

Property Crime of 18<sup>th</sup>-century Halifax:  
An Anthropological Approach

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## **Abstract**

This thesis examines the property crimes of 18<sup>th</sup>-century Halifax, Nova Scotia from the years of 1749 to 1770. In this study an investigation of the judicial system of a British colony is produced, along an evaluation of how it changed through the years of 1749 to 1770. Furthermore, the study first examines the way in which property crimes were prosecuted in 18<sup>th</sup>-century Britain, in order to give a foundation of how this system was implemented and altered in a colonial setting. This study uses archival sources that are available through the Nova Scotia Archives to determine the rate at which property crime increased and decreased in the years under investigation. Moreover, the data collected is used to indicate the similarities and differences found between the judicial structure of Britain and the colony of Halifax. From the findings, this thesis then examines the greater context of Halifax, which suggests why these differences may have occurred between the two justice systems. In examining the way in which Halifax prosecuted property crimes, it was found that when placed in a colonial setting, Britain's judicial system transformed in order to conform to the social realities of the society. The findings of this thesis illustrate that social structures have the ability to develop and change in accordance to societal factors and the context in which it is found in. Colonial Halifax was a developing British colony that underwent continuous change to adapt to its realities. This thesis argues that Halifax's 18<sup>th</sup>-century justice system was no exception to this process of change.

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## **Introduction**

In April 1761, the Supreme Court of Halifax assembled in the court house to hear the criminal indictments brought forward for trial. Among the many criminal offenders for the session, a yeomen, Felix Caneus, was brought to the bar where he faced judge and jury who would determine if he was guilty of the crime for which he stood indicted. Caneus stood in the courthouse facing the possible prosecution of a severe property crime, which if found guilty would send him to the gallows. The indictment brought against Caneus was the theft of two dozen silk ribbons and one cattle, making the offence the value of three pounds, a grand larceny act. Having heard the evidence brought forward, the jury found Caneus guilty as he stood indicted and from there the judge sentenced him to death by hanging. However, like many property offenders of the 18<sup>th</sup> century, Caneus knew a way to manipulate the justice system in order to avoid this brutal end. When asked the ritualized statement of why sentence of death should not be pronounced upon him, Caneus begged the benefit of clergy. Due to the laws that governed the colony's courts, this pardon was allowed by the judge and Caneus in open court was branded with the letter 'T' on his left hand. Afterwards, the convicted criminal was released back into the public of 18<sup>th</sup>-century Halifax, but imprint with a symbol that communicated to the public that he was a thief.<sup>i</sup>

The case of Felix Caneus is merely one example of the many property crime indictments and prosecutions that occurred in Halifax during the 18<sup>th</sup> century. It illustrates the organized procedure of a complex justice system that was installed by Britain when the colony was first established. The first maps published in London of the new North American settlement, by various geographers, represented civility and the British ways of

the colony, making it both relatable and attractive to the English reader (Lennox 2007, 408-409). The image (figure 1) gives the viewer a sense of a British community being established, as it depicts building construction, wall development, the British flag and several ships coming into the harbour. The image illustrates Halifax as a safe and developing British colony that was not isolated from the rest of the empire. These features are the main points of the image, but when viewed a little more closely Britain's further objectives for the society can be found. On the beach of the settlement there are two small illustrations along with the words 'gallows' and 'stocks'. This depicts the place where individuals of the settlement were hanged and publicly humiliated when found guilty of a crime. These small pictures show the British ideals of what makes an orderly and civilized British society. Including these small images further illustrates to the viewer the systematic similarity to the mother country and the authoritative order that has already been established.



Figure 1. NSA, T. Jeffreys, Untitled Map of Halifax (London, 1750) Early map of British colony, Halifax. Map published in London to illustrate British North American colony (Creative Commons).

Structure and order were the basis for the justice system created in Britain and when extended out into other regions, the British aimed to create the same orderly arrangement. Figure 1 suggests this, as the illustrator purposely placed the gallows and barracks in the image to show that order and justice, major aspects of British society, were being implemented in the colony of Halifax. As a result, it further instilled a sense of Britishness onto the new environment. However, to discover how much the courts of Britain influenced the colony of Halifax's justice system an evaluation is needed. A study into the property crimes and the procedures used in the courts of Halifax will illustrate the similarities and differences that occurred between the justice systems of Britain and a British colony. Therefore, by viewing the British justice system's structure in a colonial setting, an investigation can be given on how environmental factors and individual agency impacted a judicial structure.

This thesis is based on the collected property indictments that were accessible through the Nova Scotia Archives (NSA), from the years of 1749 to 1770. Through the various court records that include: judgment books, true bills, dispositions, examinations, jury decisions, trial proceedings and jury lists; an image of how Halifax dealt with property crimes in the 18<sup>th</sup> century can be given. The record-keeping of the early period is incomplete and because of this absolute conclusions cannot be drawn. Nevertheless, specific trends have been identified that give a glimpse into the justice practices of Halifax.

The property crime records of 18<sup>th</sup>-century Halifax suggest elements of British influence on the justice system's structure. Nevertheless, the record also indicates differences, which suggests that other factors such as population rate, economic

frequency and individual agency had an impact on the system and in certain regards caused change within the structure. In these circumstances, Halifax's justice system was more inclined to prosecute property crimes based on the situations of certain cases, rather than based on the strict rules and order the British justice system promoted. The colony of Halifax was subject to several societal factors that influenced its judicial system; these factors led to the colony's slight deviation from Britain's justice system. Halifax's early judicial institutional structure developed and transformed as a result of its social context; in turn, this produced a unique justice system to the colony.



## **Chapter 1: Britain's 18<sup>th</sup>-century Criminal Justice System**

The crime of theft was the most common offence prosecuted in 18<sup>th</sup>-century Britain (Hitchcock & Shoemaker 2015, 33). Studying and understanding the way in which the British justice system dealt with property crimes lends insight when discussing and dissecting the colonial justice system found in Halifax. The view of property began to shift in Britain during this period and is highlighted through the development of property crime statutes. Capital offences are suggested to have increased immensely between the years 1688 to 1820, with an estimated increase from 50 to over 200 statutes (Hay 1975, 17). The majority of these new capital offences dealt specifically with property that was newly defined and measured in this century. As a result, the growth in property offences illustrates the increase of value placed on property and the expansion of wealth that occurred in Britain. In turn, this growth caused a greater need for property to be protected and therefore the development of a more severe justice system.

### Types of property crimes

The severity of property crime in 18<sup>th</sup>-century Britain was categorized by four factors: the value of the goods taken, the type of place the goods were taken from, how the theft was carried out, and when the crime occurred. The value of property, particularly aristocratic and merchants possessions, is indicated by the profusion of laws that addressed its theft. During the time when laws surrounding property crimes increased, Britain was expanding its colonies and economic trading, which placed more value on individual property. Resulting in the creation of specific laws tailored for the theft of property.

Petty larceny and grand larceny are the two overarching categories surrounding property offences. Each criminal statute was categorized based on the value of the goods

taken. Law in 18<sup>th</sup>-century Britain declared that the crime of petty larceny was theft wherein the total value of the goods stolen was less than a shilling. A shilling in the 18<sup>th</sup> century was considered a substantial sum of money as one shilling could pay for a full meal, while two shillings could rent a cheap room for a week (Holmes 2002, xxi). While petty larceny was not punishable by death, it was taken seriously by the courts. Punishments for this offence were either whipping, fines, imprisonment, or seven years transportation (Beattie 1986, 182).

The crime of grand larceny was defined in 18<sup>th</sup>-century English law as a theft of goods that is a total value of a shilling or greater. Grand larceny was a capital offence making it punishable by death. However, it was also a clerigable offence, meaning that it was subject to a pardon that allowed criminals to avoid the gallows, which is discussed later in this chapter (Beattie 1986, 182).

Other English statutes surrounding the crime of theft were specific to when and where the crime occurred. Severity of a theft from a dwelling was determined by whether it occurred during the day or night. If the crime occurred during the day the offence fell into the statute of breaking and entering, a capital offence. The statute was defined as deliberate physical action to get into a house with felonious attempt to steal during the day. There were different levels of severity within this statute. In cases where individuals found stealing from a house that they did not have to physically break into wherein goods stolen were worth more than five shillings, the crime would become a non-clerigable offence (McLynn 1989, 87).

Theft from a dwelling during the night was considered under the statute of burglary, which became a capital crime in 1688. Burglary was the most common crime of the 18<sup>th</sup> century with over 909 convicted between the years 1750 to 1769 in London and

the county of Middlesex (McLynn 1989, 88). Burglary was considered a more severe crime than breaking and entering a dwelling during the day, because it was more likely people would be in the house (Emsley et al. 2018a). Along with theft from dwellings, the British courts prosecuted property crimes that encompassed theft that occurred at a specific shop; these types of theft were categorized under another statute known as shoplifting.

Shoplifting was defined as the theft of goods valued at five shillings or more from a specified location, a shop, which was prosecuted as a capital offence after 1699. However, shoplifting was under-reported and when convicted of the crime the capital punishment of hanging was rarely enforced. The leniency on shoplifting often came from the victims, the shop owners, who feared that prosecution would lead to a sentence of death, which would bring a negative reputation to their shop in which the theft occurred (McLynn 1989, 92-93).

Theft from a specified place was a separate category from both theft from a dwelling and shoplifting. The difference here is the location where the theft took place. Both a shop and a house can be classified as specified places; however, the purpose of this category is to include places like manufacturers, ships, lodging houses, and warehouses. Included in this statute was also the theft from houses where breaking and entering were not needed, which meant that the criminal was welcomed in the home when the crime occurred (Emsley et al. 2018a).

Pickpocketing was another form of theft categorized under property offences in 18<sup>th</sup>-century Britain. The crime was defined as stealing property worth more than a shilling from an individual's purse and or pocket (Emsley et al. 2018a). During the 18<sup>th</sup> century, pickpocketing was an indictment that was easy to evade, because the

identification of a skilled pick-pocket was difficult. Furthermore, few indictments for pickpocketing were brought to the court, as the criminal was often punished outside the legal system by the victim when caught in the act (McLynn 1989, 7).

Receiving stolen goods and knowing them to be stolen was an English statute beginning in 1691. The statute was created to hold individuals accountable who while not directly involved with committing the theft, were accessories to the crime. The indictment of receiving stolen goods was only brought through to prosecution when the individual who committed the crime of theft, to which the receiving was connected, stood guilty of the offence (Emsley et al. 2018a).

Animal theft which included pigs, fowls, cattle, sheep and at its most serious, horses was also a capital offence according to English law. The horse was considered a valuable piece of property and the theft of this animal would result in sentence of death. Even hunting certain animals was prohibited by a statute law in the 18<sup>th</sup> century for individuals not of a nobility or a gentlemen status. Game hunting was a sport that was only available to the high class of Britain and anyone of the middle and lower classes found hunting, even on their own property, were prosecuted. In 1723 the statute of hunting in the King's forest became a capital offence that was punishable by death (Emsley et al. 2018a).

### Types of Pardons

Benefit of clergy, as previously mentioned, was a pardon first developed in the medieval period to allow the clergymen to declare their position in the church, which allowed them to instead be punished by the court of the church and avoid the gallows. When the pardon was first introduced, it was only available to the ministry of the church, the clergymen, but it quickly expanded to include the literate men of British society. By

1706 anybody could beg the benefit of clergy, even women, as long as they could recite a popular verse from the bible (Phillips 2018, 276). The procedure for benefit of clergy within the courts of Britain was structured as followed: if a criminal was found guilty they had the option to plea the pardon, which it would then be accepted or denied by the court. If it was accepted the convicted criminal would be branded in their left hand with the letter representing the crime they committed, a 'M' for murder or a 'T' for theft (Beattie, 1986, 142). This process would occur in open court and usually released with no further punishment. The branding was done to signify that the individual was a convicted thief to the community. As well, if the individual was found guilty of another crime and begged the benefit of clergy, the court would see the 'T', or 'M', and deny the pardon. This was because benefit of clergy could only be given once (Phillips 2018, 276).

Branding a criminal with the letter 'T', or 'M', specifically on the left hand, had a deeply negative symbolic meaning associated with it. The performance of branding, as shown, was a ritualized process developed in the courts of Britain; in ritualizing such a brutal act, the courts illustrated the seriousness of it. Furthermore, by choosing to brand the criminal's left hand, instead of the right, represents the long-engrained idea of dualism attached to the human body. The theorist Robert Hertz has suggested that cultures associate the right hand with strength and virtue; sinister concepts and acts are connected to the left hand (Hertz 1973, 8-11). Therefore, the act of branding the criminal on the left hand in the 18<sup>th</sup>-century British courts represents British society's view of the human body during the time. Moreover, the act symbolized how the court viewed the criminal being branded and how they wanted British society to view them as well. The act of branding was done to illustrate to the criminal and to the greater public the evil

characteristics that embody the crime committed and also the individual who committed it.

Along with benefit of clergy, those convicted of a crime and sentenced to death had the ability to plea his majesty's pardon. In asking for the plea the individual was asking for the monarch of Britain to give mercy. The privilege of attempting this plea was available to all subjects of British society, but only a certain few ever received it. Nevertheless, the use of the pardon illustrated to British citizens that they could support the justice system's structure, knowing it was in some ways merciful (Beattie 1986, 13). The giving of his majesty's pardon could either be recommended through the judge during the trial or petitioned by a criminal sentenced to death awaiting their execution date. Therefore, there were two main ways to obtain his majesty's pardon: a judge could recommend someone for the pardon, which would be based on what the judge heard and saw during trial; or if an individual who was sentenced to death petitioned for the pardon it would be through the use of letters. The letters would be sent speaking of the convicted person's character and the bad influences that brought them to committing the crime. Additionally, with the petition sent, the criminal could get respectable friends, family members or known elites to send letters to assist in getting the pardon read and accepted (Beattie 1986).

Another pardon that was allowed in the British courts was the pardon of the belly. Women who were found guilty of a crime could plea that they were pregnant to avoid whippings or even death. The pardon of the belly was not an absolute pardon of the crime committed; rather, it usually only delayed the punishment. To kill an unborn child was morally inhumane in Britain and because of this the courts would not hang a woman who claimed she was pregnant (Sharpe 1999). Furthermore, once the child was born the court

was faced with the decision of orphaning the child with the sentence of death declared on the mother; or avoid growing the population of orphaned children by giving a lesser punishment. Usually the British courts decided on the latter, not wanting to complicate the case more and leave the child without a mother.

### Types of Punishments

The punishments that the British courts used to penalize criminals were harsh. In the 18<sup>th</sup> century, punishments were viewed as necessary in deterring crime. Michel Foucault points to the use of punishments as a means to make the crime less desirable to act upon; Foucault suggests, “it is the specific techniques of a power that regards individuals both as objects and as instruments of its exercise” (Foucault 1979, 170). By using the individual as a simple instrument, the judicial system successfully communicates a certain message to the public. Therefore, punishments were meant to teach a lesson to the society, using the prisoner as a symbol to the public, in order to make the torture a fearful memory to the spectators (Foucault 1979). Thus, the forceful and brutal punishments used in the British justice system were meant to discourage the greater public from committing crimes, rather than to punish the convicted criminal. As property became more valuable and property crime statutes grew, the punishments associated with property became more harsh, as a means to discourage more property offences. There were a number of punishments doled out to property crime offenders, which included whippings, transportation, imprisonment and sentence of death.

Public and private whippings were common forms of punishment for less severe property crimes, such as petty larceny. The thought behind publicly whipping a convicted criminal was to shame the individual in front of their community. In Britain the whipping would occur as the criminal was tied to a moving cart and forced to walk behind it

through the streets of their town being whipped. In the mid-18<sup>th</sup> century, whipping was more often done in a private matter, such as in a jail. As the historian Beattie points out, “unless (specified by a judge), a sentence of whipping would be administered privately” (Beattie 1986, 461). Moreover, in the 1760s whipping became a way to give additional punishment to grand larceny prosecutions who received the benefit of clergy (King 2000, 266).

Transportation to the British colonies was also used as a form of punishment that became a common practice in the British courts when the first act was passed in 1718 (Emsley et al. 2018b). Transportation was used when the British colonies were formed in regions like Australia and North America where convicted criminals could be sent. The court officials saw transportation as a good alternative to the sentence of death for a criminal who did not deserve to hang but was not wanted in the region. Also, transportation was an additional punishment the court could give to a criminal who received a pardon, giving the court the ability to expel convicted criminals from the British Isles. Transportation was thus based on the discretion of the jury and judge, who could transport an individual for seven years or in some cases for life (Sharpe 1999).

Imprisonment in the local jail (known in the records as gaol) was usually used to hold individuals until their trial procedure or to wait for their sentenced punishment. Nevertheless, in the 1760s imprisonment became a punishment in its own right (Beattie 1986, 88). As a result, a criminal who was pardoned could receive an additional punishment of three months in jail if deemed necessary by the court (Sharpe 1999).

A sentence of death was a punishment for capital offences and the most severe condemnation a convicted criminal could receive. Death by hanging was a public affair usually taking place in a central location of the town. The gallows were often a spectacle



for the public who watched, as it involved speeches from the criminals being hanged and sometimes the dramatic scene of an individual being pardoned by the monarch (Sharpe 1999).

Similarities between Britain's 18<sup>th</sup>-century court system and theatre performances have often been found (Hay 1975 and Kesselring 2003). Historians have illustrated how each draw a public spectacle and give an entertaining display of drama. The 18<sup>th</sup>-century trials and punishments were areas in society that allowed the public to take part in the justice system, which was very much wanted by the authorities. An audience at a criminal trial or at an execution were encouraged by court officials and sovereign because it allowed British society to be part of the justice process, which illustrated to the public that they could use and trust the system. Britain's justice system was designed to draw people in to participate in the courts, as it was only through the public's consistent participation that the structure of it could persist (Hay 1975).

Statistical research on property crime of 18<sup>th</sup>-century Britain has been a continuous area of exploration. Through extensive studies historians have identified that with an increase of property capital offences there was not a widespread rise in executions across Britain (King and Ward 2015). This suggests that the act of mercy became a common occurrence in the court and the overall views of sentences of death were being challenged.

The historian Peter King has researched the property crime of Essex County, England, where the data collected has shown the trend wherein property offenders received more mercy with the rise in statutes during the 18<sup>th</sup> century. King highlights, that the increase in capital statutes in Britain, which became known as the Bloody Code, did not result in a higher rate of hangings in Essex. Instead, while the crime rate increased the

study indicates that only 20 percent of guilty property offences resulted in a capital punishment (King 2000, 261). It is worth noting the crimes that led to capital punishment related to animal theft. Out of the 141 guilty cases of horse theft that occurred, 20.6 percent received sentence of death. Whereas, of the 1185 guilty cases of grand larceny that occurred between the years 1740 to 1805, only 1.8 percent of the criminals were hanged, while 35.4 percent were imprisoned and 32.3 percent were transported to British colonies (King 2000, 162). As shown through King's research, property became more important to British society, which resulted in the growth of capital laws surrounding it. However, the research performed by King also indicates that British courts did not always carry out capital punishments on the capital crimes. Rather, punishments like imprisonment and transportation were frequently used in place of the gallows (King 2000).

Peter King's study exemplifies the trend that has been identified in 18<sup>th</sup>-century Britain, which has found that there was a rise in capital statutes and offences but not a rise in capital punishments in the entirety of Britain (King and Ward 2015, Langbein 1983, and Devereaux 1996). Even more so, King's study suggests a reason for the trend. As the study indicates, different means of punishment were applied in order to maintain the order of British society, which were less harsh and allowed for an individual's reform, rather than death.

The property crimes of Britain and the way in which they were prosecuted by the British courts, illustrates the value British society placed on property and the seriousness the theft of it was viewed. In reviewing the English laws that governed the society and the procedures in which crimes were prosecuted, a simple understanding of Britain's justice system may be reached. As a result, when considering the justice system in a colonial

setting, an investigation of how the British judicial system was implemented in the new environment can be achieved.

### Colonialism and Imperialism

The process of Britain's colonization and imperialism involved the progression of implementing English people, beliefs, institutions and systems on the new colony. Anthropologically, this can be understood through Alfred Reginald Radcliffe-Brown's theory of social structures and social organizations. Brown suggests that societies are formulated through overarching social structures that organize the civilization, which Radcliffe-Brown argues are rarely changed. Social organizations are the individuals who make up the social structure and are interchangeable within the overall structure (Radcliffe-Brown 1958). The progression of British imperialism can be interpreted through Brown's theory and by doing so a clear interruption and view of the colony can be found. The social structures of Britain, such as the justice system, were placed onto the colonies of North America with the same structures as those found in Britain, and were therefore, non-changing. The social organization, however, was developed with new individuals to take on the roles already established in the structure. Brown's theory of the social structure and the social organization is a plausible and somewhat simplistic way to understand the process of colonialization. Radcliffe-Brown's theory does not take individual agency into consideration when theorizing social structures, which is a downfall. In any society, no matter how structured, individual agency and environmental influences will be factors that transform the applied structure. Nevertheless, in considering Radcliffe-Brown's theory it shows a society in a basic structure and form; as a result, it allows for the alternative or the abnormal features within a structure to be identified, evaluated and understood more easily.

The foremost reason for the colonization of Atlantic North America was due to the trade regimes and monopoly of the international market and the threat of war. The process of colonization was to obtain more power through geographical range, allowing the colonizer to lay claim to specific resources. In many respects, Britain's desire to colonize Atlantic North America was a structural-competition approach, which was a strategy the British used to maintain their economic and geopolitical power. In order to maintain economic and political revenue of the region, Britain had to lay physical claim through the expansion of infrastructure and people. Therefore, to perceive their claim on Atlantic North America, Britain had to undergo the process of colonialization in this region. (Go 2014). Thus, it was through, "imperial strategy, with its assumption that English security in Europe demanded possessions overseas, which laid the basis for an initiative" (Fingard et al.1999, 11) that Britain went on to create a colony in a region like Nova Scotia.

## **Chapter 2: Halifax in the 18<sup>th</sup> century**

Britain's colonization of North America began in the 17<sup>th</sup> century, and along with it the act of implementing various British social structures within the colonies occurred. By establishing British settlements, Britain desired control throughout Atlantic North America in hopes to create a strong new nation and maintain Britain's geopolitical power. The establishment of British settlements was a process in which political, economic, and legal structures were needed for the colony to function. Specifically, these various structures were used to encourage British way and order. In the case of 18<sup>th</sup>-century colonial Halifax, it can be argued and shown that the structure of the criminal justice system was subject to such influence. The courts of Halifax were originally created to echo English law; however, evidence from Halifax's justice system shows that in certain cases Halifax's officials deviated from what was modelled after Britain.

### Early Halifax

On the 21<sup>st</sup> of June 1749, Edward Cornwallis founded the colony of Halifax to bring a strong British presence to Nova Scotia in order to counteract the large French presence in Cape Breton at Fort Louisburg and throughout the province. Establishing a strong English presence in the region was done through the creation of Halifax's garrison, and also the arrival of English settlers. Halifax's founding and physical construction expressed a military spirit that highlighted Britain's fight to protect the region from the French, rather than the desire to establish a colony for financial gain (Clayton 1981, 578-580). The military essence of the town can be found through the mere layout of it. Halifax was built with barracks and a wall surrounding the entire town, along with a fortress positioned at its centre (Fingard et al. 1999). Thus, the colony's structure illustrates Britain's want for a stronghold in the region organized to defend.

Halifax was Britain's first major attempt to colonize Nova Scotia and the necessity for it to succeed is shown in its characteristic of being a government funded colony. The British government's financial input into the colony influenced individuals and families to leave Britain and start a new life in North America. A substantial sum of the government's money funded the initial voyage to the new colony, which brought 2576 settlers to Halifax with Edward Cornwallis in 1749 (McCreath and Leefe 1982, 198-199). As a government-funded colony, many Europeans and individuals already settled in North America looked to relocate into Halifax, specifically New England merchants. Many settlers were attracted to Halifax for the provisions they were offered, such as land, security and a civil government (McCreath and Leefe 1982, 198). Many types of settler's made up Halifax's early population, but the most prominent members of the growing population were the members of the garrison. The military was large in 1749, but the soldier population of soldiers within the colony grew further in 1756 with the outbreak of war between Britain and France, known today as the Seven-Years War (Cameron and Aucoin 1983, 167).

With the outbreak of war in Europe, Britain feared that the colonies of North America were under threat. Consequently, the British government invested substantial amounts of money into the military and naval infrastructure of Halifax. This influx of money into the colony caused Halifax's economy to flourish, allowing for the expansion of the population and the Majesty's Naval Dock Yard (Gwyn 2004, 6-7). By 1758, the population of Halifax grew to more than 6000, with around 2200 more soldiers coming into the colony to prepare for an attack on the French. The town of Halifax was overflowing with people during the years 1756 to 1760. Despite the population growth, the physical size of Halifax had not increased; consequently, more than 6000 people were

living in the small radius of the original Halifax intended for less than a third of the population (Fingard et al. 1999, 17). The overpopulation of the peninsula during war time is reflected in the Halifax court records; as it will be discussed, the rate of property crimes increased during these years.

However, by 1760, the threat of conflict in North America diminished, and, as a result, the British government limited its financial support to Halifax. Due to the little money coming into the colony after the war time boom, individuals looked to move away from the colony affecting the population, which is thought to have decreased to less than 3000 people (Clark 1968, 351). Correlation of this effect is evident in the court records with less cases found, which is discussed more in the next chapter.

### Government

Halifax was unique in its early government formation in comparison to other British colonies. When establishing a local government for the colony, the basic structure was an appointed governor, a chosen executive council and an elected assembly (Mancke 2005, 10-11). This type of systematic formation allowed the colonial population to have a say in their local government. In early Nova Scotia, however, an elected assembly was not possible. A major reason was due to the large French population and the minimal presence of English Protestants. Owing to the fact that there were few English citizens in Nova Scotia when Britain gained the region from the French in 1713; as well as the desire for an English-run colony, another type of governmental system needed to be put into place. Therefore, it was decided that Nova Scotia would be governed by only an executive council made up of English men, who were chosen by the appointed Governor. The structure remained even when the seat of government was moved from Annapolis Royal to the new settlement of Halifax in 1749; it was not until 1758 that the British

government pushed for a change in the Nova Scotian government's organization (Mancke 2005, 11).

During the 18<sup>th</sup> century, Halifax had several different governors. The majority being of military background; once again, supporting the importance of the garrison in Halifax. Though, the roles that these men took on encompassed more than just military duties; they also included political, financial and jurisdiction undertakings to properly form and lead a successful colony. Some governors struggled to achieve the needs of the colony and resigned because of it; while, others were forced to abandon their duties for medical reasons. Nevertheless, if a governor ruled for three years or ten, their actions taken while in charge, had an impact on various institutions within the colony, such as the justice system. Therefore, the governors, of the time this study covers, should be taken into consideration as specific agents and influencers within the social structures that made up the colonial society.

The first governor based at Halifax was Edward Cornwallis, who was appointed for his military background and leadership experience. During his time in Britain's military, Cornwallis took part in combat and grew in rank, achieving the title of Lieutenant-Colonel of the 20<sup>th</sup> Regiment of Foot (Reid 2013, 20). Cornwallis's military leadership accomplishments made him a prime candidate for governor of the new English colony of Halifax. However, as governor of Halifax, Cornwallis was unable to follow the instructions to create and maintain peace with the region's local indigenous population, the Mi'kmaw; instead, he created substantial conflict in the region. Furthermore, Cornwallis struggled in rationing the cost of the colony, usually spending more than he was given and having to ask the Board of Trade for more (Reid 2013, 26). As a result, English officials reprimanded the governor for his inability to create peace



with the Mi'kmaw, which would have allowed him to place English settlers into the greater region of Nova Scotia (Reid 2013, 25). By October of 1752 Cornwallis accepted his failure to grow the colony and returned to Britain, where he resumed his political and military career (Beck 1979).

After the resignation of Cornwallis, Peregrine Thomas Hopson was appointed Governor of Halifax in 1752. Hopson, also had a military background, being a senior officer of Fuller's regiment and Lieutenant-Governor of Louisburg in 1747 when the fort was under British occupation. As governor of Nova Scotia, he faced the responsibility of dealing with competing groups found in the colony, specifically that of the English settlers and the growing population of New Englanders. Due to the dueling populations in Halifax institutional structures were put into question; this included the question of what law the courts of Halifax practiced, New England law or English law; this conflict will be discussed later in the chapter. As a result of these conflicts, one of Hopson's tasks as governor was to maintain the peace and the structure of the colony that was being disrupted by the disagreeing settler groups. However, with the loss of his eye-sight, Hopson was forced to resign his position as governor in 1755 (Cameron 1974).

The appointed governor in 1755 was Charles Lawrence, another military man who in 1753 was promoted to lieutenant-governor when Hopson left the region (McCreath and Leefe 1982, 215). Lawrence is best known for his actions of expelling the Acadian population from Nova Scotia. The new vacant land that transpired because of the expulsion was then used by Lawrence to bring more English settlers into the colony from New England. However, the increase of New Englanders in the region brought disagreement to Nova Scotia's government structure and Lawrence position as governor. Specifically, the opposition came from merchants who wanted an elected assembly. To

acquire this change, the wealthy merchants went to the Board of Trade and encouraged the change of Halifax's governmental structure and the creation of an elected assembly. Since 1754, the Board of Trade encouraged the colony to create an assembly, but Lawrence was reluctant to do so. It was not until 1758, with the complaint from the Halifax merchants, that Britain's encouragement for an assembly turned into a direct order. Halifax's government accordingly added an elected assembly to the governmental structure of a chosen executive council and appointed governor. (Graham 1974).

### Laws from Britain

The justice system was one of the first institutional structures established in Halifax, which illustrates the importance of order in the new colony. Once the colony was established, the British government instructed the Halifax officials to extend all English statutes to the province and colony, though there were exceptions.

On December 13<sup>th</sup>, 1749, the executive council met at the Governor's House in Halifax; it was here that the administrators of the colony declared the rules of the court based on the instructions from Britain's Board of Trade. Though, the council was also basing the rules of the court on the traditions found in the colony of Virginia, as the men declared that "in Virginia being the nearest to the of Nova Scotia the regulations and rules there established for the General Court and their county courts, will be the most proper to be observed in this province".<sup>ii</sup> The influence from Virginia had occurred long before the establishment of Halifax. Governor Colonel Richard Phillips in 1719, at Annapolis Royal received instructions from Britain to run the institutions of Nova Scotia, including the judicial system, as indicated in the instructions given to the colony of Virginia (Barnes 2012, 14-15). Therefore, when Halifax was establishing new rules, Virginia was a strong choice of reference. The court regulations would outline the process the court would

undergo during trials, which included that all persons facing a felony charge had the liberty to beg for a pardon in open court. One of the rules taken from Virginia was that criminal trials would be held the first day of the sessions of the General Court. The instructions Halifax received from Britain on how to design the court system, illustrates the process of mimesis British officials were enacting onto the colony. However, the governor and council were aware that they could not follow the British court system exactly, which led them to seek inspiration from other British colonies.

The process of choosing the English laws that would govern the colony and the guidelines to follow within the courts was a complicated endeavour. The governor and council did have the liberty to enact the laws and procedure that they saw fit; though, the Board of Trade instructions were specific in that they had to conform to the British ways. Britain wanted to create a colony that illustrated British ideals of order and rule; but, knowing that direct implication of English law onto the colony was not possible, the governor and council took Virginia laws and procedures into consideration. This process illustrates that the governor and council had the liberty in enact the rules and procedures of Halifax; however, they were still subject to the British ways. Once the regulations of the court were in place they were communicated to the population in a ritualized ceremony, which was performed throughout the streets of Halifax. This ritual encompassed the Provost Marshall walking through the streets of the town reading the rules out loud to the beat of a drum. This was done in the first day of each court sitting (Oxner 1984, 61).

### Courts

In the first weeks of Halifax's the executive council established both the General Court and the County Court, which remained the basic institutions to deal with both civil

and criminal cases until 1752; in this year, the court systems were changed with the establishment of two new courts. The court system changed further in 1754 when the Supreme Court of Halifax was formed. The establishment of the Supreme Court produced greater organization within the justice system of Halifax (Mancke 2004).

The General Court proceedings were first held in the governor's dwelling before a court house was constructed. Along with the establishment of the General Court, a County Court was created to hear proceeding to do with civil cases. By 1752 the Halifax court house was built and the County Court was split into the Inferior Court of Common Pleas, which was strictly for civil cases; and the Court of Quarter Sessions of the peace, which would prosecute petty crimes. The General Court remained the same, dealing with capital criminal offences, along with civil case appeals (Mancke 2004, 39).

In 1752 the justice system's procedures were reformed. This change was due to public complaint, which accused the colonial justices' of the Inferior Court of Common Pleas. The complaint claimed that the justices were using Massachusetts laws within the courts of Halifax, instead of English law. As discussed earlier in this chapter, the discrepancies that occurred within the courts of Halifax arose because of the competing ideas between the diverse population consisting of English and New Englander settlers (Oxner 1984). James Monk, a New Englander, was a key figure in this discrepancy. Monk was a justice of the peace who the public accused of favouring Massachusetts law over English law. Finding proof of this partiality in the court during this time is difficult; nevertheless, the complaints were significant enough for British officials to intervene and establish a new protocol. The new procedure they put into place declared that the decision of colonial justices, including the chief justice and the justice of the peace, would be made with the consent of various council members, instead of at the discretion of the

sitting governor (Blakeley 1974). The process of appointing a chief justice changed further in the year 1754 when the decision of colonial justices was by the Crown-in-Council from that point on (Mancke 2004, 39).

The change of procedures in appointing the chief justice of Halifax reflects the intense controversy that was occurring in the justice system. What initiated the change were further public complaints, which once again led to the Board of Trade's involvement to place British order upon the colony. The British officials achieved this by installing Jonathan Belcher as Chief Justice and as a member of the executive council (Greco 2012, 43). Even though Belcher was from New England, where he was trained in the practice of English law, he went on to England where he sought to advance his legal career. Due to Belcher's time in England, where he was further trained and exposed to the British ways of justice, the Board of Trade viewed him as a suitable candidate to take the leading role in the justice system of Halifax. This action would lend to the British government's attempt to endorse British order on the colony once again. Belcher was the only chief justice of the colony up to the year 1764, making him a key influencer in the outcomes of legal trials (Buggey 1979).

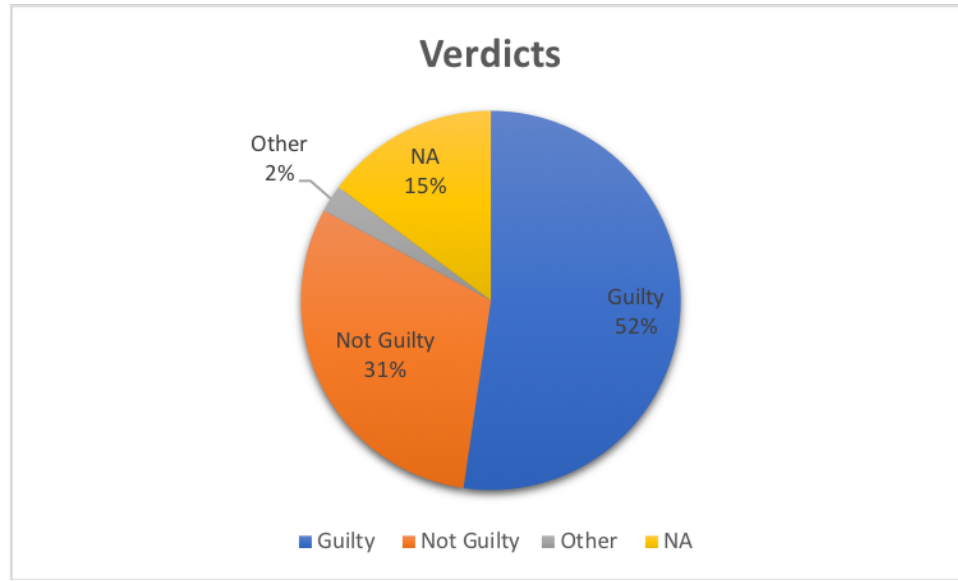
The way Halifax's government was organized had an impact on how the justice system of the colony was structured. The individuals who made up the assembly had various ideas about how the colony should be structured and ran. Likewise, the population diversity had an impact on the institutional system as well. It is because of these competing and diverse groups that made up the colony that the structure of Halifax came to be altered. However, it was also because these discrepancies that the British authorities saw the need to enforce British structure upon the colony, in hopes that it would maintain British order.

### Chapter 3: Property Crimes: Data and Analysis

Through the collection of mid 18<sup>th</sup>-century court records available through the Nova Scotia Archives, 216 property indictments have been identified for the town of Halifax in the years of 1749 to 1770. This is in exception to the year 1762, as no property crime records were found. Through these records, an evaluation of how Halifax prosecuted property offences can be presented.

Illustrated in figure 1 on page 27 are the percentage rates for verdicts that indicted individuals of property crimes received in the years of 1749 to 1770. As indicated, just over half of the individuals indicted for property crimes were found guilty and the criminals were properly prosecuted and punished. Whereas, only 30% of the individuals indicted for property crimes were found not guilty and were immediately released. There are another 2% of cases that do not fit into either category of guilty or not guilty; rather, the circumstances of these cases were found to be out of the norm. Before proceeding to trial a crime was either declared a *True Bill*, a valid indictment<sup>iii</sup>, or an *Ignoramus*, which was when the jury declared the accusations made against an individual were not adequate enough to proceed to trial<sup>iv</sup>. However, a true bill, once sent to trial, could be deemed a *ignoramus* by the trial jury and the case is thrown out. Furthermore, cases can result in what the record names as a *no prerequisite*, which is when the chief justice declares that there is not enough evidence to convict the individual indicted<sup>v</sup>. The cases that resulted in an *ignoramus* and a *no prerequisite* are what make up the ‘other’ category shown in figure 1.

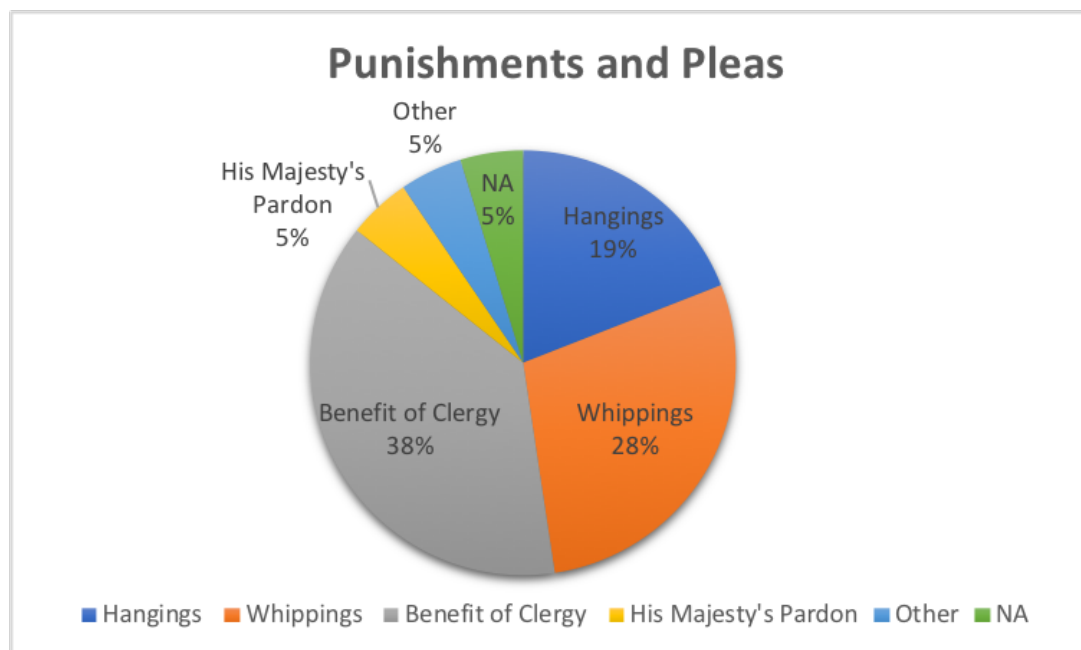
Figure 1



A more in-depth interpretation concerning the guilty verdicts is illustrated below in figure 2 (page 28). This shows the various percentages of punishments and pleas the guilty property offenders received. When an individual was found guilty they were given either a punishment or, if asked, a plea of benefit of clergy or his majesty's pardon. Due to the variation that occurred in the prosecution process figure 2 illustrates the absolute outcomes of the adjudications of the court. Thus, if someone was sentenced to hang but received the benefit of clergy, the individual was recorded as receiving a pardon rather than the punishment. Accordingly, figure 2 shows that 38% of guilty individuals were given the benefit of clergy, rather than a punishment. Figure 2 also represents the percentage of adjudications that are unknown (NA); as well, figure 2 shows the cases that had complicated circumstance in their judgements and were placed under 'other'. One of the guilty indictments categorized under 'other' is the case of Margaret Bayont that occurred in April of 1754. Bayont was found guilty of theft and sentenced to a public whipping of ten lashes; however, in court Bayont made the claim that she was pregnant and as a result the court agreed to delay the punishment until the child was delivered. The

court then sentenced Bayont to the gaol until her punishment could be given. Yet, after a petition which claimed that Bayont was ill and the court allowed for her release from the gaol with no further sentencing.<sup>vi</sup> It is unclear if Bayont ever received her punishment of a public whipping; consequently, her case is deemed an 'other' in figure 2.

Figure 2



Shown through figure 2 is also the tendency towards the act of mercy by the Halifax court in the years this study examines. The use of mercy also shows the influence from Britain where the act, by the king or queen, was used to illustrate to the public the power and forgiveness of the sovereign. Moreover, there was a social significance to the use of pardon in the court system. Though most importantly, pardons gave individuals facing severe punishment the agency to manipulate the system to some degree. The act of



mercy within the British court system was very much a balance; on the one hand the justice officials needed to inflict a sense of absolute power on a society to create obedience and enact confidence in the function of the justice system. However, on the other hand, officials had to show humanity within the strict system, in order to avoid rebellion. Therefore, “mercy became a tool of state formation” (Kesselring 2003, 3) that restored trust in the authority of Britain while still distributing rightful justice.

As mentioned in chapter 1, benefit of clergy was a common pardon given in the British courts during the 18<sup>th</sup> century. The data presented illustrates that the pardon was also frequently used in the colony of Halifax during this time. Over the twenty-year period that this study covers 34% of indictments resulted in the use of benefit of clergy. Interestingly, the first benefit of clergy pardon does not appear in the record until Oct 29<sup>th</sup>, 1754, correlating with the establishment of the Supreme Court of Halifax. The first guilty individual to use the pardon was John Moor who was found guilty to the crime of theft valued at 4 shillings and 10 pence, which resulted in the sentence of death. However, with benefit of clergy begged by the criminal, and accepted by the court, Moor received a branding of the letter ‘T’ on his left hand in open court and was released.<sup>vii</sup> The correlation found with the pardon and the establishment of the Supreme Court indicates that Halifax’s colonial justices’ were applying more British traditions in the court, which were not being used in the earlier years of Halifax’s General Court. Also, it illustrates the impact governmental and institutional change had on the system. Shown in chapter 2, the establishment of the Supreme Court and the employment of Jonathan Belcher as Chief Justice, were acts taken by the British government in response to the governmental controversy that was occurring, which as a result influenced the structure of the justice system.

Moreover, Britain's practice of benefit of clergy was taken on in the Halifax Supreme Court in a similar theatrical performance. As discussed in chapter 1, benefit of clergy was a common practice in Britain and was used by offenders to manipulate the system and avoid the gallows. Viewing the pardon in the court of Halifax, it is evident that the pardon's meaning and the ritual associated with it was substantially engrained into the British culture, which transferred directly over to Halifax's colonial environment.

Benefit of clergy was the most common pardon used in the Halifax Supreme Court throughout the 18<sup>th</sup>-century; whereas, his majesty's pardon was scarcely used. The data shows that his majesty's pardon was used only for 5% of the indictments found in the record. Furthermore, the majority of the cases that resulted in his majesty's pardon were before 1754, before the founding of Halifax's Supreme Court. The 5% of indictments that received his majesty's pardon only one case was found to resemble the theatre-like performance that Britain was known for when the pardon was given.

During the general court session of April 28<sup>th</sup>, 1752 three men - James Mackenzie, Robert Harris and Christopher Donnelly - were brought to the bar indicted for the theft of a yawl (i.e. a boat) valued at 6 pounds. Each of the men was found guilty of the felony and sentenced to hang on June 22<sup>nd</sup> of the that year.<sup>viii</sup> On the day of execution, the three men were taken to the gallows where Robert Harris and Christopher Donnelly were hanged until dead; however, James Mackenzie was given a different fate. On the day of execution James Mackenzie was "reprieved without a day, by virtue of a warrant from the said excellency the governor"<sup>ix</sup> and sent back to confinement. Mackenzie was confined in the gaol until the General Court of Assizes of October 26<sup>th</sup>, 1752 when the prisoner was granted his majesty's pardon and released.<sup>x</sup>

The case of James Mackenzie illustrates the extreme situations in which Royal pardons were used to represent the mercy of the crown. This type of performance is more commonly found in Britain, as other pardons identified in Halifax's record do not typically take this dramatic approach. Rather, the pardons take place in the court of Halifax among the judge and jury. Nevertheless, the circumstance in which James Mackenzie's case unfolded, highlights an influence from English law. The historian Jim Phillips (1992) points to this same case in his own research on the operations of his majesty's pardon in Nova Scotia. Phillip hypothesizes that Mackenzie's retrieval of the pardon occurred because it was his first offence, which the court record specifically noted. Also, Phillip offers that Mackenzie's master and also the victim of the crime, Robert Cowie, could have advocated for Mackenzie and his good behaviour, which influenced the pardon. The suggestions Phillips presents reflect back to the considerations the British legal system was known to take into account when dealing out pardons. However, under the circumstances of this specific case, his majesty's pardon may have been given merely as a display of mercy and power of the sovereign and acting governor of the colony.

Furthermore, the pardon's used to show the mercy and power of the sovereign is additionally suggested as all three men found guilty of the theft and sentenced to hang were first offenders and servants of Robert Cowie. Due to this consideration, with each of the men being first offenders they should have had the liberty for the benefit of clergy, which Phillips (1992) has highlighted in his own findings. Yet, only one of the convicted criminals were given a pardon and the other two were hanged without a second chance. The scarcity of his majesty's pardon given in this case illustrates that the act was used to

showcase the sovereign’s mercy and to give a theatre-like performance. As opposed to the legal system’s efforts to prevent injustice and save an innocent life.

Additionally, a closer analysis of the data reveals the change in frequency of property crimes over the twenty-year period studied. Figure 3 (page 32) shows that the majority of property crimes occurred in the first ten years of this study. While this may just be due to the spotty record keeping in the 1760s, it may also be attributed to the war time period that was occurring in the late 1750s. As highlighted in chapter 2, between the years of 1756 to 1760 Halifax encountered a wartime boom that caused an increase in population and economic activity. There was a larger number of grand larceny cases in the 1750s, which may be a reflection to the colony’s economic increase of the wealth that was accumulating in the colony. Furthermore, the value of goods that individuals were indicted for seems to have increased in the war period. The records show that there were no indictments valued at more than a pound before 1756; whereas, by 1760 the goods reached to the value of 105 pounds, the maximum amount an individual is found indicted for in the record.

Figure 3. Property Crimes

	1750s(+1749)	1760s
Petty Larceny	28	5
Grand Larceny	44	25
Animal Theft	5	1
Receiving	3	0
Pickpocketing	1	0

The population increase during wartime is also reflected in the property offence records, as there is a substantial increase in property crimes for the year 1759. It cannot be fully determined if the increase found in the record is due to better record keeping by the court or a consequence to the growth in population that occurred in 1758, which is an estimated population of 6000 individuals. The correlation between property offence rates and the boom in population is unprecedented and for this reason must be taken into consideration. As mentioned, the year 1759 was the year in which the most recorded property crimes are found, within the twenty-years that this research covers. Out of the 216 indictments found, 48 of the cases occurred in 1759, right in the peak of the wartime boom.

Another intriguing discovery in the data are the cases that received a pardon from the court, but also received a further punishment along with it. This punishment method is found to have occurred more regularly in the later years of the study. As figure 4 (page 34) shows, in total 17.4% of prosecutions that resulted in a pardon had an additional lesser punishment brought upon them, which was usually public. Nine cases of this type are found to have occurred in the 1760s with the lesser punishment being a public whipping, a fine, or imprisonment. A case occurring in 1767 reflects this type of punishment: three individuals, were found guilty of grand larceny and received the benefit of clergy. However, they were not immediately released, like others who received the pardon were; instead, the court sentenced each of them to public whipping. Each would endure “five lashes at six of the most public streets of Halifax”<sup>xi</sup> making a total of thirty lashes. After this public display of punishment the prisoners were released.<sup>xii</sup> Variations of this type of punishment are found elsewhere in the record, and each time the act of punishment is public.

Figure 4. Property Crime Rates

	Total Guilty	% Sentence Unknown	% Benefit of Clergy	% Majesty Pardon	% Sentence Reduced by Pardon	% Whipped	% Hung	% Other
Petty Larceny	33	6	---	3	---	84.8	---	6
Grand Larceny	69	---	43.5	5.9	17.4	1.4	31.9	---
Animal Theft	5	---	20	60	---	---	---	10
Receiving	3	---	---	---	---	33.3	66.7	---
Pickpocket	1	---	100	---	---	---	---	---
All Crimes	111	1.8	28.8	7.2	10.8	27	21.6	2.7

The undertaking of further punishing a pardoned individual is a reflection of what was occurring in Britain at this time. As discussed in chapter 1, by the mid-18<sup>th</sup> century, imprisonment, whipping and transportation became additional means of punishing a pardoned individual. However, while the trend of additional punishments seems to have influenced Halifax's sentencing procedures and publicly whip a convicted criminal during the 1760s; the British were more inclined to privately whip a prosecuted individual during this time.

Halifax's tendency to publicly whip a pardoned individual indicates the use of the punishment as a means to deter the community from committing the crime. Interestingly, the view of public whipping was changing in Britain during this time, while in Halifax public punishment's increased. This may be explained in consideration to the substantial

increase in property offences found in the late 1750s. This upsurge in property offences may have had an impact on the colonial justices' decisions and procedures of dealing with property crimes. As a result, the increase of property crimes in the years previous to the increase in public whippings indicates that the justice system saw a benefit to publicly punish a property offender.

Over the twenty-year period the data covers, nine individuals were found to have been indicted more than once, with two individuals found to have been indicted four to five times (figure 5 on page 36). This trend is known as recidivism, which is when an individual is found in the record more than once and is a repeat offender (OED 2019). A significant cause for recidivism in Halifax may have resulted from the inability to transport convicted individuals. As discussed in chapter 1, transportation was a common form of punishment found in the records of Britain, but not in the records of Halifax. As a result, guilty criminals would receive a punishment or pardon and were released back into the public, free to commit more crimes, which some individuals did. Further discussed in chapter 1, the punishment of transportation was an attractive alternative to sentence of death, as transportation allowed the officials to rid the region of criminals. However, this does not seem to have been an option for Halifax, which means that the justice system would have had to take on other procedures to punish property offenders.

Figure 5. Repeat Offenders

Criminal	Total Indictments	Outcomes						Punishments		
		Not Guilty	Guilty	No Prerequisite	Unknown	BoC	MP	Whipping	Hung	Unknown
Benny Lewis	2	2	-	-	-	-	-	-	-	-
Martha Welsh	5	-	3	1	-	2	-	-	-	1
Elizabeth Sutherland	2	2	-	-	-	-	-	-	-	-
James Brown	4	1	2	1	-	1	-	-	1	-
Mary Penfold	2	-	2	-	-	1	-	1	-	-
Chrystian Regan(er)	2	-	2	-	-	1	-	-	1	-
Eunice Cotton	2	1	1	-	-	1	-	-	-	-
Edward Ryan	2	-	1	-	-	-	-	-	-	1
William Medlon	2	1	-	-	1	-	-	-	-	-

The data collected and represented in this chapter illustrates the trends of Halifax’s justice system in the years this study covers. It reveals that property crimes in the colony of Halifax were equally significant to that found in Britain during the 18<sup>th</sup> century. As shown, governmental conflicts, population rates, economic increases and environmental factors all played significant roles in the outcome of the justice system’s structure and how property crimes were prosecuted in the colony. The way in which the crime was viewed remained relatively similar to that found in Britain. Therefore, the major differences are in the various punishments given to property offenders, which may have been due to individual circumstances. As a result, individual cases need to be investigated and analyzed.



#### Chapter 4: Case Studies

The court proceedings that have been identified through the twenty-year period this study covers, the records have encompassed a number of memorable names, which suggest the trend of recidivism discussed in chapter 3. There are two repeat offenders whose various cases are substantially unique and the circumstances the trials are found in go beyond the norms identified in Halifax's justice system. For this reason, the two individuals, Martha Welsh and James Brown, along with their many property offences, will be thoroughly investigated in order to reveal if the uniqueness of their court experiences was due to their positions in Halifax society, or because of other exceptional circumstances unidentifiable through the archival record.

##### Martha Welsh

The first case found in Halifax's property offences for Martha Welsh is dated April of 1751, less than two years after the founding of the colony. Unfortunately the crime is not indicated; the only information recorded is the verdict which states Welsh was found "guilty in manner and form as laid indicted."<sup>xiii</sup> The records for this indictment give little context for analysis, but it is the first time that she is found in the record, and therefore it makes the case important.

It is not until another five years pass that Marsha Welsh was found again in the court records, where she is once again indicted for theft. In October of 1756 Welsh was tried for theft of goods valued at 10 pence. Unlike her first indictment, the details of the case were recorded. The accusation of the crime was brought to trial by a jury's decision of a *True Bill*, which specified that Welsh stole "one cheese, one pair of stockings, and a piece of Holland (i.e. a herb) from the dwelling of a Paul Pulchard"<sup>xiv</sup>. Once brought to

trial the case was found neither guilty or not guilty; rather, the Attorney General, James Monk, declared the evidence was not substantial enough and entered a ‘no Prerequisites’.<sup>xv</sup>

The following year, in April of 1757, Welsh was again indicted for theft. The indictment was for theft of a looking glass (i.e. a mirror) valued at 5 shillings. After facing trial, Welsh was found guilty as indicted making the theft categorically grand larceny, a capital offence. As a result, like any capital offence, Welsh was sentenced to hang. However, when asked why sentence of death should not be placed upon her, Welsh begged the benefit of clergy. It being her first time asking, it was allowed by the court and she was burnt on her left hand with the letter ‘T’ in open court.<sup>xvi</sup> Thus, the next time Welsh would be prosecuted for theft and sentenced to death, she would not have the chance to save her life again through benefit of clergy. However, according to the records, she may have been an exception to the justice system’s rule.

Welsh is not found in the court records of the following year, but in April of 1759 she is once again indicted for theft, specifically for pickpocketing a chain and an unknown object valued at 40 shillings. The crime was committed on December 10<sup>th</sup> of 1758 against one Walter Warren on board the ship *Devonshire*. This is the first indictment where Welsh is named a spinster, which is an unflattering term used to define a still unmarried woman who is above the average age of marriage (Hill 2001, 4-5). The chief justice of the trial was Jonathan Belcher, who found Welsh guilty as indicted, making it grand larceny for a second time, and once again sentenced to hang. However, for a second time Welsh begged the benefit of clergy.<sup>xvii</sup> The record does not indicate if Welsh received this pardon again. However, Welsh appears in the record in 1761; as a result, it can be suggested that Welsh did receive the pardon.

The final property indictment Welsh is found for is in April 1761. Welsh was accused of stealing a watch from Walter Harkins, which she denied in her deposition. There is no trial record for this case, nor is there any indication of what became of it; the only evidence is of the case going to trial is the jury list.<sup>xviii</sup>

After Welsh's case of April 1761 she is not found in the record again under property offences. As a result, there is no indication of what became of her, if she was sent to prison, executed by the court or fell away from the life of crime. Nevertheless, her time in the justice system gives insights and shows that the structure of the system is sometimes not clearly understood or followed.

### Analysis

It is difficult to determine why Martha Welsh received more pardons than the justice system of the time allowed; nevertheless, taking into consideration the situational and individual circumstances of the criminal a few interpretations can be given.

A reason for Martha Welsh's receipt of more than one benefit of clergy may have been due to her position in society. It is in Welsh's fourth indictment that she is named a spinster; it was also in this indictment that she was accused of pick-pocketing a man aboard the *Devonshire*. Her occupation in Halifax has been suggested by the historian Jim Phillips (1994, 185) as being a prostitute, which may have been the reason for leniency within the courts. Women identified as a spinster in Britain's court records were often associated with the lifestyle of prostitution. This was an occupation that was looked down upon in society; though, depending on the circumstances of the indictment the prostitute could receive more tolerance within the courts. Specifically, prostitutes indicted for pick-pocketing were "dealt with leniently, as the men from whom they stole were viewed with little sympathy by the judges"(Hill 2001, 106). Consequently, the circumstances

identified in Britain's justice system surrounding single women and prostitution, may be applied to Welsh's pick-pocketing indictment; thus, explaining why she was identified as a spinster in this case and received leniency within the Halifax courts.

Gender may seem an obvious reason for Martha Welsh's various outcomes and pardons within the court system; however, based on how other women were prosecuted in Halifax's justice system, being a female did not in itself create leniency within the court. The grand larceny case of 1755 in which a Jane Humphris was indicted, resulted in the jury finding her guilty and the judge sentencing her to hang. Similar to Welsh, Humphris received benefit of clergy, but unlike Welsh she also was sentenced to 2 months in Halifax's gaol.<sup>xix</sup> Furthermore, in Mary Conway's case of 1759 for receiving stolen goods<sup>xx</sup>, as well as Elizabeth Price's case in 1760 for theft of 5 pounds<sup>xxi</sup>, each woman was sentenced to death. Even though neither of the proceedings indicated if sentence of death was followed through, the women were not found in the records again, suggesting that they were hung. The historian Jim Phillips has looked at women in the courts system of 18<sup>th</sup>-century Halifax and also determined that "the totality of the evidence makes it abundantly clear that women were certainly not treated more leniently than men..." (Phillips 1994, 183). My data supports Phillips' interpretations of women found in Halifax's justice system, with exception in the case of Martha Wealth.

Due to the extraordinary circumstances that are found in regards to Martha Welsh's cases, an assumption must be made about the unidentifiable individual factors of the criminal. Unfortunately, individual characteristics cannot be found, nor measured through the 18<sup>th</sup>-century court records; but nevertheless, individual qualities such as, having an innocent demeanor or a charismatic personality, are regarded as probable circumstances that resulted in Welsh's abnormal outcomes in court.

## James Brown

In October of 1757, the Halifax soldier James Brown was found indicted for the theft of a sheet, a napkin, a waistcoat, a silver tank, and a pair of silver buckles, which came to the value of five pounds. All of these items were stolen from the dwelling of one William Piggott, a Halifax tavernkeeper. The judge and jury found Brown not guilty of the indictment.<sup>xxii</sup>

However, the following year, 1758, in the month of April, the trial records indicate that James Brown was once again tried for the same crime. Though, the retrial in 1758 was decided by the jury that “having heard the evidence from and examined do say that the prisoner, James Brown (by his attorney) on this indictment enter a no prerequisite”.<sup>xxiii</sup> The case is the only retried property indictment found in the court records of Halifax.

On the same day in April of 1758, James Brown was charged with another property offence, this being the theft of a silver watch, one pair of shoes, knee buckles and a pair of breeches from a Thomas Martin valued a five pounds. Unlike Brown’s previous indictments, he was found guilty and sentenced to death. Nevertheless, when asked by the court why sentence of death should not be carried out Brown begged the benefit of clergy, which he received, and was burnt on the left hand in open court. Yet, Brown was not immediately released after receiving the pardon. Instead he was sentenced to remain in prison until the next sitting of the supreme court.<sup>xxiv</sup>

About six or seven months after his 1758 sentencing, James Brown was once again found in the supreme court of Halifax indicted for theft. The goods stolen were taken from various individuals and were found in a single schooner located at Portuguese Wharf. The goods totalled together came to the value of 28 pounds. Once again Brown

was found guilty of theft and sentenced to death. Brown for a second time begged the benefit of clergy, but did not receive it. The record directly reads: “Chief justice proceeded with sentence that Brown should return to gaol (jail) where his bolts be knocked off and thence to the gallows, place of execution there to be hanged by the neck till he be dead dead dead and the lord god have mercy on his soul”.<sup>xxv</sup> After being indicted three times and found guilty twice, Brown was finally out of chances and like many of the criminals of the 18<sup>th</sup>-century, his life was brought to an end at the gallows.<sup>xxvi</sup>

### Analysis

James Brown’s experience in the court system of Halifax did ultimately lead him to a brutal end; however, while Brown’s journey was more by the book than that of Martha Welsh, it does not erase the major discrepancy found in Brown’s trials. The inconsistency is that Brown was tried for the same property offence twice, which is the only case of this kind found in the court records. There are a few explanations that may suggest Brown’s retrial, which include: the social status of the victim, Brown’s circumstance of being indicted again for a similar property offence or the social position Brown held in Halifax’s society.

Brown was found not guilty for his indictment of 1757, but in 1758 he was tried again for the same case. The theft was a grand larceny case as the goods came to a value of 5 pounds; furthermore, the victim, from whom the goods were stolen, was a William Piggott who was identified in the court records as a tavernkeeper. However, Piggott’s occupation was more than a tavernkeeper as he was also a ship owner (Patterson 1993). Piggott’s status in the society was well established and therefore his property may have had more value. As a result, it can be argued that Piggott had an influence in the retrial of Brown, as many wealthy individuals had in Britain (Hay 1975). Piggott’s motive to have

Brown retried is difficult to determine, but since the criminal was being indicted for a similar property crime the same day, Piggott may have pushed for a retrial. Thus, this illustrates the individual circumstances that had the ability to alter and transform the structure of the justice system.

In the proceeding book of the Halifax's Supreme Court, James Brown's trials are one after another, with the retrial case being processed first. It seems as though the retrial was done in order to determine the outcome of the second case. If found guilty and sentenced to death in the case against William Piggott, then Brown would have begged the benefit of clergy, therefore sealing his death when found guilty of the second offence. Even though the retrial resulted in a 'no prerequisite' it raises questions about why the court deemed it necessary to return to a case that was already found not guilty. The court's decision may have also been based on the role James Brown played in the colony.

According to the court records, James Brown was a soldier in the town of Halifax, which may have influenced the ways in which he was treated by the justice system. Halifax was a garrison town and because of this, the soldiers population was relatively high. Jim Phillips makes the statement that "crimes by soldiers were somehow to be expected and thereby in some way more tolerable" (Phillips 1994, 184). Phillips makes the argument that there was a reliance on the military, which caused more leniency towards martial personal within the justice system (Phillips 1994). However, the trend that Phillips suggests is not found in the records of property offences. The status of soldiers is rarely mentioned in the court records as there are only 16 identified, which include Brown as an offender. Of the 16 soldiers, three cases do not have verdicts, four were found not guilty, while the other nine were found guilty. The nine soldier who were found guilty were either treated as any other criminal, as four were given benefit of

clergy. However, even when given a pardon some soldiers were given a further sentencing of a fine or imprisonment, as was the case with Brown's 1758 case. Every other soldier faced the gallows, usually because their pardon was denied, or they were not offered one.

Therefore, Phillips' suggestion of soldiers receiving leniency in Halifax's justice system is not reflected in the data of property crime during the years I examined. Rather, soldiers seemed to have been treated equally or more harshly than the average indicted individual. In the case of James Brown's retrial, the trend that suggests soldiers were treated more critically in the court justifies the situation more clearly. It may be suggested that the court wanted to make sure Brown was held accountable for his actions; accordingly, he was retried for his first property indictment when later accused of a similar felony.

Martha Welsh and James Brown were anomalies found in the justice system of Halifax. Each individual, as exemplified, were continuous property offenders and according to the records collected, were the two most indicted individuals for theft in the colony between the years of 1749 to 1770. Reflecting back to King's study on property crimes in the county of Essex England, it was observed that more individuals were transported for petty or grand larceny than punished through public whipping or hanging. As already discussed in chapter 3, transportation was not a punishment available to the authorities of Halifax. Thus, it may be suggested that because there was no option of transportation, Welsh and Brown were given more leniency within the justice system of Halifax.

Even though a clear explanation cannot be reached for why the criminals, Martha Welsh and James Brown, received more leniency and additional trials when facing the bar



in Halifax, their cases give insight into the workings of the colony's court. Moreover, the cases illustrate that the Halifax's justice system was not clearly defined, as certain circumstances caused the authorities to turn from English law and base their decision on the factors of the individual case and person in front of them.

## **Conclusion**

Maintaining structure and order were the foundations in the creation of a new British colony. The justice system was the basic attempt to promote this mandate; as well, the English law was implicated as the dominant system to create hegemony between British and colonial societies (Starr and Collier 1989, 10). However, as illustrated through the property crime prosecutions of 1749 to 1770 in the colony of Halifax, the structure that Britain promoted and desired was not fully achieved. Colonial Halifax illustrates how specific societal factors, which were unique to the colony, had significant impacts on the structure of the local judicial system.

The context of 18th-century Halifax had the most significant influence on the justice system and the data of this study. As shown population growth, economic fluctuation, international conflict, and government changes were all factors that had an impact on the function of the justice system and the rate at which property crimes occurred. Britain's goal to create a colony in which the justice system imitated its own, was relatively non-achievable. The British officials wanted to create a certain order that reflected their own when colonizing North America, but fell short when faced with the challenges and reality of placing the institution into a new environment with new human agents to manipulate it.

Anthropologically, the differentiations found between Britain and Halifax are intriguing, as they highlight the major role that underlining circumstances and individual agency had on a colony's order. Sally Falk Moore (1978) has suggested that "order never fully takes over" (39) within a society, due to the complexities and diversities that make up a culture's social life. Thus, Moore argues that not all situations can fit into a societies legal structure of order and regularity; alternatively, unusual circumstances can change a

social structure. This suggests that order can transform in accordance with a culture's social life (Moore 1978, 39-41). Both case studies discussed in this research directly echo Moore's theory. They have suggested that the deviation from Britain's judicial system was due to the unique circumstances of the individual cases, which caused the Halifax courts to turn from the norms and regularity of British ways. Alternatively, the colony of 18th-century Halifax formed its own order to properly deal with the property crimes occurring. In this consideration, the prosecutions of Martha Welsh and James Brown reflect Moore's theory that certain cases do not fit into the regularity or the order of the justice system, but instead change the structure of it.

The outcomes of this research foremost illustrates the changes that can occur within a judicial structure due to the social context it is found in. As colonial Halifax shows, the justice system, like any social structure, has the ability to develop and transform in accordance to the realities in which it is placed. This study dealt with a part of colonial Halifax's history that was complicated and harsh; nevertheless, it is a significant feature that shaped the colony's society.

## Notes

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- <sup>i</sup>Nova Scotia Archives (hereafter NSA) RG 39, series 'C', vol. 3 #71 a-b. Halifax Court Records, 3<sup>rd</sup>-April 1761.
- <sup>ii</sup> NSA: RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, 13-December 1749.
- <sup>iii</sup> NSA: RG 39, series 'C', vol. 1, #55 Halifax Court Record, 1750-1754, a true bill 1751.
- <sup>iv</sup> NSA: RG 39, series 'C', vol. 1, #90b Halifax Court Record, 1750-1754, a ignoramus bill 1752.
- <sup>v</sup> NSA RG 39, series 'C', vol. 2, # 36c Halifax Court Record, a no prerequisite 1756.
- <sup>vi</sup> NSA RG 39, series 'C', vol. 1, Halifax Court Records, 1750-1754, April 1754.
- <sup>vii</sup> NSA RG 39, series 'C', vol. 1, Halifax Court Records, 1750-1754, 29<sup>th</sup>-October, 1754.
- <sup>viii</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, 28<sup>th</sup>-April, 1752.
- <sup>ix</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, 28<sup>th</sup>-April, 1752.
- <sup>x</sup> NSA RG 39, series 'C', vol. 1 #68. Halifax Court Records, 1750-1754, 26<sup>th</sup>-October, 1752.
- <sup>xi</sup> NSA RG 39, series J, mfm 637 pg. 35. Halifax Judgement Books. 17<sup>th</sup>-February, 1767.
- <sup>xii</sup> NSA RG 39, series J, mfm 637 pg. 35, 37,42. Halifax Judgement Books. 17<sup>th</sup>-February, 1767.
- <sup>xiii</sup> NSA: RG 39, series 'C', vol. 1 #43. Halifax Court Records, 1750-1754, April 1751.
- <sup>xiv</sup> NSA: RG 39, series 'C', vol. 2 #36 a-c. Halifax Court Records, October 1756.
- <sup>xv</sup> NSA RG 39, series 'C', vol. 2 #36 a-c. Halifax Court Records, October 1756.
- <sup>xvi</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, April 1757.
- <sup>xvii</sup> NSA RG 39, series 'C', vol. 3 #50 a-b. Halifax Court Records, April 1759.
- <sup>xviii</sup> NSA: RG 39, series 'C', vol. 3 #94 a-c. Halifax Court Records, April 1761.
- <sup>xix</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, April 1755.
- <sup>xx</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, October 1759.
- <sup>xxi</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, October 1760.
- <sup>xxii</sup> NSA: RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, October 1757.
- <sup>xxiii</sup> NSA: RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, April 1758.
- <sup>xxiv</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, April 1758.
- <sup>xxv</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, October 1758.
- <sup>xxvi</sup> NSA RG 39, series J, vol. 117, Halifax Proceeding Book Criminal Proceedings in the Supreme Court, October 1758.

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