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Black Puritan: The Negro in Seventeenth-Century Massachusetts

Robert C. Twombly
and
Robert H. Moore*

I

HISTORIANS have assumed that seventeenth-century Massachusetts was no different from other American colonies in its treatment of Negroes.¹ It has been easy to overlook a colony where, as late as 1715, there were only 2,000 Negroes in a population of 96,000, and where whites seemed to hold racial views similar to those of other settlers. But an analysis of Negro life in the Puritan Commonwealth reveals the inaccuracy of this view.

Most authorities agree that Negroes first came to Massachusetts in

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¹ Recent scholarship on early American slavery has ignored Massachusetts or assumed similarity with the South: Oscar and Mary Handlin, "Origins of the Southern Labor System," *The William and Mary Quarterly*, 3d Ser., VII (1950), 199-222, and Oscar Handlin, "The Origins of Negro Slavery," *Race and Nationality in American Life* (New York, 1957), 3-29, argue that discrimination developed because of the institutionalization of slavery. Carl N. Degler, "Slavery and the Genesis of American Race Prejudice," *Comparative Studies in Society and History*, II (1959), 49-66, reverses the Handlin thesis, attributing slavery to innate white discriminatory attitudes. Winthrop D. Jordan, "Modern Tensions and the Origin of American Slavery," *Journal of Southern History*, XXVIII (1962), 18-30, sees both slavery and discrimination as part of a worldwide debasement of the Negro. Other relevant works are: Jordan, "The Influence of the West Indies on the Origins of New England Slavery," *Wm. and Mary Qly.* 3d Ser., XVIII (1961), 243-250; Lawrence W. Towner, "A Fondness for Freedom: Servant Protest in Puritan Society," *ibid.*, XIX (1962), 201-219; Towner, "The Sewall-Saffin Dialogue on Slavery," *ibid.*, XXI (1964), 40-52; Jules Zanger, "Crime and Punishment in Early Massachusetts," *ibid.*, XXII (1965), 471-477; Emory Washburn, "Slavery as it Once Prevailed in Massachusetts," in *Early History of Massachusetts: Lectures Delivered . . . Before the Lowell Institute, in Boston* (Boston, 1869), 199-225; and Lorenzo J. Greene, *The Negro in Colonial New England, 1620-1776* (New York, 1942).

1638, but it seems clear to us that at least one Negro had arrived as early as 1633. Contemporaries estimated that there were between 100 and 200 in 1680 and 550 by 1708.² Although Negroes were numerous enough to be familiar in the everyday affairs of many communities by the 1660's, most Puritans regarded blacks as strange and exotic creatures. Despite the inconsistent terminology used to refer to Negroes,³ Massachusetts whites held certain derogatory attitudes.

John Josselyn noted that some New Englanders thought Negro blackness resulted from the African climate, while others believed it came from Ham's curse. Blackness was commonly associated with evil. During the witchcraft hysteria many people claimed to have seen the Devil in the form of a "Blackman"; white women accused of having evil spirits were sometimes called "black witches." Blackness connoted ugliness as well as evil. "Sea-Devils," a fish found off the Maine coast, were popularly called "Negroes" because they were a very "ugly," "hideous" species, "having a black scale."⁴

² William Wood's 1634 *New-England's Prospect . . .* (1764 ed.), in *Publications of the Prince Society*, III (Boston, 1865), 86; and Deloraine P. Corey, *The History of Malden, Mass., 1633-1785* (Malden, Mass., 1899), 415, refer to a Negro living in Plymouth at least as early as 1633. Population estimates are taken from Simon Bradstreet to the Committee of Trade and Plantations, May 18, 1680, in Elizabeth Donnan, ed., *Documents Illustrative of the History of the Slave Trade to America* (Washington, D. C., 1930-35), III, 14-15; Edward Randolph's Report to the Lords of the Committee of the Colonies, Aug., 1681, in Samuel G. Drake, *The History and Antiquities of Boston . . .* (Boston, 1856), 441; Joseph Dudley to the Council of Trade and Plantations, Oct. 1, 1708, in Cecil Headlam, ed., *Calendar of State Papers, Colonial Series, America and West Indies, June, 1708-1709* (London, 1922), 110; and Evarts B. Greene and Virginia D. Harrington, *American Population Before the Federal Census of 1790* (New York, 1932), 14.

³ "Slave" was not precisely defined in seventeenth-century Massachusetts; its flexible usage permitted several meanings. The conventional definition was "one who is the property of, and entirely subject to, another person, whether by capture, purchase, or birth; a servant completely divested of freedom and personal rights." See W. A. Craigie, ed., *A New English Dictionary on Historical Principles* (Oxford, 1919), X, 182-184. The burden of this article is to demonstrate that Massachusetts never forced Negroes into this status. Puritans also used "slavery" to describe prisoners of war and criminals, and the term functioned as a rhetorical device to indicate dissatisfaction with government or authority. "Slave" and "servant" were used interchangeably in reference to Negroes: John Noble and John F. Cronin, eds., *Records of the Court of Assistants of . . . Massachusetts . . .* (Boston, 1901-28), I, 74; and John Josselyn, *An Account of Two Voyages to New-England, Made during the Years 1638, 1663* (Boston, 1865), 139-140.

⁴ The long history of black men in the European experience and the development of white racial opinion has been admirably treated in Winthrop D. Jordan,

If some derogatory attitudes found expression in metaphor, others appeared in social relations. Whites were insulted when compared closely with a Negro. "A Lieutenant of a Man of War," the perturbed Cotton Mather wrote, "whom I am a Stranger to, designing to putt an Indignity upon me, has called his *Negro-Slave* by the Name of COTTON-MATHER." Samuel Sewall recorded in his diary that "Mr Cotton Mather came to Mr. Wilkins's shop, and there talked very sharply against me as if I used his father worse than a Neger; spake so loud that the people in the street might hear him." Such opinions sometimes led to bizarre actions. Josselyn wrote that fish did not respond to herring as quickly as they did for a "waggish lad at Cape-porpus [Maine], who baited his hooks with the drown'd Negro's buttocks." Puritan racial attitudes do not seem appreciably different from those held by other contemporary white men.⁵

One might expect the Puritans to have treated Negroes with an indignity matching their attitudes. But the real test of the colony's race relations must be based not on what whites thought and said but on what they did. How the Negro fared in day to day activity is the best indication of the nature of Negro life in the Puritan Commonwealth.

II

Central to the maintenance of order and stability in any society is the administration of justice. This was particularly true in Massachusetts where respect for the law was primary in the colonists' conception of a vigorous, stable, and godly society. A profound commitment to the law and the judicial process overpowered antipathetical racial views and assured fair and equal treatment, guaranteeing the basic legal rights of Englishmen to free, servant, and slave Negroes. These rights—including police protection, legal counsel, trial by jury, fair and considered hearings,

"White Over Black: the attitudes of the American colonists toward the Negro, to 1784" (unpubl. Ph.D. diss., Brown University, 1960), Ch. I. Puritan racial attitudes are illustrated in Josselyn, *Two Voyages*, 143; George L. Burr, ed., *Narratives of the Witchcraft Cases, 1648-1706* (New York, 1914), 309-310, 312, 425; and William S. Southgate, "History of Scarborough, from 1633 to 1783," Maine Historical Society, *Collections*, III (1853), 92.

⁵ Dec. 10, 1721, in Worthington C. Ford, ed., *Diary of Cotton Mather* (New York, 1957), II, 663; Barrett Wendell, *Cotton Mather: The Puritan Priest* (New York, [1891]), 153, quoting Samuel Sewall, Oct. 20, 1701; Josselyn, *Two Voyages*, 159; Jordan, "White Over Black," Ch. I.

and impartial justice—are very much expected in the twentieth century. In the seventeenth they were incipient concepts in much of the western world. But Massachusetts guarded these liberties jealously, applying them without regard for skin color. The Puritans did not hold advanced racial views but they did place a high priority on the universality of justice. Throughout the century Negroes and whites received essentially equal treatment before the law.

Important principles were observed even in minor offenses. In 1680, for example, Goodman Wolland accused Daniel King's Negro boy of insulting him on a Boston street. When the boy denied the allegation, Wolland brought him to court where the case was thrown out for lack of witnesses. That the case went to court at all indicates a predilection to seek legal redress rather than to initiate private action. When, in 1653, "a contravercy" developed between John Smith of Plymouth and John Barnes's "neager maide servant," the Plymouth court listened to "whatsoever could bee saide on either side." Both were cleared of any misdemeanor, but they were admonished for public quarreling.⁶

Like whites, Negroes received police protection and were shielded from extralegal punitive action. When three Indians broke into the home of Angola, a free Negro, in 1672, he prosecuted. All three were given twenty stripes and ordered to remain in prison until they paid court costs. In another case Pelatiah Glover brought suit against Betty Negro for insulting his son and mother. Richard White and Tom, a Negro, testified against her. She was found guilty of slander and given ten stripes but by being taken to court Betty at least found a measure of protection. The principle of using judicial means rather than resorting to personal retribution extended to the colony's Maine jurisdiction where in 1686 George Norton prosecuted his own Negro for stealing his wool. Due process and a willingness to use the courts minimized expeditious extralegal punishment. Even masters recognized this principle.⁷

⁶ George F. Dow, ed., *Records and Files of the Quarterly Courts of Essex County* (Salem, 1911-21), VII, 425; Nathaniel B. Shurtleff, ed., *Records of the Colony of New Plymouth in New England* (Boston, 1855-61), III, 39. To demonstrate racial equality before the law we shall compare the several kinds of criminal and civil offenses committed by Negroes to similar cases involving whites. We have appraised all the published records (falling between 1650 and 1690) in which Negroes appear; those presented here are not atypical. We believe these cases accurately reflect the temper of the Negro's participation in the legal process.

⁷ The Angola case is in Samuel Eliot Morison, ed., *Records of the Suffolk County Court, 1671-1680*, 2 vols., in *Publications of the Colonial Society of Mas-*

Other incidents establish that Negro testimony was admissible as evidence against whites. In 1673 a defendant challenged a witness's legal right to testify, but the plaintiff replied "that the negro was of such carriage and knowledge that her testimony had been accepted several times before this." Later, in 1679, Wonn Negro testified against Bridget Oliver, who was suspected of witchcraft. In 1680 Mingo the Negro was a witness in a suit involving warehouse arson. Instances of Negro testimony for and against both races are numerous.⁸

It is also evident from the records that Negroes had access to legal counsel. In 1679 Hannah, a Negro servant, was convicted for stealing a box of "Chyrurgions Instrumts." From prison she persuaded three white men to post forty pounds bond for her release and petitioned the Suffolk County court for dismissal of her fines. Her appeal, a sophisticated legal argument, cited page and section numbers of the laws governing burglary. Although the jury dismissed it, Zachariah Chaffee, Jr., commenting on Hannah's appeal, noted the "refined distinctions" that could only have been "written by men accustomed to legal problems."⁹

An additional example of the many elements of justice accorded Negroes stemmed from the Salem witch controversy. In 1692 a warrant was issued for the arrest of Mary Black, a Negro owned by Lieutenant Nathaniel Putnam of Salem Village. Although maintaining her innocence, Mary was tried, convicted, and imprisoned for witchcraft. The next year, however, cooler heads had apparently prevailed, and Mary was not for-

sachusetts, Collections, XXIX-XXX (Boston, 1933), I, 119. The Glover incident is listed in Joseph H. Smith, ed., *Colonial Justice in Western Massachusetts (1639-1702): The Pyncheon Court Record . . .* (Cambridge, Mass., 1961), 375. A comparable case involving a white woman brought a penalty of twenty stripes and the order to wear a paper "pinned upon her forehead with this inscription in capital letters: 'A SLANDERER OF MR. ZEROBABELL ENDICOTT,'" in Dow, ed., *Essex Court Recs.*, I, 380. Norton and Peter appear in Robert E. Moody, ed., *Province and Court Records of Maine* (Portland, 1928-64), III, 226. Carl Degler, on the Southern administration of justice to Negroes, says: "As early as 1669 the Virginia law virtually washed its hands of protecting the Negro held as a slave. It allowed punishment of refractory slaves up to and including accidental death, relieving the master, explicitly, of any fear of prosecution. . . ." in "Slavery and the Genesis of American Race Prejudice," 61. Compare this situation also with the 1694-95 Nathaniel Cane murder case cited in Moody, ed., *Maine Recs.*, IV, 34-35.

⁸ See Dow, ed., *Essex Court Recs.*, V, 179; VI, 255; VII, 329-330, 373, 410. For white testimony on behalf of Negroes see Noble and Cronin, eds., *Assistants Recs.*, III, 194.

⁹ Morison, ed., *Suffolk Court Recs.*, II, 1153-1157. Chaffee's remarks are in the Intro., I, xxv.

gotten. Upon petition she was released from prison by proclamation of the Governor.¹⁰

These cases introduce important principles illustrating Negro legal rights. A Negro's word was admissible as evidence and his testimony could be as acceptable as that of whites. Charges against Negroes had to be documented and they received the thoughtful consideration of juries and magistrates. Negroes had police protection and were shielded from extralegal practices that would have denied them due process of law. They could appeal, use legal counsel, and receive gubernatorial pardons.

The principles operative in the cases described above were applicable when more abhorrent crimes were committed. Negroes were given the same judicial treatment as whites in all aspects of the case from indictment to punishment. Some crimes, like burglary, are impossible to analyze, for penalties were distributed on the basis of the kinds and amounts of items stolen; we were unable to find cases in which Negroes and whites appropriated exactly the same things. For this reason we have not attempted comparisons of thefts, but have analyzed arson, murder, manslaughter, and sexual offenses—the four main areas in which comparison between the races is possible.

Of the sexual crimes committed in Massachusetts, fornication, bastardy, and rape were most prevalent. According to the 1675 Laws and Ordinances of War—a compilation of previous statutes—rape, ravishment, and unnatural abuses were punishable by death. Fornication and other “dissolute lasciviousness” were penalized at the judge's discretion, taking into account the severity and circumstances of the case. Fornication, by both Negro and white, was a considerable problem in early Massachusetts, and the many recorded cases provide ample opportunity for comparative analysis.¹¹

Essex County punished its Negro fornicators by whipping or fine, the choice sometimes being left to the offender. In 1660, Captain White's Negro Jugg was whipped; Grace and Juniper, convicted in 1674, were “to be fined or whipped.” In 1678, two “neger” servants, David and

¹⁰ Charles W. Upham, *Salem Witchcraft . . .* (Boston, 1867), II, 128, 136-137.

¹¹ The 1675 statutes are in Nathaniel B. Shurtleff, ed., *Records of the Governor and Company of the Massachusetts Bay in New England* (Boston, 1854), V, 49-50, Sections 13 and 14. Also see Jordan, “White Over Black,” 119. Fornication and adultery were usually treated as one crime in the seventeenth century. Married men, engaging in sexual activity with women other than their wives, were often tried for fornication.

Judith, chose to pay a fine rather than feel the lash ten and five times respectively. The whites in Essex County received similar treatment. Mary Dane, an indentured servant, was whipped. The same year, 1654, Elizabeth Osgood was given thirty stripes and her mate twenty-five. Most infringers, regardless of race, received from ten to twenty stripes or were ordered to pay from forty to fifty shillings.¹²

Representative of Suffolk County's treatment of fornicators was the case of Mary Plumb, a white, who was punished with fifteen stripes and court and prison fees for "Lascivious carriage by being seene in bed with a man." For the same offense, Phoebe Lovell received ten stripes or a forty shilling fine plus court costs. Negroes in Suffolk County got the same penalties. Joan and her partner, Jasper Indian, were given their choice of fifteen stripes or a forty shilling fine plus court costs. In a significant case, Robert Corbet, a white, and George, a Negro, both servants of Stephen French, received identical sentences in 1679 for committing fornication with the Negro Maria: twenty stripes and court costs. Fornication between the races was not punished any more stringently than that between members of the same race. In Suffolk, as in Essex County, the most common penalty ranged from ten to twenty lashes or a forty to fifty shilling fine plus fees of court.¹³

Although there is no evidence that it was practiced, racial intermarriage was not illegal until 1705. Before then most miscegenation was illicit. If it led to bastardy, penalties for both races were generally the same as for simple fornication. In most cases the court sought to determine paternity in order to provide the child's support, and this led to additional costs for the father. Usually the woman was whipped from ten to twenty stripes or ordered to pay a forty to fifty shilling fine. The man was given a similar number of stripes and then bound to pay weekly support or a

¹² For Essex County Negro fornication cases see Dow, ed., *Essex Court Recs.*, II, 247; V, 411; VI, 73, 135; VII, 141, 411; for whites see I, 71, 80, 82, 337, 347, 404, 414, 420; III, 17, 61, 198-199; VII, 377-378, 398, 406, 410; VIII, 375, 377, 424. This list is by no means exhaustive.

¹³ Because the published records are incomplete, the only Suffolk County cases are from the 1670's. For Negro offenders see Morison, ed., *Suffolk Court Recs.*, I, 233; II, 991; for whites see, for example, I, 22, 80, 90-91, 114, 119, 185, 233-234; II, 885, 1012-1014, 1097-1099, 1102, 1153. The Courts sometimes required a couple fornicating before marriage to make public confession before the church. See I, 80, 90-91. In Maine fornicators usually received seven or more stripes or a fine ranging from fifteen to fifty shillings. See Moody, ed., *Maine Recs.*, IV, 268-269, 293, 340, 344-345, 358, 360, and 371 for examples.

lump sum to be administered over the years. In 1682, for example, Richard Prior gave thirty pounds surety to save Ipswich from maintaining his illegitimate child. The same year John Tucker was fined six pounds and ordered to pay an undisclosed amount for birth and support. In 1679 the court ordered John Hunkins to give his partner's father one shilling per week. When the races mixed the penalties were about the same: William Rane, father of a child by the Indian servant Ann, paid three shillings a week. For "having a bastard," the white Hannah Bonny was "well whipt"; her mate, Nimrod Negro, was also whipped and made to turn over eighteen pence weekly for his offspring. Illegitimate Negro children were generally awarded financial support in amounts similar to those paid to white and mixed offspring. In 1673 the Negro Silvanus provided two shillings six pence per week for his son's upbringing.

A humorous episode took place in Maine in 1695. Alice Metherill, for being pregnant, was given a choice of ten stripes and fifteen shillings or five pounds and courts costs; her alleged partner was ordered to pay eleven shillings six pence bond and two shillings six pence maintenance per week payable monthly. When the child was born, however, it was quite black. The "father," already punished by the court, quickly prosecuted Alice for falsely associating him with her "black bastard." Alice, by now known as a "whore" and a "witch," finally admitted that Black Will, a Negro slave, was her real consort. The province did not hold Black Will's past against him, however, for several years later when he was accused of fathering the baby of Elizabeth Brooks, a single white woman, he was acquitted.¹⁴

Rape, a more serious offense, could be punished by death. The two Negro cases in the published records reveal the severity dealt offenders. Basto Negro was convicted in 1676 of raping the three year old daughter of Robert Cox, his master. When Cox appealed Basto's death sentence,

¹⁴ As with fornication interracial bastardy was not punished more severely than bastardy between two members of the same race. For examples of penalties accorded illegitimate white births see Morison, ed., *Suffolk Court Recs.*, II, 1097-1099; Dow, ed., *Essex Court Recs.*, VII, 97, 187; VIII, 12-13, 279; Shurtleff, ed., *Plymouth Recs.*, I, 127. For illegitimate Negro births see Morison, ed., *Suffolk Court Recs.*, I, 113, 259; II, 809, 841, 1164; Dow, ed., *Essex Court Recs.*, I, 196, 323; VI, 137. Interracial bastardy cases are: Dow, ed., *Essex Court Recs.*, V, 409; VI, 23; VII, 410; Morison, ed., *Suffolk Court Recs.*, I, 185, 232; II, 809; Shurtleff, ed., *Plymouth Recs.*, VI, 177. Alice Metherill and Black Will are in Moody, ed., *Maine Recs.*, IV, 47-49, 64-66; V, 126, 169-171, 199-201; *York Deeds* (Portland, 1887-1910), VI, fol. 88.

the jury substituted thirty-nine lashes and ordered him "allwayes to weare a roape about his neck, to hang doune two foot." If ever he was found without his rope Basto would feel an additional twenty lashes. Shortly thereafter John Negro confessed to "pulling Sarah Phillips of Salem off her horse and attempting to ravish her." John's penalty for attempted rape was a five pound payment to Miss Phillips, prosecution and court costs, and banishment from the colony.¹⁵

Whites also received stiff penalties. John Man, perhaps the Marquis de Sade of his time, for "wanton and lascivious carriages . . . and cruell beating" of his indentured servant, gave two hundred pounds sureties until the next court, paid prosecution costs and court fees, and terminated his girl's contract. John Kempe attempted rape on "3 yong girles [and] was censured to bee whiped both heare [Boston], at Roxberry and at Salem very severely and was Comitted for a slave to Lieft Davenport." Two other white rapists, William Cheny and Samuel Guile, were hanged until dead.¹⁶

Two rapes involving Indians demonstrate important aspects of Massachusetts jurisprudence. In 1674, Tom, indicted for raping another Indian, pleaded not guilty before a "Jury of twelve men six English and six Indians against none of which he Objected." Although he was found guilty, Tom held the right to challenge a jury containing six members of his own race. The second case, from Plymouth in 1682, dealing with "Sam, the Indian," reveals a paternalistic strain in legal approaches to non-whites. Sam was proven guilty: "although in an ordinary consideration hee deserved death, yett considering hee was but an Indian, and therefore in an incapacity [unable] to know the horribleness . . . of this abominable act . . . he was centanced . . . to be severely whipt att the post and sent out of the country." In spite of this decision, leniency for Indians and Negroes, who ordinarily met the same penalties as whites, does not appear the rule. Indeed, judges followed the argument presented by a defendant in a 1660 Essex County case, although his suggestion about Negroes was not considered valid: "the law is undeniable that the indian may have the same distribusion of Justice with our selves," John Haw-

¹⁵ Basto's case is in Noble and Cronin, eds., *Assistants Recs.*, I, 74, and Shurtleff, ed., *Mass. Recs.*, V, 117-118. John Negro is in Morison, ed., *Suffolk Court Recs.*, II, 1067.

¹⁶ *Ibid.*, II, 807; Noble and Cronin, eds., *Assistants Recs.*, I, 50, 199; II, 86; innocent whites are *ibid.*, I, 73, 158.

thorne had argued. But "ther is as I humbly consieve not the same argument as amongst the negroes for the light of the gospell is [not] a be-gineing to appeare amongst them. . . ." The application of the law to Negroes followed the pattern of Tom's case and Hawthorne's suggestion for Indians—due process and equality in punishment. The courts did not consider Christianity a prerequisite for equality before the law; nor did they apply Plymouth's leniency for Sam Indian or Hawthorne's views on Negroes to the blacks in their midst.¹⁷

Equitable treatment for Negroes extended to other capital offenses. According to the law, murder was to be "expiated with the death of the murderer." A measure of Massachusetts's concern for justice was the care with which she appraised murder cases, often meting out punishment for manslaughter instead. Thoughtful scrutiny reflected a recognition of extenuating circumstances. And this attitude did not exclude Negro assailants of whites.

The average penalty for manslaughter was a twenty pound fine and the costs of prosecution, court, and detention. Depending on the circumstances, part of the fine went to the colony and part to the deceased's relatives.¹⁸ Both instances of Negro manslaughter, originally indictments for murder against whites, were handled equitably. A 1684 defendant, "Robert Trayes, negro," wounded the "legg of Daniell Standlake . . . , of which wound, and cutting the legg occasioned therby, died. . . ." Since he had meant to fire at Standlake's door, the jury decided that Trayes was "an instrument of the death of Daniell Standlake by misadventure," and sentenced the defendant to pay the deceased's father five pounds or be whipped. The second case, in which the servant Robin was accused, is of particular note, not only for its dealing with manslaughter but also for its clear statement of Negro legal rights.¹⁹

Robin was guilty of giving John Cheeny of Cambridge "a mortall wound on the head with a stick" in 1689. His punishment was light: charges of prosecution, fees of court, and costs of prison where he was to remain until he paid. Robin had pled not guilty, but what extenuating

¹⁷ *Ibid.*, I, 21-22; *Plymouth Recs.*, VI, 98; Hawthorne's argument is in Dow, ed., *Essex Court Recs.*, II, 240.

¹⁸ Shurtleff, ed., *Mass. Recs.*, V, 50, lists penalties for manslaughter and murder. White manslaughter cases are cited in Noble and Cronin, eds., *Assistants Recs.*, I, 54, 114, 188, 358-359.

¹⁹ The Trayes case is in Shurtleff, eds., *Plymouth Recs.*, VI, 141-142; Robin's in Noble and Cronin, eds., *Assistants Recs.*, I, 304-305, 321.

circumstances had brought about the easy sentence are not recorded. More important, however, is that after the jury had been selected Robin was allowed to "make . . . challenge against any of them." In addition, one juror, feeling as Hawthorne had in 1660, that Negroes did not deserve "the same distribution of Justice with our selves," refused to appear. In reply the court fined him five shillings. Through this concrete act the court clearly stated that shirking jury duty was inexcusable and that due process extended to blacks as well as whites.

The only recorded case in which a white killed a Negro took place in Maine in 1694 when a master's continual mistreatment of his servant led to her death. In the South well before this time, as Carl Degler points out, masters were without "any fear of prosecution" if they killed slaves; the law "allowed punishment for refractory slaves up to and including accidental death. . . ." But the Puritans showed more restraint. Indicted by a grand jury on suspicion of murder, Nathaniel Cane was convicted of manslaughter for "Cruelty to his Negro woman by Cruell Beating and hard usage." His fine—ten pounds ten shillings—was light. Nonetheless, a master could not mistreat, abuse, or murder his Negro without threat of legal action.²⁰

Arson, an infrequent but serious offense, brought harsh penalties. Severity was demonstrated early in the colony's history when in 1640 Henry Stevens fired his master's barn and had his indenture extended by twenty-one years. Throughout the century the penalties were stiff: Jack, a Negro arsonist, was hanged in 1681. Two Negroes implicated in the Maria arson case the same year were banished and Maria was burned alive, the only punishment of its kind in Massachusetts history.²¹ Maria's fire had caused the death of a baby girl. She had deliberately destroyed her master's house and had not intended murder. But since she had caused a death by burning she in turn was burned. Her severe sentence may have been prompted by uneasiness over a rash of fires in the Boston vicinity. Social

²⁰ Moody, ed., *Maine Recs.*, IV, 34-35. We saw no published court records convicting Negroes of murder. But note the equality of sentence in this extract from Samuel Sewall's diary, June 8, 1693: "Elisabeth Emerson of Havarill and a Negro Woman were executed after Lecture, for murdering their Infant Children." Massachusetts Historical Society, *Collections*, 5th Ser., V (1878), 379.

²¹ The Stevens case is in Noble and Cronin, eds., *Assistants Recs.*, II, 100. The documents relating to Maria, her accomplices, and Jack have been brought together by John Noble. See *Publications of the Colonial Society at Massachusetts, Transactions*, 1899, 1900, VIII (Boston, 1904), 323-336.

pressure may have induced the court to be unduly harsh in this affair but it was not stamped. The strict sentence was a response to a specific situation and did not become a precedent for future dealings with either arsonists, murderers, or Negroes. But the case stands as an ugly blot on Puritan history.²²

This review of legal cases indicates that throughout the seventeenth century the Negro received due process and only in isolated incidents, like the Maria case, was he given unusual treatment. But even on that occasion it is questionable to what extent skin color dictated severity. In general, the Negro held the rights of Englishmen before the courts. The legal apparatus did not undergo subtle shifts when Negroes came before it.

III

If the Negro's legal status was not circumscribed by pigmentation neither were his economic opportunities. Several black men, servant and free, accumulated real and other property; the color of their skin did not by definition render them ineligible for economic gain. Although most Negroes were members of the servant class and therefore at the bottom of the economic ladder, some were able to carve out an enviable niche in the white business world.

The story of Angola illustrates the possibilities. In 1653 he was owned by Captain Robert Keayne, who in his will in 1656 left Angola a two pound legacy. Then the free Negro Bostian Ken purchased Angola and set him free by bonding his property to Mrs. Keayne. In 1670 Governor Richard Bellingham sold a piece of land bordered "Upon the North East with the land of Angola, the Negro." Bellingham had given him this fifty-foot square piece in the late 1660's when Angola, paddling in a river, had rescued the Governor from his sinking boat. When he died in 1675 Angola's will confirmed his house, land, and other possessions upon

²² Noble, *ibid.*, argues that Maria was hanged before burning, dismissing both Cotton and Increase Mather's assertions that she was burned alive. But Noble overlooked evidence that substantiates the Mathers' contentions: a Milton minister who had witnessed Jack's and Maria's execution noted in his diary on Sept. 22, 1681: ". . . two negroes burnt, one of them was first hanged." "Rev. Peter Thacher's Journal" in Albert K. Teele, ed., *The History of Milton, Mass. 1640 to 1887* (Boston, 1887), 646. Increase Mather wrote: Maria was "burned to death,—the first that has suffered such a death in New England." *Mass. Hist. Soc., Proceedings*, III (1859), 320. Edgar Buckingham's allegation that in 1675 Phillis, a Negro slave, was burned alive in Cambridge, in "Morality, Learning, and Religion, in Massachusetts in Olden Times," *History and Proceedings of the Pocumtuck Valley Memorial Association, 1880-1889* (Deerfield, Mass., 1898), II, 20, seems unsupported.

his widow Elizabeth, her children, and her heirs forever. In the twenty years before his death Angola had paid his eighteen pound obligation to Ken and had moved from a servant with a two pound legacy to a free Negro of means.²³

Bostian Ken, Angola's benefactor, was another prosperous Negro. In order to purchase his friend's freedom in 1656 Ken bonded his house and land in Dorchester plus four and one half acres of wheat. In 1662 he sold his one-third share of the fourteen-ton ship *Hopewell* to his "loving Friend Francis Vernon" along with "one barrell of liquor one barr of Sugar one Barr mackerell and one Barr Codfish." From 1656 to 1662 Ken dealt in considerable amounts of property.²⁴

Most of the other seventeenth-century Negro landowners received their holdings from their masters. In 1677 Increase Mather bought land bordered on the "Northwest by the land of Jethro the Negro." If Governor Bellingham and the Reverend Mr. Mather owned choice land, the bordering Negro holdings may have also been desirable.²⁵ Other Negroes held land, houses, and small businesses. When Thomas, owner of a chair-making establishment, married Katherine in 1678, he drew up a lengthy document granting her his estate in case of his death and bound himself for one hundred pounds surety. Zippora Potter, daughter of one of Robert Keayne's Negroes, bought a twenty-eight by sixty-foot "parcell of land with a dwelling house thereupon" in 1670 for "forty Sixe pounds currant Mony of New England in hand paid." Although the number of successful Negroes was small, they came from a total Negro population in the colony that was at most only two hundred at this time.²⁶

A few Negroes were property owners, but the majority were house servants living with white families. Many resided in Boston but those in

²³ *Suffolk Deeds* (Boston, 1880-1906), II, 297; III, 78; VII, 22, 144; VIII, 298-299; Morison, ed., *Suffolk Court Recs.*, II, 598; *Report of the Record Commissioners of the City of Boston Containing Miscellaneous Papers* (Boston, 1876-1909), X, 25.

²⁴ Bostian Ken (Kine, Kajne), also known as Sebastian and Bus Bus, probably took his surname from the Keayne family. It was common for a Negro, if he had a last name, to use his master's or former master's. *Suffolk Deeds*, II, 297; IV, III, 113.

²⁵ Angola's land fronted on the main road between Boston and Roxbury and at least one man, James Pennyman, envied it. *Ibid.*, VIII, 298.

²⁶ Property owning Negroes and master's gifts are *ibid.*, VII, 43; X, 278, 295; Dow, ed., *Essex Court Recs.*, II, 183; VIII, 434; *York Deeds*, IV, fol. 52; Ford, ed., *Diary of Cotton Mather*, I, 278; Henry A. Hazen, *History of Billerica, Mass.* (Boston, 1883), 170-171. Charles Taussig noted a Rhode Island Negro couple that had accumulated a 300 pound fortune and in 1735 sailed back to Guinea where they were independently wealthy; see *Rum, Romance and Rebellion* (New York, 1928), 33.

the outlying areas and the Boston blacks who traveled about broadened interracial contact. Most Negroes lived in their masters' homes, were often left alone, and could come and go as they pleased when not working. They were not restricted to the towns in which they lived and in many cases moved freely about the countryside.²⁷

Freedom of movement opened up certain options. One option, running away, may have been a product of working class discontent; but running away was also encouraged by alternatives that lack of repression offered.²⁸ Freedom of movement permitted a certain amount of fraternization between races in the lower classes; the derogatory views of most whites did not preclude informal relations. Occasionally mutual activities were forms of antisocial behavior. In 1673, for example, "John Burrington, Edward Fish, Richard Hollingworths Negro Tom, Thomas [,] Clark Cliffords Servt," and a fifth man, stole saddles and bridles and "complotted to run away." About the same time "Gregory, Nath. Emerson, Arthur Abbot and a Negro" broke into a house, took wine, and improvised a drinking party. But not all interracial mingling was mischievous. For five years in the 1690's one of Boston's four chimney sweepers was "Jeremiah the Negro"; for one year, 1693, he was joined by "Negro Will," who along with Jeremiah brought token integration to Boston's public employ. During the smallpox epidemic in the 1680's Mary Heall, a seventy-four year old widow living alone, took the Negro Zanckey into her home to watch over his recovery. On another occasion, Jack, a runaway Negro, came to Anthony Dorchester's home. Jack was a stranger but Dorchester invited him in and made him welcome:

. . . after asking for a Pipe of Tobacco which I told him there was

²⁷ Horizontal mobility and freedom of movement are illustrated by the Maria case, discussed above; Dow, ed., *Essex Court Recs.*, VI, 255; VIII, 297-298; *Suffolk Deeds*, IV, x-xi; Ford, ed., *Diary of Cotton Mather*, II, 139; *Diary of Samuel Sewall*, Mass. Hist. Soc., *Coll.*, 5th Ser., VI (1879), 5; the travel account of an unknown Frenchman, ca. 1687, in Nathaniel B. Shurtleff, *A Topographical and Historical Description of Boston* (Boston, 1871), 48; James R. Trumbull, *History of Northampton* (Northampton, 1898), I, 376-377. Exemplifying freedom from masters' supervision is the case of a servant who persisted in wooing a young lady although repeatedly warned by her master to keep away. Both were later convicted for fornication. Dow, ed., *Essex Court Recs.*, VII, 141.

²⁸ Revolts were never a problem in Massachusetts but runaways were frequent. Closest to a slave revolt was an unsuccessful 1690 attempt by a New Jerseyite with abolitionist tendencies to induce Negroes, Indians, and Frenchmen to attack several Bay Colony towns. See Joshua Coffin, *A Sketch of the History of Newbury . . .* (Boston, 1845), 153-154, and Sidney Perley, "Essex County in the Abolition of Slavery," *Essex-County Historical and Genealogical Register*, I (1894), 2.

some on the Table he tooke my knife and Cut some and then put it in his Pocket, and after that tooke downe a Cutlass and offered to draw it but it Coming out stiff I closed in upon him. . . .

Jack was overpowered and taken to prison, but Dorchester's initial hospitality is noteworthy.²⁹

The colony's mechanisms of social control which permitted easy interracial contact did not make Negroes full fledged citizens or the social equals of whites, but neither were the blacks shunted to another realm of existence. The absence of rigid barriers in Massachusetts did not create a Negro utopia. But neither were Bay Colony blacks forced into a separate and demeaning world of their own. The Negro hovered on the fringes of full participation in social and economic life.

IV

Overcoming the obstacles of nature was of immediate importance to the first generation of Puritans; in their attempt to construct a "city upon a hill" their first concerns were the problems of building communities, of keeping their children from barbarism, and of reproducing essential and familiar institutions. But as the generations passed, as trade increased, as the frontier receded, and as the complexities of a growing colony burgeoned, the Commonwealth's problems shifted. Social order and stability had been of major importance from the beginning but during the last two decades of the seventeenth century serious social introspection increased. Ministers warned that God was angry with the people; family structure, education, the churches, and other social institutions came under closer scrutiny. It was in this context that the colony passed her first laws to regulate the Negro's behavior.

Except for militia policy, no laws were passed applying only to Negroes until the 1680's.³⁰ Old and New England had fitted the black

²⁹ On informal relations see Dow, ed., *Essex Court Recs.*, I, 287; V, 141; VII, 394-395; VIII, 297; Morison, ed., *Suffolk Court Recs.*, I, 249; II, 648-649; Robert F. Seybolt, *The Town Officials of Colonial Boston, 1634-1775* (Cambridge, Mass., 1939), 77, 79, 83, 85, 87; Joseph Dudley to Gabriel Bernon, May 20, 1707, in George F. Daniels, *History of the Town of Oxford Massachusetts* (Oxford, 1892), 26-27. The quotation is from Smith, ed., *Colonial Justice in Western Massachusetts*, 298-299.

³⁰ Massachusetts never formally denied Negroes the right to bear personal arms and specifically included them in the militia in 1652. But in 1656, without explanation, she reversed her policy, excluding Indians and Negroes from training. Shurtleff, ed., *Mass. Records*, IV, Pt. i, 86, 257.

man into the social system without legally recognizing slavery or a slave caste. Within the broad guidelines of the Common Law and Puritan religious views Massachusetts had extended century-old rights of Englishmen to Negroes. But in the 1680's the colony began to place restrictions upon them. The new Negro policies were responses to three social concerns: a widespread anathema for the slave trade, a pervasive uneasiness about the colony's economic future, and a growing anxiety about the Negro's behavior.

In spite of the unpopularity of slaving, several Massachusetts merchants were active traders in the 1680's, selling Negroes in Virginia for three to five thousand pounds of tobacco per head. Public pressure could not prohibit businessmen from dealing with Southerners but it could discourage the practice at home. Fear of public reprisal forced John Saffin, John Usher, James Wetcomb, and Andrew Belcher to import Negroes secretly in 1681. Fearing seizure, these merchants rerouted their Guinea trader from Swansea, Rhode Island, to Nantasket, Massachusetts, where, they wrote, "before you come in there take in such negroes . . . of ours and come up in the night with them, giving us notice thereof with what privacy you can. . . ." "Keepe your men Ignorant of your designe," the traders told their agent, and do nothing "prejudiciall to our mayne designe."⁸¹

Analyses of the economy seemed to demonstrate little benefit in the Negro's presence. In 1702 the General Court decided to promote "the bringing of White Servants and to put a period to Negroes being slaves." Beneath this admirable statement were more complex and mundane considerations. In 1708 Governor Joseph Dudley remarked that Negroes were costly to maintain during the winter months because they did little work and demanded great amounts of clothing. Negroes "are usually the worst servants," he noted. "The planters here do so much prefer white" laborers. The most complete statement of the economic disadvantages of Negroes appeared in an anonymous 1716 pamphlet. "Slaves . . . are a great hinderance to the Peopling and Improving the Country," the author began. If Negroes were excluded it "would greatly Encourage [white] Servants to come," and thereby aid the colony's growth. Since the land was

⁸¹ William Fitzhugh, King George County Virginia, to Mr. Jackson of Piscataway, in *New England*, Feb. 11, 1683, in R. A. Brock, "New England and the Slave Trade," *Wm. and Mary Qly.*, II (1894), 176-177; Saffin, Usher, Wetcomb, and Belcher to Welstead, June 12, 1681, in *New-England Historical and Genealogical Register*, XXXI (1877), 75-76.

"generally taken up," white servants could not acquire property and frequently became runaways and thieves. To avoid unruly indentured labor, a master could buy Negroes, and because of the tax structure, come off "cheaper than his poorer Neighbour that has an Apprentice." Apprentices cost more than slaves to maintain, were subject to regular militia training, and went to war. Slaves discouraged economic growth by draining their owners of wealth and by displacing laborers, apprentices, and craftsmen who used indenture as a stepping stone to greater things. To the author, the Negro posed a serious threat to indenture which, he felt, was the key to economic growth.³²

The first regulations on Negroes were clauses inserted into general laws prohibiting Negroes, mulattos, Indians, servants, and apprentices from buying or being served alcoholic beverages. Later in the 1680's the same groups were warned about stealing or giving away stolen goods and whites who induced thefts or received stolen merchandise were similarly promised punishment.³³

No further legislation appeared until after the turn of the century. In 1703 Indian, Negro, and mulatto servants and slaves could be on the streets after nine in the evening only with masters' consent. After 1703 no Negro or mulatto could be manumitted unless his master gave fifty pounds surety for the servant's welfare. The first law was directed toward night-time unrest, and the second prevented masters from throwing elderly, unemployable servants on the town charge. Both were concerned with specific and observable social problems.

³² Drake, *History and Antiquities*, 525, quotes the General Court, June, 1702; Dudley to Council, Oct. 1, 1708, in Headlam, ed., *Cal. State Papers, Col. Ser., June, 1708-09*, 110; "Some Considerations Upon the several sorts of Banks Proposed as a Medium of Trade: And Some Improvements that might be made in this Province, hinted at" (Boston, 1716), in Andrew McFarland Davis, ed., *Colonial Currency Reprints, 1682-1751* (Boston, 1910-11), I, 343, 346.

³³ Acts regulating alcoholic consumption are in the Records of the Council of Massachusetts under the Administration of President Joseph Dudley, "Dudley Records," *Mass. Hist. Soc., Proceedings*, 2d Ser., XIII (Boston, 1899, 1900), 252; Ellis Ames and Abner C. Goodell, eds., *Acts and Resolves of the Province of Massachusetts Bay, 1692-1714* (Boston, 1869-1922), I, 154; Moody, ed., *Maine Recs.*, IV, 51; Edward W. Baker, "The 'Old Worcester Turnpike,'" *Proceedings of the Brookline Historical Society* (Jan. 23, 1907), 29. Laws governing stolen goods are in Ames and Goodell, eds., *Acts and Resolves*, I, 156, 325; see also Greene, *The Negro in Colonial New England*, 130. The only other seventeenth-century statute aimed at Negroes was passed in 1680: that no ship of more than 12 tons should entertain any passenger, servant or Negro, without permit from the governor. *The Colonial Laws of Massachusetts. Reprinted from the Edition of 1672, With the Supplements through 1686* (Boston, 1887), 281.

The most stringent new measure, "An Act for the Better Preventing of a Spurious and Mixt Issue" of 1705, drove a deep wedge between the races. Sexual intercourse and racial intermarriage were now specifically prohibited. Fixed penalties were imposed on both races. Fornication was no longer left to judicial decision; Negro offenders were banished and the white consort, male or female, assumed responsibility for the offspring. The law reemphasized the desirability of Negro marriages, presumably as part of an effort to minimize mulatto births.

The 1705 law also placed a four pound duty on Negroes imported into the colony, and set heavy penalties on violators. The new duty aimed to discourage the slave trade. Some Puritans wished to rid the colony of Negroes or prevent any more from coming but restrictions on importation did not rest on this basis alone. Seven years later, in 1712, the General Court prohibited the trade in Indians. Revulsion for the slave trade and suspicion of outsiders worked to prevent nonwhites from coming to the Puritan Commonwealth.

A five-part law in 1707 prevented free Negroes from harboring or entertaining nonwhite servants in their homes without masters' approval and ordered them to repair highways, clean streets, or perform other tasks equal in time and amount to military duty. Since free Negroes had "a share in the benefit" of common defense, they would also go to the parade ground "in case of alarm" and "perform such tasks as the first commission of the company shall direct. . . ." The several laws were supplemented by town ordinances which, throughout the eighteenth century, further limited Negro freedom of movement.³⁴

V

The new Massachusetts statutes dealing with Negroes were responses to specific and observable colonial problems. The measures arose from what the Puritans thought were manifestations of social disorder. The legislation was not a premeditated program to debase the Negro, for the Puritans believed that their regulations were in the Negro's best interest. Some colonial leaders like Samuel Sewall and Cotton Mather wanted to incorporate Negroes more intimately into the colony's social and religious institutions; but men of narrower vision passed laws which over-

³⁴ The laws discussed in these paragraphs are in Ames and Goodell, eds., *Acts and Resolves*, I, 535, 578-579, 606-607; John B. Dillon, ed., *Oddities of Colonial Legislation in America* . . . (Indianapolis, 1879), 206-207, 211-212; *Report of the Record Commissioners of the City of Boston*, VIII, 173-177.

ruled better intentions. The Bay Colony reluctantly accepted the black man's presence but believed by the 1700's that it precipitated social disorder. Legal restrictions on Massachusetts's Negroes neither followed from nor led to slavery. In the Bay Colony these restrictions were part of a hasty problem-solving endeavor that prevalent attitudes and predispositions made possible. The Negro felt the brunt of discriminatory laws but he was not without due process and never totally removed from participation in the white social and economic orbit. These advantages reflected an attitude that later enabled the Bay Colony to lead the way in constitutional prohibitions of slavery.