"Unseemly Practices": Sodomy and Punishment in Seventeenth Century British North America

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Abstract

Despite numerous laws and religious tracts prohibiting homosexuality and the practise of same-sex activity in colonial North America, very few people were ever brought to trial – and even fewer found guilty – for engaging in such "unseemly practises." Using both primary and secondary sources, this paper attempts to dissect the reasoning behind the relative lack of prosecutions of men thought to have participated in "sodomitical [sic] behaviour". Issues of community, power, and religion as they related to sodomy will be discussed.

"No man shall commit the horrible, detestable sin of Sodomie upon pain of death…"

The earliest law prohibiting the practise of same-sex activity was enacted in Virginia in 1610; it was the first of many in the American colonies, with similar laws appearing in the New Netherland and Massachusetts Bay colonies in 1613 and 1632, respectively.1 In all of the laws, same-sex activity – generally meaning the act of sodomy – was codified as being a capital offense in the vein of treason or murder; therefore, it was punishable by death. However, in the entirety of the colonial period, only three people were ever actually executed for homosexual activity, and a relatively small number – about one person every seven years, according to one estimate – were even brought to trial.2 Further, women were also hardly ever condemned for engaging in lesbian activities; there are only two documented cases of proceedings in the entire colonial period, and in some colonies, laws prohibiting lesbianism were taken off the books entirely relatively early into the colonial period.3 Given how the Puritans supposedly abhorred same-sex relations, such numbers seem slightly curious; it could reasonably be expected that they would be much higher. Certainly, it is extremely probable that that the actual number of incidents was much higher than indicated by court records. So why this discrepancy in numbers? In seventeenth century colonial North America, settlers' beliefs about and relationship with homosexuality and same-sex activities seem to have been far more complicated and convoluted than is generally acknowledged. Such activities clashed terribly with both their religious beliefs and legal system; nevertheless, they were frequently allowed to continue unchecked or only subjected to lenient punishments. Given the relative precariousness of their situation, it seems plausible that they were loath to upset both their fragile economic development and the structures of power and authority that formed the basis of their society. Abhor it or not, persecution of homosexuality as a capital offense could have potentially meant disruption on a scale

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[1] Jonathan Ned Katz, *The Gay/Lesbian Almanac* (New York: Harper and Row, 1983), 69-73.
[2] Colin L. Talley, "Gender and Male Same Sex Erotic Behavior in British North America in the Seventeenth Century," *Journal of the History of Sexuality* 6, no. 3 (1996): 388.
[3] Anne-Marie Cusac, *Cruel and Unusual: The Culture of Punishment in America* (New Haven: Yale University Press 2009), 23.

that was much worse for early colonists than the crime itself. Specifically, this essay will examine documented instances of homosexual activity in colonies in New England and Virginia, particularly those that occurred between masters and servants or slaves.

Puritan Understandings of Homosexuality

In order to understand the early colonists' reaction to homosexuality, their conceptions of it must first be recognised. Most Christian groups of the period drew on the Bible as guidance, citing Leviticus 20:13, "If a man lyeth with mankind, as he lyeth with a woman, both of them have committed abomination, they both shall surely be put to death," as a guide for both their views and their laws.4 Homosexuality – along with things like adultery and bestiality, the latter usually referred to as "buggery" – were both sins akin to murder in a legal system that was heavily dependent upon Christian morality and ethics. Accordingly, the earliest versions of sodomy laws in some colonies, like Massachusetts Bay, still technically prescribed the death penalty for those we would now consider to be victims of homosexual rape. Even later versions still allowed for victims to be punished, though not executed.5 Colin L. Talley posits that "[e]rotic urges toward members of one's own sex were thought [by the Puritans] to be a temptation inherent in all persons"; however, it is apparent that they also lacked any real conception of homosexual romantic love as something that could be expressed in the same way as heterosexual romance.6 Any urges they might have were to remain unexpressed, as they represented a temptation towards sin and being unclean in soul, mind, and body. The diaries of Thomas Wigglesworth, a Harvard professor in this early period who spent most of his life repressing romantic feelings to other men, are demonstrative of this fact. Groups like the Puritans, for instance, could conceive of sexual intercourse as a key part of expressing marital love and affection, and not as something that was not meant strictly as a tool for reproduction, and church leaders "did not perceive sex as inherently dangerous or evil". However, such ideas were consistently applied only to heterosexual relationships.7

Further complicating their inability to understand homosexuality within their community, the concept of sexual desire was also completely foreign to them.[8] Sex with no higher goal than pleasure was frowned upon. Even sex as an act of marital love had some kind of deeper meaning attached to it than simple lust fulfilment. From this, one also begins to see on other levels why things like adultery were so abhorred – since they could not really comprehend the notion of sexual desire, they focused instead on the unfaithful, lust-satisfying aspects of it. Similar concepts were thus found in the Puritan notion of same-sex behaviour, which also focused on lust rather than on the idea that anyone could possibly experience homosexual attraction. While they were able to recognise "a specific inclination towards sodomitical [sic] behaviour" in some individuals, this was, again, recognition of behaviour and not of an emotional response or state mental health.[9] The idea that someone could be in love with another person of their sex was completely unreal to them.

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[4] "1641, November, Massachusetts Bay: Sodomy Law", *The Gay/Lesbian Almanac,* ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 78.

[5] Anne-Marie Cusac, *Cruel and Unusual: The Culture of Punishment in America* (New Haven: Yale University Press 2009), 23.

[6] Colin L. Talley, "Gender and Male Same Sex Erotic Behavior in British North America in the Seventeenth Century," *Journal of the History of Sexuality* 6, no. 3 (1996): 401.

[7] Richard Godbeer, "The Cry of Sodom: Discourse, Intercourse, and Desire in New England," *The William and Mary Quarterly* 52, no. 2 (1995): 263.

[8] Ibid, 265.

[9] Richard Godbeer, "The Cry of Sodom: Discourse, Intercourse, and Desire in New England," *The William and Mary Quarterly* 52, no. 2 (1995): 262.

Accordingly, this perhaps provides an explanation for the Puritans' relative confusion over what to do as regards the situation; however, it does not satisfy the question of why they rarely prosecuted for homosexual behaviour. With such a narrow definition of love (though still an admittedly liberal one, given the context of time and religion), it remains somewhat surprising that the early settlers were so infrequently up in arms about the presence of same sex activities within their communities.

Sodomy and Community

Some answer to the colonists' muted reaction to same-sex activity may be found in the difficulties that characterized other aspects of their early lives as settlers in New England. The hardships faced by early settlers meant that, for the first few years especially, the existence they eked out in their new land was a tenuous one.10 These early years were marked by all kinds of difficulties: food shortages, sickness, bad weather, conflicts with the Indian population, and, of course, a serious labour shortage; it is this last which is perhaps most concerning to the topic at hand. The argument can thus be made that in the face of so many other problems, the Puritans simply did not want to add to their troubles by persecuting for something that was – in comparison to famine or war, at least – relatively minor. The three known executions for sodomy – Richard Cornish, in 1625, William Plaine, in 1646, and Jan Creoli (who was a black man, which raises its own set of issues), also in 1646 – all occurred in the earliest decades of settlement. However, an examination of primary sources shows that there were many more cases in this period where those who were found guilty were simply whipped, fined, and in certain cases, banished from the colony or disbarred from ever holding land within the territory held by the colonists.11 Accordingly, it may be inferred that, unless the allegations were serious and provable beyond the shadow of a doubt, the early colonists did not think it worthwhile to administer that level of justice. Richard Cornish was only hanged after substantial evidence was brought against him by multiple witnesses, including the man he raped (a William Cowse, who testified, among other things, that Cornish told him that "he would love [him] if he would now and then come and lay with him"), and someone who had overheard at least one of the assaults taking place.12 In cases like this one, there would be little choice as to what the best course of action would be. However, in most others, with a minor disruption having already been caused, it was apparently quite sensible simply to only punish mildly, without further commotion. As Richard Godbeer suggests, "courts rarely accepted either intent or physical intimacy short of penetration as grounds for execution", which explains why only cases like Cornish's, with substantial evidence in that regard, ever resulted in it.13

The divide between legal and religious conceptions of homosexuality (which, as already noted, were closely intertwined) and the average lay person's ideas must also be considered. While church leaders roundly denounced the heretical nature of sodomy, popular beliefs concerning it were seemingly not always consistent with their teachings.14 Instead, while most people would have certainly found it at the very least distasteful, and at most a heretical sin, evidence suggests that they also frequently developed a "live and let live" attitude towards those in their communities who displayed or were

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[10] Sharon Romeo, in-class lecture. January 19, 2012.

[11] Jonathan Ned Katz, *The Gay/Lesbian Almanac* (New York: Harper and Row, 1983), various.

[12] "1624, November 30, Virginia: Richard Cornish Executed," in *The Gay/Lesbian Almanac*, ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 70.

[13] Richard Godbeer, "The Cry of Sodom: Discourse, Intercourse, and Desire in New England," *The William and Mary Quarterly* 52, no. 2 (1995): 271.

[14] Ibid, 272.

thought to engage in homosexual behaviours.15 Such attitudes are further indicative of the disinclination the colonists had towards disrupting the peace in their communities. Those who might be considered suspect were still members of their community: farmers, shopkeepers, labourers, and to see them persecuted would certainly disrupt everyone's lives on a scale that was not only personal, but also economic. As noted, in the early colonial period, labour and other things necessary for a sustainable economy were relatively scarce. To punish – let alone execute – someone for a crime that seemed to do no lasting damage was, quite simply, not very good business. Further highlighting this is an examination of those cases wherein the accused were alleged to have engaged in such activities with (or, it must be acknowledged, raped) their servants or those who were known indentured labourers. In evidence given against John Allexander and Thomas Roberts in Plymouth, 1637, "found guilty of lewd behaviour and unclean carriage with one another", Roberts, apparently an indentured servant (though, to be clear, not belonging to Allexander), was sentenced to be "whipped severely" before being returned to his master and being "disabled [thereby] to enjoy any lands within [that] government".16 The case of Nicolas Sension, brought before the courts in Connecticut in 1677, is also worth mentioning in this regard. Sension, a well-known figure in his community, was accused and found guilty of sodomizing or attempting to sodomize a large number of men over a period of nearly three decades; many of them were indentured servants belonging to or known by him.17 While Sension's case will be further explored elsewhere, here it is only worth noting that those involved were almost exclusively servants or low-born men of the kind who came to the colonies as labourers. Regardless, such instances aid in making a case for the theory that early settlers saw more value in maintaining a labour pool than they did in persecuting so-called sinners and heretics. These men represented the opportunity for the community's growth and continued strength; to kill or banish them would be to inhibit that growth. Overall, despite their religious convictions, the early colonists seem to have preferred stability and growth to following exactly the teachings of the church's doctrine.

Sodomy and Issues of Power

Further complicating the settlers' reaction to sodomy were the structures of power and hierarchy that existed within their communities. Roger Thompson (though the rest of his essay argues against this thesis), is correct in his assertion that the Puritan colonies were governed by an intensely hierarchical power structure that affected all aspects of their communities: religious, political, and gender especially, among others.18 Although Thompson is likely wrong in his suggestion that greater percentages of same sex activities in the colonial period did not exist, his suggestion that same-sex activities or the appearance of homosexuality might upset the hierarchical nature of the gender binary that existed within these communities is accurate. In a society where daily life and religion were organised around gender strict structures, upsetting them could potentially cause serious problems within the community. The case of Thomas/ine Hall, whose cross-dressing and possible hermaphrodite status caused some uproar in the mid-17th century is suggestive of this.19

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[15] Richard Godbeer, "The Cry of Sodom: Discourse, Intercourse, and Desire in New England," *The William and Mary Quarterly* 52, no. 2 (1995): 276.

[16] "1637, August 6, Plymouth: John Allexander and Thomas Roberts," in *The Gay/Lesbian Almanac*, ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 75.

[17] "1677, May 22, Connecticut: Nicolas Sension, Attempted 'sodomy'," in *The Gay/Lesbian Almanac*, ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 112.

[18] Roger Thompson, "Attitudes Towards Homosexuality in the Seventeenth-Century New England Colonies," *Journal of American Studies* 23, no.1 (1989): 36.

[19] "1629, March 25, Virginia: Thomas/Thomasine Hall," in *The Gay/Lesbian Almanac*, ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 71.

However, in general, issues of gender are seemingly surprisingly absent from accounts of sodomy cases, despite Thompson's claim that "any man betraying 'womanly' weakness was derided"; while this may have been the case, it seems unlikely that early colonists associated the act of sodomy with the feminization of men. Most of the tracts written against it rail more against its heretical, sinful nature – as an act against God – than they did against any gender codes it might violate. This leaves, then, the theory that, in terms of personal relationships, it was mainly bowing to structures of power and hierarchy within the community that made early colonists less inclined to persecute for sodomy or other same sex activities.

To return to NicolasEnsion, it is perhaps his case which illustrates most clearly the connection between power structures and persecution for practising sodomy. As Godbeer suggests, for those New England men who found themselves sexually attracted to people of the same sex, "intercourse, hierarchy, and power were closely intertwined".20 In other words, it was frequently their position in the community that allowed them to carry on such activities without interference. Nicolas Sension, as already noted, was a figure of some respectability within his Connecticut community of Windsor, listed among the ranks of the second wealthiest members of the town, married, with no children and relatively frequent donations to "the poor in want in other colonies".21 It is conceivable that such actions and wealth garnered him some protection from being persecuted for what others would generally have considered to be a crime. While Sension's activities also mostly took place in the latter half of the century, when, according to Robert Oaks, "attitudes towards [same-sex activities] apparently began to soften", the fact that they went on for thirty years mostly unchecked suggests that Sension had some level of influence he was able to exert; even a live and let live attitude would perhaps have an endpoint. Further, Sension had apparently come under fire for his behaviour long prior to his trial. The testimony of one William Phelps, who had worried in the 1640s that Sension's activities would "infect…the rising generation", makes it clear that Sension had been spoken to and warned on multiple occasions by leaders of the church and community that his behaviour should be stopped.22 Obviously, Sension did not listen. Further, when he was finally brought to trial, he was not awarded the death penalty, nor really, any penalty at all: his assets (worth three hundred pounds) were held in bond for the remaining twelve years of his life, pending good behaviour. As he does not show up any more in the court records, one assumes that he either stopped engaging in same-sex relations or at least managed to avoid censure.23 A case like this one may be contrasted with that of Jan Creoli in New Haven, 1646, described as "a negro", who was executed after his second offense by "being choked to death, and then burnt to ashes" in a public execution.24 While little discussed, Creoli's case, on the other end of the spectrum from Sension's in terms of both outcome and participants, also serves as an example of how one's position in the community could potentially affect the outcome of any cases brought against them. Creoli, though his status as freed or enslaved is never made clear, was still a black man in what, at the time, was a mostly-white community, one that can reasonably be assumed to have held many of the racial prejudices that such communities are known to have harboured; even if he had been free, he certainly would not have had the same status as a white man of any class. This, along with the fact that it was his second offense, was perhaps

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[20] Richard Godbeer, "The Cry of Sodom: Discourse, Intercourse, and Desire in New England," *The William and Mary Quarterly* 52, no. 2 (1995): 274.

[21] "1677, May 22, Connecticut: Nicolas Sension, Attempted 'sodomy'," in *The Gay/Lesbian Almanac*, ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 112.

[22] "1677, May 22, Connecticut: Nicolas Sension, Attempted 'sodomy'," in *The Gay/Lesbian Almanac*, ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 113.

[23]"ibid, 118.

[24] "1646, June 25, New Netherland: Jan Creoli executed," in *The Gay/Lesbian Almanac*, ed. Jonathan Ned Katz (New York: Harper and Row, 1983), 90.

enough to justify his execution.25 This is another example of how sodomy was closely linked to power and hierarchy in the seventeenth century.26

Despite common assumptions, persecution for sodomy was a fairly rare occurrence in the various colonies of seventeenth century British North America. Governed not only by religion, but also practical needs and hierarchical community structures, administering capital justice became a difficult thing to do. In response to these pressures, colonists often chose to take the easiest – though perhaps, not in their own minds, the most morally correct – route towards a conclusion. The results of this are, from a historical perspective, striking. Far from popular perceptions of early settlers, especially Puritans, as being upright and morally strict, cases like the ones presented here are suggestive of a far more complicated approach to difficult situations than many might expect. Even in matters concerning sin, solutions were never so clear-cut as might have been assumed.

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[25] Although it is not totally relevant to the subject at hand, Robert Oak's theory that the Puritans' abhorrence of buggery and sodomy "helped them to rationalize racism towards blacks", thus aiding in the development of slavery, is also worth mentioning here; in Oaks' view, the racist suggestion that black Africans were the result of sexual intercourse between men and apes – and thus not fully human – helped Europeans justify their enslavement. As the slave code began to develop in the middle of that century, such ideologies would become necessary to its continued growth and justification.

[26] Robert F. Oaks, "'Things Fearful to Name': Sodomy and Buggery in Seventeenth Century New England," *Journal of Social History* 12, no. 2 (1978): 277.

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