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Julia Wahl April 12th 2016

“What cruelty reigns in this town”: The Boundaries of the English Adultery Act of 1650 Reconsidered

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An abstract of
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History

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Abstract

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The "Adultery Act" of 1650, perhaps more than any other measure, epitomized the presence and influence of Puritanism in Interregnum England (1649-1660). Intended to police sexual behavior such as incest, adultery, fornication and prostitution, the Act transferred jurisdiction of these moral crimes from the ecclesiastical sphere to the secular realm. The Act, however, proved to be mostly a dead letter. This study focuses on adultery in Middlesex County, a semi-rural county outside London. Adultery was considered by Puritanical proselytizers to be one of the more reprehensible offenses. With such extreme moral condemnation, the crime warranted, at least in the eyes of these fanatics, capital punishment. In practice however, the Act resulted in few to no convictions in Interregnum Middlesex. This thesis investigates why an Act that was so vehemently pursued by powers in the central government failed so spectacularly on the parochial level. Combining a study of indictments from the London Metropolitan Archives for Middlesex County with an analysis of popular rhetoric during the period, this thesis intends to argue that the Act itself was too cruel to enforce. Accusations of cruelty often were utilized by seventeenth-century Englishmen to comment on, and identify the parameters between what was regarded as the permissible or impermissible use of force. This dramatic period of political and cultural change initiated intense responses with new-found moral and ethical concerns, illustrated by the lack of convictions under the Act and reflected in contemporary rhetoric.

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Introduction

Law does not exist in a vacuum. Rather, it relies on the initiative of those governing, and the consent of the governed, to achieve its goals and aims. Seventeenth-century England illustrates this point in its laws governing sexual conduct: the rule of law was more than just what appeared on the statute book. Enforcement of sexual legislation, instead, often reflected, and was limited by, the prevailing social and political order values. The history and existence of moral legislation, specifically that aiming to regulate sexual behavior, demonstrates both a genuine disapproval of sexual misconduct and a society's willingness to police such behavior. In early modern England people generally agreed that sexual immorality deeply disrupted the public order and to leave it unpunished would provoke divine wrath upon the community. Therefore, engaging in sexual activities outside of marriage was a punishable offence and, by the beginning of the seventeenth-century, had been so for hundreds of years.[1] While communities felt responsible for policing behavior, limitations existed on the degree and extent of punishment. Those who found issue with sexual promiscuity and worked to enact policies against such behavior still relied on the co-operation of local representatives to enforce their moral agenda.

The "Adultery Act of 1650" is a prime example of legislation's failure at the parochial level. Enacted by secular authorities to "suppress the detestable sins of incest, adultery and fornication," sexual licentiousness became classified as a crime punishable by the full machinery

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1. Martin Ingram, *Church Courts Sex and Marriage in England: 1570-1640* (Cambridge:

of the state.[2] Behavior previously sanctioned informally by neighborly criticism or punished mildly by the ecclesiastically courts became a capital offence. Coinciding with one of the most tumultuous periods of English history, I find that the spectacular failure of this Act reveals a "boundary of the law:" it speaks to a proto-humanitarian sentiment amongst the British populace unwilling to impose capital punishment for non-violent (and often consensual) crimes after years of civil war.

From the Ecclesiastical to the Secular

The regulation of sexual behavior has a long history. Roman law, beginning with Emperor Augustan's *lex Julia de adulteriis coercendis,* first defined adultery as "extramarital sexual relations with or by a married woman" and placed sexual licentiousness under the purview of the state in 18/17 BC.[3] After the dissolution of the Roman Empire, the independent English authorities regulated adultery. The first English lawgiver, Aethelberht of Kent, set the Anglo-Saxon attitude on adultery. In Aethelberht 31 "the adulterer was required to pay for his liaison with another's wife, whether she was caught in the act, or was falsely accused."[4] Initially only comprising financial penalties, Anglo-Saxon punishment of adultery came to entail the adulterous female losing her nose and ears.[5] With the growth of the state and the evolution of English law, however, the punishment of sexual misconduct soon became the business of the

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2. Act for Suppressing the Detestable Sins of Incest, Adultery and Fornication, 1650.

3. Judith Evans-Grubbs, *Law and Family: The Emperor Constantine's Marriage Legislation* (Oxford: Oxford University Press, 1999), 203.

4. Theodore John Rivers, "Adultery in Early Anglo-Saxon Society," in *Anglo-Saxon England, Volume 20,* edited by Micheal Lapidge (Cambridge: Cambridge University Press, 2007), 23.

5. Ibid., 24.

church courts. One of the earliest statutes, a 1286 law "assigned to the spiritual power the punishment of fornication, adultery and such like offences," and as such, canon law, rather than secular, regulated sexual behavior.[6] This transition, from civil to ecclesiastical jurisdiction, however, does not signify a lessening in the importance of sexual crimes. The ecclesiastical courts exercised expansive authority, and in early modern England "a sizable portion of the population must at some time in their lives have experienced the atmosphere of an ecclesiastical court" as a "suitor, accuser, witness or defendant."[7] Contemporaries often considered these courts as "Houses of Bawdy;" and, indeed, they did try both "rogues and whores," but the characterization of these courts as "oppressive, unjust, corrupt and inefficient" is incorrect.[8] Instead these courts formed an elaborate, omnipresent complex of institutions whose jurisdiction extended beyond purely ecclesiastical affairs and into matters that affected the population as a whole. They can be thought of as an extension of the judiciary, adjudicating some of the most intimate aspects of one's personal life. Though operating with similar procedures as civil actions, the ecclesiastical courts sought to achieve a different goal: prosecution was primarily intended to *reform* the culprit. Still, the procedural nature of the church courts reflected the fact that in early modern England the notions of "sin" and "crime" were not clearly differentiated.

The ecclesiastical courts operated as sanctioning bodies, prescribing sentences with corresponding punishments. Early in the court's existence, guilt for illicit sex resulted in

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6. England's continued jurisdiction of sexual crimes under the ecclesiastical courts post-reformation is unique. On the continent, for the most part, the changes resultant from the Protestant Reformation (1517) abolished the independent ecclesiastical jurisdiction in most Protestant states and brought about instead, the regulation of marriage and the family within the purview of secular systems. Ingram, *Church Courts Sex and Marriage in England,* 150.

7. Ibid., 2.

8. Ibid., 6.

whipping or some form other form of physical penance.[9] It was generally accepted that the penalties of the church courts, while strict, could not take away "life, limb or property."[10] After the Protestant Reformation, punishment shifted internally within the ecclesiastical sphere, reflecting the new sentiments relating to the Confessional Movement. Punishment focused less on corporal penalties and more on public humiliation, fines and excommunication. This shift was minimal and official authority remained in the hands of ecclesiastical figures. The broader community of neighbors and parishioners also worked to regulate sexual misconduct informally through behaviors like cuckolding, gossip and rumor and shaming traditions. These various forms of regulation might appear unforgiving, especially when considered by the modern reader; however, they pale in comparison, both as to severity and consequence, to potential punishments under the Act of 1650.

Why did the regulation and enforcement by the new secular Act of 1650 fail so spectacularly, especially in comparison to the ecclesiastical court's success? This thesis argues that the lack of convictions under the Act of 1650 resulted from conscious decisions to avoid imposing its most punitive feature: the death penalty. After a bloody civil war, English citizens appeared unwilling to impose severe sentences to punish sexual misconduct, and saw this Act as draconian and unenforceable. While regulating and punishing sexual crimes was important in early modern England, these offences did not appear to be so egregious as to justify execution. This speaks to the flexibility of law; the enforcement of the sexual criminal law in the 1650s illustrates the selectivity with which the death penalty was imposed. Seventeenth-century Englishmen witnessed a harsher criminal law, yet simultaneously experienced an increasing

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9. Ibid., 6.

10. Ibid., 52.

reluctance to enforce it to the full extent. Why was that?

Secular Law in Seventeenth-Century England

The English legal system operated hierarchically; typically, felony trials and more serious offences were held at the assize courts, the petty crimes, misdemeanors and administrative transgressions were the business of the quarter sessions, and, as mentioned, the ecclesiastical courts maintained doctrinal conformity and the "upkeep of the standards of Christian behavior."[11] This hierarchy extended to sanctions: assizes could hang felons, quarter sessions could demand fines and the ecclesiastical imposed public penance, fines and at times excommunication.[12] Similar to today, the legal process proceeded in stages. Initially, the community or the victim would accuse one of a crime. Once arrested, the local magistrate would examine the accused, and if convinced of a wrongdoing, would "bind" the accused to the county gaol to await trial.[13] At this stage the magistrate issued an indictment, a formal recording of the charge(s) to be heard by a Grand Jury to assess if there was sufficient evidence to try the case before a trial jury. Cases approved as "true bills" continued in the process, while cases labeled "not a true bill" did not have sufficient evidence to proceed.[14] Cases advancing to trial then considered the accused's plea, witness testimony, defendant's testimony, examinations and,

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11. Ibid., 27.

12. J.A. Sharpe, *Crime in Early Modern England: 1550-1750* (London: Longman Press, 1984), 27.

13. Ibid., 28. This "binding-over" process was to guarantee the victim would appear in court; often times, those of the higher social classes would provide a recognizance or financial guarantee of attendance to avoid being committed to gaol (jail).

14. Sharpe, *Crime in Early Modern England*, 27-30. Additionally, some bills were marked as "ignoramus" or "not found."

ultimately, delivered a verdict.[15]

Legal documents are one of the most interesting sources for social historians. Court records provide a fairly uniform and systematic approach to otherwise controversial topics like sex and sexuality, though at times they betray human emotional through their tinged rhetoric. Chief among the documents was the indictment, a "written accusation of one or more persons of a crime or misdemeanor…presented upon oath by a grand jury."[16] Essentially, the indictment was the formal accusation, but it also provided the context of the offence: the accused's name, occupation and rank, place of residence, name of others involved, and details of the offence. Indictments must be read carefully; while they do give the most relevant introductory information, oftentimes the actual content is murky or incorrect. For example, contemporary laws stipulated that each accused be described as either a laborer or a yeoman; however, these were often not their actual occupations. The alleged parish of residence was also often recorded incorrectly, reflecting rather the parish where the offence took place. However, these details are not relevant in this study and are of no concern. Three other documents were used in the evidence process: presentments (the record of less formal charges against less serious offenders), recognizances (the record of the binding over to the gaol) and depositions (the record of evidence noted during the examination).

This study focuses on Middlesex County, a rural county in close proximity to the City of London. While excluding London proper, the proximity of the metropolitan area had considerable effect upon the economic, social, agricultural and judicial developments of the

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15. Lawyers were not a common hallmark of seventeenth-century justice; as such, the defendant and judges were often times the conductors of cross-examinations and questioning.

16. J.A. Sharpe, *Crime in Seventeenth-Century England: A County Study* (Cambridge: Cambridge University Press, 1983), 9.

county. Middlesex was chosen for a detailed study given its proximity to London, as well as the existence of the Middlesex Sessions Rolls, a record of the proceedings of the Middlesex Sessions of the Peace from 1549 to 1889. Unlike other counties, Middlesex Sessions were not held quarterly, nor did Middlesex have an assize court.[17] Whereas in other counties more serious criminal matters were dealt with in the assize courts, in Middlesex they were heard at the Old Bailey in the Sessions of Gaol Delivery.[18] This allows for a more comprehensive study of adultery cases. The separation of quarter sessions and assize courts in other counties created a mixture of jurisdiction; sometimes felony cases were heard at the quarter sessions and then removed to the assizes. However, if the felony was found to be "Not a True Bill," then that indictment would remain in the records of the quarter sessions, a separate entity from the assize records. Middlesex's peculiar judicial system allows the Session Rolls to show as complete a picture of crime in Middlesex as possible. Time, however, creates unavoidable damages and losses, and while the Session Rolls include presentments, recognizes and indictments, the existence of depositions relevant to the cases of adultery from 1650-1660 have not been identified or perhaps do not even survive.

A limited analysis of the physical remains of Middlesex Sessions Rolls at the London Metropolitan Archives, combined with the documented research of nineteenth-century historians J.C. Jeaffreson and F. A. Inderwick, provide a semi-complete picture of the legal records of

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17. London Metropolitan Archives, *A Brief Guide to the London Metropolitan Archives* (London: London Metropolitan Archives, 2006), 2. At first Middlesex Sessions of the Peace were only held twice a year, but owing to the growth of the London suburbs and the resultant increase in activity, the sessions ended up meeting at least eight times a year.

18. Ibid., 2.

Middlesex from 1650-1660.[19] Specifically, this study focuses on a subset of the Sessions Rolls, the Gaol Delivery Rolls. These rolls consist mainly of indictments and recognizances taken at Sessions of Gaol Delivery of Newgate at the Old Bailey.[20] As a majority of the adultery cases during the period were considered "Not a True Bill," the relevant information is found in these two documents preserved in the Gaol Delivery Rolls. Combined with the work of modern scholars such as Bernard Capp, Stephen Roberts, J.A. Sharpe, and Ann Hughes, one can fill in the gaps to demonstrate the reality of "The Adultery Act" in Interregnum England.[21]

Literature on Illicit Sex Before 1650

Scholars meticulously detailed the existence and punishment of sexual crimes prior to the Interregnum. Geoffrey Quaife's study of early seventeenth-century Somserset illustrates clearly that sexual acts did exist outside of and before marriage in the peasantry. While punishable, sexual deviancy tended to only arouse disapproval when it disrupted the peace of the community

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19. F.A. Inderwick, *The Interregnum (A.D. 1648-60): Studies of the Commonwealth, Legislative, Social and Legal* (London: Sampson Low, Marston, Searle and Rivington, 1891), 31-38; J.C. Jeaffreson, ed., *Middlesex County Records,* vol. 3 (London: Middlesex County Records Society, 1888).

20. London Metropolitan Archives, *A Brief Guide to the London Metropolitan Archives,* 1.

21. Bernard Capp, "Republican Refomation: Family, Community and the State in Interregnum Middlesex, 1649-1660," in *The Family in Early Modern England,* ed by Helen Berry et al. (Cambridge: Cambridge University Press, 2007), 40-66.; Ann Hughes, *Gender and the English Revolution* (London: Routledge Press, 2012); Stephen Roberts, "Fornication and Bastardy in Mid-Seventeenth Century Devon: How was the Act of 1650 Enforced?" in *Outside the Law: Studies in Crime and Order 1650-1850*, ed. Jon Rule (Exeter: University of Exeter Press, 1983).

or created serious economic implications.[22] Quaife's investigation relies on depositions taken at the Consistory Court of the Diocese of Bath and Wells, and works well to illustrate that indeed, "peasants found the time and energy not only for procreation but for a variety of illicit sexual activity."[23] The assertion, however, that "sexual a-moralism was the dominant value among the peasantry" has been challenged by scholars such as Lawrence Stone and Martin Ingram.[24] Instead, these authors find that by the late sixteenth and early seventeenth centuries the Church had considerable success in instilling Christian values and a consciousness of sin among the lower ranks of society.[25] While, unlike Quaife, they found seventeenth-century English-people aware of and affected by notions of sin, both Stone and Ingram still noted that extramarital relations existed. Ingram specifically surveyed the records of sixteenth-century Wiltshire. The bastardy orders in Wiltshire from 1603 to1638 count 85 formal charges, and Ingram found it very likely the real number of bastards greatly exceeded this estimate.[26] A study of bridal pregnancy in rural English parishes by Phillip Hair likewise illustrated the existence of pre-marital sex (which could be considered by the courts as fornication). Based on samples from the registers of 1,855 brides from 77 parishes and 24 counties, Hair found that "roughly one-third [of brides] had their maternity recorded in the parish register within eight and a half months of their

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22. Geoffrey Quaife, *Wanton Wenchs and Wayward Wives: Peasants and Illicit Sex in Early Seventeenth Century England* (New Brunswick: Rutgers University Press, 1979),133-4. The "serious economic implications" for the most part relate to the case of bastards born of poor parents and thereby being placed on the community for care.

23. Ibid., 37.

24. Ibid., 22.

25. Ingram, *Church Courts, Sex and Marriage,* 160.

26. Ibid., 339.

marriage" and therefore "must have been pregnant at marriage."[27] There were variations from community to community, but the overall pattern indicated that bridal pregnancy was common throughout England in the late sixteenth and seventeenth centuries. The combined quantitative surveys of Ingram, Quaife and Hair illustrate that illicit sex was not uncommon. Whether it was a result of "the life-cycle" nature of society or the "sexual a-moralism" of society, it was nonetheless still a reality in early modern England.[28]

Scholars note the existence of illicit sexuality in the higher ranks of society. Johanna Rickman's qualitative study of illicit sex in the Elizabeth and Jacobean courts showed the imagined "chaste society" supposedly dominated by virtuous moralism was also not the reality within the nobility. Similar to Ingram's and Quaife's conclusions that illicit sex was tolerated to an extent, Rickman found that, among the nobility, behavior that caused relatively little commotion received relatively little punishment.[29] Rickman emphasized that people at this elevated social level mostly enjoyed immunity from ordinary legal procedures, although in the

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27. P.E.H. Hair, "Bridal Pregnancy in Rural England in Earlier Centuries" Population Studies, 20 (November 1966) 235.

28. The studies lend more credence to the "life-cycle" nature of illicit sexuality. Quaife's investigation, while entertaining, provides a more selectively chosen qualitative recording to illustrate his contention. However, the more quantitative studies of Hair and Ingram demonstrate that though illicit sex was a commonality, more often than not, it was instances of premarital sex between parties that would ultimately be united in the bonds of marriage. Thus, illicit sex is correlated with youth and intent to marry, not dominant a-moralism. Ibid., 354; Quaife, *Wanton Wenches and Wayward Wives,* 22.

29. Johanna Rickman, *Love, Lust, and License in Early Modern England: Illicit Sex and the Nobility* (Aldershot, England: Ashgate, 2008), 202. Different from the peasantry, whose illicit sex was more often "pre-marital sex," illicit sex in the nobility was often conducted once a marriage had been entered and included a third party. The nobility's legal privileges protected them from punishment by the ecclesiastical courts and, more importantly, their close social network of nobles created a support web of likeminded family, friends and followers, that, when not highly disruptive, tended to turn a blind eye to extramarital affairs.

early seventeenth century some of them were indeed brought to answer for rumors of sexual scandal. However, Rickman does stress that illicit sex did not necessarily lead to scandal. Instead, the nobility approached the issue practically -- it would be tolerated when it was "kept secret" or "conducted with a modicum of discretion.[30] Similar to the peasantry, affairs became a problem when they became offensive and served as a threat to the social and legal patriarchal structures, such as illegitimate children or public marriages. Altogether, these studies of illicit sexuality illustrate the reality of sex in England prior to 1650: it occurred with a degree of regularity and was regulated and punished consistently by the ecclesiastical authorities.[31]

The Act of 1650

The Act of 1650 epitomized the presence and influence of Puritanism in Interregnum England. Finding the land "much defiled" by "abominable and crying sins," on May 10, 1650, members of Parliament classified sexual licentiousness as a secular crime and prescribed severe penalties for behaviors that previously only warranted mild sanctions.[32] The Act was a clear

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30. Ibid., 202.

31. See the aforementioned works: Quaife, *Wanton Wenches and Wayward Wives;* Rickman, *Love, Lust, and License in Early Modern England;* Ingram, *Church Courts, Sex and Marriage;* Hair "Bridal Pregnancy in Rural England in Earlier Centuries;" Richard Adair, *Courtship, Illegitimacy and Marriage in Early Modern England,* (Manchester: Manchester University Press, 1996).

32. "May 1650: An Act for suppressing the detestable sins of Incest, Adultery and Fornication.," in *Acts and Ordinances of the Interregnum, 1642-1660*, eds. C. H. Firth and R. S. Tait (London: His Majesty's Stationery Office, 1911), 387-389. An interesting parallel can be drawn between the American colonies and the English treatment of adultery. While the English made adultery a capital offense only at the expiration of the ecclesiastical courts, the colonies imposed a much stricter punishment than prescribed by England before the outbreak of the English Civil War. Though magistrates' attitudes towards adultery differed between the colonies (in which New England tended to have magistrates who took a hard line toward extramarital sex, just as the Puritan leaders of the commonwealth did, and the Chesapeake colonies more often approached actual legislating of sexual crimes with reluctance) both regions prescribed capital punishment for adultery before England. As in the English experience, "efforts [in the colonies]

attempt to resume secular jurisdiction in an area that had for "five hundred years been under clerical control."[33] The Act governed four offences: incest, adultery, fornication and common bawdry. While the force of law punished all transgressions, a hierarchy illustrated the perceived egregiousness of each crime.[34] Incest and adultery became capital felonies, and as such, carried the death sentence. Fornication was punishable by three months in jail. Brothel keepers (Bawds) were also addressed with a branding of "B"; however, as they had previously been regulated by secular legislation, they are excluded in this survey. The specific rank of offenses does not challenge traditional sentiments, as adultery had always been considered "worse" than fornication; however, the radical punishments prescribed for the transgressions did constitute a fundamental change in English crime and punishment.

The Act arose from the spectacular circumstances of mid-seventeenth century England. By the 1630s, the complaints of religious fanatics "were no longer being taken [as] seriously" by most government officials.[35] Zealots long advocated for further restructure and alteration in

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to deter adultery by ratcheting up the punishment drastically underestimated the extent to which law enforcement is defined from below." In fact, there are only three documented executions for adultery in the Northern colonies, far more common accusations of adultery were mitigated down to charges of shameful, or unchaste, behavior. Most colonial courts, like their English predecessors, refused to execute suspects without absolute proof (in New England for example, testimony from two witnesses and a confession by both accused party). For more see: Carolyn Ramsey, "Sex and the Social Order: The Selective Enforcement of Colonial American Adultery Laws in the English Context" *Yale Journal of Law and the Humanities* 10 (1998): 191-228.

33. Keith Thomas, "The Puritans and Adultery: The Act of 1650 Reconsidered," in *Puritans and Revolutionaries: Essays in Seventeenth Century History Presented to Christopher Hill,* ed. Donald Pennigton et al. (Oxford: Clarendon Press, 1978), 265.

34. The "hierarchy of offences" was such that only incest and adultery were felonies punishable by death. That fornication and brothel keeping did not carry the same punishment attests to the gravity of adultery and incest long established by the Judeo-Christian moral code.

35. Ingram, *Church Courts Sex and Marriage,* 153. Thomas tracks specific reformers who urged a more harsh dealing for sexual crimes; chief among them included Martin Bucer,

moral discipline; however, continuous complaints failed to secure any dramatic transformations. Dramatic political changes did, however, result in a Puritan coalition securing control of the central government in the 1640s. Puritan critics regarded the church courts as unsuitable instruments for the godly reformation for which they had hoped. Therefore, the Long Parliament's abolition of the ecclesiastical courts in the 1640s, and the resulting enforcement of moral discipline by secular officials, allowed the Rump Parliament to enact a measure whereby certain sexual acts became felonies punishable by death. Puritans in power jumped at the opportunity to officially legislate on such heinous sins as adultery to promote their reformist agenda.

The years prior to 1650 saw multiple attempts to legislate sexual affairs. Beginning in 1543, the House of Lords considered bills for "the incontinency of women" and "for women lawfully proved of adultery to lose their dower, lands and all other possessions," and the following century would see fairly continuous attempts to legislate sexual behavior.[36] Keith Thomas finds bills read in the Houses Lords and Commons in the years 1549, 1576, 1601, 1604, 1614, 1621, 1626, and finally in 1629—just before Parliament's dissolution.[37] Ignatius Jourdain, a champion of adultery legislation, read two speeches in 1628; both proposed a harsher regulation of sexual licentiousness. On April 7, 1628, Jourdain proposed "An act against adultery and fornication" which punished these acts with a hundred marks' fine for gentlemen and a

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William Bullein, Thomas, Becons, William Ames, John Downame, Thomas Gataker, Sir Henry Finch, William Pryne and other leading Puritans (for a full list of citations see Thomas "The Puritans and Adultery," 271).

36. Quoted from the House of Lords Journal found in Thomas, "The Puritans and Adultery," 273.

37. Ibid, 273.

whipping for others.[38] Jourdain exemplified Puritan reformer's displeasure with the ecclesiastical courts' handling of immoral behavior and illustrated the desire of some to extend the secular branch into private affairs. Displeased with the reception at the first reading, Jourdain brought the bill back to the House on April 22, noting that "this [bill] should find many opposers" but it is "not a laughing matter."[39] Even within the legislative branch itself, the attempt to legislate against illicit sexuality was met with opposition. Jourdain's opinion that this legislation is "not a laughing matter" suggests that some members of Parliament perhaps found the measure funny or outrageous.[40]

The resumption of Parliament in 1640 brought with it a resumption of bills against sexual licentiousness. Amended forms of prior bills were brought forwarded in 1640 and 1641. In 1644, the Commons considered a new bill repressing the full catalogue of moral crimes, including incest, adultery, whoredom, drunkenness, swearing, blasphemy and other vices.[41] Two years passed with no action, but in 1647 this same bill was brought to the floor on two occasions, on May 26 and September 29.[42] A year later, the bill split to consider adultery, incest and whoredom separate from the other moral crimes. This new bill was read first on March 3, 1648 as "an

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38. BL Stowe MS. 366 fol. 53-54.

39. BL Stowe MS. 366 fol. 97.

40. Unfortunately for reformers like Jourdain, Charles I's Personal Rule (1629-1640) would dissolve Parliament and therefore result in a lack of legislation for the 11-year period.

41. Thomas, "The Puritans and Adultery" 275.

42. 26 May 1647, *Journal of the House of Commons* (London: His Majesty's stationary Office, 1802), 5:184; 29 September, *Journal of the House of Commons* (London: His Majesty's stationary Office, 1802), 5:320.

Ordinance for the Punishing of Adultery and Incest."[43] The Second English Civil War then interrupted progress on any legislation; the resumption of the Rump Parliament finally allowed the "Adultery Act" (as we know it) to be read (February 6) and committed on February 8, 1650.[44]

While just committing the Act of 1650 took a century of "evolution," it would still then require an extensive debate before being passed on May 10, 1650. The amendment process, which began on March 22, illustrates the exceptional controversy over the Act, and the significant alterations then severely effected its application. The debate resumed on April 12, resolving that married women "carnally known by any Man, other than her husband…shall be convicted by Confession."[45] The debates succeeded in creating caveats, as adultery did "not extend to any Man, who, at the time of such Offence committed, is not knowing, that such Woman, with whom such Offence is committed, is then married"; nor did it extend to women "whose Husbands are beyond the Seas or…absent themselves from their Wives for the Space of Five Years," or when it is rumored "that their Husbands are dead."[46] Further restricting the definition, on May 3, a deadline of "twelve months after the offence was committed" was required in order for an indictment to be issued. Those that were indicted within the twelve

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43. Ibid., 477-478.

44. Ibid., 359. The Rump Parliament is the name given to the Parliament after the Purge of December 1648 in which Cromwell's New Model Army forcibly expelled Members of Parliament who sought to negotiate with King Charles I. Though Parliament was considered to be a "representative" body, the purging of reluctant members from the Long Parliament to create the specific make up of the Rump resulted in a far less "democratic" body. A "committed" bill was one that had acquired enough support (in the form of votes) of parliament members to take the next steps to become a law.

45. Ibid., 396-397.

46. Ibid.

month period were, however, allowed to produce "any Witness or Witnesses for the Clearing of themselves from the said Offences."[47] The amendment that most restricted enforcement, ironically, was added the same day the bill passed, May 10, 1650. This amendment severely limited whose testimony would be allowed in trial; the amendment provided that "no Party's Confession shall be taken as Evidence within this Act against any other, but only against such Party so confessing; nor any Husband shall be a Witness against his Wife, nor any Wife against her Husband, for any Offence punishable by this Act; nor any Servant against his or her Master or Mistress."[48]

The amendments to the proposed Act illustrate just how difficult securing an adultery conviction would be. Cuckolded husbands were unable to give testimony and it certainly seems difficult to disprove a wife's belief that her husband was dead (assuming of course, that he had not been present for the required period). These restrictions and "loop-holes," combined with the various manifestations of the final Act in Parliament, demonstrate the central issue. While committed reforming supporters of the Act believed it was necessary to suppress the abuses of sin and immorality, the clear hesitancy and resistance from other members of Parliament can easily lead one to conclude that some saw this intrusion of the state into people's private "affairs" as a step too far. Even in abstract, the Act, in its original form, was already perceived as too harsh.[49] The further unwillingness by local level representation to enforce the Act demonstrates a

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47. Ibid., 408.

48. This limitation of testimonies was intended to restricted, perhaps, the ability of scorned partners to bring vindictive measures against spouses. While false accusations were safeguarded, true accusations thereby were also extremely difficult to bring prove. Ibid., 410-411.

49. The amendment process conveys that Members of Parliament (MPs) understood the original format of the Act as necessary of improvement. That the added amendments restricted

"boundary of the law."

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the ability to enforce illustrates a point of contention as the possible consequences of too many people being vulnerable to such a harsh measure.

Part I

Adultery in Context

How was the "Adultery Act" enforced? As mentioned, to look at adultery in its context, we shall focus on the records of Middlesex County. The drive to curb sexual immorality had long been the domain of the ecclesiastical courts, however, this period saw the dramatic extension of criminal law into the regulation of morality. The ascension of the Puritan-heavy Long Parliament in 1640 riding a wave of anti-Laudian and anti-court sentiment was determined to reverse what they saw as years of licensed profanity and oppression.[50] This study focuses on the relevant documents of adultery cases in the 1650s Middlesex; the majority of which were the pre-trial procedures as so very few indictments went forward to a full trial.[51] The "choices, priorities and responses" before the trial more vividly convey the popular values than many other areas of life as they involved the community as much as the suspect.[52] Any action that proceeded, then, relied on the willing participation of the community; the absence of adultery

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50. Anti-Laudian referred to sentiments opposing William Laud the archbishop of Canterbury who proposed a more liturgical ceremony and clerical hierarchy. Bernard Capp, *England's Culture Wars: Puritan Reformation and Its Enemies in the Interregnum, 1649-1660* (Oxford: OUP, 2012), 7.

51. This "pre-trial" process is referring to the procedures that took place between the alleged crime and the magisterial investigation.

52. As the judiciary process was wrapped up in the community, actions can be interpreted to illustrate communal values. For example, bring forth an accusation (as most were brought forth by community members) demonstrates a willingness to police certain actions. Further, committing an indictment to proceed to full trial illustrates agreement with the potential punitive measures associated should the defendant be guilty. Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge: Cambridge University Press, 2003), 24.

cases in the full trial, illustrates the hesitation and resistance of the community towards the criminalization of adultery.

Middlesex County Jurisdiction

Why focus on Middlesex County? It is an ideal study for three considerations: its geographic location, particular division of crime jurisdiction, and record preservation. Contemporary Middlesex was compact, it had a "supportive central government close by…with many parish churches in the hands of committed Puritan ministers and vestries."[53] While located in close proximity to London providing a decidedly urban flavor, Middlesex still remained a rural county.[54] Middlesex's judicial system was also unique and beneficial to this study. Middlesex Sessions were the equivalent of the non-felonious Quarter Sessions of other counties, however, given the size of the county, Middlesex sessions were held as many as eight times a year. Middlesex did not have an assize courts for criminal matters, but instead such incidents were heard at the Old Bailey, the criminal court for Middlesex. The preservation of these records however is what truly makes Middlesex an ideal study. Records from the Gaol Delivery Sessions for the Old Bailey prior to 1754 are found with the Middlesex Sessions of the Peace for the same period. This means that any mixture of jurisdiction of sexual crimes, either at the petty sessions courts, or the criminal Old Bailey court, are held in the same collection: Middlesex Justice Sessions Rolls (MJ/SR). Beyond the organizational fortune, although prior to 1752 most indictments and recognizances were written in Latin this practice lapsed during the 1650s, and instead the relevant documents written in English. None of this would matter, however, if the

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53. Capp, *Republican Reformation,* 42.

54. Cynthia Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge: Cambridge University Press, 1989), 203.

records did not survive. Middlesex judicial records are preserved to an astonishing degree, making up a collection of upwards of ten thousand volumes and nearly five thousand bundles. Additionally, J.C. Jeaffreson, a late nineteenth-century historian, transcribed the majority of the session rolls, permitting a primary reference for my own archival research.

The records, although existing in better quality and more detail than most, still are held back by the trial procedure itself. As these adultery cases almost never went to full trial, the majority of the study is limited to indictments. The indictment, while providing the formal record of the charge, gives very little indication of popular responses to the crimes as it remains separate from depositions, examinations and testimonies. The lack of these additional documents do however indicate the refusal of the community to find indictments for adultery to be “a true bill” which would then include additional records as it proceeded in the trial process.

There were, as previously discussed, explicit evidentiary and circumstantial restricts written into the “Adultery Act of 1650.” Beyond these explicitly stated legal restrictions, however, I believe there existed a certain understanding in the initial grand jurors that refused to establish execution as a rightful punishment.[55] Previously, under the jurisdiction of the ecclesiastical courts, accusations of adultery and other sexual crimes were not met with such extreme resistance; for example being sentenced by the church courts to do penance before the congregation in a white sheet, proved to be a “reassuring spectacle for the godly and chaste, and perhaps a deterrent for those contemplating sexual immorality.”[56] Execution was a step too far

55. This refusal can be understood from the finding of almost every adultery indictment to be “not a true bill” by the grand juries that first considered the offense.

56. Sharp, *Crime in Early Modern England,* 92.

the severity of punishment that an offender might expect to receive before a court had to respond roughly to what the community felt appropriate to the crime in question.[57]

Adultery Indictments in Middlesex, 1650-1660

The threat of capital punishment loomed too unforgiving to seventeenth-century jurors in Middlesex. J.C. Jeaffreson finds 23 women tried for adultery. Of those 23, 21 were found "Not Guilty;" one was found guilty but later acquitted, and one was found guilty however her execution was delayed on account of pregnancy, and her subsequent fate was undetermined.[58] Bernard Capp recognizes an additional female offender, as well as quantifying accused males in the period bringing his totals for Middlesex Adultery charges to be 24 women and 12 men.[59] These studies provide a numerical reference, however, do not provide the context of the cases. My research in the London Metropolitan Archives (LMAs) work to fill in the gaps between these quantified studies to provide a small snapshot of attitudes surrounding the criminalization of adultery in 1650s Middlesex.

Far from being a trial transcription of testimonies, the indictments preserved in the Gaol Delivery Records usually provide at most the name of the accused, his or her occupation or status, place of residence, the place where the crime was committed, the date upon which it was committed, the nature of the offense and, in some cases, the name of accused lovers. Common are recognizances using formulas such as "living in adultery"; "living incontinently" or being

57. The next chapter will present a discussion of "cruel" acts, illustrating not only the pervasiveness of cruelty accusations in the seventeenth century, but also its explicit extension to the Act of 1650.

58. These are accounts for adultery, not for other sexual crimes under the 1650 Act such as incest, fornication, bigamy or bawdry. Jeaffreson, *Middlesex County Records,* xxii.

59. Capp, "Republican Reformation," 49.

"sensually undertak[en]."[60] While some cases just present the charge of adultery, or of being suspected of adultery, others provide more robust accusations. These more detailed cases, though not providing direct witness to the crime, most often entail the retelling of a compromising situation. As most of these involve hearsay or rumor, they do not succeed as condemning evidence. As mentioned, under the 1650 Act, convictions required a voluntary confession or direct witnesses; while accusations could still be brought forward for a suspicion of committing adultery, hearsay was not enough to prove guilt. Such is the case of William Jaybouns, who was discovered "late in the night with his shoes off sitting on a bed with Anannis Newly."[61] Jaybouns was not found in bed with Anannis, however, the mere implication of such familiarity of being with a married woman late at night partially unclothed was enough for others to suppose him of incontinence. Edmond Carter as well was found in a suspicious, but not damning position when he "took hiding below his bed" while the married woman was found "being in bed."[62] Both of these cases though, as there was no direct witness of sexual intercourse, failed to provide a direct link between the alleged offenders and alleged offense, and, as such juries could not sentence such severe ends as hanging. The indictments also accuse women; in fact, the gendered nature of the Act naturally resulted in more women accused.[63] Mary Thrift for instance, was called in 1651

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60. London Metropolitan Archives (LMA) MJ/SR/1126/303; MJ/SR/1129/247-8; MJ/SR/1132/44.

61. MJ/SR/1140/350

62. MJ/SR/1140/297

63. The "gendered nature" of the Act was the skewed definition of adultery which ultimately restricted adultery to married women. A married man committing extramarital sex would only be held accountable to a charge of fornication according to the 1650 Act.

to respond to the charges of being "taken between the sheets with another woman's husband."[64] Beyond stating that she "lived incontinently" the record provides a more imaginatively damning accusation. That Thrift was suspected of being taken "between the sheets" contributes more explicitly how this act violates the privacy of the marriage bed.[65] All of the indictments involve moral judging, but the additional illustration of a one woman tempting another's husband "between the sheets" adds a significant degree of shaming.

Thrift, with an indictment where shame was more imagined, pales in comparison to the accusation brought against Priscilla Frotheringham. For Frotheringham, no degree of imagination is necessary. On June 18, 1658 she was indicted for being

> a notorious strumpet, a common field walker and one that hath undone several men by giving them the foul disease, for keeping the husband of Susan Slaughter from her ever since December last and hath utterly undone that family, and also for threatening to stab the said Susan Slaughter when ever she can meet her, the woman being a very civil woman, and also for several other notorious wickednesses which is not fit to be named among the heathen.[66]

Priscilla's indictment is quite unique in the language employed. Far more rhetorically passionate and accusatory than the other cases, the justice expounding Priscilla's wrongdoing is clearly disgusted by her actions, enough so to make sure to record the moral undertone of her actions. And, though the Puritans had secured control in the central government and installed "hundreds of like-minded ministers and magistrates to spearhead the work of reformation at the local level," ultimately the decisions to find a case to be worthy of full trial or not depended on the opinions of the more community

64. MJ/SR/1079/97

65. MJ/SR/1079/97

66. MJ/SR/1183/70

representative grand jury, who proved to baulk at the idea of sending offenders to be hanged.[67]

The majority of the records, unfortunately, do not present such colorful and explicitly shaming situations. Rather they repeat charges which relied on a significant degree of hearsay. Often we find accounts brought by disgruntled neighbors, perhaps scandalized by certain behavior flouting the forms and practices of respectable society. Or perhaps they are community members concerned with the social fabric of the community, particularly anxious over the economic results of bastard children.[68]

Some cases were obvious examples of heated one-time affairs. These cases either involve multiple partners, such as Susannah Rowning, or lack detail. Rowning was "sensually undertaken" by two brothers, "Blake and James Browne of the same parish."[69] The language that "each of them sensually under[took]" Susannah suggests that these were two separate sexual encounters, rather than a ménage à trois.[70] Either situation would provide concern to the community fabric as both paint the woman as of loose morals—either as a repeat offender, or one so morally low as to allow two men into her bed. An unidentified partner also suggests a

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67. Capp, "Republican Reformation," 41.

68. Ingram has a great discussion of the disapproval of extramarital sexual activity when it resulted in bastards born to poor parents and created serious economic implications. He finds that "Bastardry/fornication prosecution…were most numerous in the populous, partly industrialized and—increasingly during the seventeenth century—impoverished areas." There was a degree of socio-economic distinction in concern to dissent and conflict relating to sexual activity. Ingram, *Church Courts, Sex and Marriage,* 275.

69. MJ/SR/1129/247

70. Ibid.,

discrete or short-term affair. Ursula Powell, was "found in bed with" a "man unknown."[71] It is of note that Ursula, wife of Robert Powell, was the only woman convicted of adultery in Middlesex during the Interregnum. While a jury at the Old Bailey courthouse found her "guilty," after the conviction she successfully gained reprieve by pleading pregnancy.[72] Modern scholars lack consensus on her ultimate fate. Jeaffreson finds that the "wretched woman was hung after her accouchement" based on a "S" put against the Gaol Delivery Register's brief note of her case."[73] Capp remains undecided on the ultimate fate of Powell, rather judging that she disappeared from the record. Regardless of her ultimate fate, Powell was still the *only* woman to be found guilty and sentenced to hanging, and even upon conviction, her sanctioned punishment was postponed and possibly ultimately reprieved. This suggests that there were, in fact, instances when there was substantial enough evidence to condemn the offender, and that evidentiary complaints alone cannot explain the quantifiable lack of convictions from 1650-1660. When there was supporting evidence, there was still hesitation, as seen in the granting of a reprieve of pregnancy, and the possible ultimate refusal, to carry out the Act of 1650.

Instances could accuse cohabiting couples. These differ from the single instance accusations as these couples passed undetected or unreported for a period of time. As seen in the case of Elizabeth Austin though, suspicion could arise even after years of living without suspicion. Austin cohabited with William Stone for "eight years together" before Mary Martin

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71. MJ/SR/1090/208-209

72. Pleading pregnancy was not an easy course to take. Though less severe than death, to gain reprieve involved an intrusive investigation and another trial, this time by women, to determine if the plea was honest and true.

73. Jeaffreson, *Middlesex County Records,* xi.

and Alice Hendry brought charges of "them living incontinently."[74] Why this accusation was finally brought forward is unknown; often, however, accusations were used by community members to punish what they thought were their disreputable neighbors. Francis Bishopps was also "suspected of liv[ing] in a felonious and adulterous manner" with another woman as his wife was still "yet living."[75] The motivations for accusing couples living in this manner would appear to be more directed towards the fear of these unions upsetting the harmony of a community. Rather than a bastard being begotten with no care for it, one might assume that a couple living for eight years together would responsibly (or economically) provide support. Thus, the concern at the heart of these accusations is the refusal of the couple to comply and follow the status-quo. Accusations often also acknowledged violence. Alice Cornelius was brought before the sessions to answer not only for "living incontinently with one Edmond Reynolds" but also for "violently assaulting and beating Katherine Reynolds the aged old mother" of the man involved.[76] The aforementioned Priscilla Frotheringham added injury to insult, when she "threatened to stab [the wife] when ever she can meet her."[77] Violence however, did not act as an aggravating circumstance, as these cases were still found not guilty.

In sum, twenty-four women and twelve men were tried for adultery in Interregnum Middlesex; none were executed. This unusual pattern of acquittal is not unique to Middlesex.

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74. MJ/SR/1076/231

75. MJ/SR/1132/44

76. MJ/SR/1126/303

77. MJ/SR/1183/70

Stephen Roberts found five adultery cases in the Devon quarter sessions record.[78] Inderwick found three cases in the assize records of the Western Circuit, however, none were hanged.[79] Bernard Capp found nine indictments for adultery in the Kent assize, but from those, only one woman confessed, granting conviction, but that woman was eventually discharged of the crime.[80] Further studies in the sessions of Warwickshire, Yorkshire, Essex and Norwich all present the same pattern of a few indictments, but no convictions.[81] J.A. Sharpe's research into the records of Essex county reveal that only seven persons were indicted at the quarter and assize courts during the 10 year period. None were hanged.[82] Sharpe finds the low total to be understood partly as a "difference in the relation of the various courts to the people."[83] The lay courts that now oversaw moral regulation were more distant, and possibly more troublesome and costly to bring offenses. Beyond administrative difficulties, Sharpe also lightly suggests that the dearth of prosecutions could serve as evidence of an unwillingness to expose neighbors to a punishment more rigorous than penance.[84] It seems safe to conclude that, despite the rhetoric attached to it by

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78. Stephen Roberts, "Fornication and Bastardy in Mid-Seventeenth Century Devon" in *Outside the Law: Studies in Crime and Order, 1650-1850,* ed. Jon Rule (Exeter, 1992), 8.

79. Inderwick, *The Interregnum* (1891), 35-6.

80. Capp also provides a more detailed examination of related papers to the Middlesex cases. His findings concur with mine, however, his additional research beyond the Gaol Delivery Records show that the four indictments that were found to be "a true bill" were later reprieved. He also identifies an additional case of a woman pleading pregnancy to evade arrest. Capp, *England's Culture Wars,* 137.

81. For more see: Capp *England's Culture Wars,* 137. Warwickshire saw only one indictment, Norwich, ten; Essex, seven; Yorkshire, six.

82. Sharpe, *Crime in Seventeenth Century England,* 61.

83. Ibid., 61

84. Ibid., 61.

moralists and legislators, adultery, though it continued to be reported, was never likely to result in a conviction when the punishment exceeded the boundaries of the community's sentiment.

Part II

Cruelty Rhetoric and the Interregnum

Was the Act of 1650 unenforced because it was considered too cruel? This section will investigate and contextualize accusations of cruelty in the seventeenth century. It is difficult to pinpoint "cruelty" and, more difficult, to pinpoint a definition broad enough to be considered an accepted phenomena. Cruelty, however, exists from a larger designation that finds "certain forms of violence and power excessive, abusive, or in some way unacceptable."[85] Accusations of cruelty do not necessarily bring down political regimes, yet they were undoubtedly an important component in shaping opinion that influenced the early modern polity. Such polemic helped to sustain the ethical parameters between what was regarded as the permissible or impermissible use of force. Englishmen coming to terms with the new order of violence, authority, and loyalty during the civil strife and ideological in-fighting, found in cruelty examples of what the realm should not resemble. Accusations of cruelty directed towards the new order, then, were a reminder of the benevolence that had prevailed previously in England. By condemning certain expressions of power as cruel, commentators defined lines of resistance to illegitimate force and the proper lines of compliance with moral authority.

The rhetoric discussed in this section is then is important in identifying what seventeenth-century Englishmen considered as a breach of the law. What allowed accusations of excessive cruelty in the law to qualify as proto-humanitarianism is that such language recognized the

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85. This thesis would have been untenable had it not been for the work of Dr. Philippe Rosenberg. I am highly indebted to him for his pioneering research and study of cruelty in early modern England. Philippe Rosenberg, "The Moral Order of Violence: The Meanings of Cruelty in Early Modern England, 1648-1685" (PhD diss., Duke University, 1999), 1.

"shifting assumptions about what constituted a sufficient reason to inflict pain" during the period. [86] It was, even by the seventeenth century, possible to "question whether or not an execution was a matter of retribution according to justice, and whether or not it should be deemed cruel."[87] The examples of rhetoric discussed in this section will help to explain why the previous section's indictments did not lead to convictions. Was the Act of 1650 too cruel?

Modern Definitions of Cruelty

How then was cruelty used in the early modern period? First, consider modern dictionaries definitions: cruelty is "callous indifference to, or pleasure in, causing pain and suffering."[88] Cruelty requires both an agent and a victim. But beyond such basic standards, cruelty is distinct in that it requires a specific state of mind. The agent, unlike in common acts of violence, "takes delight or is indifferent to the pain the action causes to the victim."[89] Certainly the multitude of tracts pressing the need for punishing, or expanding for further punishment, of adulterers and other sexual transgressors in the seventeenth century, signifies such "delight or indifference."[90] The Puritan early seventeenth-century movement for a reformation of manners

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86. Margaret Abruzzo, *Polemical Pain: Slavery, Cruelty and the Rise of Humanitarianism* (Baltimore: John Hopkins University Press, 2011), 3.

87. Rosenberg, "The Moral Order of Violence," 133.

88. *Oxford Dictionary*, 3rd ed., s. v. "Cruelty."

89. John Kekes, "Cruelty and Liberalism," *Ethics* 106 no. 4 (July 1996): 837.

90. For examples of this intense condemnation of illicit sexuality see: Anon., *A Letter to a Member of Parliament with Two Discourses enclosed…The one shewing the Reason why a Law should Pass to Punish Adultery with death (*London, 1675*);* Lancelot Andrewes, *The Morall Law Expounded* (London: 1642); W. Younger, *Iudahs Penance* in *The Nurses Bosome (*1617*);* Anon., *A Sermon Against Whoredom and Uncleanliness,* (1547)*; The High-waies of God and King, wherein all men ought to wake in holiness here to happiness hereafter*. *Delivered in two sermons preached at Thetford in Norfolk, 1620,* London, 1620 (Found in Crime in Early Modern England); Thomas Watson, *The one thing necessary Preached in a sermon at Pauls, before the*

was a state of mind that vehemently believed moral transgressions should be severely punished. The punishment of offenders allowed the community to escape divine retribution, and would surely provide "delight" to those preaching the dangers of these sins. Calling for the death of adulterers, publically and vocally within the community, illustrates the extent to which the "justified" death of the offenders would enthuse the Puritan proselytizers. Beyond the agent's state of mind, scholars distinguish cruelty from violent acts, as it involves unjustified or excessive violence.[91] The victim's actions do not warrant the pain inflicted, nor does a universally moral reason to inflict it exist. This discussion will concentrate on state institutionalized cruelty, which differs from individual cruelty, as it concerns the "establishment of domination by one group over another," a result of "institutional indifference" to the humanity and suffering of the victims.[92]

By the late eighteenth century there certainly existed an established rhetoric recognizing humanitarianism.[93] Intrinsic in this movement was the clear understanding of "humane" behavior

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Right Honourable the Lord Mayor, and the aldermen of the City of London (August, 31,1656); William Gouge *Of Domesticall Duties* (London, 1622); Richard Cooke, *A White Sheete, or a Warning for Whoremongers. A Sermon Preached in the Parish Church of St. Swithins by London-Stone, the 19. Of Iuly 1629, the Day Appointed by Honorable Authoritie, for Penance to Be Done, by an Inhabitant There, for Fornication, Continued More Then Two Yeares, with His Maide-Seruant* (London, 1629); John Downame, "A Treatise against Fornication and Adulterie" in *Foure Treatises Tending to Disswade All Christians from Foure No Lesse Haniou Then Common Sinnes,* London, 1609.

91. Kekes, "Cruelty and Liberalism," 837-8.

92. Rosenberg, "Moral Order of Violence," 23.

93. Frank Klingberg illustrates well how the "long training of the people in earlier times" converged with the eighteenth-century state to create modern charitable institutions acting in the humanitarian spirit; Frank Klingberg, "The Evolution of the Humanitarian Spirit in Eighteenth-Century England" *The Pennsylvania Magazine of History and Biography,* 66, no. 3 (July 1942), 278; For more discussion on the establishment of sponsored humanitarian societies in the eighteenth century see: Karen Halttunen, "Humanitarianism and the Pornography of Pain in

and "cruel" behavior, and the mobilization of larger organizations acting in "humane" ways to combat "cruelty." I believe that a clear understanding of these types of behaviors, however, preexisted the humanitarian movement of the later eighteenth century. This understanding allows the terminology to apply to legitimate and illegitimate extensions of secular power during the seventeenth century. As regulating sexual morality was an aspect of this extension of power, applying cruelty rhetoric is both feasible and, in fact, suggested. The notion of cruelty clearly played a role in considering the limitations of authorities to police behavior, "in this case, moral behavior. Perhaps it lacked exact definition but, nonetheless, an accusation of cruelty served Englishmen in their attempts to challenge authority. Indeed, scholars like Philippe Rosenberg point to the "now very old myth of the eighteenth century as the threshold between a 'modern' world governed by discipline and a 'feudal' one dominated by…harsh and fickle violence."[94] Rather, before the turn of the eighteenth century, Englishmen had to wrestle with the "brutality that confronted them," initiating conversations on punishing behavior while maintaining morally defined parameters between humane and cruel.[95] Perhaps as the opposition to perceived abuses was not organized on a national scale, history has deemed fit to skim over them. Regardless of

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Anglo-American Culture," *The American Historical Review,* 100, no.2 (April 1995), 303-34; Lynn Hunt, *Inventing Human Rights: A History* (New York: W.W. Norton & Company, 2007); Norman S. Fiering, "Irresistible Compassion: An Aspect of Eighteenth-Century Sympathy and Humanitarianism," *Journal of the History of Ideas,* 37, no.. 2 (1976), 195-218; Michael Kraus, "Eighteenth Century Humanitarianism: Collaborations between Europe and America" *The Pennsylvania Magazine of History and Biography,* 60, no.3 (July 1936), 270-286.

94. Philippe Rosenberg, "Thomas Tryon and the Seventeenth-Century Dimensions of Antislavery," *The William and Mary Quarterly* 61, no. 4 (October 2004): 609.

95. Ibid., 609.

their place in history, however, the early modern English still found ways to criticize, and attempted to contain, the abuse of force.[96]

Early Modern Dictionary Considerations of Cruelty

Samuel Johnson's *Dictionary of the English Language* illustrates the clear understanding and distinction between cruel and humane established by the mid-eighteenth century. Originally published in 1755, Johnson's first edition failed to include an entry for cruelty. The term was, however, used in definitions and in examples of multiple words, the most relevant being: "Tyrannical," "Tyrannick," "Tyrannous," "Tyranny" and "Tyrant." A tyrant was a "cruel despotick and severe master; an oppressor," and to rule as tyrannical was "arbitrary; severe; cruel; imperious."[97] The third edition, published in 1768, did however, define "cruel" specifically as being "pleased with hurting others; inhumane; hard-hearted; barbarous; bloody; mischievous and destructive."[98] Variants of the word include definitions such as "savageness; barbarity."[99] On the contrary, humane behavior was "kind; civil; good-natured; tender" and having humanity was defined as "benevolence, compassion, the nature of man."[100] Humanity shared the term "benevolence" with charity, which Johnson defined as "tenderness, kindness, love goodwill, benevolence, the theological virtue of universal love, liberality to the poor, alms, relief given to

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96. This is, of course, in regards to policing sexual behavior. Political discourse during the Civil Wars and Interregnum commonly and nationally published criticism of abuse and tyranny. Cynthia B. Herrup, "Law and Morality in Seventeenth-Century England," *Past and Present,* no. 106 (February 1985), 102-123.

97. *A Dictionary of the English Language*, 1st ed., s.v. "Tyrant."

98. *A Dictionary of the English Language*, 3rd ed., s.v. "Cruel."

99. *A Dictionary of the English Language*, 3rd ed., s.v. "Cruelty."

100. *A Dictionary of the English Language*, 3rd ed., s.vv. "Humane," "Humanity."

the poor."[101] Benevolence, a clear predecessor to humanitarianism as it linked humanity with "virtue of universal love," appeared as established terminology, making sense as this dictionary was published on the eve of the larger English Humanitarian movement.

Preceding the Johnson *Dictionary*, however, four volumes published over the course of the seventeenth century established cruelty in the Englishman's rhetoric. Robert Cawdrey, John Bullokar and Henry Cockeram all published monolingual dictionaries in the early seventeenth century. The first, Cawdrey's *A Table Alphabetical,* published in 1604, included some 2,500 words thought to be "hard, unusual English words, borrowed from the Hebrew, Greeke, Latin or French."[102] Cawdrey, did not define cruel explicitly, but employed it in the definition of "immanitie," "impietie," "inhumane," "rigorous," "savage," "severe," "tragedie," "truculent," "tiranize" and "violent." He did define humane as "belonging to man, gentle, courteous, bounteous."[103] Even at this earliest instance of a monolingual English dictionary, 1604, one can see the recognition given to humane behavior. While not associated with state responsibility, as will be the case in the later humanitarian movement, there is already an explicitly early-seventeenth understanding of what it is to act humanely. The next publication, Bullokar's *An English Expositor*, published 1616, considered itself to be "complete dictionary teaching the interpretation of the most difficult words."[104] Again, it did not incorporate a definition of cruel,

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101. *A Dictionary of the English Language*, 3rd ed., s.v. "Charity."

102. Robert Cawdrey *A Table Alphabeticall of Hard and Unusual English Words,* ed. Robert Peters (Gainesville: Scholars' Facsimiles and Reprints, 1966); For a discussion of Cawdrey: John Simpson *The First English Dictionary 1604:Robert Cawdrey's A Table Aplhabeticall* (Oxford: University of Oxford Press, 2007).

103. Cawdrey, *A Table Alphabeticall,* s.v. "Humane"

104. John Bullokar, *An English Expositor* (Hildesheim: George Olms Verlag, 1971).

but did define humanity as "gentleness, courtesie, civil behavior, also manhood or the nature of mankind" and, like the others, used cruel in the definitions of other terms.[105] Most significant is the definition of tyrant as "a cruel Prince, one that rules unjustly" and that to tyrannize is specifically to "govern with cruelty."[106] Henry Cokeram's 1623 dictionary was a "collection of the choicest words contained in the *Table Alphabeticall and English Expositor* and of some thousand of words never published by any heretofore."[107] Humanity was again defined as being "gentle and pertaining to a man."[108] Cockeram did, unlike the other early dictionaries, include a separate entry for "cruell"; however, he included it in the second part of his three-part work.[109] This section was intended to "explain ordinary or 'vulgar' words by more elegant equivalents" while the first part was restricted to "hard words."[110] The "vulgar words" included in Cockeram's *English Dictionary* did not, however, "correspond to canting terms, but merely represented common words of Anglo-Saxon origin."[111] The more advanced words Cockeram

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105. Bullokar, *An English Expositor* s.v. "Humanity"

106. Bullokar, *An English Expositor* s.v. "Tyrant"

107. Henry Cockeram, *The English Dictionarie: or, An interpreter of hard English vvords,* (London: 1623).

108. Cockeram, *The English Dictionary* s.v. "Humane"

109. Cockeram also defined tyrant as a "cruel bloudy prince"; that to rule tyrannically was to rule "cruelly" and to tyrannize was to "play the tyrant." *The English Dictionary* s.v. "Tyrant"; "Tyrannical"; "Tyrannize."

110. Ronald A. Wells, *Dictionaries and the Authoritarian Tradition: Study in English Usage and Lexicography* (The Hague: Mouton, 1973), 18.

111. "Canting terms" refers to the more coarse and crude slang terms of early English. They were terms employed by the seedy criminal class, not the refined literate class using dictionaries. Mauizio Gotti *The Language of Thieves and Vagabongs: 17th and 18th Century Canting Lexicography in England,* (Tubingen: Niemeyer, 1999) 49.

associates with cruelty are “truculent, inhumane, fell, immane, dire.”[112] In doing this, Cockeram established cruelty as common; it was understood to such a degree that its “vulgarity” actually necessitated more advanced forms of the word.[113] The preceding two dictionaries, while conveying an understanding of “cruelty” by employing it in definitions rather defining it, could only suggest such an interpretation. Cockeram’s specific organization with the unique inclusion of “cruel” in the second part of his dictionary containing the “vulgar words” with more elegant and refined equivalents, demonstrates that the early seventeenth-century literate man would find “cruel” to be a ubiquitous term, so pervasive that it prompted demand for a more elegant and refined form.

Following these three early seventeenth-century dictionaries is Thomas Blount’s *Glossographia,* published 1656. Published during the Interregnum, his definition of humane and use of cruelty in the terminology, rather than defining it, did not differ significantly from his predecessors.[114] For example, “Atrocity,” “Inhumanity,” “Ferocity,” “Outrageous,” “Tragedies,” “Sanguinary,” “Murderous,” and “Barbarous” all used cruel in their definitions, illustrating that the term was conventional, specifically in Interregnum considerations of power. Blount did

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112. Cockerman, *The English Dictionary* s.v. “Cruell”

113. In this sense, “vulgar” refers to words that were commonly used. Scholars even suggest the possibility that, in terms of its entry-words, Cockeram’s “second part” as the first English monolingual dictionary of daily words. See: Leo Wiener, “English Lexicography,” *Modern Language Notes,* 9 (1986): 351-366; Noel Osselton, “John Kersey and the Ordinary Words of English,” *English Studies*, 30 (1979): 555-561; Andrea Nagy, "Defining English: Authenticity and Standardization in Seventeenth-Century Dictionaries" *Studies in Philology,* 96 no. 4, (1999): 439-456; Johan Kerlin, *Chaucer in Early English Dictionaries: The Old-Word Tradition in English Lexicography down to 1721 and Speght's Chaucer Glossaries* (The Hague: Martinus Nijhoff Publishers, 1979), 78.

114. Blount identified humane as “belonging to Mankind; also courteous, affable.” Blount, *Glossographia*, s.v. “Humane.”

differ, however, on specific terms that he related to cruelty; he adds "Dracos Laws" as "Laws, which for being extream severe and cruel, are therefore said to be written rather with blood then ink; such are those that punish trivial offences with death, or some other excessive torment."[115] There was no definition of "tyrant" in his dictionary. As the dictionary was published amidst third party accusations of Cromwell as a tyrant, the failure to include the word specifically does not appear a coincidence. Considering that the three prior dictionaries all had some form of tyrant, it is interesting that Blount only includes "tyrannicide" the "murdering a tyrant."[116] Perhaps the inclusion of "tyrant" in the dictionary would be too politically charged a word; but "tyrannicide" as it related to Charles I's execution, would be a welcome inclusion.[117]

These first single-language dictionaries convey an understanding of, and implicit distinction between, humane and cruel. They point to, and illustrate, the difference between the appropriate and inappropriate behavior of humans. What separates one from barbarity, tyranny and savageness was civility, gentleness and courtesy; these designations are then politicized. To be a tyrant is to rule cruelly, without an understanding of humanity. It is to govern beyond the consent of the governed, to govern with cruelty *instead* of humanity. Cruelty did not always imply a tyrant, but a tyrant always implied cruelty. Englishmen of the seventeenth century understood these conditions far beyond the dictionary descriptions and, in fact, employed these

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115. Blount, *Glossographia,* s.v. "Draco's Laws"

116. Blount, *Glossographia,* s.v. "Tryannicide"

117. In addition to Blount's *Glossographia,* Edward Phillips' *The New World of English Words or, A general dictionary containg the interpretations of such hard words* was published during the Interregnum (1658). His dictionary as well only includes "Tryannicide" out of the variants of "tyrant," supporting the interpretation that "tyrant" itself was an extremely charged term with implications that the authors perhaps did not want to suggest; especially given the pervasiveness of "tyrant" and "cruel" in popular rhetoric that *was* intentionally politically charged.

political considerations in the form of "cruelty writings" to identify the boundaries between admissible and inadmissible degrees of punishment.

Early Modern Cruelty Rhetoric

The language invoked in the "cruelty writings" of the seventeenth century overall illustrated "specific ethical preoccupations concerning the use of force."[118] The seventeenth century is a perfect scope to view the new polemic as the intense transformations of the century resulted in dramatic new realities of power.[119] The emergence of the nation-state, the internationalization of politics, the centralization of violence and the shifting loyalties all caused dramatic change; the resulting change initiated intense reflection and response with new-found moral and ethical concerns.

Accusations of cruelty illustrate "an inverted image of legitimate order" and thus, the use of such rhetoric serves as "a barometer for assessing English and British subjects' cultural responses to their new political horizons."[120] While we often consider early states to be authoritarian societies, "prior to the nineteenth century…even localized pockets of opposition

118. Rosenberg, "The Moral Order of Violence," 2.

119. What is "new" about the polemic employed during the seventeenth century is commenters' concern about the moral and ethical parameters of abuse. The transformation from monarchy, to quasi-absolutist monarchy, regicide, protectorate, commonwealth and reestablishment of monarchy are just a few of the dramatic political changes with resulting tumultuous changes in power. Among these, and of most concern in this discussion, is the ascent of Oliver Cromwell. The English people were conditioned to monarchical rule, however the usurpation of power by a member of the gentry created a new order that was both uncommon and uneasy. The role of the Rump Parliament, however, is not to be overlooked. While one might assume that the Act of 1650 was the result of a representative body legislating concerns of the citizenry, the Rump was by no means democratic. Instead, it had unprecedented legislative and executive powers, usurping the traditional hierarchy of central and local government. It declared itself the sole authority in England, abolishing the monarchy and the House of Lords among others.

120. Rosenberg, "The Moral Order of Violence," 3.

might test the resources of established authority."[121] Thus, even the seemingly small action of refusing to convict sexual offenders can be understood as part of a broader systematic opposition to perceived cruelty in the political regime. Push-back against the state, is not to say, however, that any form of institutionalized state violence was cruel. Rather, when looked at in light of precedent, notions of justice and morality, violence could indeed be praiseworthy. Only when the state's use of violence transgressed beyond these standards did it venture towards abuse and cruelty. Sexual morality, as mentioned, was still a pressing issue that most community members believed needed policing; however, seventeenth-century discourses indicate a limit on rulers' ability to police, and extent to police, such behavior. [122]

Seventeenth-century accusations of cruelty tended to imply a concrete physical act of abuse, or threat thereof.[123] The act of abuse or violence did not need to occur against the accuser; on the contrary, third parties filed most accusations either in direct response or in response to perceived incidents.[124] How does this relate to the Act of 1650 and the boundary of the law? The many accusations of cruelty convey that the meaning of cruelty was well understood and, though few in number, the allegations of cruelty leveled against the Act of 1650 were true accusations of a state overstepping the limit for legitimate force. The examples discussed are not to be

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121. Ibid., 9.

122. These factors would include the new expectation of self-restraint and appropriate conduct from government and the new extent and extension of legislation regarding sexual morality.

123. The threat of cruelty especially came into play with writings concerning tyranny. Often, these writings focused not on what occurred, but the potential cruelty that could result from tyrannical rule. See discussion on tyranny writings for specific examples.

124. See examples discussing massacres in the next section. The overwhelming majority of these writings were *not* written by victims, but of third party observers recording the horrific cruelty obtained from a body of foreign narratives and reprinted documents.

considered for the example's specific *subject* but for the example's *theory* of the certain moral parameters of what were admissible or inadmissible degrees of state intervention and force.[125]

What was cruel in the seventeenth century? This section will consider two common accusations of cruelty to demonstrate the nature of cruelty rhetoric in seventeenth-century considerations of violence: massacres and tyranny. Massacres were cruel as they surpassed the boundary of acceptable practices of warfare. The French St. Bartholomew's Day Massacre, for example, included killing civilians that were un-expecting, passive, and innocent, making the French Catholics to be "infinit[ly] cruel, crafty and [the] most treacherous enemies."[126] Recorded in an anonymous English pamphlet recording "the several plots, conspiracies and hellish attempts of the bloody-minded papists against the princes and kingdoms of England" religious distinction clearly plays a role in these early writings. Protestants were "barbarously slain" by agents that understood the unwarranted nature of their actions; they were "cruel" and "crafty" thereby fitting the definition of cruelty as "indifferent to the pain the action causes to the victim."[127] Massacres often were included in narratives of religious contestations, most relevant to the British being any Catholic actions against Protestants, demonstrating more broadly that cruelty, in the late sixteenth and early seventeenth centuries, was restricted to acts by the "other;" the outsider, or non-English. Over time, accusations migrated closer to the island country; first,

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125. These "broad" examples of cruelty rhetoric demonstrate a groundwork for questioning the State's role in imposing punishment. As the Interregnum State's conception itself could be considered tyrannical, the very foundation for imposing "just" punishment is questionable. When held against the specific rhetoric regarding the Act of 1650 and the lack of convictions for adultery, it could be concluded that capital punishment for sexual crimes was deemed *too* cruel.

126. Anon., *A Brief Account*, 37.

127. Ibid., 37; Kekes "Cruelty and Liberalism," 837.

Ireland became a target of cruelty writing. Edmund Borlase, a historian of the Irish rebellion, provides a valuable record of what seventeenth-century Englishmen thought of Ireland: that they acted out "the greatest and most horrid massacres…in all four provinces, the horrid cruelties used towards the British either in [the Irish's] bloody massacres, or merciless despoiling, stripping and extirpation of them, were generally acted in most parts of the Kingdom…"[128] Irish Catholics were beyond guilty of cruelty in the eyes of the British; they embodied cruelty. Sir John Temple's history of the Irish rebellion, for example, included a section: "Some of the most notorious cruelties and barbarous murders committed by the Irish Rebels." He compiled a list of exemplary violence from the 1641 rebellion titled "a brief collection of some other horrid inhumane cruelties" that covered acts ranging from "a few cases of Protestants who were bolted inside a filthy dungeon and left to die, to the trampling and mauling young children."[129] These accusations all point to an agency on the side of the victimizer; an inherently cruel barbarous and savage state of mind.

Noteworthy is the evolution of cruelty accusations from being directed at the outside, to being directed within England. Previously accusing the barbarian across the channel or in rebel lands, now the English employed accusations to comment on wrongdoings within their own English political system. Oliver Cronwell's regime specifically, experienced a multitude of accusations during the Interregnum. Marchamont Nedham, an English journalist, found

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128. Edmund Borlase, *The History of the Execrable Irish Rebellion Trac'd from many precedidng Acts, to the Grand Eruption the 23 October 1641 And thence pursued to the Act of Settlement MDCLXII* (London, 1680).

129. Sir John Temple, *The Irish Rebellion: Or, an History of the Beginnings and First Progress of the General Rebellion rasied within the Kingdom of Ireland, upon the three and twentieth day of October in the year 1641,* (London: printed by R. White, 1646).

Cromwell's behavior was "barbarou[s]" and "unworth[y]."[130] During his Irish campaign, there were multiple acts of indiscriminate killings that warranted comment from *English* sources. Cromwell's forces "used all cruelty imaginable upon the besieged, as well inhabitants as others" and with such, his actions surpassed war, and instead, ventured into cruelty.[131] He "spar[ed] neither women nor children…in the most cruel manner they could invent."[132] While notions of the "other" played into cruelty accusations, what was of more importance, as Rosenberg noted, was the "relationship of aggressors and victims."[133] To victimize someone "implied overstepping the boundaries of another person."[134] More broadly, this victimization manifested itself as an illegitimate usurpation of unwarranted power against innocence. Cromwell, to many, was the epitome of tyranny. And though tyranny was not constant or obligatory in cruelty rhetoric, cruelty was a conventional accusation lobbied against alleged tyrants. The fairly continuous contestation of the political order of the seventeenth century, wrapped cruelty with considerations of the "law, fair treatment and political order."[135] The ruler's abandonment of reason and moderation vanquished safeguards, and instead allowed the law to become an

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130. Mercurius Pragmaticus no. 27 (Oct. 23-30, 1649), found in Rosenberg "Moral Order of Violence," 184. Pragmaticus was a Royalist periodical commissioned to print anti-parliamentary sentiments from 1647-1649.

131. Mercurius Elenctius, no. 24 (Oct. 8-15, 1649), found in Rosenberg "Moral Order of Violence," 186-7. Elenctius was a similarly targeted periodical as Pragmaticus. For more discussion see: Jason McEligott, *Royalism, Print and Censorship in Revolutionary England,* (Woodbridge: Bydell Press, 2007).

132. Ibid., 187.

133. Rosenberg, 131.

134. Ibid., 131.

135. Susan Amussen "Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England," *Journal of British Studies* 34 no. 1 (January 1995): 32.

instrument of excess violence, which, of course, implied cruelty.[136] All of this is to say that the conception of tyranny was not restricted to dictionaries; rather, English opinion often employed such terminology to distinguish the political system as lawless instead of lawful. To come to power by the sword undercut any justice; it created an oppressive law "full of uncertainty, nicety, ambiguity."[137] Tyranny resulted in "the interests of the people [being] trod upon" so much that the "very law is the badge of [their] oppression."[138] Images of lawlessness and slavery intersected with examples of the new regime's violence to convey usurpers had trespassed the rights of their subjects. Tyranny, and therefore cruelty, was a gross invasion of securities afforded to subjects under law. When such was the case, the law presumed by these cruel agents was but the "will and arbitrary tyranny of a few sanguinary schismatic, cruel hypocrites and desperate usurpers over all."[139] The Interregnum government, acted under these conditions.

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136. For more accusations of cruelty lobbied against Cromwell see: John Gauden, *Cromwell's Bloody Slaughter-house* (London, 1660), Accessed EEBO; Annon. *Six Serious Quaeries Concerning the Kings Triall by the New High Court of Justice* (1649) found in Rosenberg, "Moral Order of Violence," 337; W.P., *The Bloody Project, Or a discovery of the new designe in the present War, Being A perfect Narrative of the present proceedings of the severall Grandee Factions for the present of a Just Peace and Promoting of causeless Warre* (1648), in *The Leveller Tracts 1647-1653* ed. William Haller (New York: Columbia Press, 1994), 139-140; John Lilburne *Englands New Chains Discovered* (1649) in *Leveller Tracts,* 173.

[137] After the execution of the king and the proclamation of the republic, John Warr published *The Corruption and Defienciency of the Lawes of England soberly discovered; or, Liberty Working Up to its Just Height,* in which he called for three "improvements" to the law: clearer legislation, proportional punishment to offense and accessible courts. He found that while the law should be imposed on rulers, instead, rulers have manipulated the law to impose them against the people. John Warr "The Corruption and Deficiency of the Lawes (London: 1649). For further discussion on Warr see: Melissa Schwartzerg, *Democracy and Legal Change,* (Cambridge: Cambridge University Press), 88-89; Christopher Hill, *Puritans and Revolutionaries* (New York City: Random House, 2011).

138. Ibid., 157.

139. *The Kindgomes Intelligencer* no. 21 (May 20-27, 1661) quoted from Rosenberg, "Moral Order of Violence," 354.

Thus, the law and authority of the ten-year period can be questioned. While not every law was tyrannical or cruel, those that failed in execution raise the question of contemporary attitudes. As local agents were responsible for the ultimate execution of the law: how, specifically, did they understand the Act of 1650?

Cruelty and the Act of 1650

Was the Adultery Act of 1650 intrinsically unenforceable, or did outside agents choose to let it go unenforced? Discussed in only a few direct instances that survive today, contemporary attitudes towards the notorious legislation illustrate that the latter may be the case.[140] These commentators clearly discerned the overreach of the Act in the skewed definition of justice in punishing sexual offences.

The literature surrounding the case of Anne Green conveys such a reaction towards the Act of 1650. Though not discussed extensively, preoccupations with other details within the trial, death, and "resurrection" of Anne Green, demonstrate the lack of gravity assigned to her sexual transgression. Accused of infanticide and fornication in 1650, Green was sentenced to execution by hanging. The hanging was unsuccessful, however, and after being perceived as dead, upon examination she was discovered to have a weak pulse. The recovery was perceived as a direct message from God demonstrating her innocence. The pamphlets record she was "got with Child, by an Oxford-shire Gentleman"; the child however, was either still born or was murdered by Green, as it ended up "in a corner of the…house, and covered with dust and rubbish."[141] At trial,

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140. These are discussions separate from the radical Puritan sect. There are a multitude of tracts contesting for further punishment of sexual transgressors (see note 6), however, they are not distinct from the considerations of prior centuries. These tracts are unique as they consider illicit sexuality in a new light.

141. Annon., *A Declaration from Oxford, of Anne Green,* (London: printed by J. Clowes, 1651).

Green "confessed, that she was guilty of the Act, in committing of the sin, but clear and innocent of the crime for murdering of it, for that it was dead born."[142] The "sin" in question here is her extra-marital sex, and Green's frank admission of guilt demonstrates a lack of severe punishment for illicit sexuality. The outright admission suggests that perhaps Green did not fear the retribution for fornication set by the Act of 1650. A lack of fear is possible; the prior penalty only required penance in a white sheet—not the three months in jail newly specified. Regardless, Green was indicted by the judge to "answer it at the next assizes" and though she "pleaded not guilty" to infanticide after a short trial "she was convicted for her life, and received sentence to be hanged."[143] Of significance is that Green's engagement in illicit sexual activity does not act as an aggravating circumstance, or even a point of discussion. In theory, Green is being accused of both fornication and infanticide, two crimes now punishable by the secular courts. Infanticide was not one of the crimes included in the Act of 1650. Instead, it was a crime regulated under secular jurisdiction that reached back to the medieval period. Beginning then, a codified system existed in both the church and criminal code that regarded infanticide "not as a special category of offense…but as murder."[144] Thus, Green's sentenced hanging for allegedly committing infanticide is not noteworthy. What is noteworthy is the almost complete exclusion of fornication. One would expect an offense that warrants some jail time to have some mention,

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142. W. Burdet, *A Wonder of Wonders Being a faithful narrative and true relation of one Anne Green,* (Oxford: 1651), 2.

143. We must assume that Green was found guilty only for infanticide. Unfortunately, a court transcript or record on Green does not exist today. Rather we rely on the pamphlets and popular literature to reassemble the narrative. Annon., *A Declaration from Oxford, of Anne Green*.

144. Keith Wrightson, "Infanticide in Earlier Seventeenth-Century England" *Local Population Studies* 15 (1975): 11.

especially considering that there are multiple tracts published regarding Green. And while Green does "confes[s] that she was guilty of the Act, in committing of the sin" there is no discussion of the punishment for fornication. Her employers demanded to know who it was "that had committed that foul act, and contemptible crime with her" to which she responded "a gentleman of good birth and a kinsman to a justice of Peace."[145] Such was the extent her fornication was recorded in pamphlets. The absence of the Act of 1650 in this sample of popular literature might be interpreted as a lack of its implementation. The failure to reference any aspect of the Act, which was relevant as it specifically regulated this illicit behavior, may also illustrate that county judges had no intention of considering it when hearing cases and rendering verdicts.[146]

What is recorded in the surrounding literature on Anne Green is a consideration on the limits of the law, and the alternative permissible punishment for fornication. One of the chief narratives, *A Wonder of Wonders*, found Green's execution, while operating under the guise of the law, was actually "contrary to all Law, reason and justice" enough so that "some honest Souldiers then present, seemed to be very much discontented thereat, and declared…it was contrary to all right and reason."[147] *Newes from the Dead* includes 25 poems that expand upon the attitudes towards Green. William Bell finds the death penalty as unwarranted; he presumes

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145. Burdet, *A Wonder of Wonders,* 2.

146. Alternatively, it is possible that the infanticide was so much graver an offense that it overwhelmed the discussion. It is peculiar however, that the very newly enacted legislation regulating an offense that took place in this case would have no mention at all. The Act of 1650 was rather infamous, and was communicated to the provinces, however, it receives no mention at all in the narratives on Anne Green. It is also possible that, as Green's affair was with "gentleman of good birth," that the discussion revolving her sexual affair was muted. As the gentleman was "a kinsman to a justice of Peace," perhaps, this relation worked to silence the potential stain on, and prevent the punishment of, the gentleman.

147. Burdet, *A Wonder of Wonders,* 6.

her innocence for infanticide and finds that "she thus did penance in her winding sheet."[148] Penance in white sheet was common punishment for sexual immorality under the ecclesiastical courts, and Green, assuming she underwent the necessary actions, would be "forgiven." Bell does not mention Green being jailed and admonishing her guilt though those means; instead, he chooses to perpetuate the punishment of fornication as carried out under ecclesiastical justice. Does this then suggest that even just eight months after the implementation of the Act of 1650, the punishments were already disregarded?

This disregard for the law arose, most likely, from the lack of proportionality in punishment. For example, one poem in the collection found that "wives may deceive, and doe their best/To counterfeit in all the rest/Only let them not Dye in jest."[149] To "deceive" and "counterfeit" implies that these wives partook in affairs that would, in 1650, be punishable by death. However, Henry Perim, the author, urges that these women not "d[ie] in jest" suggesting that execution for a matter such as an adulterous affair would be far beyond the trivial act. This position is supported by the work of T. Arthur who finds that "The crime was heinous, but (if you know all)/T'was not so High as to be Capitall."[150] The crime to which Arthur refers is not explicit, however, one can extrapolate from seventeenth-century attitudes that he was not referring to the crime of infanticide, but rather to crimes of sexual immorality. Infanticide, as mentioned, was accepted as evil and equated with murder. There was "uncompromising

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148. William Bell in *Newes from the Dead, or a True and Exact Narration of the Miraculous Deliverance of Anne Green--Written by a scholler in Oxford for the satisfaction of a friend, who desired to be informed concerning the truth of the businesse. Whereunto are added certain poems, casually written upon that subject,* (Oxford: Printed by Leonard Lichfield, 1651) 16.

149. Henry Perim in *Newes from the Dead,* 9.

150. T. Aruther, in *Newes from the Dead,* 16.

opposition" toward the crime given the "unnatural nature of the offence…which rendered it particularly heinous."[151] So, it is not outrageous to presume that, as this crime occurred in December 1650, the crime that was "heinous" but not so much "as to be Capitall" was a reference to Green's sexual crime.[152] Again, we see the association between regulating sexual crimes, in this case fornication, and the limit of the State to inflict violence following its own moral agenda. Of issue in these examples is the proportionality of the crime. Crime of sexual immorality did not necessitate capital punishment or lengthy jail time.

Beyond proportionality, is a question of the justness of the Law. Another poem from this bundle disassociates the Law from being uncontestably just. Green, who is ultimately pardoned, is a "just and equitable cause/Whether not constant to the Lawes."[153] Even though something is "not constant to the Lawes," that does not negate its legitimacy. The Law alone does not imply and grant lawfulness; there are outside forces that must consensually considered it legitimate. Further, the law is not accepted as the all-greater power. Anne Green's case illustrates that one can wrongly "suffe[r] the Law."[154] There is a greater moral power than the law: God, and when the Law fails, as in the case of Green, the higher power will intervene. Green, ultimately, acknowledged that her "sin [of fornication] deserved punishment" but the sentence granted was too great, and consequently, God did "not given [her] over unto death."[155]

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151. Keith Wrightson "Infanticide in Earlier Seventeenth-Century England" 11.

152. Initial acts of fornication were punishable by three months in jail, but upon a second offense the punishment was increased to execution. Therefore, it is not impossible for Green's fornication to be a capital offense even when excluding infanticide.

153. Jch. Aylmer, in *Newes from the Dead,* 10.

154. W. Burdet, *A Wonder of Wonders*, 6.

155. Anon. *A Declaration from Oxford, of Anne Green*, 5.

There are, indeed, accounts that do not require any extrapolation to examine contemporary attitudes towards the Act of 1650. Lucy Hutchinson (1620-1681), a female scholar of the seventeenth century, explicitly comments on the extraordinarily cruel measures of the Act. Hutchinson and her husband, the governor of Nottingham, John Hutchinson, supported the Parliamentary government during the English Civil Wars. After the death of Charles I, however, they actively opposed Cromwell's regime, and that opposition clearly comes across in Hutchinson's discussion of the Act. Noted for the biography of her husband, her writings help to destroy the austere picture of English society otherwise propagated by the educated Puritans elite. Unlike the religious extremists, Hutchinson's attitude towards the punishment of illicit sex was remarkably moderate, and perhaps, especially when held up against the lack of court convictions for sexual transgressions, more representative of the seventeenth-century position. Hutchinson, more broadly, represents the limitations of a republic: while on a national level she was committed to a revolution with divine connotations, her desire for reformation was restricted and superseded by her belief in strict limitations on personal power.[156]

Lucy's opposition to godly government gone too far is captured in her "Ballad upon the lamentable death of Anne Greene and Gilbert Samson" who were "executed at Tyburn the 2nd day of January for having been taken in the act of adultery."[157] The poem is relevant enough to

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156. David Norbrook, "Order and Disorder: The Poem and its Contexts," in *Order and Disorder*, (Oxford: Blackwell Publishers, 2001), xiii.

157. This Anne Greene is not to be confused with the prior Green. This Anne Greene was convicted in London, not Oxford, for adultery, not infanticide. The case of Green who was hung, but then revived, was fairly well known and publicized, and this switch of vital details is unlikely to be a mistake. Found in Anne Hughes, *Gender and the English Revolution,* (New York: Routledge, 2012) 137-8.

be quoted in full:

> What a pitiful age is this
> What cruelty reigns in this town
> For using a thing of her own
> …Is not my body my own
> Why may I not use it then
> This is not a law made by god
> But by the vile acts of men
> Had you followed the sacred rule
> I need not have made this moan
> For where is that parliament man
> That was worthy to throw the first stone?
> Oh where was Harry Martin
> And where was my little lord Grey
> Oh where was the good earl of Pembroke
> And noble Sir Harry Mildmay
> Sure they did not pass this act
> Nor thus did their country betray
> For such trivial faults as these
> To cast our poor lives away
> Come gentle lover of mine
> That die with me for this fact
> Let us never lament to part with such slaves
> As rule by this shameful act

Even those like Hutchinson who supported a reformation of manners expressed hostility to such punitive measures as the death penalty. Hutchinson's references to notorious politicians in her ballad contrast the fate of the Anne Greene with the more light-hearted approach to sexual misdemeanors engaged in by the likes of Harry Martin, a known man of loose morals.[158] Perhaps she is suggesting that the treatment of sexual morals under these men was a more realistic stance. That she is "sure they did not pass this act" suggests that she believes some authorities employed

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158. The Harry Martin referred to in Hutchinson's work is most likely referring to Henry Marten, a member of parliament and a radical republican who signed Charles I's death warrant. It is also possible that Henry was targeted in this work as his "support of Leveller and women's petitions in the 1650s made him the target of frequent sexual slanders"; see Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England,*(New Haven: Yale University Press, 2003), 84.

a degree of self restraint not present in the current regime. Or, she is illustrating the extreme irony sure to be associated with the act—that many of these high handed men in actuality had notorious affairs and were reputed to be "ugly rascals[s] and whore-master[s]."[159] Hanging for sexual crimes is a result of "cruelty reign[ing] in this town."[160] Worse, to submit is to be a "slave…rule[d] by this shameful act."[161] Hutchinson's ballad, though short, still employs almost all the cruelty tropes discussed prior; explicit rhetoric on cruelty, victimization, slave and betrayal by the state. She illustrates a perceived distinction between doctrinal knowledge and practice, one that was not as firm as found in some of her Puritan contemporaries.[162]

It is important to note, however, that capital punishment was *not* being condemned in general as a form punishment. Rather, capital punishment was too severe a reaction for consensual sexual crimes. Executions by hanging were praised in other ballads, but the crimes in those ballads warranted such a response. The "sad and true relation of the Apprehension, Tryal, Confession, Condemnation and Execution of the two barbarous and bloody Murtherers" illustrated the sense of justice rendered by hanging murders. The two in this ballad were sentenced to die as "a reward for impiety" which was "their due" as hanging "was the murderers' just fate."[163] Greene was guilty of "trivial faults" for "using a [body] of her own" while these two

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159. Gowing, *Common Bodies,* 124.

160. Hughes *Gender and the English Revolution,* 137.

161. Ibid., 138.

162. For a further discussion of this in combination with Hutchinson's other works see Mark Burden, "Lucy Hutchinson and Puritan Education," *The Seventeenth Century* 30, no. 2 (2015): 163-178.

163. William Powell, *Being a sad and true Relation of the Apprehension, Tryal, Confession, Condemnation, and Execution of the two barbarous and bloody Murtherers, who basely and unawares killed a worthy Knight of the North Country as he was going down to the*

committed a "bloody deed" against "not the very worst of foes."[164] Hutchinson paints the law as cruel, vile and unjust in exacting this punishment, that it is "not a law made by God/but by the vile acts of men"; on the contrary, the law in "A Sad and true relation" was just and righteous, going so far as to provide the caveat that "if they are wrong'd the *law* will find."[165] The two men deserved the fate that awaited them. Anne Green was a victim of the law, the two men however, victimized another, thereby permitting a just execution.

A Dialogue between Mistres Macquerlla, a Suburb Bawd, Ms Scolopenda, a noted Curtezan and Mr Pimpinello, an Usher etc. serves as another publication that explicitly referred to the Act of 1650 with cruelty rhetoric. In this satirical broadside three unscrupulous citizens all "pitifully bemoan the tenour of the Act (now in force) against adultery and fornication."[166] All three characters were at risk: Macquerlla is a "suburb bawd," Scolopenda, a Courtesan and Pimpinello, a pimp; with such, they all stood to risk their lives, not to mention their livelihood, from the new regulation on sexual behavior. Macquerlla rejected the Act of 1650 and instead recalled the "the memory of the men of former times, who made wholesome Lawes for the

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Waterside; not giving them the least abuse, for which cruel and inhumane action they were both hanged in Fleet-Street, neer White Fryers, 22 Octo. 1675, (London: 1675).

164. Hughes *Gender and the English Revolution,* 138.

165. Ibid., 138. Emphasis added on my account.

166. Though the three characters in this work are, undoubtedly, three low class, unscrupulous and dissolute members of society, that they are the ones challenging this act, and somewhat successfully so (see discussion of circumventing the Act), negatively paints law makers. Even though they are so lowly, they are able to outsmart and get around the law. I think, rather than illustrating that opponents to the Act as dissolute, it illustrates that the lawmakers are so ridiculous as to be outsmarted by the most unrespecting of characters. *A Dialogue between Mistres Macquerlla, a Suburb Bawd, Ms Scolopenda, a noted Curtezan and Mr Pimpinello, an Usher etc* (London, 1650), 1.

protection of Handsome women."[167] This new law, instead of protecting, worked to "und[o] us all."[168] The reaction captured a passionate emotional response in which the characters "desired to die" rather than live without "all former joys."[169] Illicit sexuality, to these characters, and the assumed customers of these characters, was a characteristic of normal life, not a notorious sin so heinous to warrant execution. To these characters, a life without free sexuality was unbearable; indeed they would rather "hang [themselves] upon the next tree that stand in my way."[170] Pimpenello went as far to wish to "pull out [his] own eyes that [he] might not behold the misery that is fallen."[171]

As mentioned, the Act created severe economic consequences, and the three characters did not overlook the cruelty of having their trade taken away. They are left with "not the least employment," instead "all's gone, all's lost."[172] There was not a "gentleman that dares, or cares to tell" Pimpinello that his services are in demand; the risk is too high.[173] Even though the Act was "so terrible to all [their] tribe" and prescribed harsh punishment, the three characters' dialogue demonstrates measures invented to circumvent the law.[174] Marquella provides one such

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167. Ibid., 1.

168. Ibid., 2.

169. Ibid., 2.

170. Or, perhaps, this is a way of the characters to circumvent the law. They already saw the Act of 1650 as an overstep in punishment in one's private life, perhaps by preemptively hanging themselves, they would die on their own means, not by the state's doing. Ibid., 2.

171. Ibid., 2.

172. Ibid., 2.

173. Ibid., 2.

174. Ibid., 6.

plan, suggesting that "every door must have its Guardian" and those guardians "shall have not cause to swear."[175] This loyal guardians would therefore protect any sex that occurred as "the Act saith, that Oath must be made against the parties ere they can be lyable to Censure."[176] Illicit sex did still occur despite the Act, and though there was a lack of convictions for it, the intellectual atmosphere during the Interregnum illustrates that there was a clear push back towards measures taken against individual's privileges. The attempt to circumvent the law demonstrates a rejection of the legitimacy of the state. There is a breach of the law in the case on both ends of the hierarchy; the lower orders did not fulfill their obligation to lawfulness as the perceived the higher order as having not fulfilled their obligation moderation and restraint in governance.

This broadside points, similarly as Hutchinson did, to an unjust stripping of certain rights. Now "poor women" are "suspended from that privilege the very cats enjoy."[177] "Privilege," conveys a fundamental entitlement that can not be disregarded despite the intervention of the state. Though an immoral act, death for illicit sex was a violation of a person's "privilege" to behave naturally.[178] Additionally, the author of this broadside employed rhetoric that pointed to the agent's intention in legislating the Act. They contend that the "noble Act hath boasted" execution for illicit sex.[179] The use of "boast" implies a state of mind of the agent, in this case the government, warranting a cruelty designation. Moreover, that one is hanged as an "example to

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175. Ibid., 5.

176. Ibid., 6.

177. Ibid., 3.

178. Ibid., 3

179. Ibid., 3.

the Nation" suggests that more is at work than simple retribution for offense; it suggests an agenda that's success resulted in the agent's delight.

Considerations on Cruelty Rhetoric

The rhetoric employed during the Interregnum clearly illustrates disputes over legitimacy, authority and political violence. Cromwell's regime was surrounded by claims of active and cruel mistreatment of subjects. Those contentions, when held against the clear and definite understanding of moral polemics illustrated in contemporary dictionaries, help to explain the lack of convictions for adultery in the 1650s. The Act of 1650 was considered cruel and harsh, and the disagreement over appropriate punishment led some to dismiss the Act itself. That rejection was possible given only a rejection of the legitimacy of the contemporary regime. This interpretation suggests that the application of the law demonstrates historically specific social and political contexts; in this case that a breach of law was in fact sometimes more lawful than the law itself.[180] This section illustrated first, that cruelty was a term understood during the seventeenth century; second, that cruelty was employed in other instances during the period; and third, that the punishments specifically set out in the Act of 1650 were too harsh. All together, popular opinion of the seventeenth century reflected a boundary to the law. Whether it stemmed from illegitimacy or severity, cruelty was the opposite of what the law worked to accomplish. When the law ventured into cruelty, it was the right of the people to deny and reject it, whether through the people's writing or through the court's acquittals.

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180. The breach of law would be the refusal to convict adulterers regardless of the proclamations of the state.

Conclusion

Although the study of adultery in Interregnum England is by no means revolutionary, hopefully, this thesis adequately illustrated a link between societal understandings of humanity and the lack of adultery convictions. The failure to convict adulterers extends beyond the primarily evidentiary concerns credited by prior scholars. Yes, there were extensive restrictions inherent in the law, but contemporary attitudes towards government, cruelty and the Act itself illustrate an awareness that criminal law as written worked rather as an ideal to be selectively enforced. Acting on that awareness was a "proto-humanitarianism"; an early seventeenth-century understanding of what was permissible and impermissible intervention of the state and resultant punishment. To everyday early seventeenth-century Englishmen, sexual crimes were *not* the egregious moral crimes lawmakers set them as; rather, as illustrated, local agents acting "humanely" clearly distinguished adultery as a forgivable sin.

The study of law can reveal a great deal about early modern society. It tells us much about how men and women perceived the relationship between individual and communal norms and spheres of responsibility. Too often, studies focus on decrees of the government; they fail to investigate the local reaction and counter-reaction to the law. The specific motivations behind the Act have been mentioned in passing; overall, it appeared to be the desire of a zealous few, who, upon the spectacular circumstances of political overhaul managed to legislate a wider moral agenda. Looking at the broader picture, however, perhaps the Act itself was an example of a newly established regime attempting to assert control. Though the means it set to accomplish

such were fatally flawed, it nonetheless has curious precedent.[181] When one studies the actual enforcement of the law, however, much more is revealed. Exemplified in the Adultery Act of 1650, changes in persecutions can be explained by the socio-legal theory of the "gap between 'law-in-the-books' and 'law-in-action.'"[182] Regardless of the specific reason for the gap, it illustrates nonetheless, that there was, and is, often a separation between the legal norm and the fact of human behavior. Governments may make laws, but individuals carry the ultimate decision: they can either recreate the law by applying it, or initiate resistance by ignoring it.

What were the specific reasons for this gap? As both ecclesiastical and secular measures against illicit sexuality were dependent on community consensus, the failing of the more extreme, secular regulation illustrates a perceived boundary of the State's ability to intrude into moral affairs. Reliance on community consensus to enforce is integral to conceptualizing boundaries. This thesis argued that there was a clear understanding between humane and cruel behavior in the seventeenth century. When that understanding was applied to governments, a boundary of admissible and inadmissible degrees of State power became apparent. Proportional

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182. An interesting comparison is illustrated between instances of Roman and English reaction to civil war in resultant legislation by the newly assumed political faction and/or agent. Two particular cases that illustrate this correlation are the rises of Augustus and Constantine. Both came to power in the aftermath of prolonged spasms of civil war—similar indeed to the Cromwellian ascent in 1649 (here I am representing the larger Puritan Parliamentary faction through Cromwell to more easily illustrate the parallels between these circumstances). And, all three agents, Augustus, Constantine, and Cromwell (via Parliament), issued revolutionary moral legislation; Augustus in his secularization of adultery, Constantine in his restrictions penalties on divorce, Cromwell in the reformation of manners, most significant in this case, the capital criminalization of certain sexual crimes. Though all three treated the sexual crimes in slightly different matters, for instance Constantine's legislation on adultery restricted the concerned parties to the immediate family, they all nonetheless signaled the state's continuing concern with matters of sexual morality.

181. Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* no. 4 (1985): 899-935.

punishment emerged in the consideration of sexual crimes. Previous ecclesiastical punishments for sexual crimes, for the most part, were accepted without resistance. The transition to secular, and severity of the new act, however, forced seventeenth-century Englishmen to apply considerations of cruelty and proportionality to sexuality for the first time. And, as judicial measures were rooted in ideals of consensus and, the practice of legal regulation relied heavily upon the involvement of ordinary households, law enforcement developed a more practical definition that gave heavy consideration to the circumstances of the crime and the condition of the accused. The (lack of) convictions from 1650-1660 demonstrate that in the larger debate on policing sexual behavior, set against the backdrop of increasing public resistance on the State's power, sexual morality was a matter of personal conscience rather than public regulation. Though moralists and others continued to call for severe public punishments for illicit sex, new popular attitudes concerned with the tyranny of the state seemed to shift emphasis towards voluntary self-regulation.

Conceptualizing, and then accusing, tyranny towards the Interregnum government played a considerable role in the actual practice of parochial level politics. Seventeenth-century definitions of tyranny illustrate that the term was wrapped up in understandings of illegitimacy, cruelty and excessiveness. To understand the government as tyrannical understood the government as unjust. These considerations led agents to question then the foundation of the government itself. If the central government was inherently cruel and unjust, what result did that have on the laws it prescribed? Englishmen had to grapple with whether the law was the will and desires of a tyrannical few, and how to play personal considerations of cruelty with professional responsibility of law enforcement. While not every law was tyrannical or cruel, the ideological underpinnings of cruelty accused against the Interregnum government, leads one to understand

the gap between the law and practice as a result of moral considerations. Laws enacted by a "lawless" government were, therefore, an invasion of securities afforded to subjects under law. Criminality was a relative concept and, extremely flexible. Thus, the specific condemnations of the Act of 1650 combined with local justice's flexibility in enforcement, demonstrate that capital punishment was too punitive a response to sexual immorality. When placed in context, the lack of convictions for adultery in Interregnum Middlesex illustrate that the discretion in seventeenth-century courtrooms did not reflect the lawlessness of the law, but an inherent justice.

Manuscript Sources

British Library
Stowe MS. 366 fol. 53-54
Stowe MS. 366 fol. 97

London Metropolitan Archives
MJ/SR Middlesex Session Rolls

Primary Sources

Anon. *A Brief Account of the Several Plots, Conspiracies, and Hellish Attempts of the the Bloody minded Papists against the Princes and Kingdoms of England, Scotland and Ireland from the Reformation to the Present Year, 1678. As Also Their Cruel Practices in France against the Protestants in the Massacre of Paris, &c.* London: printed for J.R. and W.A., 1679. EEBO.

Anon. *A Declaration from Oxford, of Anne Green a young woman that was lately, and unjustly hanged in the Castle-yard.* London: printed by J. Clowes, 1651. EEBO.

Anon. *A Dialogue between Mistres Macquerlla, a Suburb Bawd, Ms Scolopenda, a noted Curtezan and Mr Pimpinello, an Usher etc.* London, 1650. EEBO.

Borlase, Edmund. *The History of the Execrable Irish Rebellion Trac'd from many precedidng Acts, to the Grand Eruption the 23 October 1641 And thence pursued to the Act of Settlement MDCLXII* (London, 1680).

Blout, Thomas. *Glossographia or, A dictionary interpreting all such hard words of whatsoever language now used in our refined English tongue with etymologies, definitions and historical observations on the same : also the terms of divinity, law, physick, mathematicks and other arts and sciences explicated.* London, 1656.

Bullokar, John. *An English Expositor.* Hildesheim: George Olms Verlag, 1971.

Burdet, W. *A Wonder of Wonders. Being a faithful narrative and true relation of one Anne Green, servant to Sir Tho. Reed in Oxfordshire, who being got with child by a gentleman her child falling from her house or office being but a span long, and dead born, was condemned on the 14 of December last.* London: John Clowes, 1651. EEBO.

Cawdrey, Robert. *A Table Alphabeticall of Hard and Unusual English Words.* Edited by Robert Peters, Gainesville: Scholars' Facsimiles and Reprints, 1966.

Cockeram, Henry. *The English Dictionarie: or, An interpreter of hard English vvords.* London, 1623.

Hutchinson, Lucy. "Ballad Upon the Lamentable Death of Anne Greene and Gilbert Samson, executed at Tyburn the 2nd day of January for having been taken in the act of adultery." In *Gender and the English Revolution.* New York: Routledge, 2011.

Johnson, Samuel. *A Dictionary of the English Language.* London, 1755.

"May 1650: An Act for suppressing the detestable sins of Incest, Adultery and Fornication..," in *Acts and Ordinances of the Interregnum, 1642-1660*, ed. C H Firth and R S Rait (London: His Majesty's Stationery Office, 1911), 387-389.

Phillips, Edward. *The New World of English Words or, A general dictionary containing the interpretations of such hard words as are derived from other languages…together with all those terms that relate to the arts and science to which are added the significations of proper names, mythology, and poetical fictions, historical relations, geographical descriptions of most countries and cities of the world*. London, 1658.

Powell, William. *Being a sad and true Relation of the Apprehension, Tryal, Confession, Condemnation, and Execution of the two barbarous and bloody Murtherers, who basely and unawares killed a worthy Knight of the North Country as he was going down to the Waterside; not giving them the least abuse, for which cruel and inhumane action they were both hanged in Fleet-Street, neer White Fryers, 22 Octo. 1675.* London, 1675. EEBO

Temple, Sir John. *The Irish Rebellion: Or, an History of the Beginnings and First Progress of the General Rebellion rasied within the Kingdom of Ireland, upon the three and twentieth day of October in the year 1641.* London: printed by R. White, 1679. EEBO.

United Kingdom. *Acts and Ordinances of the Interregnum, 1642-1660*. Edited by C. H. Firth and R S Rait. London: His Majesty's Stationery Office, 1911.

United Kingdom. *House of Commons Journal,* vol. 6, 1648-1651. London: His Majesty's Stationery Office, 1802.

Warr, John. *The Corruption and deficiency of the laws of England soberly discovered: or, Liberty working up to its just height.* London: Printed for Giles Calvert, 1649. EEBO.

Watkins, Richard. *Newes from the dead. Or A true and exact narration of the miraculous deliverance of Anne Greene, --Written by a scholler in Oxford for the satisfaction of a friend, who desired to be informed concerning the truth of the businesse. Whereunto are added certain poems, casually written upon that subject.* Oxford: printed by Leonard Lichfield and H. Hall, 1651. EEBO.

Secondary Sources

Abruzzo, Margaret. *Polemical Pain: Slavery, Cruelty and the Rise of Humanitarianism.* Baltimore: John Hopkins University Press, 2011.

Adair, Richard. *Courtship, Illegitimacy and Marriage in Early Modern England.* Manchester: Manchester University Press, 1996.

Amussen, Susan. "Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England." *Journal of British Studies* 34, no. 1 (January 1995): 1-34.

Burden, Mark. "Lucy Hutchinson and Puritan Education." *The Seventeenth Century* 30, no. 2 (2015): 163-178.

Capp, Bernard. *England's Culture Wars: Puritan Reformation and Its Endemis in the Interregnum, 1649-1660.* Oxford: OUP, 2012.

--- "Republican Reformation: Family, Community and the State in Interregnum Middlesex, 1649-1660." In *The Family in Early Modern England,* edited by Helen Berry and Elizabeth Foyster, 40-66. Cambridge: Cambridge University Press, 2007.

Dabhoiwala, Faramerz. "Sex, Social Relations and the Law in Seventeenth-Century and Eighteenth-Century London." In *Negotiating Power In Early Modern Society: Order, Hierarchy and Subordination in Britain and Ireland,* edited by Michael Braddick and John Walter, 85-101. Cambridge: Cambridge University Press, 2001.

Evans-Grubbs, Judith. *Law and Family in Late Antiquity: the Emperor Constantine's Marriage Legislation.* Oxford: Oxford University Press, 1999.

Fiering, Norman. "Irresistible Compassion: An Aspect of Eighteenth-Century Sympathy and Humanitarianism." *Journal of the History of Ideas* 37, no. 2 (1976): 195-218

Gaskill, Malcolm. *Crime and Mentalities in Early Modern England.* Cambridge: Cambridge University Press, 2003.

Gotti, Mauizio. *The Language of Thieves and Vagabongs: 17th and 18th Century Canting Lexicography in England.* Tubingen: Niemeyer, 1999.

Gowing, Laura. *Common Bodies: Women, Touch and Power in Seventeenth-Century England.* New Haven: Yale University Press, 2003.

Hair, P.E.H. "Bridal Pregnancy in Rural England in Earlier Centuries." Population Studies, 20 (November 1966): 233-243.

Halttunen, Karen. "Humanitarianism and the Pornography of Pain in Anglo-American Culture." *The American Historical Review.* 100, no.2 (April 1995): 303-34.

Hartog, Hendrik. "Pigs and Positivism." *Wisconsin Law Review* no. 4 (1985): 899-935.

Herrup, Cynthia. *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England.* Cambridge: Cambridge University Press, 1989.

---. “Law and Morality in Seventeenth-Century England.” *Past and Present* no. 106 (February 1985): 102-123.

Hughes, Ann. *Gender and the English Revolution.* London: Routledge Press, 2012.

Hunt, Lynn. *Inventing Human Rights: A History.* New York: W.W. Norton & Company, 2007.

Inderwick, F.A.. *The Interregnum: Studies of the Commonwealth, Legislative, Social and Legal.* London, 1891.

Ingram, Martin. *Church Courts, Sex and Marriage in England, 1570-1640.* Cambridge, England: Cambridge University Press, 1987.

Jeaffreson, J.C. *Middlesex County Records.* Edited by J.C. Jeaffreson, vol. 3. Middlesex: The Middlesex County Record Society, 1888.

Kekes, John. “Cruelty and Liberalism.” *Ethics* 106, no. 4 (July 1996): 834-844.

Kerlin, Johan. *Chaucer in Early English Dictionaries: The Old-Word Tradition in English Lexicography down to 1721 and Speght's Chaucer Glossaries.* The Hague: Martinus Nijhoff Publishers, 1979.

Klingberg, Frank. “The Evolution of the Humanitarian Spirit in Eighteenth-Century England.” *The Pensylvania Magazine of History and Biography* 66, no. 3 (July 1942): 260-78.

Kraus, Michael. “Eighteenth Century Humanitarianism: Collaborations between Europe and America.” *The Pennsylvania Magazine of History and Biography* 60, no.3 (July 1936): 270-286.

McEligott, Jason. *Royalism, Print and Censorship in Revolutionary England.* Woodbridge: Bydell Press, 2007.

Nagy, Andrea. "Defining English: Authenticity and Standardization in Seventeenth-Century Dictionaries." *Studies in Philology* 96 no. 4, (1999): 439-456.

Norbrook, David. “Order and Disorder: The Poem and its Contexts.” In *Order and Disorder,* edited by David Norbrook, xii- lii. Oxford: Blackwell Publishers, 2001.

Osselton, Noel. “John Kersey and the Ordinary Words of English.” *English Studies* 30 (1979): 555-561.

Sharpe, J.A.. *Crime in Early Modern England: 1550-1750.* London: Longmon Press, 1984.

---. *Crime in Seventeenth-Century England: A County Study.* Cambridge: Cambridge University Press, 1983.

Quaife, G.R.. *Wanton Wenches and Wayward Wives: Peasants and Illicit Sex in Early*

Seventeenth Century England. New Brunswick: Rutgers University Press, 1979.

Ramsey, Carolyn. "Sex and the Social Order: The Selective Enforcement of Colonial American Adultery Laws in the English Context." *Yale Journal of Law and the Humanities* 10 (1998): 191-228

Rickman, Johanna. *Love, Lust, and License in Early Modern England: Illicit Sex and the Nobility*. Aldershot, England: Ashgate, 2008.

Rivers, Theodore John. "Adultery in early Anglo-Saxon Society." In *Anglo-Saxon England, Volume 20,* edited by Micheal Lapidge. Cambridge: Cambridge University Press, 2007.

Roberts, Stephen. "Fornication and Bastardy in Mid-Seventeenth Century Devon: How was the Act of 1650 Enforced?" In *Outside the Law: Studies in Crime and Order 1650-1850,* edited by John Rule. Exeter: University of Exeter Press, 1983.

Rosenberg, Philippe. "The Moral Order of Violence: The Meanings of Cruelty in Early Modern England, 1648-1685." PhD diss., Duke University, 1999.

---. "Thomas Tryon and the Seventeenth-Century Deimensions of Antislavery." *The William and Mary Quarterly* 61, no. 4 (October 2004): 609-624.

Simpson, John. *The First English Dictionary 1604: Robert Cawdrey's A Table Alphabeticall.* Oxford: Oxford University Press, 2007.

Thomas, Keith. "The Puritans and Adultery: The Act of 1650 Reconsidered." In *Puritans and Revolutionaries: Essays in Seventeenth Century History Presented to Christopher Hill,* edited by Donald Pennigton and Keith Thomas, 257-282. Oxford: Clarendon Press, 1978.

Wells, Robert A. *Dictionaries and the Authoritarian Tradition: Study in English Usage and Lexicography.* The Hague: Morton, 1973.

Wiener, Leo. "English Lexicography." *Modern Language Notes* 9 (1986): 351-366.

Wrightson, Keith. "Infanticide in Earlier Seventeenth-Century England." *Local Population Studies* 15 (Autumn 1975):10-22.

Wunderli, Richard. *London Church Courts and Society on the Eve of the Reformation.* Cambridge, Massachusetts: The Medieval Academy of America, 1981.