The Scarlet Letter of the Law: Hawthorne and Criminal Justice

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I.

In the scene of public witnessing that begins The Scarlet Letter, the Governor, magistrates, and elders look down from their balcony to the platform where Hester Prynne stands in proud shame, raised in turn above the grim faces of the milling crowd. The ground-level voices we hear express a resentment quite appropriate to a townspeople both beneath and outside the nexus of unassailable power represented by that balcony, “the place whence proclamations were wont to be made” (64). Though they hold varying opinions of the letter-wearing sentence, in one thing the townspeople’s comments are consistent: not they but the magistrates have had the sole power and authority to deal with Hester Prynne. “This woman has brought shame upon us all and ought to die,” rants one woman. “Is there not law for it? Truly there is, both in the Scripture and the statute-book. Then let the magistrates, who have made it of no effect, thank themselves if their own wives and daughters go astray!” (51–52).

In Hawthorne’s Puritan world, the only decision-makers standing between Hester and the gallows are the all-powerful magistrates. Their word is law, their discretion untrammeled. If the colony has a fully developed criminal justice system—grand juries returning indictments, juries assessing trial testimony and returning verdicts, pre-determined criminal penalties governing the sentencing of offenders—we don’t hear about it. Instead, the entire apparatus of the Puritan Rule of Law in The Scarlet Letter is signified by this small group of powerful men, accountable apparently to none but themselves and their God. The first three chapters create the clear impression that the townspeople are wholly excluded from any decision-making role in dealing with crime. The conflation of religious, political, legislative, and judicial power in Hawthorne’s early New England is total: the monolith rules and sentences. The people may mutter, but they must also unhesitatingly obey.

As Hawthorne well knew, however, the legal and judicial authority of the magistrates, particularly during the tumultuous decade in which he situates his tale, was anything but unassailable. The colony’s criminal justice system had been intentionally structured to counterpoint magistratical power with the peer-

1 Virtually all of the townspeople who comment on Hester’s punishment note, in one form or another, “the worshipful magistrates” who have “awarded” Hester’s sentence. One says the magistrates are “God-fearing” but “merciful overmuch,” while another wishes that they, not the magistrates, had been in charge of determining the penalty (51). Every comment testifies to the magistrates’ power; none mentions a trial.

2 Hawthorne’s scholarly familiarity is attested to not only by the historical details used throughout his Puritan fiction, but by existing library records of the Salem Athenaeum, listing the source books he borrowed. See Ryskamp 257–58, Kesselring passim, and Colacurcio, “Footsteps” 462 n6. On the persistent efforts of the colonists to circumscribe magistratical power throughout this period, see Haskins 29–42.
group power of grand and petit juries and elected legislators who were not magistrates. And, wherever magistrates nevertheless attempted to exert hegemonic power, their authority was under persistent siege. Juries brought in verdicts which frustrated and undermined magistrates' judicial authority. Agitators for legislative reform worked to set prescribed penalties for crimes with the explicit goal of circumscribing the magistrates' discretionary sentencing authority. In short, the historical magistrates were neither as powerful nor as awe-inspiring as their fictional counterparts.

The wealth of excellent recent scholarship focusing on Hawthorne's Puritan sources has explicated a host of issues underlying the Puritan world of Hawthorne's fiction: the religion, sexuality, and politics of prominent Puritans Anne Hutchinson, Richard Bellingham, and John Winthrop have all been persuasively detailed (Colacurcio, Essays; Arac; Bercovitch; Berlant). But what has not been adequately explored in this most legal of novels is Hawthorne's ahistorical imaging of the machinery of Puritan criminal law. At the same time that the novel seems obsessed with crime and punishment, it avoids—indeed erases—the institutions and procedures that constitute public criminal process. This essay applies a process of double historicization to the novel's exploration of the relation of crime and law to the private individual. The first level of inquiry compares case histories, statutes, and legal disputes of the 1640s to Hawthorne's fictional Boston, to locate points of significant variance. Hawthorne's occasional inaccuracies have been the subject of critical discussion for more than thirty years; as recently as 1988 Michael Colacurcio declared that the novel's "major historical fabrication" was casting Bellingham rather than Winthrop as governor in June of 1642 (110). I argue that a great deal more was changed or eliminated, and that the text consequently bears the traces of a series of historical figures it struggles to suppress. These include, most significantly, the shadows of three: the townsman juror, the whipped woman, and the political malcontent.

Focusing historical analysis on what Hawthorne's text omits will require a reevaluation of the novel's traditional villains, the "grim-visag'd" magistrates whose sentence binds Hester to the red letter of the law. Hawthorne's narrator characterizes them as rigid, severe, and frostbitten, incapable of judging a woman's heart; surprisingly, critics who specialize in exposing this narrator's ironic doublespeak in other areas have accepted such epithets. Measured against their historical counterparts, however, Hawthorne's magistrates emerge as distinctly progressive; if they are more autocratic, they exercise their power with compassion and restraint.

If Puritan history makes Hawthorne's historical manipulations visible, the politics of 1850 make them comprehensible. My focus here is on two law-related issues The Scarlet Letter profoundly meditates: First, what obligations do individuals have to obey laws regulating private behavior, laws that directly conflict with individuals' deeply held principles, and which they have had no hand in making? And second, must submission to such a law be viewed as integrity-

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3 See, e.g. Shulman, who argues that Hawthorne placed Hester in a "joyless, punitive society" run by men who are "capable but insensitive, heartless" (86-88), or Berlant, who characterizes Bellingham in the child custody scene as showing "symptomatic Puritan inability to adjudicate properly, due to his oversaturation with juridical consciousness" (79).
destroying cowardice, or can it be understood as courageous and even beneficial to the individual? These questions sounded with particular resonance in 1850, when the legitimacy of public law and criminal process was a matter of intense national debate. In the same month that The Scarlet Letter appeared, Senator Daniel Webster irrevocably destroyed his almost mythic reputation by arguing that the Compromise Act of 1850 was a reasonable means to preserve the nation and should be adopted. Abolitionists thundered against him from newspapers, pulpits, and platforms. Citizens were urged to defy the Compromise's Fugitive Slave Law provisions, with violence if necessary.

As Jonathan Arac and Sacvan Bercovitch have shown, The Scarlet Letter was written in a time of intense concern about the Fugitive Slave Laws. Like Arac and Bercovitch, I read The Scarlet Letter as a response to the political anxieties of 1850. My focus, however, is not (or not exclusively) on Hawthorne's attitude toward slavery or the necessity for broad political compromise, but on the specific crisis faced by Northerners who had to decide whether or not to cooperate with the provisions of the Fugitive Slave Law. That law, passed by federal legislators in Washington, placed all citizens under affirmative legal obligations not only to permit but to assist in the capture and return of fugitive slaves. Significantly, the federal Compromise Act of 1850 conflicted with, and overturned, state-level protections for runaway slaves that had been provided for by such laws as the Massachusetts Personal Liberty Acts of 1843 (Schwartz 191). Throughout most of the 1840s these laws made it virtually impossible to recover a runaway slave in many Northeastern states; after 1850, federal law would force New Englanders to become passive witnesses to the capture, imprisonment, and rendition of the runaways in their midst. Abolitionist fervor intensified in response. The battle cry of violent resistance in the name of a Higher Law was preached to enthusiastic crowds by the Boston Vigilance Committee, which also undertook to rescue imprisoned fugitives. From the pulpit, abolitionist minister Theodore Parker "adjured" his parishioners to "reverence a government that is right, statutes that are right ... but to disobey every thing that is wrong" in the name of the "higher law," the "law of God" (40).

Recent articles by Jean Fagan Yellin and Jennifer Fleischner have productively explored Hawthorne's refusal to represent slavery in his works and documented his belief that the enslavement of African-Americans was in general neither outrageous nor inhumane. As Yellin has shown, the sufferings and dilemmas that interested Hawthorne were those of whites, not blacks. In this context, I will argue that in designing Hester's punishment, Hawthorne eliminated whatever would have suggested a resemblance between her situation and that of the slave. As a figure for white northerners, Hester's behavior becomes all the more controversial. To a member of the Vigilance Committee, Hester's outward submission to the strictures of Puritan law might well appear a shameful knuckling under, the kind of failure of the will that buys safety at the price of personal integrity. Yet Hawthorne convinces us that Hester's behavioral acquiescence is both truly heroic and intellectually liberating. With Hester as a model, the novel suggests, readers may find the courage not to rebel but to forego rebellion. In the 1838 speech that set the pro-law terms of the debate over obedience to law,
Lincoln had warned that if “the laws be continually despised and disregarded” by “mobs” who take it on themselves to judge the acceptability of each law, order, reason and the Government itself must eventually fall (“Address” 22). Yet it was precisely the choice to submit to law rather than to follow the dictates of private conscience that Parker, Thoreau and others found absolutely unacceptable.

After exploring this historical context, the final section of this essay will argue that the debate over obedience to law is crucial to reading *The Scarlet Letter*. By entering such debates through the medium of fiction, a novel can significantly influence readers' responses to the challenges presented by contemporary events without requiring them to read the novel in explicitly political terms. Where contemporary speeches and editorials impelled readers to respond by adopting or refuting the specific position argued in the text, Hester Prynne’s hard-won freedom and serenity could elicit admiration and a desire for emulation even from readers who would ordinarily have resisted the novel’s underlying attitude toward law and obedience. This is not to reduce the novel to the status of an essay or a narrow political allegory; instead, it is precisely the literary qualities of evocativeness, complexity, and imaginative richness that make its impact on these law-related issues possible, just as those same qualities have produced an extraordinary range of “purely literary” interpretations. But if fiction’s fundamental openness to interpretation distinguishes it from most forms of discursive advocacy, I will also argue that it makes it *like* rather than unlike most forms of law, which also depend on a process of continuing interpretation for their power. Though law is often imaged as fixed and rigid in contrast to literature’s interpretive fluidity, I will argue that *The Scarlet Letter*’s contribution to the American cultural dialogue about law and obedience owes as much to its narrative specificity, boundedness, and closure as to its interpretive ambiguities.

II.

Explaining Hester’s appearance on the scaffold to a just-arrived Roger Chillingworth, a townsman says that

> our Massachusetts magistracy, bethinking themselves that this woman is youthful and fair, and doubtless was strongly tempted to her fall; —and that, moreover, as is most likely, her husband may be at the bottom of the sea; —they have not been bold to put in force the extremity of our righteous law against her. The penalty thereof is death. But, in their great mercy and tenderness of heart, they have doomed Mistress Prynne to stand only a space of three hours on the platform of the pillory, and then and thereafter, for the remainder of her natural life, to wear a mark of shame upon her bosom. (62–63)

While Hawthorne’s fictional magistrates are the criminal justice system, their historical counterparts’ authority was significantly limited by the colonial jury’s verdict-making powers, on one hand, and the colony’s prescribed criminal procedures, on the other. A person accused of crime was not a passive or
disempowered object to whom law was "done." Rather, under the 1641 Body of Liberties, a hard-won definition of the civil rights of colonists, the defendant enjoyed a series of important rights, including the right to choose a jury or bench trial, to challenge jurors for cause, to have another person speak on her behalf, to a speedy trial at which written records were made, and to appeal the verdict to a higher court (see paragraphs 29, 30, 36, 41, 64 of the Body of Liberties in Powers's appendix [533–48]). The range of available punishments, and the circumstances in which they could be imposed were also regulated by the Body of Liberties, which guaranteed in its first paragraph that "no mans life shall be taken away, no mans honour or good name shall be stayned, no mans person shall be arrested, restrayned, banished, dismembred, nor any wayses punished ... unlesse it be by vertue or equitie of some expresse law of the Country waranting the same," and in its forty-sixth outlawed punishments "that are inhumane, Barbarous or cruel." A person accused of adultery would have been tried by a jury of twelve freemen in a trial court where magistrates sat as judges. The jury would have decided, in private, not only the general question whether to convict or acquit but also, because the conviction must be for a specific crime, what crime had been provably committed. Only the return of the verdict triggered the judge's sentencing powers (Konig 33, Haskins 32–36).

Death was the mandatory penalty for adultery in the Massachusetts Bay Colony in 1642, though it was not then a capital crime either in England or in the colony at Plymouth (Powers 78, 261–62, 300). Once the jury returned a verdict for adultery, the magistrate-judges had no discretionary authority to demonstrate "tenderness and mercy" by imposing a lesser penalty. Conversely, if the jury chose to return a verdict for a lesser sexual offense such as "lewd and lascivious behavior," the death penalty could not be imposed.

The power of juries to control sentencing by determining verdicts was frequently commented on at the time. In John Winthrop's Journal, recently argued to be not only Hawthorne's "prime and obvious source" for The Scarlet Letter, but to have furnished "the novel's most essential themes" as well (Colacurcio, "Woman's" 103), Winthrop describes a "sad business" that "fell out" in the spring of 1645, in which a churchgoing young man went to England, leaving his wife in the care of another "pious" and "sincere" member,

who in time grew over familiar with his master's wife, (a young woman no member of the church) so as she would be with him oft in his chamber, etc. and one night two of the servants, being up, perceived him to go up into their dame's chamber, which coming to the magistrate's knowledge, they were both sent for and examined ... and confessed not only that he was in her chamber with her in such a suspicious manner, but also that he was in bed with her, but both denied any carnal knowledge, and being tried by a jury upon their lives by our law, which makes adultery death, the jury acquitted them of adultery, but found them guilty of adulterous behavior. This was much against the minds of many, both of the magistrates and elders, who judged them worthy of death.... [A]ll that the evidence could evince was but suspicion of adultery, but neither God's law nor ours doth make suspicion of adultery (though never so strong) to be death; whereupon the case
seeming doubtful to the jury, they judged it safest in case of life to find as they did.
So the court adjudged them to stand upon the ladder at the place of execution with
halters about their necks one hour, and then to be whipped or each of them to pay
20 pounds. (2: 305-06)

Clearly, the locus of power in this case is the jury, not the magistrates; unless the
jury convicts, the magistrates cannot execute, however much they may deem an
offender “worthy of death.” Where the jury in this 1645 case used the “express
law” requirement to avoid the death penalty many magistrates would have pre-
ferred, a jury three years earlier had used its verdict to require an execution the
magistrates would gladly have avoided. In 1642, the same year Hester received
her red A, Mary Latham and James Britton became the only persons executed for
adultery in the history of the Massachusetts Bay Colony. Describing the case in
his journal, Winthrop noted that “some of the magistrates thought the evidence
not sufficient against her, because there were not two direct witnesses, but the
jury cast her, and then she confessed the fact, and accused twelve others, whereof
two were married men” (2: 190-91). Britton petitioned the general court for his
life, “but they would not grant it, though some of the magistrates spake much for
it, and questioned the letter, whether adultery was death by God’s law now” (2:
191) No discretion was available once a jury verdict for adultery had been
returned. Latham and Britton were hanged.

Did Hester have a trial? If she chose a jury rather than a bench trial, of what
specific crime did the jurors convict her? Did the grim crowd that watched her
mount the scaffold include jurors whose votes helped put her there? And, perhaps most significantly, why did Hawthorne invent a criminal case in which
the determination of guilt or innocence would have been made by a jury and
then carefully construct the impression that the magistrates acted as a law unto
themselves?

For one thing, we should note that the execution of Britton and Latham was by
no means characteristic of Puritan justice. Although indictments on capital of-
fenses were fairly common, convictions were rare. The Body of Liberties speci-
fied twelve capital crimes; yet, as Edwin Powers puts it, “time after time, juries
refused to bring in verdicts that might have led to the scaffold” (279). Instead,
they used their verdict-controlling power as modern juries do, to bring in ver-
dicts for lesser-included offenses when death seemed too extreme a punishment.
The Records of the Court of Assistants, the court of general jurisdiction of the Bay
Colony, reflect numerous cases in which juries effectively circumscribed judges’
sentencing powers, eliminating possible infliction of the death penalty. In cases
charging adultery, verdicts were returned reading “not legally guilty but guilty
of very filthy carriage, etc.,” “not guilty according to Indictment but found him

4 This clemency did not, unfortunately, extend to cases for witchcraft, as the fate of Mistress Hibbins, the sister of Governor
Bellungham who invites Hester to a witchery meeting in the forest, demonstrates. Her case is described in Caleb Snow’s History
of Boston, which Ryskamp has shown was Hawthorne’s primary source for historical details. As Snow tells it, “the jury brought
her in guilty [of witchcraft], but the magistrates refused to accept the verdict; so the cause came to the general court, where the
popular clamour prevailed against her, and the miserable old lady was condemned and executed in June 1656” (qtd. In
Ryskamp 267). As this account shows, where conflicts occurred between jurors and magistrates the “popular clamour” of those
at the juror level could win out, even if it meant executing the governor’s sister. Such power in the populace contrasts sharply
with the impotence of those who “clamour” against Hester in the novel’s opening scene.
Guilty of vile, filthy and abominably libidinous Actions,“ and “not legally Guilty according to Indictment but doe find hir Guilty of Prostituting hir body to him to Committ Adultery” (Powers 103, 279).

The real power to determine sentencing in adultery cases thus often lay with the jury, who rarely used it to its harshest capacity. Yet Hawthorne’s townspeople suggest that whipping, branding, or death would have been more appropriate punishment for Hester’s crime. Clearly, she is better off in the magistrates’ hands than left to the townspeople’s mercy. While Hawthorne’s narrator suggests that “out of the whole human family” it would be difficult to find persons “less capable of sitting in judgment on an erring woman’s heart” than the magistrates (64), he situates Hester, with characteristic irony, above a throng of neighbors whose judgment would have been far harsher and more vengeful. Erasing the Puritan jury not only makes the magistrates the sole source of judgment, it also increases the ambit of their sentencing discretion. This helps explain why the “expresse law” for which Hester is convicted is never mentioned, and why the word “adultery” never appears in the text. Hester is apparently convicted of adultery, a capital crime, but she receives a sentence which could only have been imposed for a much less serious infraction. By implying that the magistrates’ range of options included these much harsher punishments, Hawthorne both inflates the magistrates’ powers and highlights their compassionate consideration for Hester’s circumstances.

This reallocation of power has three important effects. As already discussed, it enlarges and concentrates the magistrates’ power over the townspeople while putting in their hands enormous discretionary authority. This erases any semblance of participatory or democratic government and replaces it with an image of authoritarian oligarchy. Second, it exacerbates the distance, in terms of class and power, between the lone woman on the scaffold and those who decide her fate. Finally, it disconnects the townspeople from any involvement in or responsibility for judging and sentencing Hester. Because I will explore the implications of the first two later in this essay, I want to look now at the third point, the non-participatory status of the witnessing bystanders in the opening scene.

To have Hester’s guilt determined by a jury of her peers would suggest that the power to judge crime and assign penalties is not limited to those on high but shared or mediated among the community as a whole. And, of course, sharing the power to judge is precisely what juries are all about. As Alexis de Tocqueville noted in his brief paean to the American jury, the jury system

places the real direction of society in the hands of the governed, or of a portion of the governed, and not in that of the government.... The true sanction of political laws is to be found in penal legislation; and if that sanction is wanting, the law will sooner or later lose its cogency. He who punishes the criminal is therefore the real master of society. Now the institution of the jury raises the people itself, or at least a class of citizens, to the bench of judges. The institution of the jury consequently invests the people, or that class of citizens, with the direction of society. (1: 293)
Hawthorne’s deliberate elimination of the jury is, in de Tocqueville’s terms, an inversion designed to make the magistrates rather than the townspeople “the real master of society.” Hawthorne’s irony in dubbing one opinionated townswoman a “self-constituted judge” is thus double: her presumption in taking on the magistratical job of judging a neighbor’s guilt is an example of comic overreaching as much because she is an ordinary citizen as because she is a woman.

Hawthorne’s townspeople judge—but their judgments trigger no consequences. No matter how extreme a punishment they call for, they are not responsible for any sufferings that result. Because their “verdicts” float free from liability for the burdens they impose, they can judge and, more importantly, rejudge Hester, until the harshness of those early judgments melts into later admiration for her modesty and usefulness. By the novel’s end, the once reviled adulteress has become a woman respected for her wisdom as well as her sufferings, as those who once reviled her (or their daughters) now seek out her advice.

What I am suggesting is that the townspeople’s freedom to interpret Hester is enabled by their position outside the concentration of power up on that balcony. Indeed, the novel insists in a variety of ways that mental development is always fullest and freest when liberated from the crushing weight of behavior’s consequences. Readers raised on *The Plague* and *Man’s Fate*—or for that matter, on *Middlemarch*—may find paradoxical at best the suggestion that personal development is fully possible only when the thinker is not required to act in consistency with his beliefs. But for Hester, as well as for the townspeople, it is precisely the unlinking of mental freedom from any obligation toward consonant action that makes her intellectual growth possible. In “Another View of Hester” we learn that in the isolation of her lonely cottage Hester’s extraordinary “freedom of speculation” has led her to believe that “the whole system of society is to be torn down, and built up anew” (164–65). Yet Hester’s conclusion that “the world’s law was no law for her mind” is antinomian only in the theoretical sense. An Anne Hutchinson of the mind alone, Hester does not behave as if she believes that the world’s law is no law for her body. She submits. She counsels young women to submit. Whatever she may be feeling, she walks through the streets of Boston with her head modestly down, and her outward obedience buys her the unassaulted privacy in which to continue thinking. She hopes that some bright future time will resolve the world’s inequities, but in the here and now her freedom exists in the realm of thought, not action.

There is an important connection between Hester’s restricted behavior and her unrestricted thoughts. Her position outside the web of normal social obligation and activity permits her to see and judge society whole. Also, and perhaps more
significantly, Hawthorne implies that it is precisely because she need not think about practical action that her mental explorations can be so far-reaching. The energies dammed up by her life of enforced outward conformity can flow freely only in this interior realm, where their penetration of unexplored terrain will not be cut off by the confrontations and compromises that would inevitably ensue were they to be translated into radical action. While Hawthorne suggests that in different circumstances Hester might have been a prophetess or a revolutionary, it is quite clear that in Hester’s world, the satisfactions of philosophical exploration are made available through her life of privation and are one of its few compensations. Like the widely various juridical opinions of the milling crowd beneath the scaffold, Hester’s philosophical and historical conclusions can be radical, even revolutionary, precisely because they are not muddied by the messy and corrupting process of attempting change in the real world. It is significant too that outward obedience is all that the Puritan rule of law requires; its justice system punishes only acts, not thoughts. Because community stability depends on each member’s self-restraint, Hester’s conformity to behavioral expectations helps hold the community together even when her thoughts may be at their bitterest. If protecting society from disruptive assaults is a paramount goal, then such a system helps preserve order, while leaving each individual the sanctum of his or her own mind. Whether that very limited freedom is enough is of course quite another question.

III.

If Hawthorne’s elimination of the Puritan jury suggests that he wanted his magistrates to be more powerful than their historical counterparts, his handling of Hester’s sentence suggests that he also wanted them to be more responsive. Let us return briefly to Puritan legal history. In 1641, the general court of the Colony of New Plymouth sentenced Thomas Bray and Anne, the wife of Francis Linceford, for the “crime of adultery and uncleanness,” to which both had confessed publicly. Much of the court’s sentence will be familiar:

[The Court doth censure them as followeth: that they be severely whipt immediately at the publik post, & that they shall weare (whilst they remayne in the government) two letters, viz. an AD, for Adulterers, daily, upon the outeside of their uppermost garment, in a most emenent place thereof; and if they shalbe found at any tyme in any towne or place within the government without them so worene upon their uppermost garment as aforesaid, that the constable of the towne or place shall take them, or either of them omitting so to weare the said two letters, and shall forthwith whip them for their negligence and shall cause them to be immediately put on agairie, and so worene by them and either of them; and also that they shalbe

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6 Like Bercovitch, I place major emphasis on the moment of Hester’s return, though my focus does not read it as the defining moment in the creation of a liberal ideology of compromise. While I agree with Arac’s argument that the novel “is propaganda—not to change your life,” I argue that it offers the rule of law rather than simple “character” as the central enabling and positive value. Like Fleischner, I argue that Hawthorne sees dissociation from public political action as privately beneficial; I want to suggest, however, that Hester represents the situation of the ordinary reader rather than, as Fleischner suggests, the artist.
both whipt at Yarmouth, publiquely, where the offence was committed, in such fitt 
season as shalbe thought meete by Mr. Edmond Freeman & such others as are au-
thorized for the keepinge of the Courts in these partes. (Records of Plymouth 2: 28)

The similarities between Anne Linceford’s sentence and Hester Prynne’s are
obvious. Yet the discovery that Hester’s lifetime letter-wearing sentence has a
precise historical analogue should not obscure the fundamental difference
between the two: like virtually all Puritan sexual offenders, Anne Linceford was
publicly stripped and severely whipped, most probably receiving the Biblically-
allowable maximum of forty lashes. Hester receives no physical punishment. If
The Scarlet Letter is the painstakingly accurate representation of Puritan life it is
often assumed to be, the example of Anne Linceford is troubling. Why did
Hawthorne, whose historical research was nit-picking enough to permit him to
provide correct street addresses for his historically prominent characters,
eliminate what was for the Puritans a fundamental component of all serious
punishment? In short, why isn’t Hester whipped?

In 1844, Hawthorne noted as a story idea in his journal “the life of a woman,
who, by the old colony law, was condemned always to wear the letter A, sewed
on her garment, in token of having committed adultery” (American 254). Two colo-
nial statutes have generally been accepted as Hawthorne’s possible source; signif-
icantly, each mandates a severe public whipping before the offender begins a life
of sartorial humiliation. The penalty not only shames the sinful spirit, but harshly
mortifies its fleshly container. The first, a 1658 act of the colony of New
Plymouth, provided: “whosoever shall commit Adultery shalbee severely pun-
ished by whipping two severall times; ... and likewise to weare two Capital let-
ters viz. AD cut out in cloth and sewed on their uppermost garments on their
arme or backe; and iff att any time they shalbee taken without the said letter
whiles they are in the Government soe worn to bee forthwith taken and publickly
whipt” (Compact 42-43). The second, a 1694 act described in Joseph Felt’s 1827
Annals of Salem, provides that adulterers be made “to sit an hour on the gallows,
with ropes about their necks, be severely whip’t not above 40 stripes and forever
after to wear a capital A 2 inches long, cut out of cloth colored differently from
their clothes and sewed on the arms or back parts of their garments so as always
to be seen when they were about” (317). Whichever statute Hawthorne may have
seen, his fascination with the psychological possibilities of the sentence did not
extend to its corporal component. Hester is humiliated, first by being made to
stand three hours on the scaffold, and then by her lifetime of letter wearing; she
is also apparently imprisoned, since Pearl is born in prison, and Hester returns to
the prison after her morning exposure. But she is not whipped. Hester’s red A,
frequently characterized as a happily-vanished instance of Puritan severity, is
most noteworthy for its extraordinary leniency, its complete avoidance of the
physical chastisement so essential to Puritan programs for spiritual correction.

Whipping was the standard colonial punishment for bastardy and other sex
crimes. As Powers notes: “a review of the Colonial court records gives one the
impression that one who held the sex mores of the times in light esteem would
sooner or later have an engagement with the constable at the whipping post”
(172). Unless the defendant was rich enough to substitute payment of a fine, a
whipping of up to forty lashes might be expected. The *Records of the Court of Assistants* in Boston in 1642, the year Hester mounted her scaffold, contain numerous examples of such punishment. Robert Wyar and John Garland, for instance, for “ravishing” two young girls, “the fact confessed by the girls, & the girles both upon search found to have bin defloured, & filthy dalliance confessed by the boyes,” were sentenced to be severely and publicly whipped, the girls to be whipped also, but privately (121). The denouement to the 1645 case from Winthrop’s Journal, described earlier, provides a further example. The court sentenced the pair to an hour on the gallows with halters around their necks, and then either to pay 20 pounds, or be whipped. “The husband (although he condemned his wife’s immodest behavior, yet) was so confident of her innocence in point of adultery, as he would have paid 20 pounds rather than she should have been whipped; but their estate being but mean, she chose rather to submit to the rest of her punishment than that her husband should suffer so much for her folly. So he received her again, and they lived lovingly together” (2: 258). Even where letter-wearing penalties were inflicted for long periods of time, they began with a whipping. Hawthorne’s avoidance of physical punishment is thus stunningly ahistorical, whether considered in light of the typical punishment for lesser sex crimes or as an example of an “old colony law” on adultery.

Whipping was not only the most historically common punishment for adultery and other sex crimes in Boston in 1642, it was also one of the hottest social and literary subjects of Hawthorne’s day. As Richard Brodhead has demonstrated in his examination of antebellum America’s obsession with the subject, Hawthorne’s audience was embroiled in controversy over corporal versus psychological punishment. Psychological punishment, touted as “discipline through love,” was associated with progress and reform (70). Originating in family-based disciplinary instruction, such methods substituted the infliction of guilt for the infliction of physical pain, thereby internalizing parental authority. Controversies over methods of punishment were played out in every medium, both fictional and journalistic. Throughout the 1840s and 1850s, Brodhead declares, “the picturing of scenes of physical correction emerges as a major form of imaginative activity in America, and arguing the merits of such discipline becomes a major item on the American public agenda” (67). Furors over inflammatory scenes of whipping in novels like *Two Years Before the Mast* (1840) and *Uncle Tom’s Cabin* (1852) stimulated book sales enormously.

Why then isn’t Hester whipped? Paradoxically, the very topicality of corporal punishment may have prevented Hawthorne from consigning Hester to the whipping post. Brodhead begins his general analysis by establishing that in the ante-bellum period, “whipping means slavery ... and considerable evidence suggests that the more general imaging of such punishment at this time has slavery as its ultimate referent” (68). If we connect this perception about the

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7 In 1657, for example, the Plymouth Court again imposed its “old colony law,” this time on Katherine Aines, who, “for unclean and lascivious behavior,” was sentenced to be twice publicly whipped and then forever after to wear “a Roman B” on her clothes (*Records of Plymouth* 3: 111, Powers 1998). In 1639, in Boston, John Davies was sentenced “for grosse offences in attempting lewdness with divers women” to be severely whipped, both in Boston and at Ipswich, and then “to weare the letter V upon his breast upon his uppermost garment untill the Court do discharge him,” which it did, in recognition of his good behavior, some six months later (*Records of Court* 2: 81, 87).
1840s to the anomalous absence of a whipping from Hester’s 1642 sentence—a juxtaposition Brodhead does not make—we see that to have Hester receive a historically accurate forty lashes would have irrevocably positioned her as a slave surrogate, an object of pity and a spur to activism. To put it simply, had Hester’s punishment begun with a whipping, *The Scarlet Letter* would have been a book about slavery. As a white victim of the type of cruelties associated with slavery, Hester would have made those horrors immediate and accessible. “Hester Prynne” would have been a sign pointing toward an absent and unrepresented character—the American slave—and the novel might have joined the decade’s greatest bestseller, *Uncle Tom’s Cabin*, as a passionate abolitionist manifesto.

But that was precisely what the novel is structured to prevent. Hawthorne’s discomfort with abolitionism is well known; although not a defender of slavery, he rejected the notion of kinship with slaves or identification with their plight. In an 1851 letter to Longfellow, he declared that he never “did, nor ever shall, feel any pre-eminent ardor for the cause” of abolitionism. Two months later, he assured Zachariah Burchmore that he had “not ... the slightest sympathy for the slaves; or, at least, not half so much as for the laboring whites, who, I believe, as a general thing, are ten times worse off than the Southern negroes” (Mellow 409–10). Where Hawthorne feared to tread, he discouraged his readers from rushing in: his heroine is neither stripped nor whipped. The phantom figure of the oppressed slave is kept out of his text, and his heroine does not become, as Stowe’s light-skinned Eliza would two years later, a slave surrogate with whom readers could identify.

If Hawthorne must reinvent history in order to make Hester a stand-in for the reader herself rather than a figure for enslaved African-Americans, he cannot entirely eradicate what Toni Morrison has called the “Africanist presence” in the shadowy margins of canonical American texts (44–46). Two recent critics, Mara Dukats and Caroline Woidat, have identified Hester as a slave figure, and have suggested that contemporary novels such as Maryse Condé’s *I, Tituba* and Morrison’s *Beloved* rewrite her story with all the violence and racial confrontation the earlier novel suppresses (and, as Sethe’s chokecherry-tree back testifies, with all the horrors of whipping made manifest as well). Viewed through the lens of slavery, Hester is indeed the “allegorical figure of patient submission to tyranny” Woidat constructs, “a white, female” Uncle Tom whose refusal to rebel ensures her continuing victimization (537). But if it is important to recognize that the racialized context of *The Scarlet Letter* is unavoidable, it is equally important to explore the consequences for the novel of Hawthorne’s insistence that Hester’s choices and burdens are those of whites, not blacks.

Morrison’s evocative essay articulates the racialized ground in which American literary narratives construct affirmative “American” values such as independence and freedom by contrasting the position of white Americans with those of enslaved blacks. In *The Scarlet Letter*, Hawthorne’s efforts to maintain Hester’s racial separation are twofold. Not only does he attempt to eliminate those characteristics of Hester’s situation—like whipping—that would link her to enslaved African-Americans, he also tries to overcome the assumption, created
by the omnipresence of slavery in antebellum American thought, that a person whose behavior is severely restricted by the force of law must be mentally enslaved as well. Castigating fellow Massachusetts citizens as virtual slaves because they would not resist the Fugitive Slave Law, Henry David Thoreau fumed that “there are some, who, if they were tied to a whipping-post, and could but get one hand free, would use it to ring the bells and fire the cannons to celebrate their liberty” (30). That Hester, though harshly constrained, both avoids the whipping post and enjoys a substantial measure of intellectual liberty suggests that Hawthorne’s point is the inverse of Thoreau’s: for Hawthorne, no amount of legal repression can eradicate the essential capacity for inner freedom he believes to be inherent in whites. Nor can it merge their situation with that of slaves.

Through Hester then, white readers may well have encountered their own legal/political situation, de-familiarized, perhaps, but recognizable nevertheless. Like New England citizens, but not like the whipped slave, Hester must decide whether or not to obey a harsh law imposed on her by distant, all-powerful law-makers who are more concerned with the fate of the entire community than with any erring individual. Like them, but not like the slave, she has the freedom ultimately to consent, rather than merely submit, to the weight of Law she neither approves of nor has had any hand in making. She is thus a monitory model for the reader, and her progress toward inner freedom lights the way for our own. That the repugnant laws Hawthorne believed in the necessity of obeying were primarily fugitive slave laws argues even more strongly the importance of excluding the shadow slave from a position of possible reader-identification. In his 1852 campaign biography of Franklin Pierce, Hawthorne would declare that “merely human wisdom and human efforts” could not overcome the evils of slavery “except by tearing to pieces the Constitution, breaking the pledges which it sanctions, and severing into distracted fragments” the whole country (415). From his anxious viewpoint, excessive sympathy for slave-victims might lead to attempted rescues, confrontations, and violence, which in turn would undermine the cohesion and security of the national union. As his rhetoric clearly reveals, abolitionism is firmly equated in Hawthorne’s mind with destructiveness; it is a force which “tears,” “breaks,” and “severs” the already vulnerable legal structures binding the states together.8

If readers are to be persuaded that the crushing weight of law should be borne uncomplainingly, those who administer that law must not be monsters. Harsh whippings inflicted on lovely heroines prevent readers from respecting those who call for the lash. Hester is spared her turn at the whipping post because, beneath their “grim-visaged” exteriors, Hawthorne’s quasi-federal magistrates must be humane. They eschew violence and retribution in favor of inducements toward self-reformation. Because such psychological punishments were widely

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8 Arac also discusses aspects of Hawthorne’s treatment of slavery in the Life of Pierce (253-54), as does Bercovitch (86–88). While the biography was, unlike the novel, an explicitly political act written for a particular campaign, and, on Hawthorne’s part, written too with hopes of reaping a political appointment as a reward, its attitude toward the possible consequences of violent abolitionism is consistent with that expressed elsewhere in his writings.
perceived as progressive, the magistrates are subtly aligned with forces of reform familiar to readers through debates over educational and military discipline. While Hawthorne’s narrator primly recoils from these “sages of rigid aspect,” Hawthorne is thus hard at work rewriting history to improve their authority and compassion. They may appear cold, distant, cruel, and unfair, and in the short run, they may be so, but the novel as a whole exhibits a powerful underlying faith in the notions of order, authority, and non-participatory law-making which the magistrates represent. Somehow the whole point is that their immediate unfairness is not the point: we must suffer and obey what appears today to be harsh and oppressive law because in the long run maintaining the community is more important than protesting injustice. As several commentators have noted, Hawthorne’s defense of the Fugitive Slave Law in _The Life of Pierce_ parallels Hester’s counsel to the unhappy women who seek her out in the novel’s final chapter: systemic injustice cannot be “remedied by human contrivance” but must be left to “Heaven’s own time” when it will “vanish like a dream.” To rebel against present unfairness is not only arrogant and unnecessary, but dangerous.

IV.

Just as the “real world” of Hawthorne’s fiction is constructed at least partially by excluding figures like the townsman juror and the whipped woman whose presence would undermine the magistrates’ justness and authority, it also suppresses all evidence of popular challenges to the magistrates’ powers. 1642, the year Hester mounted her scaffold, saw intense attacks on the magistrates’ undemocratic authority, attacks fully characteristic of the decade in which they occurred. At least two such disputes—the infamous squabble over Goody Sherman’s sow and the debate over the magistrates’ unlimited sentencing discretion—hover influentially just below the surface of Hawthorne’s narrative. Nowhere is his historical sleight of hand more visible than in these efforts to strip volatile conflicts of their politically problematic content while recasting them so as to enhance and entrench the power of his magistrates.

When Hester visits the governor’s mansion to protest Pearl’s rumored removal from her custody, Hawthorne’s narrator explains the “ludicrous” involvement of such eminent figures in a small-scale dispute of this kind:

> At that epoch of pristine simplicity, however, matters of even slighter public interest, and of far less intrinsic weight than the welfare of Hester and her child, were strangely mixed up with the deliberations of legislators and acts of state. The period was hardly, if at all, earlier than that of our story, when a dispute concerning the right of property in a pig, not only caused a fierce and bitter contest in the legisla-

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9 Because Brodhead’s analysis of 19th century discipline uses antebellum but not Puritan materials, his discussion of the various forms of punishment in _The Scarlet Letter_ misses this crucial aspect of Hester’s punishment. Because his methodology prevents his recognizing the significance of Hester’s unwhipped back—the affirmative marker of meaning here constituted by an unmarked surface—Brodhead mis-characterizes Hester’s letter as a harsh instance of “corporal correction,” “correction performed through the external, visible marking of the body” (77-78), rather than as a splendid example of the very shift from corporal to psychological punishment which his article so persuasively documents as having occurred in the 1840s and 1850s. Berlant too refers to Hester’s “marked body,” as if the letter were a brand or tattoo (65).
Hawthorne’s narrator smiles a bit condescendingly at this trivial dispute in a charmingly simpler era, memorable as much for the magistrates’ magnanimous concern for petty squabbles as for the unspecified legislative reform it occasioned. In fact, it was not only one of the most complex and contorted lawsuits in Massachusetts history, but also, as Winthrop’s lengthy account (dated June, 1642, the month Hawthorne’s narrative begins) makes clear, “gave occasion to many to speak unreverently of the court, especially of the magistrates.”

Goody Sherman, a poor widow, apparently egged on by her unscrupulous lodger, one Story, sued Captain Keayne, a sharp and much disliked merchant, for the value of a sow she claimed he had mistakenly slaughtered. Suits (for damages) and countersuits (for libel) wound through an astonishing variety of trial and appeals courts for more than two years. More than seven days of testimony were eventually heard by the full Court of Assistants, comprising 9 Magistrates and 30 Deputies. Sympathy ran high for the widow against the rich merchant, although everyone seems to have known that much of the evidence and testimony had been manufactured after the fact. Although a majority of the deputies sided with Mrs. Sherman, the case was determined in Captain Keayne’s favor when the magistrates exercised their “Negative Voice,” a device permitting them to nullify the votes of non-magistrate assistants by returning a verdict in favor of the party receiving a majority of the magistrates’ votes. This exercise of magisterial supremacy only made matters worse with the public, for, as Winthrop tells it, “the report went, that their negative voice had hindered the course of justice, and that these magistrates must be put out, that the power of the negative voice might be taken away” (qtd. in R. Winthrop 282). Because “there was much laboring under a false supposition,” Winthrop published a “declaration of the true state of the cause” and a defense of the Negative Voice (qtd. in R. Winthrop 283). The following year he managed to defeat efforts to abolish it, but the bad taste lingered in many mouths; the consequent separation of the deputies and magistrates into two legislative bodies speaks as much of persistent resentment and conflict as it does of triumphant resolution.

Like widow Sherman, Hester Prynne receives personal attention from powerful magistrates. Unlike the widow whose litigation exploited the availability of public process and judicial review almost beyond human capacity, Hester’s custody case is resolved immediately, through an ad-hoc informal conversation in the ex-governor’s garden. Hawthorne’s magistrates hold neither criminal trials for adultery nor legal hearings on child custody. Applying their discretionary authority to the circumstances of the case at the moment it is presented, they appear rigid but behave with compassion, leaving Hester her child as they left her unmarked skin. Hawthorne’s ambivalent handling of the sow case—gratuitously intruding it into his narrative while suppressing its subversive resonance—suggests the ultimate goal of his re-inventions of Puritan history.

In Robert C. Winthrop’s Life, “The Stray Sow and the Negative Voice” warrants an entire chapter, which traces in detail the course of the dispute, the extended litigation it triggered, and its consequences within the community (2: 280-95).
the one hand, he wants the aura of historical accuracy and authorial erudition that such references to long-forgotten cases can produce. On the other hand, he wants to present the Puritan magistracy as unassailably secure in their powers, a type of idealized federal bureaucracy. The result is the same as in his handling of the absent jury trial: all challenges to magistratical authority disappear. Instead of providing evidence that the magistrates were under attack, the case is refigured as a comic example of the magistrates’ willingness to stoop responsively to aid a poor widow, just as they deign to listen to Hester’s plea for continued custody of Pearl.

The challenge to the magistrates’ Negative Voice was not the only, or even the most serious, attack on the powers of the magistrates during the period of Hawthorne’s fiction. As Mark D. Cahn has shown, the unlimited discretionary powers of the magistrates—precisely the aspect of their authority Hawthorne is at greatest pains to present as entrenched—were the focus of the intense debates over the codification of non-capital criminal sentences. Colonists outside the inner circle of power fought to circumscribe the magistrate-judges sentencing authority by establishing pre-set penalties for specific crimes. While there were several reasons for the movement to codify, “none ... was more significant than the freemen’s desire to curb the discretionary powers of the magistrates. The freemen feared that unless penalties were established by statute and rules regarding punishment made public, the magistrates could not be trusted to impose penalties fairly and with regularity” (108). Without pre-set penalties, challengers argued, judges imposed widely varying sentences for the same crime, making the outcome of cases dependent on judicial bias or whim, and undermining the system’s consistency and predictability. The magistrates (led by the indomitable Winthrop) fought vigorously to retain their discretionary authority, insisting that as God’s representatives on earth they were specially empowered, and that through their discretion God’s law was harmonized with the diversity of human experience. As Cahn notes, “the leitmotif of Winthrop’s political writings was that God intended certain men to be magistrates—and for these individuals, once elected, to govern unimpeded by dictates and restrictions imposed by those less fit to rule” (121). In 1644, Winthrop lost the battle when the General Court voted to accept the validity of prescribed punishments and restrict the penalties magistrates could impose, though the magistrates managed to delay the adoption of an extensive code until 1648.

The period between 1641 and 1648—roughly the period covered by the events of The Scarlet Letter—was thus permeated by this bitter challenge to the arbitrariness of magistratical power. Though there is no explicit reference in Hawthorne’s text to the battle over codification, I believe that the extraordinary emphasis in the opening scene—and indeed, throughout the novel—on the sole and unlimited discretion of the magistrates in dealing with Hester is more than coincidental. Hawthorne’s narrative both illustrates and argues Winthrop’s case for the legitimacy of discretionary authority. In Hawthorne’s Boston you can trust the powers that be, however far-away, grim-visaged, and sealed off from popular input, because they are ultimately compassionate, reasonable, and devoted to the community’s welfare.
The influence of the codification dispute on Hawthorne's text can best be understood by seeing judicial discretion in sentencing as a form of interpretation. Codification supporters were suspicious of authority, which they saw as arbitrary and subjective. So long as magistrates could decide for themselves what penalty should be imposed in a non-capital case, they could "interpret" the circumstances of the case to mete out punishments based on political or personal bias. Inflexible statutory penalties were proposed as means to curb judicial inconsistency by eliminating the judge's power to interpret. Interpretation was thus imaged negatively; consistent justice could be grounded only in the predictability afforded by black-letter pre-set penalties. The same infraction should produce the same penalty, regardless of who was the judge, who the defendant. In direct opposition, the magistrates championed case-by-case interpretation of the law. They presented their authority as objective, skillful, and sensitive. Arguing that it was the defendants, not the magistrates, who were likely to be variable, the magistrates wanted the power to mold sentences to the circumstances of each case. Though the sentence once imposed would not change, it would be the product of an interpretive response to particular circumstances.

In this context, Hester's scarlet A is Winthrop's best case. The letter, a seemingly rigid and unalterable sign of objective authority, in practice represents flexibility and openness to interpretation, both past and future. While the letter A stands for the crime she has committed, it is also "the letter of the law," the penalty for that crime. Created before the novel's action begins through a process of compassionate interpretation, the letter has been carefully shaped to fit the circumstances of Hester's case, a case which calls, not for whipping or execution, but for this sentence only. The letter also opens to a future of reinterpretation, as the seemingly unchangeable A comes over time to signify Hester's admirable qualities rather than her past behavior. The letter itself cannot change, of course, but its meaning can. As Hester's personal sign, the way the letter is read tracks her changing relations with the Puritan community. Ultimately, she claims the letter as the marker of her identity, beyond the power of the magistrates to remove. In a typical Hawthorne paradox, what is most rigid signifies what is most fluid; what is most fungible, abstract, impersonal—a letter of the alphabet—becomes what is most personal, unique, and identity-bound. The A represents the potential for compassionate interpretation which lies within seeming inflexibility, and which can best be achieved by granting broad discretionary authority to magistratical decision-makers.

V.

If the changing course of Hester's relationship with the Puritan legal establishment demonstrates that accepting the law's strictures can strengthen both the individual and the community, the terrifying counter-example set by Roger Chillingworth completes the lesson. Upon discovering his wife being publicly punished for adultery, Roger Prynne could have taken action against Hester by
divorcing her, an option he is never described as considering. With respect to her lover, however, he was legally obligated to leave the prosecution and punishment of the crime to the colony’s courts. Instead of doing so, he devotes his life to the secret discovery and punishment of her partner. In what seems to be an act of kindness, he assures Hester that though he will make it his business to find out the identity of her lover, he will never “betray him to the gripe of human law” (80). In actuality, his preservation of secrecy is anything but kind. Unlike Hester, who protects Dimmesdale’s identity in order to spare him pain, Chillingworth’s aim is to monopolize the power to investigate, condemn, and punish the wrongdoer. Policeman, magistrate, judge, jury, and executioner in one, Chillingworth usurps every governmental role in the criminal justice system. Though his methods do not include the actual use of whips or stocks, Hawthorne describes his interaction with Dimmesdale as the ongoing infliction of torture: “Would he arouse [his victim] with a throb of agony? The victim was for ever on the rack; it needed only to know the spring that controlled the engine; —and the physician knew it well!” (140). If we assess Chillingworth’s behavior in terms of its attitude toward law, it is clear that his rejection of public magistratical process in favor of fanatical service to the private law of vengeance marks him as the novel’s vigilante figure. If Hester models the ultimate benefits to be derived from accepting the workings of legal process, her husband presents the necessary disaster—both to the community and to the vigilante himself—that results when individuals reject public process in favor of private action.

To one who believes in the unifying powers of the rule of law, the vigilante is a destabilizing threat: an anarchic evader of legal structures who is willing to employ violence. Lincoln had warned in the “Address to Young Men” in 1838 that when individuals arrogate to themselves the right to punish even genuine wrongdoers, mob violence is often the result, and, in turn, the destruction of government through a gradual weakening of the people’s respect for it. The “lawless in spirit” become “lawless in practice,” he charged, until those who have “ever regarded the Government as their deadliest bane ... make a jubilee of the suspension of its operations; and pray for nothing so much as its total annihilation,” while even good men lose their attachment to law and thus “the strongest bulwark of any government” is destroyed (30–31). In Lincoln’s apocalyptic vision, disinterested judgment, due process, indeed, all the forces of cohesion in society disappear when such figures are ascendant. To prevent such harm, Lincoln called for “every American, every lover of liberty” to swear “never to violate in the least particular, the laws of the country,” and to teach reverence for the laws in every home, school, and college until it should become “the political religion of the nation” (32).

Significantly, Hawthorne’s imaging of the vigilante figure’s destructiveness focuses as much on the vigilante himself as on his victim. As a one-man criminal justice system, Chillingworth’s rage to punish is unrestricted. None of the colony’s institutional safeguards, such as statutorily limited penalties, judges uninvolved in the case, public records and public scrutiny, operate to keep his drive

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11 While divorce was virtually unavailable, and socially unacceptable, in England in the 17th century, colonial American courts occasionally issued divorce decrees from their earliest years, and partners were free to remarry. See Haskins 63, 81, 194–95.
for vengeance within civilized bounds. When he makes what he thinks is a principled decision to retain control of Dimmesdale’s prosecution rather than turn it over to the magistrates, he loses all the community-directed restraints that are designed to make the rule of law both rational and humane. The fact that Chillingworth feels so deeply the insult of Hester’s adultery, far from conferring an obligation to judge or punish, should disqualify him from both roles. Yet he takes on the roles of judge and executioner, roles which, because his relationship to them is so inappropriate, cause the corruption of his own soul, “striking evidence of man’s faculty of transforming himself into a devil, if he will only, for a reasonable space of time, undertake a devil’s office” (170). Instead of a heightened integrity and a strengthened individualism, his actions lead to a loss of perspective, self-control, and qualitative humanness.

It is highly significant that the “devil’s office” the good doctor assumes is precisely that role which the rule of law most triumphantly eliminates: that of torturer. The rack and other such “engines” were the kind of “inhumane, barbarous and cruel” punishments outlawed by the 1641 Body of Liberties. Hester, dealt with by the public authorities, receives a humane sentence most striking in its failure to include physical punishment.

In Hawthorne’s grim utopia, the justice system is administered by men who rise above any personal drive for revenge, eschew violence, and illustrate the superiority of disinterested lawmaking over the “barbarity” of private justice. The magistrates’ cold distance protects Hester from both her husband’s and the townspeople’s outrage. If the magistrates’ sentence inflicts years of lonely suffering on Hester, her submission to the discipline of law also enables her intellectual growth and, the final chapter suggests, something like serenity. Those who evade “the gripe of law” are destroyed, either by falling victim to vengeance and private self-punishment, like Dimmesdale, or by suffering the self-destructiveness of unregulated and inappropriately assumed punitive power, like Chillingworth.

That Chillingworth is positioned as a vigilante suggests that the spectre of violent disdain for law was one of Hawthorne’s motivating fears in writing the novel. The public discourse of New England abolitionism in the late 1840s and 1850s preached just such vigilanteism, and it is useful to read Hawthorne’s fiction within this larger cultural conversation about decisions to obey or resist the strictures of law. In an 1852 speech, for instance, Frederick Douglass thundered to a largely white political audience that “the only way to make the Fugitive Slave Law a dead letter is to make half a dozen or more dead kidnappers” (Life 207). His words were received with laughter and applause. Two years later, when a white federal guard was killed in a botched attempt to rescue Anthony Burns, a fugitive, Douglass defended the act in an article titled “Is it Right and

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12 Chillingworth’s attempt to achieve a wholly private revenge on Dimmesdale is ultimately unsuccessful, for the minister not only resists the doctor’s continual efforts to elicit for himself alone what in Puritan terms must be a public confession, but “escapes” into the realm of the public to confess and die in the midst of his congregation. In this rule of law analysis, it is fitting that Dimmesdale’s ultimate sanctuary is not a private but a public place, where relief from the burden of past deeds is found through permitting the community, however ambiguously, to know and assess his sin. Dimmesdale can defeat—though not survive—Chillingworth’s lawless surveillance by mounting the scaffold in the presence of magistrates and townspeople. Similarly, his attempts to take on the governmental role of judge and punisher through self-flagellation must fail, because they do not proceed from a public assessment by uninvolved decisionmakers.
Wise to Kill a Kidnapper?” by arguing that the guard’s “slaughter” “was as inno-
cent in the sight of God, as would be the slaughter of a ravenous wolf in the act
of throttling an infant. We hold that he had forfeited his right to live, and that his
death was necessary, as a warning to others liable to pursue a like course” (Life
287). In a sermon preached two days after the incident, Theodore Parker justified
the killing, while laying the blame for violence not on those who sought to free
Bums but on the state and federal officials who had imprisoned him.13 While the
use of violence was certainly not universally accepted within Abolitionist circles,
it was condoned, justified, and encouraged by many as the only way to conscien-
tiously resist the rendition of fugitives. Douglass and others preached that each
individual has the obligation to judge man-made law against the Higher Law of
right and wrong set by God. Where that law is judged and condemned as pro-
foundly wrong, the individual must not only refuse to obey it, he should be will-
ing to take on himself the infliction of punishment for that wrongdoing, even if
such punishment leads to fatal violence. So Douglass calls on fellow abolitionists
to execute slaveowning “kidnappers” whose capture of fugitives is lawful under
the Compromise Act of 1850, and Parker refuses to condemn those who caused
the death of a guard while attempting to free a fugitive awaiting rendition.

Read in the context of such calls for independent judgment of laws and violent
resistance to their enforcement, The Scarlet Letter becomes a creative brief in sup-
port of Lincoln’s doctrine of obedience to law. This is not to say that the story of
Hester Prynne’s willed submission to the harsh but compassionate law of the
Puritan magistrates is no more than a response to contemporary political anxi-
eties. If colonial and antebellum politics make this reading visible, they do not
restrict its relevance for readers from Hawthorne’s day to our own. Along with
the many other issues the novel raises, The Scarlet Letter is a powerful and imagi-
native meditation on the larger issues implicated in every individual’s continuing
relation to governmental law, authority, and enforcement. The power to judge
and punish wrongdoing, the novel suggests, must remain with the public
authorities because, whereas vigilantism undermines the peaceful order of
society, the rule of law is the best hope of preserving it. Only the magistrates can
translate judgment into action without becoming contaminated by passion. The
novel suggests that we, the reader-peers figuratively participating in the crowd
around Hester’s scaffold, should accept the ultimate usefulness to society even of
some deeply repugnant laws instead of challenging their immediate harshness.

Positioned within the novel as a sympathetic heroine, Hester certainly does
not reap the traditional heroine’s rewards of amatory and economic success. She
is loved but not permitted to live with or marry her lover, and the wealth that
Chillingworth possesses is left to Pearl, not to her. While Hester’s heroism in re-
sisting the temptation to rebel does bring such benefits as privacy, intellectual
independence, and an apparently useful wisdom, each is achieved as a direct
consequence of her suffering, isolation, and shame. If the violent resister proves
his commitment by his willingness to suffer imprisonment and public

13 It was Parker himself who, on the night of the attempt to free Burns, had roused the crowd at Boston’s Faneuil Hall and made
the motion to “adjourn to Court Square” where Burns was being held. His sermon, along with journalistic reports of the events
and coverage of the legal proceedings, were published in pamphlet form as Boston Slave Riot and Trial of Anthony Burns. The
sermon is on 30-33.
condemnation, perhaps the person who chooses to obey in a time of general resistance must also be prepared to pay a severe price. The novel resists providing any simplistic vision of happiness for those who might follow in Hester’s footsteps, insisting instead that this form of heroic compromise is anything but an easy way out.

The novel makes no explicit connections to the Compromise Act of 1850, and there is no evidence that contemporary readers made such connections, or even, for that matter, that Hawthorne himself did. Yet the national controversy that swirled around the Fugitive Slave provisions of the Act, the intense anxieties about possible disruptive violence, sectional fragmentation, and the obligations of individuals to obey unpalatable laws were very much part of the atmosphere in which the text was both written and read, and I believe it is reasonable to suggest that the novel both expressed and shaped the direction of those concerns. To make such a claim raises two important and connected questions with which I want to end this essay. First, how can a novel—especially one that does not make its politics a matter of explicit concern—play an important role in such an ongoing cultural dialogue? And second, if it can, does it do so only by ignoring or sidestepping the novel’s essential literariness, reducing it to a species of political discourse? While a full answer to these questions would require another essay, a few points can be noted.

In my view, it is precisely The Scarlet Letter’s “literariness” that empowered it to play a critical role in shaping its readers’ views, even if the dimensions of that role may be impossible to verify or recover. Obviously, a novel is neither a political essay nor a proposed statute. Perhaps less obviously, its unlikeness from each of these is different. A political essay that argues strongly for a specific position requires its audience to take an equally specific position in response—not just to agree or disagree with its assertions, but to restrict the ambit of that agreement to the particular issue and questions framed for debate. The story of Hester Prynne remains open in precisely the ways that such an essay is circumscribed. Like the letter she wears, the novel itself opens out to a range of interpretive responses among readers and invites a change in such responses over time. We can read the novel as being about passion, repression, and hypocrisy, without being required to accept or reject its implicit claims about civic obligation. Further, because the novel does not force readers to defend previously articulated political stands—does not, in fact, appear to be about contemporary politics at all—it can make new ways of thinking about those issues more easily acceptable. Through Hester readers can come to see freely chosen acceptance of the law’s strictures as heroic. The transformation of such submission from cowardice into courage can elicit admiration and evoke a desire for emulation without forcing readers into a debate about the provisions of any statute. Among the many things it accomplishes, The Scarlet Letter permits its readers to explore the courage that can sometimes be

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14 The contemporary reviews of The Scarlet Letter collected by Schanhost suggest that readers of Hawthorne’s day singled out the novel’s poetry and passion, its study of the human heart and its handling of the consequences of adultery. Hester’s heroic obedience and the magistrates’ compassion were noted, as when the Portland Transcript applauded Hester’s “almost proud submission to the indignities inflicted upon her” (24), and Orestes Brownson critiqued Hawthorne’s failure to condemn the adultery, declaring that the magistrates’ “treatment of the adulteress was far more Christian than [Hawthorne’s] ridicule of it” (34–39). I have, however, found no reviews connecting the novel to agitation about the Compromise Act.
required to obey the law without conducting that exploration in the already-tainted context of discussions about controversial fugitive slave laws. Once affected by these underlying issues in the novel's powerful story, it seems to me quite reasonable to suggest that, without necessarily attributing it to the novel, a reader might find herself responding differently to subsequent calls for violent resistance to divisive and unpalatable laws.

If evocative power and openness to interpretation distinguish the novel from position papers of any kind, boundedness, narrative closure, and moral inflection mark fiction's difference from most discursive forms of law. In juxtaposing law and literature, writers have sometimes imaged law as the kind of fixed text that determines and closes down the process of interpretation, while literature offers an openness to interpretation derived from its imaginative complexity. Such dichotomies, though useful, erase important continuities connecting the two discourses. What is significant is that legal texts, whether statute, constitutional provision or judicial decision, are necessarily part of an ongoing process of interpretation as the language of impersonal rules and previous interpretations is applied in specific, often unforeseeable cases. When the fugitive slave provisions of the Compromise Act of 1850 were drafted, legislators could sketch out a statutory scheme for recovering runaway slaves, but until the law was applied in a variety of states and contexts, its ambiguities, enforceability and consequences could not be known. It required, and received, judicial interpretation in a variety of adversarial contexts, interpretation that varied over time and with the identity of the judicial interpreter. Just as recent Supreme Court decisions have significantly changed "the law" in many areas by reinterpreting such textually-fixed Constitutional provisions as the Fourth Amendment's protection against unreasonable search and seizure, so state and federal courts are continually called on to interpret and reinterpret in new contexts the meaning of statutes, codes, and earlier decisions. This openness to a necessary and evolving process of interpretation suggests a profound continuity that links law to literature through a shared dependence on language and rhetoric, with all the richness, complexity and ambiguity inherent in any discursive enterprise. Hester's red "letter of the law" is an apt symbol of that continuity: like the text of the novel in which it appears, it is both the product of and the textual stimulus for continuing interpretation.

But if law and literature both require interpretive readings, literary narratives can provide a degree of specificity and closure unavailable to law. Faced with Hester's adultery, Hawthorne's Puritan magistrates, like Winthrop's contemporaries who fought hard to retain the privilege, had the power to fashion a discretionary sentence responsive to her unique circumstances; they could not,
however, predict with certainty its effect on Hester’s future life. Similarly, the Compromise Act of 1850 could provide the occasion for debate and dire prediction, but it could not determine the outcome of a particular fugitive’s quest for freedom or trace the particular series of events that would implicate that Act in the eventual outbreak of the Civil War. The connection of legal cause to ultimate practical effect, the vivid, particular way that a harsh law will change the lived experience of those it affects, can only be imagined as among the possibilities that may ensue if this or that legal text becomes law. Literary narratives in contrast, provide not just beginnings but endings, sequences of events in which the consequences of actions can be traced through time. If we are used to recognizing that a novel like *The Scarlet Letter* presents a complex and richly imagined world characterized by ambiguity and multiple possibilities for interpretation, it is also true that the story of Hester Prynne, Arthur Dimmesdale, and Roger Chillingworth describes not an infinity of paths but a course of connected events, producing these results and conflicts, and, finally, this particular form of closure. In 1850 it was the novel, not the statute, that could present a definite story of how the law affects the individual.

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