatant violations of bylaws governing
weights and measures prior to 1647, Meiggs' suit emphasized
the need to "branch out" still further through legislation
and to create an agency of control charged with the respon­sibility of inspecting shoes and leather. In essence,
the suit played an important role in promoting order
through consumer legislation which was begun within months
of the case. It also generated official inquiries into
coopers gauges and the measures of other artisans. Indeed, as suggested at the close of Chapter 3, the suit may have been responsible for the enforcement of weights and measures bylaws that cost Mrs. Gregson and company 12d each. 32

Most cases of nonfeasance did not have such a pronounced impact on the apparatus of social control in early New Haven. There were, however, other kinds of disputes that did have a direct bearing on defining social order. Certain debt or damage cases contributed to new legislation and as such bore a relation to criminal prosecutions. Moreover, cases relating to crop damage caused by livestock in the long run served to promote order.

As illustrated earlier relative to law and petty crime, livestock control was a problem in New Haven. Most of the town's bylaws concerned the control of livestock and the maintenance of fences. And with the exception of the prosecution of military offenses, these ordinances were violated more than any others. The height of enforcement occurred in 1649 and 1650 when 70 or 68% of the 102 livestock violations were prosecuted. This in turn was preceded by a two year period beginning in 1647 when nearly a quarter of the livestock control laws were passed. And, to add a final bit of perspective to the context of livestock management, it was in the years 1644 and 1645 that 41% of the civil suits for damages caused by animals were filed. This sequence of events—litigation, legislation, and enforcement—occurred in a concentrated period of time and suggests
that more than one cause and effect relationship may have existed.

The decade between 1640, when the first order restricting hogs in the neck was issued, and 1650, when most of New Haven's livestock violations took place, holds the key to appreciating how these three elements of social control were related. For reasons outlined in previous chapters, it appears that local officials were slow to recognize and respond to problems associated with controlling livestock. Although several orders were made in the early years of settlement, it was not until 1644 that the first bylaw was passed. And it was not until the position of public pounder was instituted in 1648 that truly effective enforcement began. Gradually, officials realized that meaningful measures of control had to be introduced into the community.

The realization came in the form of private controversies between friends and neighbors who suffered damages caused by roaming animals. In fact, the first of the 17 suits relating to livestock damage was heard in 1640, a month after the first orders were issued. In a case lacking details, the court determined that "Mr. Wilks shall pay 5 bushels and a half of Indian corn to Thomas Buckingham for corn" destroyed by the defendant's hogs. It would be nearly two full years before the next suit was recorded, but the issue was still the same: John Owen "had some damage done in his corn by hogs" through the neglect of a group of residents who had not "made up their fence in
season.\textsuperscript{34} During this period a few orders were issued, but it was not until 1644--five years after settlement--that authorities began to take purposeful steps towards stemming what was becoming a contentious situation.

The cause which set the social control apparatus into more complete motion was filed by the gunsmith, Thomas Nash, in 1644. Nash's complaint was made because he "suffered damage done in his corn to the value of nine bushels by hogs in their quarter," or neighborhood. Authorities responded by ordering a committee to "view fences of the said quarter" and assess damages on respective owners. Recovering damages was one thing, but getting owners to repair their fences "speedily" was another. A few months after his hearing Nash returned to court and requested satisfaction for an additional twelve bushels that had been ruined because quarter fences were either defective or completely down. Figuring in the blame was none other than the Town because its fence "was not set up in time."\textsuperscript{35} It appears that Nash's second appearance had a hand in convincing authorities of the need for a more effective means of dealing with the problem. Finally, rulers recognized that the "plantation has been much exercised with hogs destroying of corn." All agreed that it was time to take into "serious consideration how they might prevent the like damage" in the future. The solution lay, or so it seemed, with appointing fence viewers for each of the quarters.\textsuperscript{36}
Ultimately, however, these informal committees proved to be ineffective. Indeed, more suits for animal damage were filed in the year following implementation of the committees than at any point in the town's history. After John Walker brought suit against Thomas Morris in 1645, the marshal warned members of the quarters to "get the defective fences mended." Unfortunately, Thomas Kimberly's warning did not exactly cause planters to run out and repair their fences. After all, at this point in time there were few laws on the books capable of leading to prosecution for failing to maintain fences. Perhaps this is why Theophilus Eaton had to report in 1648, that "many are discouraged from the labor of husbandry, because their corn, when they had sown it, is spoiled." Finally, after several years of frustration, contention, and informal attempts to resolve the problem, authorities created the position of public pounder and backed it with meaningful legislation.

It was immediately following the appointment of John Cooper as pounder and the establishment of bylaws with fixed penalties that the problem appears to have been controlled. But it took the prosecution of negligent property owners to insure conformity. Indeed, within two years of Cooper's appointment, 70% of all known violations of the livestock control bylaws were prosecuted. In light of this progression of events, the role litigation played in bringing a semblance of order to the community appears to have been significant. If, in fact, litigation served to promote
order and stability, then a sizeable portion of the civil suits stemming from animal damages should have occurred prior to the passage of bylaws and the prosecution of offenders. That is precisely what Figure 5.2 suggests. Before 1648, when the pounder was appointed and a quarter of the livestock control laws were passed, nearly 60% of the civil actions had been filed. Conversely, just 1% of the violations had been prosecuted—a reflection of the fact that there was little enforcement prior to 1648. The clustering of violations in the three year period from 1648 to 1650 reflects both the formulation and enforcement of livestock control ordinances. In that period, 70 or 74% of the 95 violations prior to 1663 were prosecuted. Thereafter, prosecutions dropped dramatically, as did the percentage of civil actions. Furthermore, it has already been demonstrated that criminal cases prosecuted after 1650 tended to result in postponements or acquittals—an indication that the problem was being brought under control.39

Although it appears that livestock control was less troublesome by the 1650s, civil suits continued to be filed. Yet even these point to a change from the causes heard in the 1640s. For instance, in 1657 Edward Perkins sued a Dutchman named Steendam for damages done to two acres of peas. The culprits were hogs who had squirmed through a hole in the defendant's fence. Steendam was aware of the defects and had previously "agreed with men to make it new." He therefore tried to pass the damages on to the workers.
Figure 5.2
Percent Distribution of Livestock Litigation
and Petty Offenses, 1639-1662

Key: Solid line: Litigation
     Broken line: Violations

Sources: New Haven Records, I & II; Town Records, I & II.
The court said no, awarded Perkins six bushels of peas plus court costs, and then told the defendant that "he may seek remedy from those who were to do his fence and did not." Unlike the earlier suits which were characterized by blatant neglect or the complete absence of fences, Steendam had taken steps to have his repaired—an indication that he was attempting to conform to the regulations. Similarly, testimony in a case from 1651 provides another hint that the problem was being brought under control. In a suit between Thomas Powell and William Gibbard centering on the former's corn crop which had been "eaten and spoiled," local fence viewers played a primary role in determining damages in the case. It was through active participation by viewers who were requested to decide if the damage was caused by hogs or by cattle that a judgement on behalf of Powell was reached. The presence of the viewers indicates that the livestock problem was being faced head-on. Over time, their role increased and in 1654 viewers (unlike those of the 1640s) were ordered to take a public oath "to discharge the trust committed to them."

By 1654 the circumstances surrounding the control of livestock were different than they had been a decade earlier. The legal basis for control had since been expanded, with litigation playing a fundamental role in promoting change. In the early years of settlement most of the legal activity associated with livestock control was manifested in lawsuits for damages caused by animals. Bylaws and their
enforcement were non-existent. By the fifties, however, many orders and local ordinances had been passed, offenders were being prosecuted, the pounder was a viable position of authority, and the office of fence viewer had become institutionalized. This change is suggestive on two counts. First, it appears that certain civil actions served a function by helping to bring physical order to the community. Surely litigants did not file suits with this express goal in mind; their immediate concern was to recoup monetary losses. Their suits, however, called to attention the need to limit contention through legislation which became the basis for punishing transgressors. It may well have been that penalizing petty offenders individually fostered stability by limiting conflict between two or more parties. Second, the fact that laws were passed and violators were prosecuted suggests that institutionalization, not good will or utopian rhetoric, was needed to order livestock offenders in New Haven. Simply put, individuals failed to meet their obligations voluntarily and in response to this negligence, law became a more pervasive force in the community.

This tendency for the town to become increasingly "institutionalized," for it to rely less on informal procedures, relates directly to another facet of conflict resolution in New Haven—arbitration and its decline over time. It was suggested earlier that this informal method of resolving private controversies was encouraged in the initial years
of settlement. And it was utilized heavily at first even though it never came near to being the foremost means of ending disputes. Yet, in 1645 when Richard Malbon sued a Mr. Caffinch "for damage done in his corn at several times," arbitration was employed. Caffinch, who evidently had common business interests with the plaintiff, argued that the damage "came by defect of their own fence." Because officials believed the case was "something dark," both parties consented to allow the matter to be resolved by three individuals who were to "view and arbitrate and determine" the outcome of the case. But almost as frequently as it was used to iron out problems in the 1640s, references to displeasure with this technique of resolving disputes surface in records of the 1650s. When Thomas Powell sued William Gibbard in 1651, both parties were urged to submit their difference to arbitration. Originally Powell agreed, but Gibbard declined. Then, when the latter finally accepted the proposal, the plaintiff refused; "He now desired it might by issued by the Court, [so] that he may have no more trouble about it." Powell's remarks suggest that arbitration lacked the speed and authority associated with court ordered decisions. Although reasons for rejecting arbitration undoubtedly varied, it is clear from Figure 5.3 that over time it lost its appeal as a means of conflict resolution.

The basic function of arbitration was to stifle private disputes before they reached the public spotlight
and, perhaps more importantly, to allow disputants to have a role in determining the outcome of the case. In so doing the spirit of compromise generated by participation in determining awards became a possible avenue for limiting future contention. If the trend in New Haven is at all indicative of other locales, then the procedure was used most extensively during the first 25 years of settlement in communities founded prior to 1650. It was utilized in Boston as an alternative to local and colony courts. It was used in Dedham, where it was presumably "an ephemeral but effective" means of resolving debt and slander cases. And it was employed extensively in Essex County communities in an effort to defuse contentious conduct in a peaceful and loving fashion. Arbitration was also used in England where it was considered to be "of great importance in limiting bitterness and conflict" without resorting to formal litigation. In areas where it was used, it appears that restricting the scope of contention was the foremost aim of arbitration.

Unfortunately, our understanding of the nuts and bolts of the process is fragmentary and therefore makes it difficult to assert with confidence why this means of resolving disputes was slowly phased out. For example, we do not know how most of the arbitrated cases were resolved; any number of the actions brought before the bench could have originally been the subject of arbitration. We do not know with certainty how long it took the typical case
submitted to arbitration to be resolved. Nor do we know precisely how binding were the awards given in arbitration. In the case cited earlier, where John Hall sued William Bradly, the issue might have been prompted by Bradly's refusal to take the arbitrators judgement seriously. This lack of knowledge about the procedure is odd, given the important role it was supposed to have played in the covenanted communities of New England.

Nevertheless, we do know enough about the way the process worked to gain some appreciation of why it was useful. Once "judicious men," "three indifferent neighbors," or "friends" had been selected as mediators, they reviewed the circumstances of the case. If necessary, they could call witnesses, although formal legal procedures like serving warrants probably were not used. Finally, the arbitrators would sit down with the contending parties and "hammer out a practical agreement on a give-and-take basis." This can be seen at least partly in the details of a case arbitrated in Massachusetts in 1640.

The issue in the action was nonfeasance. A Mr. Norton was sued by his servant Richard Arresby for failing to fulfill the terms of a contract. The points in contention were the date when Arresby's service began and monies spent by him after his arrival in New England. In essence, Norton claimed that he offered Arresby 20 nobles annually (which pleased him), that his "time" was to begin on August 10, 1639, and that he had not agreed to pay for Arresby's
Figure 5.3
Arbitrated Cases in New Haven, 1639-1662

Key: Solid line: Actual cases
      Broken line: Trend

Sources: New Haven Records, I & II; Town Records, I & II.
transportation from England. Also entering into the case was the status of Arresby's wife who had been a "charge and to no benefit, having nothing to do but milk cows." Chosen to arbitrate the case were Governor Winthrop and William Tynge, who then listened to Arresby's side of the story.

In response to Norton's position, Arresby argued that his time was to have begun when he landed at Dorchester on June 23, 1639. In addition, he pleaded that his wife "was entertained by Mr. Norton's consent," and that she had been useful because she provided "diet" for Norton's workers and had made butter and cheese which she sent to Mrs. Norton. Finally, Arresby maintained that it was Norton's responsibility to reimburse him for living expenses following his arrival.

Ultimately the arbitrators reached a decision suitable to both parties. Their agreement stipulated that Arresby's time was considered to have started on July 1--something of a compromise. His wages "for himself and wife" were determined to be £20 annually. Norton was held responsible for Arresby's expenses, but the costs of his passage were "set against the money he disbursed for his wife,"-- a concession by the plaintiff. In the course of determining an equitable solution to the case, Winthrop and Tynge addressed each of the major issues in the action and "hammered out" an agreement to the apparent satisfaction of both disputants.

Few examples of arbitrated cases anywhere, including New Haven, spell out the contending positions and final compromise
as early as Arresby v. Norton. For New Haven, the most precise information about an arbitrated action is contained in a reference to an award granted to Thomas Pell in 1649 after he sued John Budd of Southold. William Wells of Southold and New Havenite Thomas Munson were chosen as arbitrators. They determined that Pell was to receive a bedstead, "two lockes, some bags of wool, and some hoop-roots and hoopoles." In this particular instance, Pell was seeking verification of the award so that he could enter the house containing these items without having to worry about being sued for trespass by its current occupants.\textsuperscript{51}

Beyond this one example, details of arbitrated cases are virtually non-existent. Thus, in addition to the fact that arbitration declined over time, about all that is known in a concrete way is that the actions which were mediated were not restricted to one particular kind of cause. Actions of relpevry were arbitrated, as seen in the 1645 dispute between Nathaniel Turner and his servant over the death of a cow "by default of the said John Hill in working him contrary to his master's express command."\textsuperscript{52} So too were actions of nonfeasance such as the one "depending between Robert Seely and Daniel Paul" who agreed to have two residents "arbitrate and determine as they shall see cause."\textsuperscript{53} Even cases of slander were occasionally put to arbitration, which is what happened in 1654 when John Tompson sued Seely because the latter reported that during a business transaction the plaintiff behaved "dishonestly and in an
unjust way.\textsuperscript{54} The arbitration process was used to decide a variety of causes including debt, trespass, differences between outsiders, like Catchman and Holt,\textsuperscript{55} and in cases arising from damages caused by animals. Indeed, the last known case of arbitration occurred in 1659 and centered on the issue of satisfaction for damage done to John Down's corn by Thomas Mulliner's horse. Evidently they were the last residents to agree to have their difference "referred to arbitration," and because they did, "no sentence was given in the case."\textsuperscript{56}

It is perhaps fitting that the last cause to be arbitrated in New Haven would end officially on an inconclusive note. It serves as a reminder of the difficulties associated with assessing the role arbitration played in limiting contention in the community. M.J. Ingram has summarized as well as anyone the import of arbitration when he noted that it "could give the wronged party adequate redress, but the relative informality of the procedure made it possible to be flexible... to persuade the parties at issue to compromise their rights in the interests of harmony."\textsuperscript{57} The spirit of compromise was clearly the goal of arbitration and frequently it worked, as evidenced in Arresby v. Norton. And, aside from the aim of compromise it is known that arbitration was also viewed as a means of obtaining "a loving and peaceful end" to private disputes.\textsuperscript{58} It was employed in New Haven and elsewhere to settle controversies ranging from debt to slander, and for about 25 years authorities
were able to persuade disputants to embrace the procedure as an alternative to formal litigation. Based on evidence like this, it would seem that arbitration had much to recommend it. For this reason it is more difficult to understand why it was phased out after 1660.

A number of different forces seem to have contributed to its decline. Comments made by Thomas Powell in 1651 suggest one of the most important of these: the desire to resolve actions decisively. Slowly but surely the formal environment of the courtroom was supplanting the informalities of arbitration. Actions heard by the bench were resolved quickly and backed by established law. Because the outcomes of arbitrated cases in New Haven are so difficult to determine, it is impossible to document accurately displeasure with the system. Nor is it known who was growing weary of it. Was it the dissatisfied litigant, like Powell, who sought a no-nonsense solution to a source of irritation? Or were those on the opposite side of the bench no longer encouraging arbitration because they realized that it was often slow and non-binding? Was this tacitly recognized by the fact that nowhere in the codes of 1656 and 1673 is mention made of arbitration?

If there was a decreased tendency by officials to urge disputants to arbitrate, then it could have been a response to an increase in the failure rate of arbitration. If what was happening in Essex County was simultaneously occurring in New Haven, then clearly the system was failing. David
Konig has argued that the failure of arbitration reflected the "failure of the local community" to resolve private controversies. This notion is appealing because it fits well into other paradigms of social change--declension, spatial fragmentation of New England towns, and increased mobility and independence by the rising generations. However, it was not the community that was failing. Rather, it was the rhetorical and idealistic foundation upon which it was built. In point of fact, by the 1660s communities were better equipped to resolve private disputes because positive law had developed into a functional and pervasive force within them. By the sixties, for example, livestock damage suits had disappeared because they had originally promoted meaningful legal change. Throughout the century law on the local level reamined responsive to the needs of society. Furthermore, local courts continued to hear and determine private disputes. Perhaps the decline of arbitration was less a falling off of the policies of perfection or an indication of community weakness, than it was a strengthening of the legal milieu which simply provided a more satisfying method of resolving private controversies.

Contrary to what one might expect, the phasing out of arbitration was not linked to sharp increases in major categories of litigation. By the 1660s cases of debt, replevin, and slander were being heard with less frequency than had been so in the early years of settlement. Pres-
sures associated with an increased caseload do not, there‐
tofore, appear to have been a factor in the decline of arbi-
tration. By 1660, 58 or 49% of the debt cases had been
heard, as had 28 or 44% and 22 or 42% of the actions for
replevin and slander respectively. Although the context
within which these disputes arose is less clear than the
circumstances of animal damage suits, they nevertheless
accounted for 65% of the lawsuits filed in New Haven and
as such merit examination.

Because they were related to routine economic activities
in the community, causes of debt and replevin shared much in
common. For instance, both were distributed similarly over
time (Figure 5.4). As suggested above, the greatest per-
centage of these suits occurred early when, for a variety of
reasons, the economic life of the community was most ill-
defined. It was perhaps during the stage of acclimation to
the new world environment that individuals seeking economic
opportunity engaged in speculative ventures that fell
through and that there was a greater tendency to enter into
verbal contracts which led to lawsuits for indebtedness.
Following the high concentration of suits in the early
years, a steady decline began and continued for two or
three decades. It was during this period of decline that
arbitration was phased out. Moreover, it was not until
the 1680s and 1690s that suits of both kinds once again
began to increase.60

Unlike the intense periods of law enforcement that
produced wide ranges in the number of offenses during a given period, the range of debt and replevin cases was narrow. On three occasions—1647, 1690, and 1698—there were as many as four cases of the latter. Typically, in the 37 years in which replevin suits were filed, one or two cases was the rule. Debt actions were slightly more prevalent, averaging between two and three cases annually, but there were never more than seven suits filed in a single year and this occurred only twice over the course of the century.

In addition to sharing common distributions and narrow ranges, both kinds of actions had other similarities. With both, for example, 95% of the cases involved local residents seeking satisfaction in business dealings with their friends and neighbors. About a third of the suits had at least one participant who was a non-resident, however. In both cases, males were the sole litigants in 88% and 92% of the cases respectively. Only twice did females exclusively enter actions of debt (1) or replevin (1). And in debt cases which were completed, plaintiffs won 90%, while their counterparts in replevin suits were successful in 77%—a reflection of the fact that replevry frequently included accusations of negligence which was sometimes a difficult issue to prove.

The thorny question of negligence is best exemplified by a replevin suit filed in 1647 by merchant John Evance against a local mariner, John Charles. At issue was the
Figure 5.4
Percent Distribution of Debt and Replevin Cases
in New Haven, 1640-1699

Key: Solid line: Debt
     Broken line: Replevin

Sources: New Haven Records, I & II; Town Records, I & II;
         County Court Records, I & II; and Court of Assistants Records.
loss of a shallop and its cargoe to the value of £100.

Evance, who was no stanger to the litigation process, endeavored to prove that "through gross, if not wilfull, negligence and default" of the defendant, "the said vessel was cast away or broken, and a quantity of peas belonging to himself, with certain pipes of Madera wine belonging to others, were lost." The case was originally put to arbitration, but Charles refused to agree to the award granted to Evance. The arbitrators in the case were men "that have long bred the sea" and who were "well experienced in such cases." When asked why he did not accept the award, Charles claimed that he was not in charge of the vessel and therefore not responsible for its well-being. Because of this turn of events, the merchant was "constrained to crave help and justice" by the court.

Charles' role in the voyage thus became a principal point of contention. In fact, before pursuing the question of negligence, "the plaintiff was required to make proof" that Charles was indeed master of the shallop and that the loss then resulted through "his neglect or default." The issue was complicated because Charles was a last minute replacement for Thomas Jeffries, the man originally designated to serve as master. Charles claimed that he went along "voluntarily" because he had "some occasions of his own" in Guilford. However, Jeffries and several other witnesses testified that they understood Charles' role to be that of master. The two seamen who
accompanied the defendant stated that during the trip they did "what he said John Charles commanded them." Another master was asked what he considered to be usual practice, whereupon he answered "that if anyone were shipped in the room of a master of a ship and had his power, that then he conceived he was master." In response to this testimony, Charles held fast to his position, adding that he had requested no wages and therefore could not have been the master of the vessel. Ultimately, however, the court rejected Charles' defense, asserting that in "his own conscience" Charles thought of himself as master and "would have required master's wages if he returned safe."

Once a determination was reached relative to Charles' role, the question of neglect was proved with little difficulty. Evidently the shallop was docked at Guilford for two days with a full cargoe when suddenly a storm developed. Thomas Jeffries testified that "it was a dangerous place to ride" out a storm and that as a precaution the vessel should have been anchored in a nearby channel so that it "could run up the river with little difficulty" and thereby be saved. Finally, during the storm Charles and his crew "did all forsake her," resulting in the loss of ship and cargoe.

In the face of this testimony Charles was asked whether or not the master of the vessel should be held responsible for its loss? His answer was a cautious yes: "that if he were proved master, there was a great neglect." Essentially
all parties agreed that the boat was lost through negligence, but before this could be proved, officials had to first determine who was in charge. When all the witnesses has spoken, authorities concluded that Evance would not have permitted Jeffries to miss the voyage if the defendant "had not been procurred in his room," and "that the treaty with John Charles in this business, the time he took for consideration, and his consent at last, all tended to that purpose." In the end, Evance received the justice he was "craving." For his gross neglect and "unworthy carriage in such a place of trust," Charles was ordered to pay the plaintiff £67.

Evance was one of 28 other plaintiffs in replevry suits who won. In each instance recovery of lost or damaged property was sought by individuals who filed suits. Most replevry causes were not as complex as Evance v. Charles and the amount of awards requested was generally smaller. More typical was Thomas Barnes' suit against Ralph Dayton, whose son was charged with neglect in the drowning death of the plaintiff's cow while watching the herds. In this instance the court ruled for the defendant; the loss was considered "an afflicting providence of God which the said Barnes must bear himself." Whether plaintiffs sought to recover as much as Evance or as little as Barnes, authorities diligently weighed evidence in an effort to bring equitable solutions to private controversies. If the absence of appeals is any indication of the attempt to
control bitterness, then perhaps officials performed their appointed task successfully.

Lawsuits for indebtedness were similar, if not more plentiful, insofar as they related specifically to routine economic activities of the community. Although they were not as difficult to unravel, actions for debt were more varied than those for replevin. But because they tended to be less complicated, surviving records contain less detail about cases of debt. All too often, references appear as follows: "In the action wherein Joseph Smith is plaintiff and John Downs contra defendant the court finds for the plaintiff 20s and costs of court which is 7s." This does not mean that details are unrecoverable and a sampling of more complete cases reveals the variation that existed in debt actions.

In 1652, for example, Philip Galpin sued Lancelot Baker for a debt amounting to 20s in "trading wampom." Galpin had given the wampom to Baker, instructing him to "buy some hoppes at Connecticut." However, if he could not acquire them, Baker was to turn the money over to John Webb of Hartford as payment for ten bushels of apples. Baker did neither and when Galpin's wife requested the money back, he refused. Instead, he offered the Galpins some apples which he had purchased from Webb even though he admitted to having the wampom in his possession. The court ruled for the plaintiff and Baker was ordered to return the 20s and pay court costs.
Six years later, in another of the varied debt cases, widow Elizabeth Peakin sued John Tompshon "for a debt of roughly £7 due to her for work done by her late husband." As evidence she submitted his account book and a covenant between Tompston and her husband. The former freely acknowledged the debt, but he contested portions of it for three reasons. First, he claimed that it was improper for Peakin to charge 9d a day for the "victuals and drink" of his workers. Second, that costs for tools should not be included in the debt because Tompson had provided them. Finally, that Peakin's wage of 3s a day for his own work was too high.

After pointing out to the widow that she was "very quick in prosecuting, seeing the money were due but yesterday," the court ruled in her favor, but moderated the debt slightly--workmen were allowed 6d instead of 9d and Tompson was released from paying for the tools. As to Peakin's wages, they were allowed in full "seeing he was a master workman" who labored "early and late" at his job. But because she was so eager to prosecute, despite Tompson's offer to settle out of court, Mrs. Peakin was ordered to pay for half of the court fees associated with her case. 65

Perhaps the most frequent action for debt concerned "unpaid" bills for products purchased by local residents. More typical, therefore, then the preceding cases was the lawsuit between Samuel Cooke and Thomas Mix heard by the Plantation Court in 1669. As plaintiff, Cooke charged that Mix owed him £1 3s 7d "together with such damages as
the Court shall adjudge." The debt was for an unspecified quantity of shoes purchased by the defendant who had offered to pay for them with corn. Evidently, however, Mix extended this offer only after a warrant for prosecution had been filed and the amount tendered was considered inadequate by Cooke. Mix made no attempt to repudiate the debt, and after all the evidence had been presented, he was ordered to pay the plaintiff the full amount in addition to bearing half of the court charges. As proved to be the case with widow Peakin, Cooke was told he had to pay the other half. In fact, he was admonished for "needlessly troubling the court and his neighbor" and was left with the warning that if "he should after be found in such needless and vexatious suits," he faced punishment by the court "as the law directs in such cases."66

Although the dispute between Cooke and Mix is illustrative of the circumstances which prompted most cases of debt, it was also atypical insofar as authorities believed the cause to have been vexatious. Clearly, the majority of actions for debt did not end with admonitions by the court. Because they did not, and because there is a paucity of debt related material in extant records, it is difficult to assess the amount of true contention and disorder which were generated by cases of an economic nature. Nonetheless, reference to the fact that Cooke had needlessly troubled his neighbor suggests that ill-feeling very well could have existed between the litigants. Similarly, widow
Peakin's refusal to settle out of court with John Tompallon leaves the impression that here too bitterness and strong disagreement existed. But because the major issue in each of these actions was debt, its resolution, not the extent of personal antagonism, received the principal attention of the bench. Thus, most of our insights into how disruptive private controversies could in fact be, come from cases like slander and defamation where attacks on individuals reputations required the unswerving attention of authorities.

When Hannah Marsh filed suit against Mr. Brewster because he called her a Billingsgate slut, she was seeking redress by the court. This came in the form of a public apology by the defendant who was told he had to "repair her reputation." Nearly all of the 54 slander suits filed in New Haven between 1640 and 1699 were caused by similar name-calling or accusations which were perceived by plaintiffs as being unjust and damaging to their reputations. Slander suits throughout the century were filed in a random fashion and do not appear to have been linked to anything unusual in the community, like the problems of livestock control which led to litigation in the 1640s. As proved to be the case with petty offenses and other kinds of litigation, the majority of New Haven's slander cases were heard in the first few decades of settlement (Figure 5.5). The most prolonged period of litigation for slander occurred between the mid-forties and early sixties when
over 50% of the suits were filed. The most pronounced period of slander related controversies took place in the early 1670s when 11 or 20% of the cases were heard. From that point on, the number of suits declined steadily until the early 1690s when three or 5% of the cases were recorded. One, a suit filed in 1694, serves as a reminder that litigation was continuing on the local level even though there are no extant records of the inferior courts. In what appears to have been part of a neighborhood conflict involving quarreling and lying, John Downs entered an appeal in the County Court of a decision rendered against him by local justices. The original verdict was overturned, but Downs was left with the warning "to be more cautious" with his neighbors in the future. Thus, as was the case with all our distributions, the one depicted in Figure 5.5 must be viewed as tentative, especially after 1666.

Slander suits, like most of the cases of civil litigation filed in New Haven, involved local residents almost exclusively. Fifty-one or 94% of the cases were filed by local residents; only three suits were heard between non-residents. And, as also proved to be the case with debt and replevin, in slander suits reaching completion, 87% were won by the plaintiff; four or 13% were determined in favor of the defendant. In addition, most of the individuals involved in slander suits were, like John Downs, male members of the community. Seventy percent of the cases involved males exclusively, another 15% were cases like the one
between Marsh and Brewster which embraced members of both sexes, and 15% were filed just by women. Moreover, the eight slander suits entered by females represents 68% of all those cases wherein women were the only litigants.

It is not surprising to find that most of the slander cases occurred between local residents and that women were embroiled in these with greater frequency than in the majority of actions, like debt or replevin, which were related to business transactions and the economy in general. The likelihood of defaming a stranger was much less than speaking disparagingly about a neighbor or relative who was disliked. Whether male or female, however, the testimony taken in slander cases reveals certain common characteristics. First, the general aim of the litigation was to "restore" the plaintiff's reputation. Second, the cases were generally marked by true contention. And, third, immediate neighbors were frequently distracted, if only tangentially, by the so-called private conflict of the litigants. It is in this respect that the disorders associated with slander actions worried public officials. Among other things, it was feared that if these suits were not resolved efficiently and equitably, violence (and a spill-over into the realm of criminal law) might follow.

The conflict that raged for several years within one New Haven family is an example of a particularly disruptive case which was difficult to resolve. Central to the dispute was Ebenezer Brown, one of the town's most prolific
recidivists who, in the span of 27 years, violated local or colony statutes on ten different occasions. His inability to fulfill his duties as a husband led to conflict between his mother-in-law, widow Rebecca Vincent, and his mother, widow Mary Brown, in 1668. The exact nature of the slander is unknown, but it may well have been related to Ebenezer's treatment of his wife Hannah and remarks made by her concerned mother. In the initial confrontation the court ruled on behalf of Vincent; Brown threatened to appeal the decision to the Court of Assistants, but let her petition drop without an explanation. Immediately following this hearing, Rebecca turned around and sued Mary for slander; she won her case, was awarded £4 by the jury, but the award was moderated by the court to 40s and costs. 68

As it turns out, the issue was far from settled. At the same session of the court, widow Vincent accused Ebenezer of "sinful miscarriages" which somehow affected her daughter. Brown was ordered to be whipped, but his wife intervened and the corporal punishment was remitted. 69 Perhaps Hannah should have let her husband be "corrected," because his apparent neglect or mistreatment of her continued and in 1669 the court ordered him to find a suitable home for his now pregnant wife. 70 Five years later, at another session of the court, Samuel Todd entered an action against Rebecca Vincent and her daughter because they spread the rumor that his wife "hugged and kissed Ebenezer" Brown. Unlike the earlier cases, this was withdrawn when the plaintiff and
Figure 5.5

Percent Distribution of Slander Cases in New Haven, 1640-1699

Sources: New Haven Records, I & II; Town Records, I & II; County Court Records, I & II; and Court of Assistants Records.
his wife reportedly came "to an agreement" with the defendants.\textsuperscript{71} Four years after the resolution of that conflict, Ebenezer was taken to court and sued for slander by Benjamin Bunell after this particularly wayward member of the Brown clan reported that one day he saw the plaintiff's wife "drunk as a bitch." The court ruled that Bunell was unjustly wronged and ordered Brown to pay £5 in damages.\textsuperscript{72}

The series of civil and criminal actions involving members of the Brown family illustrates divisiveness which was connected to many slander suits. To be sure, the Browns were fighting out in court a domestic dispute which was caused by Ebenezer. Yet on at least one occasion their conflict led to the involvement of non-family members like Samuel Todd. As such, the Brown's conduct was the kind which leaders most hoped to avoid. It set a poor example for other married couples; it set in-laws like Rebecca and Mary against one another in public view; and it was allowed to spill over and draw outsiders into the fray. Perhaps to the relief of rulers, the Brown family quarrel was one of the very few which dragged on over a long period of time. After all, one of the foremost aims of litigation was to resolve conflict before it escalated. The Brown dispute was, however, also unique because the restoration of a damaged reputation does not appear to have been the principal issue as it was in most cases of slander.

Lawsuits where the "repair" of one's reputation was the point at issue could be equally contentious. In 1659, for
instance, Richard Beckley sued the recently widowed Frances Hitchcock who, for some unknown reasons, claimed that the Beckley's neglected their parental obligations. In addition, Hitchcock reportedly stated that Mrs. Beckley was a "liar and a backbiter," who "went about with the work of the Devil," and as such "made difference amongst neighbors." The case was originally put to arbitration, but that increasingly unsatisfying process failed to resolve the conflict. The arbitrators determined that the widow "should give satisfaction in the presence of her neighbors," but the defendant's apology "was very short compared with her miscarriages." Because the arbitrators could not force the widow to offer a more sincere apology, the Beckley's were left with little choice but to file suit in Plantation Court.

Once formal suit was filed, the disagreement escalated when Mrs. Hitchcock further slandered the plaintiff and his wife by charging their children with breaking the Sabbath. At this point the records indicate that Beckley was "angry and grieved" by her behavior. All attempts to gain satisfaction from the disorderly widow had failed. Once the testimony of the plaintiff and defendant had been heard, along with that of the arbitrators and neighbors affected by the conflict, the court reached the conclusion that Frances had a "rotten and corrupt heart" and that the "poison of asps" was "under her lips." Accordingly, "in a way of reparation," Beckley was awarded £10 and Hitchcock
Beckley v. Hitchcock was a particularly divisive case and it summarizes well the basic characteristics of slander suits and why they needed to be controlled. First, the Beckleys were seeking "reparation" for remarks or rumors directed at them which the court deemed uncalled for. Pressing on with the suit even after Hitchcock had made an anemic apology indicates their resolve. In their case, financial recompense proved to be both a satisfying and an effective means of quieting the defendant. Frequently, however, public apologies alone served that purpose. This is what satisfied Hannah Marsh in 1645. And when three youths slandered the daughter of John Thomas by circulating the rumor that she refused "to lye with her husband." they had to publically acknowledge their error so that Thomas' "daughter might be cleared."74

Secondly, the controversy between Beckley and Hitchcock had had a deleterious affect on their relationships with neighbors. The arbitrators in the case evidently spent several days with the litigants and their neighbors in an attempt to iron-out the wrinkles in their relationship. Other divisive slander suits, like Mallory v. Hotchkiss, also affected immediate neighbors. Moreover, the court records are dotted with cautions like the one given to Nathan Thorpe and Joshua Hotchkiss in 1673 for "more neighborly and peaceable behavior in the future."75 Most
references to conflict among neighbors surface in conjunction with suits for slander, but others, like a bitter replevin suit between John Winston and Timothy and Samuel Ford, ended with warnings that the defendant's behavior had been "injurious to his neighbors." 76

Finally, remarks like these suggest that all suits had the potential of being disruptive and contentious. Beckley was reported as being "angry" with Hitchcock, whose conduct was obviously a source of concern for more people than just the plaintiff and his wife. The unusually handsome settlement awarded Beckley underscores how contentious the case had been. The lengthy and bitter dispute among members of the Brown family suggest that public endeavors to control private disagreements would indeed sometimes be very difficult. From the start of settlement authorities realized that private controversies were bound to arise. If these could be kept to a minimum, so much the better. But when suits were filed in court or even referred to arbitration, leaders assuredly sought better results than indicated in the Brown controversy. Occasionally, some of the disputes escalated following the litigants initial court appearance. In 1657, a case of extortion eventually blossomed into a full blown suit for slander. Six years later, an unusually vociferous replevin action led to a battery suit after a servant of the plaintiff Isaac Beecher was beaten by one of the defendants. And, in 1665, after being accused of attempting "to violate the chastity" of two sisters, Patrick
Moran sued their mother, "old goody Pinion," for slander and won his case even though he was urged to "carry it more prudently in the future." Instances like these and the Brown case occurred infrequently at best; in the main, authorities appear to have resolved civil disputes effectively once they reached the formal setting of the court. Not only was this true for cases of an economic nature, but also with actions for slander which, without question, tended to be more disruptive than any others. Residents of New Haven may have been contentious on occasion, but because the courts were consistent and effective agencies of social control over the course of the century, the planters also remained a well-ordered people.

"Contention" is a word that conjures up images of protracted controversies and disagreements between disputants. It suggests a depth of enmity that we know must have existed but which at the same time is next to impossible to document with regularity. To a certain extent, therefore, the act of filing a suit, especially where slander, trespass, or battery were issues, must remain our principal indication that contention existed in early New Haven. Very often individuals became vexed in their relations with one another and undoubtedly suppressed their feelings without seeking legal remedies to their problems. Filing suit in essence represents their inability to resolve conflicts in a "peaceful and loving" fashion.
Judging from extant records, slander suits threatened social harmony more than any others. They frequently included strident exchanges between litigants and had a tendency to draw neighbors into the dispute. Whether or not this indicates, as John Demos has speculated for similar cases in Plymouth, that a "man cursed his neighbor in order to keep smiling at his parent, spouse, or child," is debatable. What is relatively certain, however, is that cases of slander and defamation upset the tempo of life in the community to the point where conflicts had to be resolved in the formal setting of the court. The courts were there for that reason, as were provisions for filing suits in the New Haven and Connecticut Colony codes.

But victims of slander were just a small percentage of those who utilized legal avenues to right wrongs which were perceived to have occurred. The majority of suits touched on a variety of routine economic transactions in New Haven. Although the context within which the suits for debt and replevin were filed is not too difficult to understand, the amount of contention or disorder associated with them is. Was, for example, John Evance deeply angered by the neglect of John Charles, and if so did it continue to undermine their relationship? Perhaps so, but the fact that Charles did not appeal the decision or file a countersuit suggests that authorities had done their part in ending the controversy equitably.

That, after all, was one of the principal functions of
litigation. But it is also true that in certain instances civil actions helped to promote order by calling to attention the need to pass laws as a means of staving off future disputes. This is what happened in the 1640s and 1650s relative to livestock control. Even though rulers were aware of the need to legislate in the area of fencing from the outset of settlement, it was not until after a series of lawsuits filed in the forties by men like John Owen and Thomas Nash that bylaws were actually written. In this instance litigation clearly fostered meaningful change and greater institutionalization in the form of both local ordinances and positions like the public pounder.

The tendency for the community to become increasingly institutionalized is a constant theme of legal development throughout the seventeenth century. Whether in the form of increased numbers of bylaws, positions of authority, legal codes, or new courts, formal legal remedies were chosen means of promoting order. The decline of arbitration as a method of conflict resolution is yet another example. Rather than indicating a failure of the community to diminish contention, the phasing out of arbitration reflects the breakdown of the policies of perfection as articulated in 1639. In theory, the spirit of compromise exemplified in cases like Arresby v. Norton was appealing. However, the comments of Thomas Powell who in 1651 refused to have his suit arbitrated so that "he may have no more trouble about it" are revealing. They suggest, as does most of the
evidence presented here, that over time order came to be defined through legal provisions and courts designed to meet the challenges of settlement in the new world.
CHAPTER V

NOTES


5. The remaining 22 cases were heard in sessions of the Magistrates' Court (13) prior to 1665, or the Court of Assistants (5) after that date, or in other special sessions of the court system (4).


8. Ibid., II, 135.

9. Ibid., I, 28-29. In Newtown, New York, during the second half of the century 81% of the completed cases favored the plaintiff and 19% the defendant. See Jessica Kross Ehrlich, "'To Hear and Try All Causes Betwixt Man and Man': The Town Court of Newtown, 1659-1690," New York History, 59 (1978), 277-305, 291.

10. County Court Records, I, 162.


13. County Court Records, II, 40, and Ibid., I, 213 respectively.
14. Arbitration will be examined in more detail below. For the case see Town Records, II, 200.


17. Ibid., 106-107. Twelve years later Morill committed suicide—one of the few instances of "untimely death" in New Haven. Ibid., II, 162.


19. Debt was the cause of much litigation in Newtown where it accounted for 46% of the cases. In England during the reign of James I, 78% of the actions brought before the Common Pleas were for debt; 44% before the King's Bench. See respectively, Ehrlich, "Newtown," 286-288, and Ingram, "Communities and Courts," 114-115.


25. Ibid., 209.


29. For the provisions see respectively, New Haven Laws, 16-17, 49, and 27; Connecticut Laws, 80, 136, 79, and 93.

30. County Court Records, I, 128.
31. In 1640 Arthur Halbidge was convicted for selling a "false measure of lime," for which he was ordered to make twofold restitution and temporarily prohibited from selling Lime. New Haven Records, I, 39, 46, and 56. He had previously been imprisoned in Massachusetts for exacting unfair wages. Massachusetts Records, I, 153.

32. For obvious legal responses to the case see New Haven Records, I, 356-357 and 429-430.

33. Ibid., 28.

34. Ibid., 81.

35. Ibid., 144-145, 149. For more on the "quarter" concept, see Archer, "Puritan Town Planning," passim.


37. Ibid., 161.

38. Ibid., 366-367, 405-407.

39. The breakdown for Figure 5.2 is as follows:

<table>
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<th>Three Year Mid-Point</th>
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<td>1640</td>
<td>1</td>
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</tr>
<tr>
<td>1643</td>
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<td>2</td>
<td>11.7</td>
</tr>
<tr>
<td>1655</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>1658</td>
<td>5</td>
<td>29.5</td>
</tr>
<tr>
<td>1661</td>
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<td>0</td>
</tr>
<tr>
<td>Totals</td>
<td>17</td>
<td>100</td>
</tr>
</tbody>
</table>

40. Town Records, I, 327-328.

41. Ibid., 93-94.

42. Ibid., 217.


45. Town Records, I, 93-95.

47. Ingram, "Communities and Courts," 125. Thus Herbert Fitzroy's assertion that arbitration was not an English tradition is inaccurate. "Richard Crosby Goes to Court," 14.

48. Evidence of instances where arbitration failed is presented by David Konig in *Law and Society*, 112.

49. Ingram, "Communities and Courts," 127.


52. Ibid., 163.

53. Ibid., 105.


55. Contrary to David Konig's statement that arbitration "presupposed membership" in the community. *Law and Society*, 115.

56. *Town Records*, I, 413.


60. The breakdown for Figure 5.4 is as follows:

<table>
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<th>Period Ending in</th>
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</thead>
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<td>18</td>
<td>15.2</td>
</tr>
<tr>
<td>1649</td>
<td>18</td>
<td>15.2</td>
</tr>
<tr>
<td>1654</td>
<td>13</td>
<td>11</td>
</tr>
<tr>
<td>1659</td>
<td>13</td>
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<td>1664</td>
<td>6</td>
<td>5.1</td>
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<td>1669</td>
<td>10</td>
<td>8.5</td>
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<tr>
<td>1674</td>
<td>9</td>
<td>7.6</td>
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<tr>
<td>1679</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td>1684</td>
<td>3</td>
<td>2.5</td>
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<td>1689</td>
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<td>16</td>
<td>13.6</td>
</tr>
<tr>
<td>1699</td>
<td>4</td>
<td>3.4</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>118</strong></td>
<td><strong>100</strong></td>
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</tbody>
</table>
61. Unless otherwise indicated, all quotes and other information relating to the case is found in New Haven Records, I, 281-291.

62. Ibid., 162. For similar cases of neglect see Ibid., 308 and Town Records, I, 288-290.

63. County Court Records, I, 105.

64. Town Records, I, 145.

65. Ibid., 333-334.

66. Ibid., II, 244.

67. County Court Records, I, 226-227. The breakdown for Figure 5.5 is as follows:

<table>
<thead>
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<td></td>
<td>No.</td>
</tr>
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<td>1644</td>
<td>0</td>
</tr>
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<td>1649</td>
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<td>1684</td>
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<td>1689</td>
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</tr>
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<td>1694</td>
<td>3</td>
</tr>
<tr>
<td>1699</td>
<td>0</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>54</strong></td>
</tr>
</tbody>
</table>

68. County Court Records, I, 18.

69. Ibid., 18-19.

70. Ibid., 34.

71. Ibid., 76.

72. Ibid., 116.

73. Town Records, I, 413-416.

74. Ibid., 389-390. In other locales, public confession of guilt was also a prevalent method of satisfying victims of slander. See, for example, Demos, Little Commonwealth, 139, 153; Erhlich, "Newtown," 282; and Konig, Law and Society, 96.
75. County Court Records, I, 71.

76. Ibid., 97-98.

77. See respectively, New Haven Records, II, 248; Town Records, II, 51-56; and Ibid., 117-123.

78. Little Commonwealth, 50-51.
CONCLUSION

Richard Bushman opened his study of Connecticut with the statement that puritan rulers in the last quarter of the seventeenth century "valued order above all other social virtues. Disorder and sin were equivalents in their minds" (From Puritan to Yankee, 3). Few researchers would call into question the applicability of the first portion of his remarks; throughout the century order remained a persistent theme of puritan rhetoric. But so too did the notion that disorder was equated with sin, a point reinforced by even a casual excursion into the writings of Gurdon Saltonstall or Cotton Mather. In many respects, however, both ministers were throwbacks to an earlier age when the exhortations of men like John Cotton and John Davenport literally determined the character of society. Moreover, if one were to assess New England society on the basis of ministerial tracts alone, it is possible to conclude, as did Perry Miller, that the behavior of puritans reflected a commitment to an "unbroken body of thought" that lasted for nearly a century.

Yet other forms of evidence suggest that behavior changed significantly. The vital records of New England communities indicate that birth rates dropped. Ecclesiastical records have been used to document the decline of church membership experienced in many locales. And town
records have yielded material about changes in the personnel of government that occurred late in the century. Indeed, once re-examined by social historians, evidence like this has explained the behavior of puritans in a different light than that depicted in the writings of the articulate few. Court records are yet another source for determining the behavior of puritans who wrote laws, broke them, and used them to resolve private controversies. Information contained in New Haven court documents suggests that far from being inflexibly grounded upon the "judicial laws of Moses," the town's legal apparatus was responsive to the needs of society. Law was both a reflection of changes in behavior and used as a means of controlling it.

Law and legal institutions probably were utilized to a greater extent than envisioned by the founders of New Haven. Leaders like John Davenport were convinced that a broad-based commitment to a God-ordained social order would prevent serious disorders from surfacing. Theirs was an ideal vision of society that was inextricably tied to the prospects of erecting a Wilderness Zion unmolested by the corruptions prevalent in England. Theirs was to be a well-ordered and covenanted society constructed around institutions that promoted correct moral conduct. The family, with its network of hierarchical relationships, figured prominently in the formula for success. Indeed, these "little commonwealths" constituted the first line of defense against social disorder. The church, which was open
to all who offered convincing professions of faith, served as another agency of control and periodically used its power to maintain purity by disciplining delinquent saints. And for those who were technically beyond the pale of church authority, God's vice-regents were empowered to punish unrighteous members of the community. Magistrates received their powers through a unanimous and voluntary mandate by New Haven's free planters and as a "moral hedge" invoked the laws of Moses to determine ungodly behavior. It is little wonder that at the outset of settlement, when the policies of perfection were strongest, the architects of the New England Way believed that disorder was synonymous with sin.

Within a few years of "transplantation," however, disorders arose which necessitated legal remedies that were traditional and secular. The most important period of legal development in New Haven was the 1640s when 53% of the 114 bylaws were written. These town ordinances addressed a variety of practical problems ranging from fire prevention to the control of livestock, which alone, accounted for 35% of the legislation. While men like Matthew Gilbert may have been God-fearing enough to be chosen as magistrates, it was their inability to have fences "made up in due season" that necessitated bylaws. The threats to order that surfaced when fences lay down or chimneys remained unswept were not intrinsically related to sin. Rather, they were disorders with which even the most
enthusiastic member of the errand into the wilderness had to contend. Lawmaking on the local level was in effect a secular response to the particular needs of the community. Even on the colony level where laws were periodically codified, flexibility was evident. Indeed, 69% of the statutes in the Eaton Code of 1656 and 80% of those in the Connecticut Code of 1673 were secular in nature. The rulers who compiled the codes were realistic enough to include laws that were most applicable to the needs of society and alter or drop those that were not. They came to recognize that even the highly regarded laws of Moses were sometimes anachronistic. Whereas Biblical law constituted 31% of the Eaton Code, 17 years later that figure had dropped to 20%. Moreover, the order that was promoted through lawmaking in the new world differed markedly from that given priority in 1639.

So too did most of the disorders as reflected through law enforcement which took place on both the local and colony levels. Violations of bylaws governing aspects of life relating to timber cutting, military preparedness, or livestock control were clear challenges to the physical order of the community. As in the case of lawmaking, it was during the first decade that many (43%) of the 897 appearances were made. An additional 39% of the cases were prosecuted before 1659, thus suggesting that the formative years were crucial in terms of defining physical order. The sharp decline in petty crime after 1660 may well be an
indication that disorders had been overcome, that through a combination of selective legislation and enforcement problems were brought under control. This proved to be the case with infractions of military and livestock bylaws which accounted for 62% of the violations. When the community was threatened by Indians or unruly livestock, authorities moved swiftly to correct the disorders. Offenders were brought to court, sometimes repeatedly, and convictions were handed down in between 98% and 100% of the cases. It was only after enforcement forced the majority of residents to attend training exercises or repair their fences, that previous fines were remitted or that offenders with excuses were acquitted. These disorders were not caused by sinful behavior, nor were petty offenders sinners. As a group they were, like magistrates Gilbert and Goodyear, in their early thirties, married, and typically well established members of the community.

If we accept puritan rhetoric at face value the real sinners violated colony level statutes and as such challenged moral order. It was in the colony codes that "sins" such as drunkenness, theft, fornication, and a variety of capital crimes were defined. And, judging by the punishments that a minority of the criminals received, some were considered sinners in the complete sense of the word. These were New Haven's deviants and included among them were people like Humphrey Norton who was "excluded" from the plantation, John Knight who was deemed "unfit to live
among men," and Mrs. Fancy who was labelled as a "notorious thief and lyar." Their crimes were considered so threatening that authorities believed they were incapable of reclamation. But this was not the case with most of the 541 violations of colony laws. An overwhelming majority (61%) were for alcohol abuse, theft, and fornication. But rather than being excluded for deviance, most moral offenders received surprisingly mild sentences. As a group these delinquents tended to be unmarried, in their early twenties, and descendants of the founders of New Haven. And although corporal punishment was inflicted upon a number of these offenders in the early years of settlement, there was a pronounced tendency to treat them with greater leniency over time. Punishment for the "sin of fornication" is a case in point. Overall, 33% of the cases resulted in whippings, but 91% of these occurred before 1669. Thereafter magistrates used the discretion at their disposal to fine "sinners" for their misbehavior—the punishment meted out in 61% of these cases during the seventeenth century. If rulers in 1639 believed that morality could be legislated, that was no longer the case a generation later.

Another threat to social harmony came in the form of civil litigation. The aim of litigation was to resolve private controversies. And although New Haven had its share of contentious disputes which set local residents at odds with one another, authorities appear to have resolved these in an equitable fashion. Indeed, rather than
just disrupting social stability, civil suits sometimes furthered the cause of order. This is seen most explicitly in the case of actions stemming from animal damage to crops. These suits proved to be instrumental in the formulation of bylaws which could be used to hold negligent planters accountable. Once the laws were passed and subsequently enforced, livestock disorders, including cases related to animal damage, declined significantly. Finally, one of the clearest examples of how formal legal remedies helped to promote order concerns arbitration. If there was one aspect of litigation that was bound up directly in the rhetoric of the well-ordered society, it was this informal process of conflict resolution. But as other features of the ideal faded, so too did the reliance upon arbitration. And just as authorities came to rely on law to counteract physical and moral disorders, local residents in turn adopted established law and procedure to end their private controversies.

If it could be argued that a God-ordained commitment to order determined the character of law in 1639, it is equally plausible to assert that in 1701 law defined the character of order. With all due respect to the founders of New Haven it is accurate to state that they realized there would be a need to "branch out" beyond the foundations of Biblical law. Perhaps what they did not anticipate was how far, just as they failed to perceive that other institutions like the family, church, and government would
change dramatically in the face of new world conditions. However, as these alterations occurred, as members of the rising generations struck out on their own, as church membership declined, and as the personnel of government changed, law followed suit. By the end of the seventeenth century the commitment to order remained, but it was law, not utopian rhetoric, that assumed the pre-eminent role in defining and maintaining social order.
BIBLIOGRAPHIC ESSAY

Investigations of social control by nature require extensive use of primary sources, specifically court records. The records which document the behavior of New Haven's puritans are, for the most part, complete and many have been published. All have been equally instrumental in providing data necessary for the completion of this study of order and disorder in early Connecticut.

Useful throughout have been Charles J. Hoadly ed., Records of the Colony and Plantation of New Haven, From 1638 to 1649 (Hartford, 1857) and his companion volume Records of the Colony or Jurisdiction of New Haven, From May, 1653, to the Union... (Hartford, 1858). The former is really a collection of the earliest town records, although it does contain occasional records of the New Haven Colony General Court after 1643. The latter consists exclusively of colony records, including the proceedings of the Magistrates' Court, although the earliest accounts of these tribunals (1643 to 1653) are no longer extant. After 1649 (through 1701) the New Haven town records, which include town meetings, occasional selectmen's records, and business transacted in the Plantation Court appear in Franklin B. Dexter and Zara Jones Powers eds., Ancient Town Records (3 vols., New Haven, 1917-1962), although Vol. III, which
begins in 1684, contains little information on judicial proceedings.

After the union with Connecticut in 1665 and the judicial reorganization of 1666, most data was obtained from colony level records. For reasons outlined in the text, proceedings of the Commissioners' Courts in New Haven no longer remain, if they were ever recorded in the first place. Although a MS volume entitled "Town Meetings of New Haven, 1665-1691," located in New Haven City Hall contains townsmen's (selectmen's) records, esp. 68-157, these do not include trials or hearings of petty offenders. They do, however, provide a partial accounting of individuals who were warned out of the community. By far, the most useful source in the post-1665 period was the MS "New Haven County Court Records, 1666-1841," (24 vols.), located at the Connecticut State Library in Hartford. Volumes I and II cover the seventeenth and early eighteenth centuries and are in fine condition. One drawback, especially for scholars working on crime and the local community, is that offenders who appeared before county officials were not listed by place of residence, thus necessitating for this study, a complete prosopographical analysis of New Haven's population. Other colony records found helpful include the 'Court of Assistants Records, 1665-1701," which were transcribed by Norbert B. Lacy in an unpublished Yale University M. A. thesis, a copy of which is located at the State Library. At the time my research began, the Library did not possess

A number of sources on New Haven and Connecticut, again mostly published, have been invaluable even if they do not deal specifically with social control. Especially crucial for prosopographical research was Donald Lines Jacobus, Families of Ancient New Haven (9 vols., in 3, Baltimore, 1974), supplemented by James Savage, A Genealogical Dictionary of the First Settlers of New England (4 vols., Boston, 1860-1862). These were used in conjunction with the spotty Vital Records of New Haven, 1649-1850 (2 vols., Hartford, 1917-1924), Franklin B. Dexter comp., Historical Catalogue of the Members of the First Church of Christ in New Haven, Connecticut (New Haven, 1914), the MS "First Church of Christ and Ecclesiastical Society Records, 1639-1937," Volume I, located in the Connecticut State Library, and
Jay Mack Holbrook, *Connecticut 1670 Census* (Oxford, Mass., 1977), which is not a true census (unfortunately), but a collection of names drawn from a variety of sources.


The list of important sources that in one form or another
touch upon the components of the well-ordered society is endless, but in addition to those cited in the introduction of this analysis, there are several recent studies which have helped clarify my thoughts about the shape of early New Haven society. Especially useful were T.H. Breen, *The Character of the Good Ruler: A Study of Puritan Political Ideas in New England, 1630-1730* (New Haven, 1970), and Stephen Foster, *Their Solitary Way: The Puritan Social Ethic in the First Century of Settlement in New England* (New Haven, 1971), as well as their collaboration, "The Puritan's Greatest Achievement: A Study of Social Cohesion in Seventeenth-Century Massachusetts," *Journal of American History*, LX (1973), 5-22. Their interests clearly reflect those of their mentor Edmund Morgan who, early in his career, authored *The Puritan Family: Religion and Domestic Relations in Seventeenth-Century New England* (Boston, 1944) and later *Visible Saints: The History of a Puritan Idea* (New York, 1963). Collectively these works examine puritan society, ideas, domestic relations, religion, and politics, all of which were important features of the well-ordered society.

Morgan was influenced by his teacher, Perry Miller, whose *The New England Mind: The Seventeenth Century* (New York, 1939), *Orthodoxy in Massachusetts, 1630-1650* (Cambridge, Mass., 1933), and *Errand into the Wilderness* (Cambridge, Mass., 1956) are standard fare for appreciating the complex issues associated with puritan thought.

Secondary works focusing on law, its enforcement, and litigation also played an important role in understanding the disorders encountered by New Englanders. Providing an overall conceptual framework were a number of general introductions such as Donald Black, The Behavior of Law (New York, 1976) which examines law and social control from a sociological perspective; Roscoe Pound, Social Control
Through Law (New Haven, 1942); the first chapter of Richard B. Morris, Studies in the History of American Law (New York, 1958) and Part I of Lawrence M. Friedman, A History of American Law (New York, 1973). William J. Bouwsma's "Lawyers and Early Modern Culture," American Historical Review, LXXVIII (1973) correlates the rise of the legal profession with the need to regulate disorders in the late middle ages, while Warren O. Ault's "Some Early Village By-Laws," English Historical Review, XLI (1930), 208-231, demonstrates how important local ordinances were for regulating life in English rural communities at roughly the same time. Dealing largely with the same period is Alan Harding, A Social History of English Law (Gloucester, Mass., 1973 [1966]) which is nonetheless informative because of the way it explains the context of certain crimes as well as the derivation of complicated legal terms.

Bridging the gap between Europe and America are helpful works like Thomas G. Barnes and Joseph H. Smith, The English Legal System: Carryover to the Colonies (Los Angeles, 1975), which features a pair of long essays, "The English Criminal Law in Early America," by Smith, and Barnes' "Law and Liberty (and Order) in Early Massachusetts;" Mark DeWolf Howe, "The Sources and Nature of Law in Colonial Massachusetts," in George A. Billias ed., Law and Authority in Colonial America (Barre, Mass., 1965), 1-16; G. B. Warden, "Law Reform in England and New England," William and Mary Quarterly, 3rd Ser., XXXV (1979); and to


In addition to the works of Edwin Powers, Kai Erikson, and Eli Faber, studies on crime and punishment have proliferated in recent years. Though not focusing on New England, Douglas Greenberg's Crime and Law Enforcement in the Colony of New York, 1691-1776 (Ithaca, N.Y., 1976) is one of the few full-length quantitative assessments of criminal behavior in early America. However, some of the finest surveys of crime have been devoted to England. Two collections of essays that are noteworthy include Douglas Hay et al., Albion's Fatal Tree: Crime and Society in Eighteenth-Century England (New York, 1975) and J.S. Cockburn ed., Crime in England, 1550-1800 (Princeton, 1977). The latter consists of many fine selections, but worth special mention because of the way crime is examined on the local level are J.A. Sharpe, "Crime and Delinquency in an Essex Parish, 1600-1640," and M.J. Ingram, "Communities and Courts: Law and Disorder in Early Seventeenth-Century Wiltshire." Other helpful works of English social history that have aided to further illuminate criminal conduct are Barbara Hanawalt's "Fur Collar Crime: The Pattern of Crime among the Fourteenth-Century English Nobility," Journal of Social History VIII (1975), 1-17 which describes

Along the same line but focusing on New England is Robert F. Oaks' whose "'Things Fearful to Name': Sodomy and Buggery in Seventeenth-Century New England," Ibid., XII (1978) suggests that homosexuality was more widespread than previously thought. Other works pertaining to moral order, but more general in scope include Charles Francis Adams' disappointing examination of Braintree, Massachusetts church records, "Some Phases of Sexual Morality and Church Discipline in Colonial New England," Massachusetts Historical Society Proceedings, 2nd Ser., VI (1890-1891), 477-516. Much better is David H. Flaherty's "Law and the Enforcement of Morals in Early America," Perspectives in American History, V (1971) because of the way it illustrates changing morality, especially in light of the puritan rhetoric found in studies like Ronald A. Bosco, "Lectures at the Pillory: The Early American Execution Sermon," American Quarterly, XXX (1978), 156-176. Despite the rhetoric of

Finally, there is a small body of literature devoted primarily to exploring civil litigation. As one might expect these studies have been utilized to the fullest in an effort to illuminate the context of private controversies in New Haven. The most important is certainly David Thomas Konig, Law and Society in Puritan Massachusetts: Essex County, 1629-1692 (Chapel Hill, 1979) which emphasizes the rise of law in defining the social order as the policies of perfection or what L. called the "communal ideal" crumbled. Also useful for comparative purposes was
Jessica Kross Ehrlich, "'To Hear and Try all Causes Betwixt Man and Man': The Town Court of Newtown, 1659-1692," *New York History*, LIX (1978) especially because it focuses on a single community during the seventeenth century. Both of these studies should be supplemented by Herbert W. K. Fitzroy, "Richard Crosby Goes to Court, 1683-1697: Some Realities of Colonial Litigation," *Pennsylvania Magazine of History and Biography*, LXII (1938) even though it examines more than just civil disputes. Also worthy of mention is the one good example of arbitration that I have found, "Arbitration Between Mr. Norton and Richard Arresby," *Winthrop Papers*, IV. And, perhaps deserving of attention is Robert Silverman's recent *Law and Urban Growth: Civil Litigation in the Boston Trial Courts, 1880-1900* (Princeton, 1981).