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Introduction

“You are a Liar; you are no more fit for a Justice than the Devil! You are a Justice of a Fiend!” shouted yeoman Bildad Fowler at Justice Eldad Taylor in December of 1772. Several of the “good People” of Hampshire County witnessed Fowler’s vituperative outburst at Justice Taylor, much to the disrepute of his “Office and Authority,” as Taylor reported the incident to the next sitting of the county’s Court of General Sessions of the Peace. In his report to the court, Taylor repeated Fowler’s abusive statements, “all which Expressions,” he told his fellow justices, he “apprehends to be Violations of those Rules of Decency and good Manners that every one ought to observe towards [each] of his Majesty’s Justices of the peace [and] inconsistent with the good behavior the said Bildad ought to have maintained.”¹

Justice Taylor alleged no specific statutory violation in his complaint against Fowler. This in and of itself was not uncommon; alleged criminals in provincial Massachusetts were often tried for common law offenses as well as those enumerated by statute. However, the precise crimes that Taylor described were unknown to either common or statutory law. The “Rules of Decency and good Manners,” while elaborated at great length in numerous conduct and courtesy books popular in eighteenth-century Anglo-America, were, after all, merely the reflection of certain cultural ideals held by the

¹ *Rex v. Fowler*, February 9, 1773, Hampshire County Court General Sessions of the Peace (GSP).

genteel and the would-be genteel. So how did Fowler's alleged violation of these ideals, however impolite, land him in court on charges of criminal activity? And why, given the context and content of these words, was he not charged instead with contempt or abuse or defamation, all established legal categories which could easily have accommodated Fowler's outburst?

These questions are important because this case is far from an isolated example; Bildad Fowler was one of hundreds of Massachusetts colonists who found themselves the subject of a criminal prosecution for their speech in the eighteenth century. Statutes outlawing criminal speech often framed these offenses as impolite and implicitly associated them with the "vulgar" sort of people. In many cases, court records explicitly describe speech crimes like Fowler's as violations of good manners.² In others, the records merely imply that the "rules of decency" had been broken. But the evidence from these cases and elsewhere overwhelmingly suggests that, during the eighteenth century, Massachusetts legal institutions began to enforce not only official legal rules and non-statutory codes of ethical conduct, as had traditionally been their purview, but also the rules of polite manners. In so doing, they also contributed to the public construction of new ideals of elite white masculinity.

To be sure, many varieties of speech were prosecuted in the seventeenth century as well. But before the institution of Massachusetts' Second Charter in 1691, neither the colony's statutes nor its actual records of prosecutions framed speech offenses as violations of the code of politeness.³ Rather, like most other crimes, they were conceptualized as sinful, ungodly, and violations of divine

² See, e.g., *Rex v. Poivre, Poivre, and Cooke*, July 1697, Bristol County Court GSP (re. their "Erogular Actions and Provoking Speeches to Each other, Contrary to the Rules of Civility & Good Manners"); *Rex v. Stetson*, September 1723, *Plymouth Court Records, 1686–1859*, Vols. 1–4, ed. David Thomas Konig, intro. William E. Nelson (Wilmington, DE: Michael Glazier in assoc. with the Pilgrim Society, 1978–1981) (re. "his rudeness and unmannerliness to the Court"); *Rex v. Gouge*, April 1704, Suffolk County Court GSP (re. "his open Contempt of the Court by his rude and unmannerly Carriage and Expressions"); *Rex v. Barrell*, October 1710, Suffolk County Court GSP (re. behaving "very Disrespectfully to the Court as well in words as Actions"); *Rex v. Kellaugh*, September 1724, Suffolk County Court GSP (re. behavior "against good manners and contrary to the Laws"); *Rex v. Lamb*, February 1733/34, Worcester County Court GSP (re. "behaving himself in a Rude & disorderly maner in ye Court").

³ For the Second Charter, see Benjamin Labaree, *Colonial Massachusetts: A History* (Millwood, NY: KTO Press, 1979), 127.

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law, and offenses of which any community member could potentially be guilty.⁴ John Porter, Jr.'s behavior toward his parents, for example, was described in his indictment as “profane, unnatural and abusive”; he later submitted an apology for his speech which was so “contrary to the very light of nature & much more contrary to the little light of the word of God.”⁵ Oaths were “wicked and profane”; slander “[broke] the ninth commandment”; and other “unruly speeches” were “sin.”⁶

A close analysis of legal records reveals how the participants in the procedures of criminal justice began to define and enforce the ethos of politeness, in addition to as well as (sometimes) instead of traditional legal rules. Increasingly, Massachusetts legal institutions both reflected the growing preoccupation with how language and speaking style related to personal identity and social status, and translated the hierarchical rankings of speech and speakers into rankings of social power and privilege. This book argues that the criminalization, prosecution, and punishment of verbal offenses helped establish and legitimate an emerging social hierarchy based upon gentility, and in particular white masculine gentility, in eighteenth-century Massachusetts.

These ideals underlay social hierarchy, the allocation and exercise of power in colonial politics, and the construction and elaboration of empire itself. Rudeness and the rude were explicitly and implicitly excluded from the sinews of power – and, by their exclusion and othering, they defined in relief the imagined communities of power in colonial British America.⁷ Polite speech did not constitute the entirety of an imperial social order premised upon “civility.” However, it was an essential and exclusive practice for those who wished to craft an identity for themselves as genteel subjects of, and legitimate authorities within, that empire.

⁴ Stephen Botein, *Early American Law and Society* (New York: Alfred A. Knopf, 1983), 24–27.

⁵ Record of December 1661, Records and Files of the Quarterly Courts of Essex County, Massachusetts, Vol. 2 (Essex Institute, 1912), 335; Petition to the Court, *ibid.*, 337.

⁶ Prosecution of Dennes Kellam, March 1662–1663, Records and Files of the Quarterly Courts of Essex County, Massachusetts, Vol. 2 (Essex Institute, 1912), 408; Complaint of Andrew Mansfield against John Hathorne, March 1662–1663, *ibid.*, 24; Acknowledgment of Edith Cravitt, November 1666, *ibid.*, 386.

⁷ See John Brewer, *The Sinews of Power: War, Money, and the English State, 1688–1783* (Cambridge, MA: Harvard University Press, 1990); Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London/New York: Verso, 1991).

The “refinement” of the British colonies in America, a process encompassing both material and behavioral aspects of eighteenth-century society, is now well-established in the historical literature.⁸ The consumption of luxury goods, the construction of new public and private spaces, and the adoption of “polite” codes of conduct created a new cultural geography in which social and political power flowed to those who had distinguished themselves as “genteel,” and in which the vulgar were expected to defer to the polite. The literature does not, however, address exactly how those social and cultural distinctions were to be achieved. Conduct and courtesy books certainly offered an idealized vision of the proper ordering of society according to the hierarchies of gentility, but this vision was merely prescriptive. The colonial elite demonstrably desired and expected the political perks of politeness, and the deferential behavior of the masses, but did anything make this more tangible than wishful thinking?⁹

Bildad Fowler’s rude words to Justice Taylor would certainly seem to undercut this proposition. Scholars in the “deference debate” of early American history have asked similar questions, to the point where some now doubt whether the concept of deference is even still useful (a 2004 conference on the subject was subtitled “The Life and/or Death of an Historiographical Concept”).¹⁰ Part of the reason for this doubt is that scholars have defined deference in different ways, thus making it difficult

⁸ See, e.g., Richard Bushman, *The Refinement of America: Persons, Houses, Cities* (New York: Alfred A. Knopf, 1992); C. Dallett Hemphill, *Bowing to Necessities: A History of Manners in America, 1620–1860* (New York: Oxford University Press, 1999); Kenneth A. Lockridge, “Colonial Self-Fashioning: Paradoxes and Pathologies in the Construction of Genteel Identity in Eighteenth-Century America,” in *Through a Glass Darkly: Reflections on Personal Identity in Early America*, eds. Ronald Hoffman, Mechal Sobel, and Fredrika J. Teute (Chapel Hill: University of North Carolina Press, 1997); Mark A. Peterson, “Puritanism and Refinement in Early New England: Reflections on Communion Silver,” *WMQ* 3rd ser., 58, no. 2 (April 2001): 307–346; Michal J. Rozbicki, *The Complete Colonial Gentleman: Cultural Legitimacy in Plantation America* (Charlottesville: University Press of Virginia, 1998).

⁹ Michael Zuckerman is perhaps the strongest proponent for the argument that colonial Americans were only rarely and insincerely deferential. See, e.g., Michael Zuckerman, “Authority in Early America: The Decay of Deference on the Provincial Periphery,” *Early American Studies: An Interdisciplinary Journal* 1, no. 2 (Fall 2003): 1–29, at 24–29.

¹⁰ “Deference in Early America,” a Mini-Conference at the McNeil Center for Early American Studies, 11 December 2004.

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to compare directly their analyses and arguments. One group of historians has focused on voting behavior, without providing any description of the process by which deference was generated or manifested, and another group has provided detailed descriptions of behavior they identify as “deferential” or “non-deferential,” without linking such behavior to the broader workings of social and political power. Moreover, most writing about deference purports to be about people’s outlook or attitude, which, given its historical distance and innate interiority, is both “unverifiable *and* irrefutable.”¹¹ Instead, historians need to examine behavior, more specifically “modes of political and cultural expression through which colonists articulated or rejected claims to authority.”¹² In other words, scholars must search for social spaces in which colonists engaged in policing the low, or enforcing deference, in order to observe how gentility was constructed as the governing paradigm of social identity and hierarchy.

One such space was the colonial “speech economy” – essentially the rules governing who gets to speak publicly, with legitimacy and believability, and with authoritative and broadly accepted judgments. The speech economy contained the essential core of attitudes toward social authority; despite common rhetoric about the importance of lodging power in the people, most eighteenth-century commentators still agreed that the voice of the people was always susceptible to undue influence and therefore ought to be circumscribed. One approach to studying the speech economy is to analyze how it was constructed through battling discourses in the public prints, assessing how the language of “gentlemanliness” was employed as the basis of claims for social and political power.¹³ Such an analysis can reveal how the regulation of discourse was closely tied to the constitution of cultural authority and the consolidation (and eventual disruption) of a genteel ruling class. In eighteenth-century Connecticut’s speech economy, for example, “assumptions about social legitimacy, personal authority, and religious calling regulated

¹¹ This argument was made by John Smolenski in a paper originally written for the “Deference in Early America” conference, later published as “From Men of Property to Just Men: Deference, Masculinity, and the Evolution of Political Discourse in Early America,” *Early American Studies* 3, no. 2 (Fall 2005).

¹² Smolenski, “From Men of Property.” ¹³ Ibid.

who could speak or write to a general audience and anticipate its attention and respect.”¹⁴

The cover image of this book is a visual representation of several elements of the Massachusetts speech economy. The embroiderer depicts Harvard Hall in the early eighteenth century, and adds two putti holding a busy beehive where the cupola should be. The slogan is a quotation from Virgil, roughly translating as “They keep out drones from these premises.”¹⁵ Drones were nonworker bees, of course, which signified the skiving and therefore expendable poor in a well-ordered society.¹⁶ But “drone” could also refer to “a monotonous speaker; a person who speaks in a droning voice.”¹⁷ Harvard graduates performed public disputations as part of their commencement exercises, and, whether they were called to the pulpit or the bar, were expected to speak with eloquence and style.¹⁸ As the untranslated slogan subtly implied, moreover, one had to possess proficiency in the classical languages to even gain entrance to Harvard. Once within “these premises,” learned young men would be subject to college laws that forbade all manner of impolite and “offensive” speech.¹⁹ Poignantly, this vivid yet subtle commentary on

¹⁴ Christopher Grasso, *A Speaking Aristocracy: Transforming Public Discourse in Eighteenth-Century Connecticut* (Chapel Hill: University of North Carolina Press, 1999), 2.

¹⁵ Samuel Eliot Morison, “Needlework Representing a Colonial College Building,” *Old-Time New England* XXIV, no. 2 (1934): 67–72, at 68.

¹⁶ In seventeenth-century England, bee colonies were admired for expelling drones once they had performed their sole contribution of mating with the queen, and held up as a model for a society bedeviled by the “strolling poor.” Tammy Horn, *Bees in America: How the Honey Bee Shaped a Nation* (Lexington: University Press of Kentucky, 2005), 10–11. The slogan and prominent placement of the beehive perhaps suggested that no lazy scholars would be welcome at Harvard College.

¹⁷ “drone, n.2.” *OED Online*, June 2021. Oxford University Press. www.oed-com.ezproxy.alma.edu/view/Entry/57853?rskey=q8fwTD&result=2, accessed June 16, 2021.

¹⁸ Albert Matthews, “Harvard Commencement Days, 1642–1916,” *Publications of the Colonial Society of Massachusetts*, Vol. XVIII (Boston: 1917), 309–384.

¹⁹ One early set of rules specified that “All students shall be slow to speak, & eschew and (as much as in them lies) shall take care that others may avoid all swearing, lying, cursing, needless asseverations, foolish talking, scurrility, babbling, filthy speaking, chiding, strife, railing, reproaching, abusive jesting, uncomely noise, uncertain rumors, divulging secrets, & all manner of troublesome & offensive gestures, as being they who should shine before others in exemplary life.” William Bentinck-Smith, ed., *The Harvard Book: Selections from Three Centuries*, rev. ed. (Cambridge, MA: Harvard University Press, 1982), 157.

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the speech ethos of Massachusetts was likely accomplished by Mary Leverett.²⁰ As a woman, she would never have been admitted to Harvard College and had few opportunities to speak legitimately upon matters of public concern.

Harvard might have been able to exclude unwanted speakers. However, we can gain a much fuller sense of how gentility was constructed and challenged by observing colonists' actual behavior and interactions in a very different social space: the courtroom. The records of prosecutions of speech crimes in eighteenth-century Massachusetts also show colonists negotiating and performing individual identities and social relationships more broadly. Thus, there is potential to connect the process of defining the self to that of defining the polity, just as recent intellectual and cultural histories of the American Revolution have been grounded in the practices and rituals of everyday colonial life.²¹ Central to the project of creating a new nation, these scholars have argued, was defining the self and the citizenry; to these ends, Americans paid particular attention to which sorts of people were entitled to claim and practice a legitimate voice in the public sphere. In the new republic, the public prints and other cultural productions played a crucial constitutive role in defining and limiting political participation. Prior to the war for independence, however, formal legal procedures for prosecuting and punishing illicit speech provided spaces in which provincials could perform and negotiate the roles deemed appropriate for exercising a political voice.

Moreover, the significance of transgressive speech may have been more than local. Even in seventeenth-century New England, the legal regulation of speech demonstrates that the “work of ‘governing the tongue’ ... was central to the work of governing families, neighborhoods, towns, and even empires.”²² As the era of salutary neglect ended and the British government sought to exercise more centralized control over its American colonies in the eighteenth

²⁰ Morison, “Needlework,” 67–72.

²¹ See Carolyn Eastman, *A Nation of Speechifiers: Making an American Public after the Revolution* (Chicago: University of Chicago Press, 2009); Sarah Knott, *Sensibility and the American Revolution* (Chapel Hill: University of North Carolina Press, 2009).

²² Jane Kamensky, *Governing the Tongue: The Politics of Speech in Early New England* (New York: Oxford University Press, 1997), 9.

century, some of that control manifested as cultural influence: “While it is important to see that power is enacted in and through texts . . . it is also crucial to see power working through speech and gesture, in voices, bodies, forms of dress and comportment. . . . [T]he establishment of authority throughout the British Atlantic world depended upon establishing a social order based on an ill-defined but nevertheless powerful conception of ‘civility.’”²³ Civility, as will be described, was a fundamental value of eighteenth-century Massachusetts criminal speech law.

In analyzing the speech economy of eighteenth-century Massachusetts, this study focuses primarily upon the law of speech itself – the statutes criminalizing specific speech acts, the prosecutions of illicit speech, and the courtroom performances and interactions that breathed life into doctrine. After all, the speech economy was not only constructed in the abstract realm of print culture; its rules were also negotiated, defined, and enforced in the physical space of the courtroom, through legal processes and procedures. Through a close reading of these records, we can hear our historical subjects curse, swear, threaten, insult, and lie; they deny, affirm, confess, order, and apologize; they excuse and exculpate, convict and condemn. They also gave voice to a new sort of speech economy, in which genteel masculinity – gentlemanliness – joined godliness as a central personal quality on which claims to social and cultural authority rested.

Methodology

In order to hear these voices – polite and impolite alike – I examined all available records pertaining to criminal speech prosecutions from nine Massachusetts counties (all whose records survive), plus seven years of records from one county in Maine, which was part of Massachusetts at the time.²⁴ Some of these instances include elaborate descriptions of

²³ Miles Ogborn, “Francis Williams’s Bad Language: Historical Geography in a World of Practice,” *Historical Geography* 37 (2009): 72–88, at 83 (internal quotations omitted).

²⁴ Barnstable County’s records from the colonial era were destroyed by a fire in 1827. David H. Flaherty, “A Select Guide to the Manuscript Court Records of Colonial New England,” *AJLH* 11, no. 2 (April 1967): 107–126, at 117.

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the time and place of the offense, with witness testimony and exact transcriptions of the criminal words allegedly spoken. Others include a pretrial procession of writs and warrants, or a posttrial procession of appeals and sureties to appear. Most consist of terse entries noting a presentment or certifying a conviction. All told, however, I ultimately encountered more than 1,600 criminal misspeakers, plus many prosecutors, witnesses, and justices of the peace associated with their cases in the period from 1690 to 1776.²⁵

The surviving evidence includes a variety of types of legal documents. All counties include “Records,” essentially a basic description of the case and its disposition.²⁶ Records always identify the defendant (but not always his or her social status or occupation) and name the offense, sometimes describing the offensive speech with great detail. They occasionally identify the complainant and his or her status, and almost always provide the ultimate disposition of the case – although, rarely, a case ends with a frustratingly enigmatic “the court decides ____.”

The records from Berkshire, Bristol, Hampshire, and Middlesex counties also include Files, an assortment of legal papers accompanying a case. These can include writs, complaints, depositions, warrants, grand jury presentments, appeals from individual justice of the peace decisions to General Sessions courts, summons for witnesses, and bonds (payments of money to guarantee good behavior or a future court appearance). While these papers do not provide information about the ultimate disposition of a case, they often contain biographical data about the defendant, the complainant, and any witnesses involved, such as social and marital status, occupation, age (if a minor), and town of residence. They also often provide rich detail about the offensive speech in question, describing the time and place of the alleged crime (and sometimes its volume), recounting any associated actions (such as violence), as well as quoting the alleged words spoken.

Also surviving for Suffolk County are its docket books, which are usually understood to record only the most basic chronological

²⁵ The total number of cases is 1,685. A few defendants were repeat offenders.

²⁶ I will use the capitalized form of “Records” here to distinguish this specific type of judicial document from the more general category of all legal records.

outlines of individual cases. However, in this instance they resemble Records, in that they include information about the complainant, the defendant, the witness testimony, and the ultimate disposition of the case.

Finally, totals include twelve individual justice of the peace record books from five separate counties. As noted elsewhere in the Introduction, justices of the peace heard complaints as individuals separately from the quarterly sittings of the General Sessions courts. (They recorded these cases in their record books and were supposed to later “certify” them to the General Sessions courts. However, the comparisons I have done between justice of the peace record books and the corresponding county General Sessions Court Records suggest that this process was haphazard, at best.) These twelve record books are, of course, but a fraction of the total number of record books that were created by Massachusetts justices of the peace over the course of the eighteenth century, but not many have been preserved or are accessible to researchers.

Most of the General Sessions Court Records are interspersed with Records of the county Court of Common Pleas, which heard matters of civil litigation. (The two courts were actually the same judicial body; the nomenclature change merely indicated jurisdiction, i.e., whether the court was hearing criminal or civil matters.) Moreover, the General Sessions Records are not indexed by type of offense. Therefore, the only way to identify prosecutions for speech offenses was to read every case throughout the entire record. Similarly, the Files are not organized or indexed by crime, so I needed to examine every document in order to identify which ones were potentially relevant to the study. I followed a similar procedure with the docket books and justice of the peace record books.

I identified cases as relevant to the study if they clearly involved prosecution for any act of speech or vocalization (e.g., verbal utterance or noise). Thus, I included any document that clearly specified verbal threats, menaces, contempt, rudeness, or abuse; profane cursing or swearing; all instances of noisy or clearly verbal disorderly conduct; lying, false reports, false stories, defamatory or fraudulent speech, or perjury. I did not include cases identified only as “breach of peace” or “abusive carriages,” even when I suspected that such cases involved speech offenses, because I could not confirm beyond question that they