

American History Online

crime and punishment in colonial America

Crime and punishment run deep in the grain of colonial America. The Salem [witchcraft](#) Trials (1692) are the most well-known case of crime and punishment in the North American English colonies, symbolizing the centrality of religious beliefs in the 17th century and emblematic of the threats to order and stability, yet this spectacular instance of crime and punishment obscures a much more pervasive, if mundane, reality. Crime and punishment permeated the English colonies, grew in number and changed in nature from the 17th to the 18th century, and differed from colony to colony. Although certain groups were more likely to be found guilty and were punished more harshly, members of all classes engaged in some form of criminal activity.

During the 17th century powerful ideas about religion and social order overshadowed other explanations for crime and punishment. Small and scattered settlements may have fostered a neighborly environment for some, but people from outside a particular community were often viewed with suspicion and treated as criminals. Historians once believed that sailors, slaves, and [Native Americans](#) committed most crimes during the 17th century. Sailors were suspect because of their imprudent morality and slaves because, despite all pronouncements to the contrary, it was well understood that they had reason to rebel. Indians posed the principal threat to the colonists' claims to the land.

However, recent studies have shown that people from all racial and ethnic groups and age cohorts engaged in some type of criminal activity. Ministers and [merchants](#) were rarely disciplined for committing crimes. The most helpless Americans, in both early and modern times, suffered punishments disproportionately.

Crimes of the 17th century, dominated by religious concerns, included breaking the Sabbath, idolatry, blasphemy, and, of course, witchcraft. While [Massachusetts](#) led the way in this regard, [Virginia](#), perhaps the least religiously oriented of colonies, punished similar crimes. Public drunkenness, fighting, and swearing also incurred authorities' retributive justice.

In the 17th century punishments did not aim to rehabilitate. Jails were used primarily to hold suspects awaiting trial. Punishments were physical, publicly inflicted, and intended to make an example of the offender. Shaming penalties such as branding, displaying symbols (as in *The Scarlet Letter*), ducking, and sitting in the stocks and pillory were not used as frequently as were whips and fines. The lash of the whip fell overwhelmingly upon the backs of slaves, servants, apprentices, and the laboring and dependent classes. Fines were reserved for those who had committed infractions and were able to make restitution. This penalty, of course, ruled out servants and slaves, because they did not possess the resources to pay. Thieves paid extra damages in addition to restoring the stolen property. The more times an individual committed a crime, the harsher the penalty.

Punishments fell most heavily upon disobedient children, male and female slaves, single women (especially maidservants), Native Americans, and impoverished white males. In the 17th and 18th centuries men more frequently than women were accused and found guilty of crimes. The worst physical punishments were reserved for the enslaved population, although executions of slaves did not often occur because the slaves were expensive investments and therefore somewhat protected by the property-owning class.

Publicly executing an offender was, in many respects, the most dramatic punishment. The death penalty, although used less frequently than in England, could be visited upon rebellious sons as well as people who committed murder, infanticide, sexual offenses (fornication, bastardy, and sodomy), witchcraft, defying the ban on [Quakers](#) and [Jesuits](#) in Massachusetts, and rape (except when committed against black women). Under the court's sentence to be "hanged 'til you be dead," the condemned offender marched from the jail to the gallows at an appointed time, a solemn affair calculated to leave an indelible impression upon the assembled crowd of spectators of the consequences of transgressions.

By the 18th century many small settlements had become established towns where there was considerable growth in wealth and population; the protection of property became central to defining the nature of crime and punishment. Prostitution, public drunkenness, and scandalous public behavior joined Sabbath breaking as the variety of crimes expanded. However, theft of property, including burglary and robbery, became the most prevalent offense. One form of theft was peculiar to slaves; they could steal themselves by escaping. Burning residences, crops, and other buildings of value to a landowner was a crime defined as

endangering persons and property. In cities forgery, counterfeiting currency, picking pockets, and other forms of petty theft were among the crimes for which the poor most frequently endured punishment. The wealthy, although they lived off the backs of the laboring classes and slaves, did not often suffer for their economic crimes, just as elite criminals in the modern United States frequently escape harsh penalties.

Although prosecutions could only be private, the court system was public and became more complex as time progressed. Few early Americans were knowledgeable about the law, and, in general, free white men of property sat on juries and acted as judges. Courts did not function, however, to allow all colonists access. While white women and men had access to the courts, black people and Native Americans rarely were entitled to the legal "rights of Englishmen."

Further Information

Lawrence Meir Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1994);

A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process in the Colonial Period* (New York: Oxford University Press, 1978);

Eric H. Monkkonen, ed., *Crime & Justice in American History: Historical Articles on the Origins and Evolution of American Criminal Justice*, 2 vols. (Westport, Conn.: Meckler, 1991).

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