

---

# Legal Precedents for Sport: The Colonial Experience

by  
Nancy L. Struna  
University of Maryland

There are many facets to the canvas of sport in colonial America, not the least of which is the notion of legitimacy. Historians have documented the existence of sport as a behavioral form, but they have failed to uncover the parameters of the legitimacy of sport. One aspect of this dilemma has been our inability to understand the nature and scope of colonial laws, reflectors of legitimacy. The first step must be to examine the earliest laws in several colonies, to ascertain both the conceptual nature of the laws and the similarities or differences among the colonies. These early laws can be considered as precedents and serve as a framework for noting later substantiation or negation of the sport conditions which produced the original laws. In this research the legal parameters have been gleaned from the records of three predominantly English colonies - Massachusetts Bay, Virginia, and Maryland - from their founding until the end of the French and Indian War.

Determination of the legitimacy of sport in these colonies rested on three conditions: economic utility, observation of the Sabbath, and personal community rights. The first of these, economic utility, served as the basis for the numerous gaming laws. Before 1650 the Virginia Company and Assembly, as well as the Court of Assistants in Massachusetts restricted its occurrence everywhere. By 1748 Virginia's laws corresponded to those of Massachusetts. The Maryland Assembly also restricted gaming, but only as engaged in by "the lower sorts" and those without "visible estates." The most stringent laws appeared in

depression decades which, in themselves, heightened the colonies' fears of economic instability.

The second issue to affect the legitimacy of sport was that of the observation of the Sabbath. Before the middle of the seventeenth century, both Massachusetts and Virginia demanded religious conformity, while Maryland did not. In the second half of the seventeenth and throughout the eighteenth centuries, legislatures acted to prevent those who did attend from being disturbed, to insure a peaceful and restful day, and to discourage the presence of travelers or visitors with undesirable attitudes.

The third set of conditions that appeared before the middle of the seventeenth century was that of the right of individuals and the communities. The manor courts in Maryland and the assemblies in Virginia and Massachusetts protected the property of owners from theft or trespass by hunters. The assemblies in Massachusetts and Virginia, also, protected the community by limiting shooting or riding habits which endangered the colonists.

After mid century each of these assemblies continued to adjust the prerogatives of hunters and fishermen whose sport interfered with commerce, especially in Massachusetts, or created nuisances for the settlements, as did the Virginia deer hunters and the Maryland rangers. The Massachusetts General Court legislated more frequently to protect townspeople from bodily harm resulting from sport than did the southern colonies, at least during the seventeenth century.

Perhaps the primary key to understanding the conditions underlying the legitimacy of sport is to accept a "no negative effects" framework. Maryland and Virginia assemblies limited occasions for sport, often as a means of eliminating other more undesirable behaviors, among those whom they feared the most — the poor, the idle, poachers, servants, negroes, and seamen. These were the people whom the assemblies believed possessed the least, were least responsible, and whose sport participation produced numerous negative effects. The same framework can be applied to Massachusetts. There the greater number of laws indicate the General Court's belief that all causes and effects were interrelated, more so than did the southern colonies, and that control was far more implicit in the legislature's social philosophy.

Yet, the differences among the laws of the three colonies are those of degrees rather than of kind. None of the precedents established in the formative years was ignored afterwards. As sport forms, the people, and the conditions of society changed, laws based on those precedents were modified somewhat, but the precedents remained as the spirit behind the laws.



Participants dining in Vanier Hall of the University of Windsor