History on Trial
Episode 18
Murder in Plymouth: *Plymouth Colony v. The Peach Gang*
Researched and written by Mira Hayward

PROLOGUE

Darkness was falling over the Rhode Island woods by the time Roger Williams reached the wounded man. When Williams had heard that a man had been attacked, he'd set off quickly, hoping that he could help. But looking at the man lying before him, Williams knew the situation was hopeless. Williams was no stranger to violence; no one living in New England in the 1630s was. He knew that wounds like these - a long, ugly gash running up one leg, ending in a deep wound in the belly – could not be overcome.[1]

Nonetheless, the doctors Williams had brought with him, John Greene and Thomas James, did what little they could. Then the three men, along with the three Narragansett hunters who had discovered the wounded man, picked the man up and began the trek back to Providence, the settlement that Williams had founded two years earlier.

It was an arduous journey through the dense forest. The wounded man must have been in excruciating pain. But he found the strength to tell his rescuers his story. His name was Penowanyanquis, he said. He was a member of the Nipmuc tribe. He had been set upon by four men, who tried to rob and kill him. He had escaped, but he knew his wound was grave. Infection was setting in, a fever taking hold. Penowanyanquis began to pray, calling out to Muckquachuckquànd, the Children's God. Muckquachuckquànd was known to save lost boys; as a child, Penowanyanquis had encountered the God, in the form of an animal, and now he called upon the God's protection.[2]

But it was too late. Penowanyanquis was beyond saving. Before he slipped away, though, he told the men one last crucial fact: his attackers, he said, were English.

Roger Williams, with a pit in his stomach, knew who the four men must be. He had seen them just that morning, when they had shown up at his doorstep, bedraggled and starving, claiming to have gotten lost in the woods. They said they were trying to get to Connecticut. Williams fed them, assigned them Narragansett guides, and gave them a few letters to deliver on their way.

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[1] Tobey Pearl, *Terror to the Wicked: America's First Murder Trial by Jury, Ending a War and Forming a Nation* (New York: Pantheon Books, 2021), 62-64. N.B. That an electronic version of this book was used; page numbers may vary by user settings.
[2] Pearl, 52-54.

Williams had just been trying to be kind. But now he knew the sickening truth: he had assisted murderers. He resolved at once that he would hunt these men down. Soon enough, with the help of the Narragansett guides and the English colonists on Aquidneck Island – present day, Portsmouth, Rhode Island–Williams had his men. They were four indentured servants: Arthur Peach, Thomas Jackson, Richard Stinnings, and Daniell Crosse.

Now that Williams had apprehended the murderers, he faced a new challenge: what to do with them? Their attack on Penowanyanquis had taken place in a no-man's land of sorts, a swampy patch claimed by neither the Narragansett nor the Wampanoag tribes, nor by any of the English colonies.[3] And while the killers were English, their victim was Nipmuc. Who should have jurisdiction over the murderers?

It was a question with serious implications. For the past two years, the brutal Pequot War had raged through New England. Tensions between colonists and indigenous peoples were at an all time high. Would this murder spark disaster?

"The indians sent for Mr. Williams," recorded William Bradford, the former governor of Plymouth Colony, "and made a greeveous complainte; his friends and kinred were ready to rise in armes, and provock the rest therunto, some conceiving they should now find the Pequents word trew: that the English would fall upon them."[4] Roger Williams, Bradford writes, quote, "pacified them, and tould them they should see justice done upon the offenders."[5]

It was determined that the men would be tried before a jury in Plymouth Colony. Could the colonists, with their scant resources, manage a fair trial? Could they overcome their innate prejudices towards their indigenous neighbors? Could they stave off a looming war? And most of all, could they fulfill Williams' promise? Could they see justice done?

Welcome to History on Trial. I'm your host, Mira Hayward. This week, *Plymouth Colony v. the Peach Gang*.

ACT I

In late December, 1620, English colonists from the *Mayflower* arrived at the remains of a Patuxet village on the southeastern coast of present-day Massachusetts. The new arrivals dubbed this settlement Plymouth.[6]

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[3] Pearl, 17, 31, 88-90.

[4] William Bradford, *History of Plymouth Plantation 1620-1647* (New York: Houghton Mifflin Company, 1912), vol. 2, 266.

[5] Bradford, *History of Plymouth Plantation*, vol. 2, 266.

[6] Rebecca Beatrice Brooks, "History of Plymouth Colony," *History of Massachusetts*, September 28, 2016.

The first winter at Plymouth was brutal. Almost half of the colonists - fifty out of 102 – died, succumbing to disease and starvation.[7] The remaining population struggled to build adequate shelter and make use of the land's natural resources.

Salvation arrived in the form of the Wampanoag confederation. The Wampanoag had once been a dominant presence along the present-day Massachusetts and Rhode Island coasts, with a population of some 40,000 people living in 67 villages.[8] But between 1616 and 1619– a period that became known as the "Great Dying"--thousands of Wampanoag died from infectious diseases brought by European explorers. A neighboring group, the Narragansett, who had been less impacted by disease, began to encroach on Wampanoag territory.[9]

When the Plymouth colonists arrived in 1620, the Wampanoag saw an opportunity. An alliance with the English could provide weapons and bodies to fight off the Narragansett. In the spring of 1621, the Wampanoag established contact with the English, and in late March, the two groups signed a peace treaty.[10]

This alliance saved the colonists. Their Wampanoag allies provided invaluable assistance, teaching the colonists how to work the land, maximize crop output, and hunt. Over the next decade, thanks to this knowledge, the colonists began to thrive. By the mid-1630s, Plymouth's population had more than tripled and it was about to grow even more. Colonists lived in neat houses with small gardens behind them. A large defensive wall encircled the town, and a meeting house sat atop the town's highest point.[11]

The establishment of further English colonies – the Massachusetts Bay, Saybrook, and Connecticut Colonies – gave Plymouth residents further security and opportunities for trade.

But not all was well in Plymouth. In 1636, the various English colonies allied with the Narragansett and Mohegan tribes in a war against the Pequots. Though the English dominated the conflict, the brutality of the war, which included a massacre of more than

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[7] William Bradford, *History of Plymouth Plantation 1620-1647* (New York: Houghton Mifflin Company, 1912), vol. 1, 194.
[8] Nancy Eldredge, "Who are the Wampanoag?" Plimoth Patuxet Museums.
[9] "Native America and the Mayflower: 400 years of Wampanoag history," *Mayflower400*, 2020.
[10] William Bradford and Edward Winslow, *A Relation or Journal of the Beginning and Proceedings of the English Plantation Settled at Plimoth in New England*, or, *Mourt's Relation* (London: John Bellamie, 1622), 20-24.
[11] Patricia Scott Deetz and James Deetz, "Plymouth Town Early Descriptions, 1620-1628," and "Population of Plymouth Town, Colony & County, 1620-1690," *The Plymouth Colony Archive Project*, University of Illinois Urbana-Champaign, 2000-2007.

400 Pequot in a single day in 1637, deeply concerned the English's native allies.[12] What would happen if the English turned against them?

The English, too, were becoming increasingly wary of their indigenous neighbors. Prejudice against native peoples grew. "Earnest interactions," writes historian Tobey Pearl in her book *Terror to the Wicked*, "gave way to mistrust, suspicion, and hatred."[13]

There were also tensions between the English colonies. The Massachusetts Bay Colony was growing faster than Plymouth, sucking up resources and land and new arrivals – including indentured servants, which Plymouth Colony desperately needed.[14] The colony relied on these servants – men and women who agreed to a period of unpaid labor in exchange for passage to the colony and the promise of land at the end of their indenture – to keep it running. But by the late 1630s, with land becoming scarce, Plymouth Colony leaders reduced the amount of land guaranteed to indentured servants from 100 acres to 5 – which would only be granted to servants that the colony deemed "fit." These unattractive terms quickly stemmed the flow of indentured servants.[15]

These changes also infuriated many of Plymouth's existing indentured servants, who felt cheated out of their futures.[16] One such servant was Arthur Peach. A twenty-three year old Irishman, Peach had sailed on the *Plain Joan* from Gravesend, England to the Colony of Virginia in the spring of 1635.[17] In 1636, he had traveled to New England, where he signed a four year indenture contract with Edward Winslow, a prominent Plymouth resident.[18] Peach spent part of the first years of his contract as a soldier, fighting for Plymouth in the Pequot Wars. William Bradford, the Plymouth governor, recorded that Peach, quote, "had done as good service as the most there, and [was] one of the forwardest in any attempte."[19] Peach was brave, no doubt. Unfortunately, domestic life did not suit him as well as war did. Peach was "loath to worke," Bradford wrote.[20] Instead of completing his duties for Winslow, Peach spent most of his time at Stephen Hopkins's house. Hopkins hosted a makeshift tavern and gambling den there, much to the chagrin of Plymouth's leaders. Peach quickly racked up large gambling debts to Hopkins.[21] He also got entangled with Dorothy Temple, one of Hopkins's

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[12] Pearl, 13 and Bradford, *History of Plymouth Plantation*, vol. 2, 253, and John Underhill, *Newes from America; Or, A New and Experimentall Discoverie of New England; Containing A True Relation of Their War-like Proceedings These Two Yeares Last Past, with a Figure of the Indian Fort, or Palizado* (London: Peter Cole, 1638), ed. Paul Royster, University of Nebraska-Lincoln, Digital Edition, 38.
[13] Pearl, 13.
[14] Pearl, 81.
[15] Pearl, 21.
[16] Pearl, 21.
[17] Pearl, 125.
[18] Pearl, 128.
[19] Bradford, *History of Plymouth Plantation*, vol. 2, 264.
[20] Bradford, *History of Plymouth Plantation*, vol. 2, 264.
[21] Pearl, 21-23.

indentured servants. Relationships between servants were forbidden in Plymouth, but that didn't stop Peach from wooing Temple. If Plymouth officials discovered the relationship, Peach and Temple would both face punishment – fines, or whippings, or both.[22]

Despite this burgeoning romance, Arthur Peach was unhappy. He didn't know if he could bear two more years of indentured servitude. He didn't know if he could ever pay off his gambling debts. He craved adventure. But indentured servants couldn't leave Plymouth Colony without their masters' permission. What was Arthur Peach, who William Bradford called, quote, "a lustie and desperate yonge man," to do?[23]

Run.

That was Arthur Peach's answer. He would flee dry, drab Plymouth for the exciting possibilities of New Amsterdam, the Dutch settlement on Manhattan Island.[24]

He wouldn't go alone. At Stephen Hopkins's house, he'd made friends with a number of similarly disillusioned servants. And he'd convinced three of them – Thomas Jackson, Richard Stinnings, and Daniell Crosse – to leave with him. On July 24th, 1638, in the dark of night, the men met on the Green Harbor Path, a well-trodden byway running along the coast. Fearing pursuit, they decided to leave the path and head into the thick woods. The woods were dense and imposing, but through them, Peach believed, lay freedom.[25]

ACT II

For three exhausting, frustrating days, Arthur Peach and his companions stumbled their way through the forest. They likely argued as they went – the three other men had only joined Peach because he claimed to know the way to New Amsterdam. But as the days wore on, it became clear that he did not. The Peach gang, as the group would become known, also had not packed well. They were running short on food and water.[26]

On July 27th, the gang stopped to rest in Misquamsqueece, a swampy patch of land north of present-day Seekonk, Massachusetts. They were only 36 miles from Plymouth, as the crow flies, but it must have felt much further. Mosquitoes nipped at their ankles,

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[22] Pearl, 21, 25-26.
[23] Bradford, *History of Plymouth Plantation*, vol. 2, 264.
[24] Pearl, 88.
[25] Pearl, 25-27.
[26] Pearl, 17.

their heads throbbed in the heat, and their stomachs ached from hunger. The atmosphere was oppressive; some locals called the area the Devil's Swamp.[27]

All at once, Arthur Peach heard a rustling behind him. He grabbed his rapier, a thin, double-edged, deadly sharp sword, the only thing he had taken with him from Plymouth. The gang tensed. Who was walking through the woods - a party from Plymouth, out to apprehend them? Or an animal that they could kill for food? The rustle grew louder. A lone man emerged from the trees at the clearing's edge.[28]

Nervous, none of the Peach gang addressed the man. He walked silently through the clearing and disappeared back into the trees.

Arthur Peach had been caught off guard by the man's appearance. But it had given him an idea, a dark idea. He told his men that they would not be traveling further that day.[29]

The man they had just seen is known by history as Penowanyanquis. This is likely not his real name; Penowe means "foreigner" or "stranger" in Eastern Algonquin, so the man may have been describing himself as a stranger when he later gave his name to Roger Williams.[30]

Penowanyanquis was a member of the Nipmuc people. Nipmuc means "freshwater people," a fitting name, given that their homelands contained the headwaters of all major rivers in eastern Massachusetts and Rhode Island.[31] The Nipmuc lived in villages all across the interior of present-day Massachusetts and parts of Rhode Island and Connecticut. When the *Mayflower* colonists landed at Plymouth in 1620, there were an estimated 5-6,000 Nipmucs. But contact with the English, and the infectious diseases they carried, decimated the tribe's population. By 1638, the Nipmuc were paying tribute to the Narragansett tribe in exchange for protection.[32]

On July 27th, when he crossed paths with the Peach gang, Penowanyanquis was on his way to the Aptucxet trading post, outside of present-day Bourne, Massachusetts. The trading post had been built in 1627 to facilitate trade between the Wampanoag, the Dutch, and the English. The Narragansett, being enemies of the Wampanoag, could not visit the trading post. So they sent members of affiliated tribes – like the Nipmuc – to do their trading for them.[33]

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[27] Pearl, 17, 27.
[28] Pearl, 27-28.
[29] Pearl, 28.
[30] Pearl, 50.
[31] Pearl, 47.
[32] Cheryll Toney Holley, "A Brief Look at Nipmuc History," *Hassanamisco Indian Museum*.
[33] Pearl, 29-31.

Penowanyanquis carried beaver pelts and beads with him, which he was trading on behalf of Mixanno, son of Canonincus, leader of the Narragansett. At the trading post, Penowanyanquis exchanged his pelts and beads for three cloth coats and five fathoms of wampum.[34] Wampum, small shell beads, were used as currency. A fathom consisted of 360 wampum strung in six-foot lengths.[35] Five fathoms was worth approximately six contemporary English pounds, or around $1,200 dollars today.[36] It was a small fortune to carry through the woods, a magnet for danger, especially since traders were required to trade unarmed.[37]

But Penowanyanquis was well-trained. He knew this land intimately. He likely had no fear as he set out from the trading post, heading west. He walked until dark, set up camp, and then resumed his journey along the Narragansett Trail the next morning.[38]

Further down the trail, Arthur Peach and his men huddled in a clearing. Seeing Penowanyanquis two days earlier had given Arthur Peach an idea. The things he and his gang wanted – food, water, money – required hard work. Wouldn't it just be easier to steal them from someone else? All they had to do was wait for a traveler to pass by.

Their first opportunity appeared in a clatter of hooves. John Throckmorton, a Providence resident, was traveling the trail on horseback. Throckmorton recoiled at seeing four dirty, disheveled men step out onto the trail. Suspicious, Throckmorton urged his horse into a gallop and rode past quickly. The Peach gang was out of luck. They settled back down to wait.[39]

Sometime later, they heard the sounds of someone approaching on foot. It was Penowanyanquis. Arthur Peach was prepared this time. The gang had built a fire, and Peach invited Penowanyanquis to sit beside it, offering his pipe too. Penowanyanquis, having no reason to fear these friendly travelers, approached. Now that the moment was upon them, Peach's compatriots hesitated. One of them told Peach not to attack.[40]

But Peach would not be deterred. "Hang him, rogue, I had killed many of them!" he cried, speaking of his time in the Pequot War.[41] And then he thrust his rapier at

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[34] Pearl, 30-35.
[35] Pearl, 34.
[36] Pearl, 34 and Eric W. Nye, *Pounds Sterling to Dollars: Historical Conversion of Currency*, accessed September 8, 2024.
[37] Pearl, 35.
[38] Pearl, 35.
[39] Pearl, 36.
[40] Pearl, 37-38.
[41] Pearl, 38.

Penowanyanquis, sinking the blade into the man's stomach and pulling it down his belly through his upper thigh.[42]

Penowanyanquis reeled. But his reflexes were faster than Peach's. He dodged a second blow and turned to run. Another gang member lashed out at him, but Penowanyanquis bounded away. He knew his greatest advantage was his knowledge of the land. He sprinted into the thick vegetation of the swamp. The Peach gang gave chase, slashing at plants with their blades. Penowanyanquis did not look back. He splashed through the swamp, holding his stomach as blood poured from his wounds. He tripped and fell, then, hearing his pursuers nearby, pulled himself up and made one more agonizing push, deeper into the swamp. Unable to go further, he lay down in the brackish water, letting the reeds shelter him.[43]

The Peach gang gave up the hunt. They figured Penowanyanquis would soon bleed out. And they had what they wanted – the strings of wampum and the coats. With this small fortune, they could establish themselves in New Amsterdam. They just needed to get there.

But luck was not on their side. Not far away, near Pawtucket Falls, the Peach gang encountered a group of Narragansetts. The Narragansetts were concerned to see four filthy Englishmen wandering in the woods, and encouraged the men to travel south to nearby Providence, where the settlement's leader, Roger Williams, could help them. The Peach gang declined, saying that they were headed west to Connecticut.[44]

But the Narragansetts were worried about the men, and decided to report them to Roger Williams. One of the first colonists in Boston, Williams's unorthodox beliefs had gotten him kicked out of the Massachusetts Bay Colony in 1635. Williams headed to present day Rhode Island, where he founded a settlement that he named Providence.[45]

Williams was fascinated by indigenous culture and enjoyed close relationships with many native people. He advocated for fair dealings with the tribes and learned to speak a number of Algonquian dialects, including Narragansett. But Williams also owned a Pequot slave, a child called Will. And he could be brusque and temperamental.[46]

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[42] Pearl, 38.
[43] Pearl, 38-40.
[44] Pearl, 41-42.
[45] "Roger Williams–Minister, Merchant, Magistrate," National Park Service, last updated September 6, 2024.
[46] Pearl, 55-58, 123.

When the Narragansett party informed Williams about the men in the woods, he sent a messenger with food and an invitation to visit him. The messenger returned with the news that the men preferred to get some sleep.[47]

The Peach gang must have realized that it would look suspicious to turn Williams down indefinitely. Early the next morning, they set off for Providence. Williams welcomed them into his home, offering them food and water. Learning that they were bound for Connecticut, he asked them to deliver some letters for him. They agreed, and Williams arranged for some Narragansett guides to accompany them so they didn't get lost again.[48]

Around the time that the Peach gang arrived in Providence, a group of Narragansett hunters stumbled across Penowanyanquis. Sometime in the night, the wounded man had mustered the strength to pull himself onto a path. The hunters immediately sent word to Roger Williams that a Nipmuc trader had been attacked by a party of Englishmen. By the time the message arrived, the Peach gang had already left. Williams summoned two physicians, John Greene and Thomas James, and set off to find Penowanyanquis. Before leaving, Williams sent a messenger to surreptitiously warn the Narragansett guides that their traveling companions might actually be fugitives. Williams hoped the messenger could catch up with them in time.[49]

Penowanyanquis's strength rapidly faded as his rescuers carried him towards Providence. It was incredible that he had even lived this long – long enough to tell his story. But his grasp on life was slipping. Exactly when he died is unknown – none of the written records we have contain an account of his death, and Williams for one did not witness it.

Miles away, Arthur Peach knew that his time was running out. At some point, he had learned that Penowanyanquis had survived and identified his assailants. Desperate, Peach abandoned his pretense of going to Connecticut and told the guides that he needed to stop at Aquidneck Island, in Narragansett Bay. Aquidneck had recently been settled by a group of religious exiles from the Massachusetts Bay Colony, and Peach hoped that these people would shelter him. He'd pushed his group to hurry and they'd eventually made it to Narragansett Bay. All that was between the gang and freedom was a canoe ride.[50]

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[47] Roger Williams, letter to John Winthrop, August 1638.
[48] Roger Williams letter to John Winthrop.
[49] Roger Williams letter to John Winthrop.
[50] Pearl, 73-76.

As the boats pushed off from shore, Arthur Peach must have sighed in relief. When he reached Aquidneck, the settlers there welcomed him. He had made it.

Well, not quite. Arthur Peach didn't know it, but a trap was closing on him. Miraculously, Williams' messenger had managed to track down the party and secretly notify their Narragansett guides of the gang's true nature. The guides, knowing that they were outnumbered by the Englishmen, had maintained their composure and betrayed nothing of their knowledge. They had bided their time until they arrived at Aquidneck. Then, while the Peach gang rested, they told the settlers there about the crime. Aquidneck Islanders didn't like the colonial authorities. But they didn't like murderers either. Working with the Narragansetts, they took the Peach gang by surprise and arrested them.[51]

Unfortunately, the Island had no place to hold the captives. Daniell Crosse, a member of the Peach gang, took advantage of this. He managed to loose his bindings and slip away, stealing a canoe and heading for land. Once there, he traveled some 100 miles north to the settlement of Piscataqua, near present day Portsmouth, New Hampshire.[52] Piscataqua had a reputation for welcoming misfits - John Winthrop, governor of the Massachusetts Bay Colony, wrote contemptuously of Piscataquans that it was quote, "their usual manner (some of them) to countenance, etc., all such lewd persons as fled from us to them."[53]

As for the other three prisoners, there would be no reprieve. After a conversation between leaders from the Massachusetts Bay Colony, Providence, Aquidneck Island, and Plymouth, it was determined that Arthur Peach, Thomas Jackson, and Richard Stinnings would stand trial in Plymouth.[54] After barely a week on the run, the Peach gang was headed right back to where they'd started.

ACT III

What did the law look like in Plymouth Colony? Unlike the neighboring Massachusetts Bay Colony, Plymouth Colony had not been granted a royal charter by the king of England. Charters defined the laws in a colony and gave the colony's leader authority to enforce said laws. Without a charter, it was up to Plymouth's residents to define their own government. In late 1620, 41 of the settlers signed a document declaring

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[51] Pearl, 75-76.
[52] Pearl, 86-87.
[53] John Winthrop, diary, published as *Winthrop's Journal "History of New England" 1630-1649*, ed. James Kendall Hosmer (New York: Charles Scribner's Sons, 1908), vol. 1, 274.
[54] Pearl, 88

themselves, quote, "[a] civil body politic," with the power to create laws for, quote, "the general good of the colony; unto which promise all due submission and obedience."[55]

In 1636, two years before Penowanyanquis's murder, Plymouth produced its first written set of laws. Enforcement of the laws would be managed, in part, by the colony's General Court, a part-judicial and part-legislative body led by the colony's elected governor.[56]

The laws in this code were shaped by the English common law – but there were some key differences, too. Many Plymouth residents had experienced, or been witness to, grave injustices perpetrated by the English legal system. Religious dissenters were frequently punished for criticizing the Church of England and the king; punishments could include whippings, brandings, and having one's ears chopped off.[57]

The colonists did not eliminate corporal or capital punishments from their legal code, but they greatly reduced the number of crimes that could receive such penalties.[58] And they tried to ensure that punishments were not arbitrarily applied, as they so often had been in England by the infamous Star Chamber.[59] In 1623, Plymouth Colony governor William Bradford declared that all criminal trials must be heard by, quote, "a jury upon their oaths."[60]

So the Peach gang would receive a jury trial. The jury selection process in 1638 looked quite different than it does today. To begin with, very few people were eligible for jury service. Plymouth at this time had only 550 residents. From that pool, women, children, the elderly, and the sick were automatically excluded. So were indentured servants – who made up around a fifth of the population. Colony officials and religious leaders were also exempt.[61] That didn't leave many options – so instead of summoning a random jury pool like we do now, Plymouth leaders carefully hand-selected jurors. For this trial, twelve men served on the jury. Two additional men served as "grand jurors" – which meant, in this time, that they served as watchdogs over the jury and the trial, to make sure no laws were broken.[62]

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[55] Christopher Fennell, "Plymouth Colony Legal Structure," *The Plymouth Colony Archive Project*, University of Illinois Urbana-Champaign, last modified December 14, 2007.
[56] Fennell, "Plymouth Colony Legal Structure."
[57] Thomas Lechford, *Note-book kept by Thomas Lechford, esq., lawyer, in Boston, Massachusetts Bay, from June 27, 1638 to July 29, 1641,* ed. Edward Hale Everett (Cambridge, MA: J. Wilson and Son, 1885), xi-xii.
[58] John Bessler, "Foreword: The Death Penalty in Decline: From Colonial America to the Present," *Criminal Law Bulletin* vol. 50, no. 2 (2014), 245.
[59] John H. Langbein, *History of the Common Law: The Development of Anglo-American Legal Institutions* (New York: Aspen Publishers, 2009), 574-576.
[60] Pearl, 101.
[61] Pearl, 101.
[62] Pearl, 108.

On September 4th, 1638, the trial began at the Plymouth Meeting House.[63] A thick-walled building made of rough planks, the Meeting House loomed over the town from its spot atop a hill. The Meeting House served many purposes – originally built as a fort, the second floor sported six cannons, while the first floor hosted church services.[64] On this day, the Meeting House would be a courthouse.

It was dark and hot in the Meeting House. The only windows were thin defensive slits for firing guns out of. On the second floor, the colony's military commander, Myles Standish, had provided a disturbing decoration for the occasion: the severed head of an Indian named Wittawamet, who Standish had killed years earlier.[65] The skull grinned down at the convicts, a grim reminder of their possible fate.

Arthur Peach, Thomas Jackson, and Richard Stinnings were charged with "willful murder," one of the few crimes punishable by death under Plymouth laws.[66] The men, who had been jailed in the colony since their capture a month earlier, were malnourished and filthy. The fourth member of the gang, Daniel Crosse, would not be in attendance; Piscataqua had refused Plymouth's requests to extradite the fugitive. Crosse's ultimate fate is unknown.[67]

The meeting house was packed. English colonists and members of the Narragansett and Wampanoag tribes filled the room – those who could not squeeze in stayed outside, listening intently through the walls.[68]

Thomas Prence, the current governor of Plymouth Colony, presided over the trial. Prence was not only the judge, he was also, Tobey Pearl writes, quote, "both fact finder and prosecutor, supervising the proceedings and interviewing witnesses and defendants alike."[69]

400 years on from this trial, we can't accurately reconstruct a play-by-play. But we do know enough to sketch an outline.

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[63] *Records of the Colony of New Plymouth in New England: Printed By Order of the Legislature of the Commonwealth of Massachusetts* (New York: AMS Press, 1855-1861), 96.
[64] Pearl, 113.
[65] Pearl, 117.
[66] Fennell, "Plymouth Colony Legal Structure." Technically, adultery was also listed as a capital crime, but Christopher Fennell notes that "the inclusion of "Adultery" in this list was qualified with the words "to be punished," which made it essentially a non-capital offense, and it was handled as a non-capital offense throughout the period of the Colony."
[67] Pearl, 113, 177.
[68] Pearl, 114, 116, 117.
[69] Pearl, 119.

John Throckmorton, the Providence colonist who had encountered the Peach gang in the woods, was on call to establish the gang's presence near the crime scene. The defendants, unsurprisingly, denied ever seeing Throckmorton.[70]

Next up was Roger Williams. Williams had been intimately involved in the story almost from its beginning, and had interacted with both the Peach gang and Penowanyanquis. He could repeat what Penowanyanquis told him in his dying declaration, that, quote. "Four English had slain him."[71] He could describe the way the Peach gang tried to escape.

But Williams could not testify on the matter at the heart of the case: had the Peach gang truly killed Penowanyanquis? No one had actually seen Penowanyanquis die. We don't know why this is – maybe, realizing that the end was near, Penowanyanquis had asked to be alone. And after his death, his body had disappeared, perhaps because local indigenous people had cremated it in order to return his ashes to his family.[72]

So how could it be proved that this was really a murder? At the trial, both Roger Williams and Dr. Thomas James swore an oath that Penowanyanquis's, quote, "wound was mortal."[73] As a physician, Dr. James's testimony on this matter carried weight. But would it be enough? So much doubt still existed.

Two men arrived in the courtroom to try to settle the matter. It had not been an easy decision for these men to testify. There was considerable danger involved. These men were two of the Narragansett hunters who had discovered Penowanyanquis and fetched help. It was only with, quote, "much difficulty [that they] were procured to come to trial," John Winthrop wrote, "for they still feared that the English were conspiring to kill all the Indians."[74]

But despite the dangers, the Narragansetts were here. They were willing to risk their lives to see justice done – and they told the court as much.

Neither of these men had seen Penowanyanquis die. But in court, they both swore that, quote, "if he were not dead of that wound, then they would suffer death."[75]

With four men all taking oaths that Penowanyanquis must be dead, the matter of whether or not this was murder was likely settled. But that didn't mean that a guilty

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[70] Roger Williams, letter to John Winthrop, and Pearl, 124.
[71] Roger Williams, letter to John Winthrop.
[72] Pearl, 67.
[73] Winthrop, diary, 274.
[74] Winthrop, diary, 274.
[75] Winthrop, diary, 274.

verdict was guaranteed. There were a number of complicated factors at play for the jurors who now began their deliberations on the second floor of the Meeting House.

As we've discussed before, no courtroom is a vacuum. The outside world inevitably leaks in. In this case, the jurors couldn't have helped but to be aware of the heightened tensions between colonists and indigenous tribes. Roger Williams had promised the Narragansetts justice – it was only this promise that had kept the Narragansett from, quote, "ris[ing] in armes." A guilty verdict might satisfy the tribe and stave off a war.

A guilty verdict could also serve as a deterrent for other indentured servants who were considering running off.[76]

But on the other hand, news of three indentured servants being executed might not exactly be great marketing material for a colony desperate to entice more indentured servants. And that wasn't the only reason to consider a not guilty verdict. Arthur Peach had valuable fighting skills. Could the colony afford to lose a soldier, especially as the Pequot War had not yet ended?[77]

There were also more philosophical reasons to let the Peach gang off. Many colonial leaders believed in a lenient application of the law: "in the infancy of plantations," John Winthrop wrote, "justice should be administered with more lenity than in a settled state; because people are more apt then to transgress…partly out of opposition."[78] Many colonists in New England had been escaping the tyranny of the English crown and courts; they might have been more inclined to give defendants the benefit of the doubt. This inclination is reflected in conviction rates: "During the colonial era," Tobey Pearl writes, "nearly half of defendants were acquitted; of those who faced a preliminary grand jury, many were not indicted. This meant that approximately two-thirds of accused criminals avoided conviction."[79]

What's more, Arthur Peach was English. The man he had killed was not. William Bradford noted that, quote, "some of the rude and ignorante sorte murmured that an English should [not] be put to death for the Indeans."[80] Though Roger Williams exhorted his fellow colonists to, quote, "Boast not proud English, of thy birth & blood, thy brother Indian is by birth as good," not everyone in Plymouth had the same beliefs.[81]

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[76] Pearl, 120.
[77] Pearl, 120, 124.
[78] Pearl, 123.
[79] Pearl, 157.
[80] Bradford, *History of Plymouth Plantation*, vol. 2, 267-268.
[81] Roger Williams, *A Key Into the Language of America* (London: Gregory Dexter, 1643), 61.

Many colonists simply valued Arthur Peach's life more than they valued Penowanyanquis's.[82]

So what would the jury do? At the trial's start, Thomas Prence had asked them to swear an oath to, quote, "give a true verdict according to law and evidence."[83] But the evidence in this case was not necessarily rock solid. Everyone knew Penowanyanquis was dead, but the absence of a body left the jurors just enough wiggle room to justify either verdict.

By the day's end, the jury had reached a conclusion. Returning to the Meeting House's first floor, they announced their verdict to the crowd:

On the charge of willful murder for the death of Penowanyanquis, the defendants Arthur Peach, Thomas Jackson, and Richard Stinnings, were found GUILTY.[84]

ACT IV

With their fates sealed, the convicted men saw no point in further denying their actions: they all confessed to attacking Penowanyanquis to, quote, "get his wampum."[85] A confession did nothing to change their sentence; there was only one punishment in Plymouth for willful murder: death. They did not have to wait long for the end. The three convicts were taken by cart to the gallows.[86] All the fight had gone out of them - or at least out of two of them, who, according to John Winthrop, quote, "died very penitently."[87] We don't know if it was Stinnings or Jackson who refused to repent, but Arthur Peach, at least, expressed remorse. John Winthrop called him, quote, "especially [penitent]," and subsequently gave Peach, despite his crimes, a fine obituary, describing him as, quote, "a young man of good parentage and fair conditioned, and who had done very good service against the Pequods."[88]

A reputation for good service – and for murder – wouldn't be Arthur Peach's only legacy in Plymouth Colony. Sitting in the shadows at his trial – and perhaps in attendance at his execution – was Dorothy Temple, Peach's 23 year old lover. She was pregnant with Arthur Peach's child.[89] Her employer, Stephen Hopkins, the town libertine who made money from gambling and liquor sales, apparently drew a line at pregnancy out of wedlock. When Temple gave birth to a son in early February, 1639, Hopkins tried to kick

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[82] Pearl, 114.
[83] Pearl, 122.
[84] *Records of the Colony*, 97.
[85] Winthrop, diary, 274.
[86] *Records of the Colony*, 97.
[87] Winthrop, diary, 274.
[88] Winthrop, diary, 274.
[89] *Records of the Colony*, 113.

her out of his house. But the Plymouth General Court ruled that he was required to support Temple.[90] Shortly after, John Holmes, a member of the jury at Arthur Peach's trial, bought Temple's indenture contract from Hopkins. Temple moved in with the Holmes family.[91] In June, only four months after giving birth, she was sentenced to be whipped twice for, quote, "uncleanness and bringing forth a male bastard."[92] She fainted during the first whipping, so the court, in its mercy, let her off without the second one.[93] What became of Dorothy Temple and her son are unknown.

What of Penowanyanquis's family? We don't know exactly who they were, but we can imagine how deeply his loss must have affected them. Besides the emotional devastation, Penowanyanquis's role as a trader made him valuable to his tribe. Financial restitution for crimes was common in Plymouth, and at the close of the trial, Governor Prence had ordered that the Peach gang provide payment to the Nipmuc. But the men had declared that they had, quote, "[no] lands or tenement, goods or cattles."[94] Penowanyanquis's family would receive no compensation for their loss.

At least the killers had been caught and convicted; we can hope that this gave some sort of peace to the Nipmuc. At the very least, the guilty verdict *did* help reduce tensions between the colonists and the tribes. No new conflicts arose, and old ones were settled: on September 21st, 1638, a little more than two weeks after the trial, representatives of the English, the Narragansett, and the Mohegan signed the Treaty of Hartford, ending the Pequot War. The Pequots themselves had been nearly entirely wiped out; the treaty stripped the approximately 200 survivors of their lands and identities.[95]

That this trial happened at all is remarkable. A colony with no officially sanctioned government managed to conduct a jury trial in a fort. As Tobey Pearl writes, quote, "When juries made law in the colonies, they wrested control from centralized authorities and empowered local communities–a foundational principle for the fledgling nation. Average individuals, otherwise disenfranchised, became surrogate lawmakers. They became world changers."[96]

Unfortunately, these world changers would not always use their powers for good. By the 1650s, writes Jennifer Aultman in her study *Native Americans in Criminal Cases of Plymouth Colony*, quote, "impatience with Native Americans' resistance to adopting

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[90] *Records of the Colony*, 111.
[91] *Records of the Colony*, 113.
[92] *Records of the Colony*, 127.
[93] *Records of the Colony*, 127, and Anna Neuzil, "Women in Plymouth Colony, 1633-1668," *The Plymouth Colony Archive Project*, University of Illinois Urbana-Champaign, 1998, last modified December 14, 2007.
[94] *Records of the Colony*, 97.
[95] "Treaty of Hartford," *Venture Smith's Colonial Connecticut*.
[96] Pearl, 169.

English custom and religion...[caused] the court [to show] more leniency toward its own people and less toward Native Americans."[97] This trend only intensified. In the 1660s, as Plymouth Colony's demands for land skyrocketed, leading to increased resistance from its Native neighbors, the focus of the court, Aultman says, became, quote, "not restitution, but retribution."[98] For crimes that white settlers were usually fined for, Indians were whipped. By the 1670s, the Plymouth Court was selling Indians convicted of crimes into slavery in the Caribbean.[99] The same legal system that had once convicted the killers of a Native man was now being used to tear indigenous people from their land and families.

In both its victories and failings, the Plymouth Colony legal system mirrors our own legal system. The outcomes are often inequitable and the process is often unfair. But in some cases, we can transcend our biases and, as Roger Williams once promised, see justice done.

That's the story of Plymouth Colony v. the Peach Gang. Stay with me after the break to learn more about the remarkable history of the Nipmucs.

EPILOGUE

Today, many people in the town of Grafton, Massachusetts commute to work in Worcester or Boston. Before Grafton was a commuter suburb, it was a mill town, and before it was a mill town, it was a hub for leather manufacturing.[100] Before all of this, though, Grafton was Hassanamesit – the "place of small stones" – home to the Hassanamisco band of Nipmucs. The Nipmucs who lived on this land planted corn and beans and squash, caught fish from the rivers, and hunted deer and rabbits.[101]

In 1654, John Eliot, an English missionary, established a "praying town" at Hassanamesit, occupying 8,000 acres.[102] Eliot had developed the "praying town" model as a method of converting Indians to Christianity. Indigenous people living in these villages had to conform to English customs and Christian dictates. In exchange, those who moved to these towns hoped to receive protection from rival tribes or establish better relationships with the English. But, writes Cheryll Toney Holley, the current sonskq, or female leader, of the Hassanamisco, quote, "while Hassanamesit was a safe

[97] Jennifer L. Aultman, "From Thanksgiving to War: Native Americans in Criminal Cases of Plymouth Colony, 1630-1675," The Plymouth Colony Archive Project, University of Illinois Urbana-Champaign, last revised February 2001.
[98] Aultman, "From Thanksgiving to War."
[99] Aultman, "From Thanksgiving to War."
[100] William Nathaniel Banks, "History in Towns: Grafton, Massachusetts," *The Magazine ANTIQUES*, Fall 2010.
[101] Cheryll Toney Holley, "Hassanamesit," May 6, 2023.
[102] Cheryll Toney Holley, "A Brief Look at Nipmuc History."

harbor for Nipmucs, it also meant publicly relinquishing Nipmuc lifeways to stay."[103] And a further blow to Nipmuc society was looming.

During King Philip's War in the late 1670s, the Nipmucs at Hassanamesit who had not moved into the praying town were driven off their land. After the war, the praying town itself was dissolved.[104]

Over the next six decades, some Nipmuc families returned to the area. But in 1728, the colonial government decided to transfer most of the 8,000 acres used by the praying town to English settlers. 1,200 of the acres were set aside for only seven Nipmuc families - many Nipmuc families were not allocated anything.[105]

The Hassanamisco Nipmuc were supposed to receive payment for this land. As the National Park Service records, quote "A system was set up whereby non-Native trustees or guardians were responsible for investing the proceeds from the land transfer and protecting the remaining Native lands from encroachment by English settlers. However, the system failed to protect either the principal from the sale, or the lands of the Nipmuc families."[106] Cheryll Toney Holley writes, quote, "The 2500 pounds paid by 40 English proprietors was placed in trust by the guardians or trustees of the Hassanamisco. The [Hassanamisco] were to be paid the interest on the fund annually, but according to multiple petitions to the legislature, this only sometimes happened. Trustees also took it upon themselves to decrease the principal of the fund from time to time to pay their own debts. These stolen funds are still owed to the tribe today."[107]

Over the next century and half, the remaining Hassanamisco Nipmuc sold their land, or lost it through rigged deals with settlers. By 1857, all the land was gone.[108] All the land, that is, except for three acres belonging to a Nipmuc woman named Sarah Arnold Cisco. Today, nearly four hundred years after Penowanyanquis's death, the land still belongs to the Nipmuc: it is called the Hassanamisco Reservation, and it is the only plot of land in all of Massachusetts that has never left the hands of Native people.[109]

Thank you for listening to History on Trial. If you've enjoyed this episode, please consider leaving a rating or review – it can help new listeners find the show! My main sources for today's episode were Tobey Pearl's book *Terror to the Wicked: America's*

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[103] Toney Holley, "Hassanamesit," and "A Brief Look at Nipmuc History."
[104] Toney Holley, "Hassanemesit."
[105] Toney Holley, "Hassanemesit."
[106] "National Register of Historic Places: Hassanamisco Reservation, Grafton (Worcester), MA," July 14, 2011, Section 8, Page 2.
[107] Toney Holley, "Hassanemesit."
[108] "National Register of Historic Places: Hassanamisco Reservation," Section 8, Page 3.
[109] Jennifer Lord Paluzzi, "Cisco Homestead receives Grafton historic preservation funds," *Grafton Common*, October 22, 2019.

First Trial by Jury That Ended a War and Helped to Form a Nation, as well as The Plymouth Colonial Archive, and various primary sources including the writings of Roger Williams, William Bradford, and John Winthrop. Special thanks to Chief Peter Silva of the Hassanamisco Nipmuc Tribe for his assistance. For a full bibliography as well as a transcript of this episode with citations, please visit our website historyontrialpodcast.com