

death penalty grew from approximately fifty in 1680 to more than two hundred in 1820. The new laws, writes historian Douglas Hay, were often “related to specific, limited property interests,” enacted as favors, “for the mere asking,” and without debate.⁴⁸

For the British king and the government, punishment, including the spectacular display of death-making on the gallows, served a critical social function. The eighteenth-century British rulers “cherished” capital punishment, writes Hay. They cherished it partly because of its capacity to inspire terror.⁴⁹

Control the Population
 In terror resided religious meanings—as in the awestruck contemplation of God—and political power. “In its ritual, its judgments and its channeling of emotion the criminal law echoed many of the most powerful psychic components of religion,” writes Hay, who suggests that the religious meanings of the scaffold, because they had more “bite” in the eighteenth century, overshadowed those of the church.⁵⁰ In an age when God, via government, punished with pain and death, new property crimes became religious matters in Britain and perhaps in its shadow colony Virginia, which like other American colonies also accelerated executions for property crimes.⁵¹

CHAPTER 2

“A Heart Is Not Wholly Corrupted”

REVOLUTION, RELIGION, PUNISHMENT

BENJAMIN RUSH, REVOLUTIONARY, signer of the Declaration of Independence, early abolitionist, professor of chemistry, “father of American psychiatry,” and foe of yellow fever was a passionately religious man. He craved symmetry between his personal and his political beliefs. Rush consistently extended his thoughts and his religious life to politics, and vice versa, and he placed himself in the thick of the day’s political excitement. He exemplifies both the religious ferment and the punishment transformations that followed the Revolution.

As can be seen from his correspondence, Rush identified himself as a Presbyterian as late as 1784.¹ Then, in 1785, he experienced a religious conversion. In a letter dated October 15, he wrote of hearing Elhanan Winchester, a preacher who spoke of the doctrine of final restitution—the idea that all beings on Earth belong to the creator and will return to God.² This idea electrified Rush, who thought the belief appropriate to the new republic. “The spring which the human mind acquired by the Revolution has extended itself to religion,” he wrote. Rush claimed that the major denominations were transforming in response, shifting away from such Calvinist ideas as predestination (the belief that all people, before birth, have a predetermined final destination—either heaven or hell—which they cannot alter during their lifetimes).³

Rush’s was a Christian interpretation of Enlightenment thought char-

acteristic of some of his fellow reformers. The new United States experienced a version of the Enlightenment that was "not about the effort to 'rationalize' things spiritual," writes Nina Reid-Maroney, "rather it [was] about the effort to sanctify things rational."⁴ The Presbyterians did not transform quickly enough to suit Rush. When his wife was out of town, he wrote her a letter dated August 22, 1787, informing her that he had discharged his obligations to his former church and was no longer a member. Rush became a Universalist, a member of the denomination Winchester helped to found.⁵

In his letter to his wife, Rush writes at length about his encounter with a group of convicts, a subject that at first glance seems unrelated to his decision to leave Presbyterianism. He describes "an high scene before our doors" that occurred the previous day when he met a group of "wheelbarrow men," prisoners with shaved heads who did hard labor in the streets of Pennsylvania. "One of the wheelbarrow men (who were all at work in cleaning our street) asked me for a penny. I told him I had none but asked him if a draught of molasses beer would not be more acceptable to him. He answered in the affirmative." Rush ended up supplying the entire group with beer while a crowd "as usual gathered around them."⁶

Writing of the prisoners, Rush continued, "One of them struck me above the rest. . . . He took a large dog in his arms and played with him in the most affectionate manner. 'This dog,' said he 'came from England with me and has been my companion ever since.'" In the prisoner's love for his dog, Rush found both religious meaning and an idea he would come to advocate as public policy. "A heart is not wholly corrupted and offers at least one string by which it might be led back to virtue that is capable of so much steady affection even for a dog," he writes. "The conduct of the dog excited my admiration and conveyed a faint idea by his fidelity of that infinite love which follows the human species, however much reduced by distress, debased by crimes, or degraded by the punishments of a prison, of ignominy, or of pain."⁷

Rush's epiphany about those most "debased by crimes" did not occur in isolation. In that same year, the first prison-relief organization in Europe and North America, the Philadelphia Society for Alleviating the Miseries of Public Prisons, reinvented itself. (After a brief existence as the Philadelphia Society for Assisting Distressed Prisoners, in 1776, it was closed by the British.) Rush joined the founding meeting of the organiza-

Rush
Prison
Society

tion when it was reinstated.⁸ The year 1787 was significant for Philadelphia in yet another way: political leaders gathered in the city to create the new United States government. Concern about the well-being of prisoners was part of the postrevolutionary cultural climate.⁹

Rush thought that a shift in legal systems should bring about wholesale cultural change. "We have changed our forms of government, but it remains yet to effect a revolution in our principles, opinions, and manners," he wrote in 1786. It was an idea he repeated in his letters to influential men of politics. "I wish to see America acquire a national character and, instead of receiving, to impart manners and customs to the strangers of every description who reside among us," he wrote in a 1781 letter to John Adams.¹⁰ Among the things Rush wished to see change were the systems of education (he advocated free schools, what is known today as public education), the instruction young women should receive (among other things, "astronomy, natural philosophy, and chemistry"), the disciplining of children, and the punishment of criminals.¹¹

exactly

Rush's sense that the new republic's education of young women should encapsulate revolutionary cultural change is evident in "Thoughts upon Female Education, Accommodated to the Present State of Society, Manners, and Government, in the United States of America," an address he gave at the Young Ladies' Academy in Philadelphia in 1787 and later published as an essay. In the first paragraphs, Rush advocates a breach with his country's colonial past, writing, "The education of young ladies, in this country, should be conducted upon principles very different from what it is in Great Britain, and in some respects, different from what it was when we were part of a monarchical empire."¹²

"Thoughts upon Female Education" also concerns criminality and punishment, a juxtaposition characteristic of Rush, who understood punishment and education as entwined. After ridiculing traditions of dress that leave "our ladies panting in a heat of ninety degrees, under a hat and cushion, which were calculated for the temperature of a British summer," Rush goes on, tying his disapproval of British female costuming to colonial scaffold cruelties. "We behold our citizens condemned and punished by a criminal law, which was copied from a country, where maturity in corruption renders public executions a part of the amusements of the nation."¹³

The comparison between the encumbrances of women's clothing and fun on execution day is not so great a stretch as it might seem. Both are

habits that, as Rush sees them, the new country "copied," rather than considered. Both lead to physical discomfort—with execution the more vicious of the two—that the new nation has not yet come to understand as unkind. The inability to recognize either the nastiness of requiring heavy clothing on a ninety-degree day or the brutality of amusements at an execution Rush credits to "maturity in corruption," a weakening of sympathetic understanding, and an unthinking acceptance of inherited, or imposed, tradition. Just as parents must put aside empathy in order to dress their daughters in a manner that will cause them to suffer, so too must the public displace its humane concern to enjoy scaffold entertainments.

Having drawn this parallel between "hats and cushions" and celebrations at hangings, Rush issues a call for the new nation to "awake from this servility" and to "adopt manners in every thing, that shall be accommodated to our state of society, and to the forms of our government." Fashions for young women and the behavior of people who gather at the foot of the scaffold must change if the young country is to replace the monarchical system with a democratic republic. In making this argument, Rush discloses his conviction that cultural trends determine political ones.¹⁴

Three years later, in "Thoughts upon the Amusements and Punishments Which Are Proper for Schools," Rush again draws a parallel between education methods and treatment of criminals. "In barbarous ages every thing partook of the complexion of the times," he begins. "With the progress of reason and Christianity, punishments of all kinds have become less severe. Solitude and labour are now substituted in many countries, with success, in the room of the whipping-post and the gallows."

He goes on to note that the treatment of schoolchildren does not follow the progress he praises. "The rod is yet the principle means of governing them, and a schoolmaster remains the only despot now known in free countries." In a young nation newly liberated from tyranny, the message that a whipping schoolmaster was no better than a "despot" would have caused a clang of recognition. In decrying the classroom despot, Rush draws on personal experience, both as a revolutionary and as a former student, writing, "I recollect, when a boy, to have lost a schoolmate, who was said to have died in consequence of a severe whipping he received in school."¹⁵

Rush presents a series of arguments against corporal punishment of

schoolchildren. Whippings in front of classmates confound a developing conscience and can lead to crime, he argues. "Corporal punishments inflicted at school, have a tendency to destroy the sense of shame, and thereby to destroy all moral sensibility," he writes, tying the loss of these traits to future criminality: "The boy that has often been publicly whipped at school, is under great obligations to his maker, and his parents, if he afterwards escape the whipping-post or the gallows."¹⁶

In contrast to parents who today spank out of religious obligation, the eighteenth-century essayist Rush discusses the corporal punishment of children in religious terms, but to different ends. Instead of a vengeful God who demands physical hurt of those who disobey, Rush says painful punishment is devilish. "I have sometimes suspected that the Devil, who knows how great an enemy knowledge is to his kingdom, has had the address to make the world believe that *ferruling, pulling and boxing ears, codgelling, horfing, &c.* and, in boarding schools, a little starving, are all absolutely necessary for the government of young people, on purpose that he might make both schools and schoolmasters odious, and thereby keep our world in ignorance; for ignorance is the best means the Devil ever contrived to keep up the number of his subjects in our world." (What Rush calls "ferruling," a word derived from the fennel plant, is a beating with a flat wood instrument, such as a ruler. "Horsing" suggests a colonial punishment, also in use in the U.S. military at least through the Civil War, sometimes called a ride on the wood horse.)¹⁷

Alongside such religiously motivated arguments, Rush includes one his republican philosophy had inspired: "I conceive corporal punishments, inflicted in an arbitrary manner, to be contrary to the spirit of liberty, and that they should not be tolerated in a free government."¹⁸

A RELIGION TO FIT A REVOLUTION

Many revolutionaries, like Rush, sought a religion compatible with their political beliefs. For some patriots, liberal Christianity and republicanism were not just compatible, they were inseparable. "I have always considered Christianity as the *strong ground* of republicanism," Rush, in one of his many comparisons between the Gospel and republican thought, wrote to Thomas Jefferson.¹⁹ Others left Christianity altogether, preferring a belief system along the lines of Deism. Jefferson avoided saying whether he followed a religious faith or not. What these revolutionaries had in

Does
imposed
through

Reforming the
Punishment (not criminalization)

*

common was their tendency to seek a belief structure that emphasized freedom of thought, consistent with their understanding of a democratic republic and in contrast to the monarchy and inherited religions they resisted.²⁰

Republicanism was a powerful motivator for Rush. "Capital punishments are the natural offspring of monarchical governments," he writes in his 1792 essay entitled "Considerations on the Injustice and Impolicy of Punishing Murder by Death." "Kings believe that they possess their crowns by a *divine* right; no wonder, therefore, they assume the divine power of taking away human life. Kings consider their subjects as their property; no wonder, therefore, they shed their blood with as little emotion as men shed the blood of their sheep or cattle." The monarchical faith, Rush implies, was barbarous, leading some men to treat others as they would "property," or domestic animals. So too were the trappings of such a faith barbarous, including executions.²¹

At a political meeting "convened at the House of Benjamin Franklin, Esq." in Philadelphia 1787, Rush read from his essay "An Enquiry into the Effects of Public Punishments upon Criminals, and upon Society." Much of this essay concerns the influence of such punishments on the citizenry. "All *public* punishments tend to make bad men worse, and to increase crimes by their influence upon society," he writes. Rush goes on to claim that public punishments spike crimes because public physical cruelties harden people. In response to public punishments, "the principle of sympathy" will "cease to act altogether." He warns that widespread loss of feeling for other human beings harms all other forms of social cohesion, including familial love and respect for the poor and the weak. Likewise, convict labor on the streets "will render labour of every kind disreputable." Rush's understanding of public punishments suggests that their presence in a society will cause it to rot.²²

In his dislike of public punishment, Rush anticipated the cross-national middle-class revulsion that, in the nineteenth century, led to moving executions indoors in both the United States and Britain.²³ But Rush's critique is large. He argues from practicality: execution "lessens the horror of taking away human life, and thereby tends to multiply murders." He argues from religious conviction: "The punishment of murder by death is contrary to *divine revelation*." Rush also claims that public physical punishments confuse the conscience of otherwise inno-

cent onlookers: "Public punishments, so far from preventing crimes by the terror they excite in the minds of spectators, are directly calculated to produce them. . . . To see blows, or a halter, imposed in cold blood, upon a criminal, whose passive behaviour, operating with the ignorance of spectators, indicates innocence more than vice, cannot fail of removing the natural obstacles to violence and murder in the human mind."²⁴

Rush prescribes a penitentiary, actually two penitentiaries—one calculated to "have a beneficial effect not only upon health but morals," the other calculated to terrify. In the better-known version of this essay, published in his *Essays, Literary, Moral, Philosophical*, which he collected in 1798, Rush emphasizes the religious meanings of his proposed punishment: "Let a large house be erected in a convenient part of the state," he writes. The design he suggests would promote contemplation and monastic privacy: "Let it be divided into a number of apartments, reserving one large room for public worship. Let cells be provided for the solitary confinement of such persons as are of a refractory temper." The prisoners, he says, would work throughout most of the day, in silence: "Let a garden adjoin this house, in which the culprits may occasionally work, and walk." Rush's conversion experience finds voice in his call for the penitentiary. "This spot will have a beneficial effect not only upon health but morals, for it will lead them to a familiarity with those pure and naturall objects which are calculated to renew the connection of fallen man with his creator."²⁵

But in 1787, the year Rush converted, finding evidence of "infinite love" in a dog and a "string" that could lead a corrupted heart to goodness, the prison he advocated didn't communicate optimism. Any member of the public who ventured to find this "house" would get an eyeful and an earful. "Let the avenue to this house be rendered difficult and gloomy by mountains or morasses," Rush writes. "Let its doors be of iron; and let the grating, occasioned by opening and shutting them, be encreased by an echo from a neighboring mountain, that shall extend and continue a sound that shall deeply pierce the soul." Inside, all was to be gloomy. The "officers of the house," Rush admonishes, should "be strictly forbidden ever to discover any signs of mirth, or even levity, in the presence of the criminals." Its name should also "increase the horror of this abode of discipline and misery."

The light and dark prison images in Rush's versions of *An Enquiry*

Divine right of kings

but penitentiary is better? Foolish

Proof?

Penitentiary - solitary confinement

Booo

into *Public Punishments* capture a conflict inherent in American punishment—one contested throughout the nineteenth century and into the twentieth and twenty-first. Punishment was supposed to "terrify" yet it was also supposed to reform.

Fucked up.

HOW CALVINISM CONTINUED IN A TIME OF REFORM

The "benevolent" version of the penitentiary advocated by Rush, with its emphasis on forgiveness and the salvation of all souls, was a marked contrast to the prevailing punishments of his day, many of which communicated Calvinist meanings. Some historians have suggested that in the decades following the Revolution, the social power of the traditional clergy fell precipitously. The seeking after a more "republican" religion on the part of Rush and others inspired by the Revolution gives that impression. But, if the ministry lost its authority on Sundays, on execution days Calvinism stood on the scaffold.²⁶

On June 10, 1797, the Reverend Nathan Strong of the Presbyterian Church in Hartford, Connecticut, preached prior to the execution of Richard Doane, who was convicted of killing his friend during a drunken fight. Preachers often published expanded editions of their gallows sermons, containing, as Strong's does, a biography explaining the moral dissolution of the executed man and extra warnings for readers. This well-loved genre of the time, explains Daniel A. Cohen in *Pillars of Salt, Monuments of Grace: Literature and the Origins of American Popular Culture, 1674-1860*, started with Cotton Mather and amounts to the beginning of crime literature and also marks the origin of U.S. popular culture.²⁷

In the postrevolutionary Republic, the Presbyterian and Congregational churches were holdouts for Calvinist thought, and Nathan Strong's gallows sermon for Richard Doane is a classic bit of Calvinist preaching. It unites civil with divine law and declares both punitive, seeing the strong arm of God in the state noose. "The infinite goodness of God is an acknowledged truth; but this is no certain evidence you are going to happiness, for his goodness may require him to punish you in another world as he doth in this," Strong admonished Doane.²⁸ The contrast with Rush's curative God who saves all could not be greater.

But Calvinism isn't the only voice in this sermon. Strong launches into a tirade against drinking houses that would sound appropriate to a Progressive-era temperance supporter more than one hundred years

later. "This prevailing vice, is greatly promoted by tipling houses and dram shops, where the incautious gradually acquire a habit which proves their ruin." Other parts of the sermon locate the source of the crime inside Doane, but this passage comes close to blaming crimes that follow from drunkenness on bars that sell liquor—a social argument that anticipates twentieth-century explanations of criminality. Strong's solution to the problem of alcohol is not the punitive gaze of God but government intervention in the selling of draughts.²⁹

Nor does Strong appear to have been in full control of the religious meanings offered before the scaffold. Doane selected a verse from the Old Testament prophet Hosea. The scripture reading preceded Strong's sermon: "For I desire mercy and not sacrifice, and the knowledge of God more than burnt offering." The convict's craving for "mercy" rather than what is presumably his own "sacrifice" and "burnt offering" draws on a more merciful concept of God than Strong's absolute ruler whose "goodness may require him to punish you in another world as he doth in this."³⁰

Doane's expression of his desire for "mercy and not sacrifice" seems to have made Strong nervous. In the printed version of his sermon, Strong included a footnote to Doane's selected scripture: "The preacher is sensible that many will suppose the text improper for the occasion. It was chosen by the prisoner, and he could not be so well pleased with another." Strong explains that Doane, "on reading this passage," experienced "what he supposed Divine light, an astonishing view of God's character." Strong's description of Doane's ecstatic recognition resembles the infinite love Rush identified in the dog companion to the wheelbarrow man; both reactions imply a discovery of benevolence.³¹

If, as Foucault suggested, governments tend to use spectacular and painful punishments to exhibit their power before a public, then the rhetorical struggling in Strong's gallows sermon may imply a broader tussle over meanings. Executions may have allowed the new government to demonstrate its power to quell internal disturbances and implicitly to control the public at large. But the new republic used the religious forms associated with colonial power in order to do so. Those religious forms increasingly seemed inadequate and inappropriate, at least to thinkers like Rush and criminals like Doane. The republican promises, the rising popularity of an all-forgiving Christian God, and the more Calvinistic threats vibrated in tension.³²

liberal
vs
Calvinist
Christian

hub

copy
writing

PUNISHMENT AND SOCIAL CHANGE

In retrospect, we can understand Strong's sermon as well as Rush's predictions of widespread changes in manners as anticipating cultural shifts that affected punishment, in addition to other social practices. It is my argument in this book that changes in American punishment occur alongside, and in relation to, other significant cultural changes. Rush's belief that education of young women, punishment of prisoners, treatment of school children, and religious practices would all change in response to the Revolution proved prophetic.

Before the American Revolution, religious beliefs influenced punishment methods in the colonies. As the eighteenth century closed and the nineteenth century opened, religion again proved a prime mover. But if in twelfth-century Britain a punitive Christian God demanded that governments kill sodomites, in eighteenth-century America it was the benevolent God of Rush and of Doane's plea that determined the painful punishments of the past to be the work not of God but of mistaken mankind.

The attention of people of faith to punishment; their claim to authority on the subject; their struggles over the meanings of good, evil, forgiveness, and pain; and their influence on the public debate set a pattern that would repeat throughout the nineteenth and twentieth centuries and seems to be continuing, in the works of Sister Helen Prejean and Chuck Colson, into the twenty-first. In this secular society, punishment has remained a peculiarly religious subject. It is also a public subject, with ordinary citizens, particularly those motivated by religious convictions, weighing in again and again.

Benjamin Rush's writings can still sound urgent and independent to a modern reader. But in regard to punishment, at least, he was more a popularizer of existing thought than an innovator. The religious roots of the execution laws meant that in times of competing religious values, communities would argue about how best to punish, with punishment philosophies sometimes taking on the energy of religious fervor. As the United States began to define itself, that's what happened. The Revolution was fertile ground for new Protestant movements, many of which would have been condemned as "antinomian heresies" in earlier decades. In New England, the early Universalists and Unitarians began defining themselves as distinct from the Calvinists both because they disagreed with the doctrine of the Trinity and because they did not believe that all

Process of
punishment

human beings bore the sin of Adam. If God was good, their thinking went, how could God's creation be evil?³³

In the eighteenth and nineteenth centuries, the battle against corporal and capital punishments divided along religious lines—between the inheritors of Calvinism and religious minorities, such as the Quakers (who had been among the punished in many colonial American communities because they were seen as heretical). The argument, ostensibly about corporal punishment, was also about the nature of the soul. Those who believed man was born into sin tended to believe that physical hurt was a necessary component to punishment. Those who believed that people were good or neutral from birth looked on corporal punishment with disfavor. This division over meanings also affected child-rearing concepts and beliefs about corporal punishment in the schools, and it continues today.³⁴

overly simplistic

THE QUAKERS AND THE NEW PUNISHMENT TECHNOLOGY

The history of punishment reform in America is rife with examples of those who suffered the cudgel of the state and found in that experience inspiration to issue a call for humane treatment. Among the Quakers, a minority group that often faced discrimination, was William Penn, who spent a term at Newgate, the legendary London prison, as punishment for his refusal to take an oath, an act forbidden by his Quaker faith. In 1682, Penn sailed up the Delaware River, under the sanction of Charles II, to found Pennsylvania and to set out a new legal code. Penn did something extraordinary for his time. With the exception of floggings, Penn ended most forms of public torture, retaining capital punishment only in cases of murder. It was the beginning of reform in America, with Penn making the nearly unprecedented argument that crime prevention, restitution to the victim, and reform of the prisoner should be the sole purposes of punishment.³⁵

PA
punishment
reform

From 1676 until Penn's arrival, Pennsylvania had been governed under its first set of laws, known as the Hempstead laws. Like the laws of New Haven, which the colony of Pennsylvania drew on as a model, the Hempstead laws derived from English common law. Capital crimes included the act of denying "the true God and his attributes," kidnapping, sodomy, buggery, murder, false witness in a trial involving a capital crime, invading a town or a fort, and smiting one's parents. This last crime

indicates that the Pennsylvania code allowed for the execution of children. As the statute made clear, a conviction of smiting depended solely on parental testimony. "At the complaint of the said Father and Mother, and not otherwise, they being sufficient witness thereof, that Child or those Children so offending shall be put to death."³⁶

Like other European-influenced statutes, the Hempstead code of Pennsylvania included a healthy helping of corporal pain. For instance, thieves received a mark with a hot iron on the brow. If caught a second time for the same crime, the recalcitrant thief got a second brand plus a whipping. The third time captured, the thief was to be put to death. Forgers received three days in the pillory, in addition to financial and other penalties.³⁷

When Penn changed the laws of Pennsylvania, he was not acting alone but with the support of his fellow Quakers, members of the Chester Assembly. As the Hempstead laws had the backing of God and king, so did Penn draw on the authority of religious men. Before the Chester Assembly of Quakers left for their lives in the New World, they approved the "Laws Agreed Upon in England," which Penn had composed.³⁸

One of the benefits of corporal punishment rarely noted by its critics is its low cost. The versions in place in the American colonies were also simplistic, in comparison to the technology Penn was about to propose: prison. Penn required counties in Pennsylvania to "build a sufficient house, at least twenty feet square, for restraint, correction, labor, and punishment of all such persons as shall be thereunto committed by law." According to Penn's code of laws, "all prisons shall be workhouses for felons, vagrants, and loose and idle persons. . . . All prisons shall be free, as to fees, food, and lodging."³⁹

Other of Penn's ideas approved by the Chester Assembly included the choice between a five-shilling fine or five days in prison on a diet of water and bread as a punishment for blasphemy. Those guilty of "defiling the marriage bed" merited a whipping in public and a year in prison. (Those caught falling into the wrong arms more than once—whether in a case of adultery, sodomy, or incest—got life in prison.) Many other crimes received combination punishments of fines plus prison terms. Instead of death for smiting a parent, convicted children "were to be put in prison at hard labor for as long as the parent desired."⁴⁰

The hard labor, the stripped diet, and the public whippings in William Penn's Pennsylvania may today seem harsh or even cruel. But, in Penn's time, these were astonishing decreases in punitiveness, and they attracted notice from overseas. The British government relieved Penn of his duties as proprietor in 1692, not long after the ascension of King William. Some historians suggest that Penn lost his job because of royal dissatisfaction with the Pennsylvania criminal code. He returned to proprietorship in 1694 to develop a second version of the code, one that allowed for more corporal punishment but that was still much milder than those in other colonies.⁴¹ But the British government remained uncomfortable with Penn's reforms. After 1718, England required all government representatives in the colonies to swear an oath, a rule that effectively removed all Quakers from public office as their faith forbids the swearing of oaths. Penn died in that same year.⁴²

After Penn's death, Britain began enforcing a more execution-heavy punishment code on Pennsylvania: "twelve crimes punishable by death, five by branding, one with the loss of ears, eight by whipping, two by servitude, thirteen by forfeiture, twelve by imprisonment, and five by fines. These penalties remained essentially the same throughout the remainder of the colonial period."⁴³

But Penn had left his mark. Prison optimism took hold in the new republic. This is not to say that the prison is a uniquely American institution. Historian Pieter Spierenburg has shown that correctional houses held criminals in sixteenth-century Britain and northern Europe. Prior to the Revolutionary War, governments maintained jails primarily for containing suspects prior to trial. Some of these jails were notoriously easy to escape from, as the exploits of Jack Sheppard, the famous thief and British escape artist, make clear.⁴⁴

By the late eighteenth century, a broad social shift favored prisons in Europe and America and "transformed the meaning of incarceration," writes Edward L. Ayers in *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South*. "Social tensions created a receptive audience for the growing number of religious and secular thinkers in Europe, England, and America who attacked the inefficient and inhumane dungeons and corporal punishments of the past." After the American Revolution, England could no longer transport its criminals to that

Prison
history

large expanse of the New World, and so searched out other technologies. Faced with an apparent crime wave, Americans sought practical solutions that suited their revolutionary goals.⁴⁵

The late eighteenth-century prisons are modern partly because for the first time a philosophy shored up the physical structures. They are American not because Americans invented the buildings but because America *wanted* prisons more avidly than any other nation. It is arguable that Americans wanted prisons because they believed in a country based on freedom, the prison antithesis. Americans built their penitentiaries eagerly and prolifically, fiddling again and again with prison philosophy and punishment styles. For two centuries, the country acted as though it thought punishment perfectible.⁴⁶

Shortly after the new country won independence, the state of Pennsylvania transformed an old jail into the first modern prison, the Walnut Street prison in Philadelphia. In 1776, Pennsylvania established in its constitution that the legislature should "proceed as soon as might be, to the reform of the penal laws, and invest in punishments less sanguinary, and better proportioned to the various degrees of criminality." The Walnut Street prison was renovated in 1790 to create small cells, segregating the most dangerous inmates into solitary confinement where, as punishment, they were not permitted to work. The Walnut Street prison also separated the sexes and banned liquor sales inside, thus setting the precedent for incarceration practices across the new country.⁴⁷

Also in 1776, a group of Quakers invented the "Philadelphia Society for Assisting Distressed Prisoners," the first such organization in either Europe or the New World. The organization's name signals a profound leap in the public's perception of prisoners. Instead of understanding criminality as an identity marked on the body through physical hurt, many Americans began to see the convict as a person to be looked upon with pity, someone in need of aid. And with the prison, that profound technological and philosophical development in the history of humankind, came new ideas about punishment and criminality, many of them similar to the ideas Rush expounds in his letters and essays.

The modern prison took on energy in the American colonies, where drunkards and loud women had long suffered bodily punishments imposed by far-off governments. The prison was one of the ways that the new republic began to establish its identity as distinct from that of Britain.

Prisons
of a search
for freedom

many

The spirit of rebellion that led to the Revolutionary War had gained nearly as much energy from public humiliations and physical injuries as it had from unfair taxes. A distant king, who allowed neither the taxed nor the punished a say in their welfare, imposed all of these obligations. The sense that the British sovereign was both unfair *and* cruel added to the emergent nation's fervor for rebellion. Banning most hurtful bodily punishments and restricting the death penalty came to be seen as patriotic acts in the new republic.⁴⁸

The dread of hanging for treason, in addition to the reputed barbarity of the British troops and of the loyalists to the crown who remained in the American colonies, led American revolutionaries, including Rush, to think of crime and punishment when they strove to distinguish themselves from the British.⁴⁹

for white people, where's the rest analysis

THE ENLIGHTENMENT AND RATIONAL PUNISHMENT

Although the founders of the United States were certain that they were embarking on a new experiment in contrast to the old cruelties of England, the U.S. debate did not happen in isolation. The founders were participants in the Enlightenment, an eighteenth-century international philosophical movement that stressed reason, rejected traditional authority and nationalism, and saw human society as progressive. Voltaire, John Locke, and Cesare Bonesana, marquis of Beccaria, had all suggested prior to the American Revolution that punishment could serve a less religious and more rational purpose. Prussia and Russia had both curtailed capital punishment.⁵⁰

The letters, autobiographies, and other papers of the founders of the United States suggest that many of them read the writings of Beccaria, author of a 1764 volume entitled *On Crimes and Punishments*.⁵¹ For Beccaria, retributive punishment, exacting a physical toll of the convict's body in payment to the state, was not in the best service of governments, which, he argued, should seek to decrease crimes through tactics such as education and rewarding "virtue" rather than revenge. Punishments should be less severe but more consistent; torture and capital punishment should be done away with altogether. "Is it possible that torments and useless cruelty, the instrument of furious fanaticism or the impotency of tyrants, can be authorised by a political body, which, so far from being influenced by passion, should be the cool moderator of the passions of individuals?" he

asks, presupposing a beneficial and rational government. Suggesting the uselessness of revenge punishment, he adds a second question: "Can the groans of a tortured wretch recall the time past, or reverse the crime he has committed?" *(Can a Prisoner?)*

Many of these ideas, whether from Beccaria or simply a response to the revolutionary spirit of the time, entered the debate of the founders as they attempted to determine what the new United States would become. In his autobiography, Thomas Jefferson indicates that at the time Virginia and the other twelve colonies were debating their futures, "Beccaria and other writers on crimes and punishments had satisfied the reasonable world of the unrightfulness and inefficacy of the punishment of crimes by death; and hard labor on roads, canals and other public works, had been suggested as a proper substitute."⁵²

But, as Rush's eager advocacy suggests, there was also something homegrown—and religious—about much New World thought on punishment. The thinkers who were deciding to punish in a new way were aware of the novelty of the American experiment.⁵³

The subject of punishment made some prominent appearances in revolutionary America. It turns up in the Declaration of Independence. The Declaration expresses concern about instances of false justice, in which the British government protected its own soldiers "by a mock-trial from punishment for any murders which they should commit on the inhabitants of these states." In the same sentence, the Declaration accuses Britain of punishing the American colonists under false pretenses, "depriving us in many cases of the benefits of trial by jury [and] transporting us beyond seas to be tried for pretended offences."

Again and again in his autobiography, Jefferson links punishment to other topics he considers critical to the success of the new republic. For a government of the people, he implies, careful controls so as to guarantee fair trials and punishments are essential. In discussing the Constitutional Convention of 1787, for instance, Jefferson expresses discomfort. "The absence of express declarations ensuring freedom of religion, freedom of the press, freedom of the person under the uninterrupted protection of the Habeas corpus, & trial by jury in civil as well as in criminal cases excited my jealousy. . . . I expressed freely in letters to my friends, and most particularly to Mr. Madison & General Washington, my approbations and objections."⁵⁴ The list of Jefferson's republican necessities is

striking. They include what have become our understood freedoms: freedom of religion, freedom of speech. Next to these, he emphasizes the rights of those brought to trial and punished.⁵⁵

In 1796, the Virginia legislature turned to the subject of punishment reform. (It had previously broached the issue in 1776.) "They adopted solitary, instead of public labor, established a gradation in the duration of the confinement," writes Jefferson. He had drawn one of the early designs for a modern prison, a building that would help to bring about the ameliorations in punishment that he desired, basing his drawings on a French prison built for extensive solitary confinement of inmates. Jefferson's architectural contribution was not without political implications; he wished to influence the debate. He submitted the drawing "in the hope that it would suggest the idea of labor in solitary confinement instead of that on the public works, which we had adopted in our Revised Code."⁵⁶

Jefferson's architectural blueprint proved influential. Not only did the legislature adopt extensive labor in solitary confinement as one of its guiding standards, it also drew on Jefferson's idea for the prison. "Its principle accordingly, but not its exact form, was adopted by Latrobe in carrying the plan into execution, by the erection of what is now called the Penitentiary, built under his direction," Jefferson writes.

Jefferson's observation that prisons were being called by a new name is, strictly speaking, inaccurate. A version of the word "penitentiary" was identified with prisonlike church confines in medieval England. But Jefferson's writing captures the moment that a religious term made its way into the lexicon of the new democratic republic.⁵⁷

Both Rush and Jefferson talked about punishment at length and often with passion. For these visionaries and politicians, punishment was not a subject one could speak of in isolation. Rather, in punishment was contained the new nation. What American punishment was, so too would America become. In retrospect, that perspective has proven prescient. Where punishment has headed, the rest of the nation has followed.

ENLIGHTENMENT EPILOGUE:

RETRIBUTION AND REPETITION

Benjamin Rush was characteristic of Enlightenment writers in his rhetoric of eager passion for change. His essays and letters reveal a man persuaded of his own rightness and enthusiastic about the new United

Penal architecture

States he advocates as a humane departure from the old ways. Rush was loved in his time, a factor in his influence on the direction of the new nation. ("I know of no character," wrote John Adams, "who has done more real good in America.") So it is worth noting that two of Rush's popular ideas had a sometimes uncomfortable effect on their supposed beneficiaries.⁵⁸

Explicitly
ambiguously
As others have noted, Rush and his contemporaries sometimes substituted extreme control for the public pain they decried.⁵⁹ For the mentally ill, Rush, who believed madness to be an overexcitement of the blood, designed a "tranquilizing chair." "I have lately designed a chair and introduced it into our hospital to assist in curing madness," he wrote in a letter to James Rush in 1810. "It binds and confines every part of the body. By keeping the trunk erect, it lessens the impetus of blood toward the brain. By preventing the muscles from acting, it reduces the force and frequency of the pulse, and the position of the head and feet favors the easy application of cold water or ice to the former and warm water to the latter. Its effects have been truly delightful to me. It acts as a sedative to the tongue and temper as well as to the blood vessels. In 24, 12, six, and in some cases four hours, the most refractory patients have been composed. I have called it a tranquilizer." The chair included straps to bind the torso to the frame, the arms to the armrests, and the shins to the chair legs. Rush enclosed the bound person's head in a box.⁶⁰ Rush also shared the Quaker belief in the benefits of solitary confinement. He believed the method would act as an agent of conversion for those thus secluded.

Both long-term solitary confinement and the tranquilizing chair entered nineteenth-century prisons. Both caused controversy during that century. These control methods gained reputations not of kindness but of cruelty. Extensive solitary confinement, said its detractors, drove prisoners mad. Investigations showed that guards abused inmates in the tranquilizing chair.⁶¹

In the 1990s, the United States returned both to long-term solitary confinement and to something called the restraint chair, a close replica of Rush's original design. (The current versions of the device differ in one significant detail from Rush's version: while binding the body, they allow the head to remain free.) Prisons and jails seized on these two solutions. The return to control had—given the historical evidence—predictable results.

The restraint chair and extensive solitary confinement were Enlight-

enment inventions, born at a time when men like Benjamin Rush believed every person, including every criminal, had a heart attached to "one string by which it might be led back to virtue." Such beliefs in the neutrality or goodness of human beings guided the U.S. criminal justice system for nearly two centuries. And when the methods Rush advocated were later exposed as ineffectual and hurtful, prisons turned away from them.⁶²

But twenty-first-century Americans live in a different society. Today, when both extensive solitary confinement and the restraint chair have again become common in jails and prisons across the country, complaints that such methods lead to hurt are no longer as effective as they once were.

In 2000, the United Nations Committee against Torture demanded that the United States "abolish electroshock stun belts and restraint chairs as methods of restraining those in custody" because use of such devices "almost invariably leads to breaches" of the international treaty against torture. The United States has banned neither device, and the chastisement from the United Nations did not lead to much public discussion. This perceived need for control and restraint devices, despite strong international censure, is the result of a marked cultural change.⁶³ In general, American culture no longer understands a criminal's heart as "not wholly corrupted."

CHAPTER 3

Reforming the Reforms

Prison expansionist reformers

ON A HILL THAT ONCE bore a cherry orchard at the northern edge of Philadelphia rose a massive symbol of the land of the free—the Eastern State Penitentiary of Pennsylvania. The Philadelphia Society for Alleviating the Miseries of Public Prisons had prodded the state legislature for decades to construct such a building, and the society rejoiced in the structure. A pamphlet published by the society in 1830, when the building was partly finished and already housing inmates, devotes sentences to the “large sums” spent on the prison. Total expense when the building is finished, as reported in “A View and Description of the Eastern Penitentiary of Pennsylvania,” “will be four hundred and thirty-two thousand dollars.” The building was one of the most costly of its time.¹

The pamphlet praises the new prison’s “solidity and durability,” grandeur, and size. It is “the most extensive building in the United States,” taking up ten acres. Having emphasized “large masses” of gray stone that form the structure, the pamphlet turns to the edifice’s moral meaning: the Eastern Penitentiary was a substantial spectacle not for those inside, but for the public. “The effect which it produces on the imagination of every passing spectator, is peculiarly impressive, solemn, and instructive.”² The hope that the penitentiary’s “large masses” would weigh on people’s minds suggests proximity to a time when punitive pain in town squares instilled shame in the punished and warned onlookers.

to underline the masses

The Eastern State Penitentiary façade both echoes the colonial past and departs from it. It displays and encloses punishment, shutting off the convicts from the view of the citizenry. It also ensures that the message the public receives will come from the punishers and not the punished, who at least while suffering agonies in the colonial American square had opportunities to appeal to their audiences. *controls the message*

Inmates housed inside the Eastern State Penitentiary probably saw little of the building’s impressive façade. Regulations required prisoners to wear hoods whenever they left their cells, so as to discourage them from learning escape routes, speaking to guards, or seeking distractions from the silence that was supposed to seal their lives.³

Almost as revealing as the description of the prison façade is the attention given to the surrounding landscape in the pamphlet: “The Eastern State Penitentiary is situated on one of the most elevated, airy, and healthy sites in the vicinity of Philadelphia.” The pamphlet endows the landscape with moral messages. The site, like the building, would lend the prisoner an “elevated” and “healthy” life. The ambitions of the penitentiary promoters were as grand as their rhetoric; they believed the building could improve people. But again, the prisoners would have had a difficult time viewing the scenery. At the Eastern State Penitentiary, a fortress-style wall surrounded the cellblocks and most inmate windows faced onto yet another wing of the prison.⁴

The Eastern Penitentiary is also, according to the pamphlet, a symbol of the “liberal, humane, and enlightened character of our commonwealth.” At the same time that the prison conveys Enlightenment values, it displays power. “The Penitentiary is the only edifice in this country which is calculated to convey to our citizens the external appearance of those magnificent and picturesque castles of the middle ages, which contribute so eminently to embellish the scenery of Europe.”⁵

Only fifty-four years after the American Revolution, in a nation founded on such phrases as “Give me liberty or give me death” and “All men are created equal,” a potent symbol of the new United States has been found—in a prison. *Des of reformers*

In a nation of liberty, the penitentiary flamboyantly displayed confinement. In a nation founded on equality, the massive enclosure declared that all people were not the same. And in a nation of independence, the high walls proclaimed the virtues of dependent populations. In the American penitentiary, we can find the attrac-

tions of the monarchical past and the contradictions of the American project. The penitentiary could compete with the castles of Europe not simply because of its bulk, but because a massive prison, like the grand castles, allowed some men to rule others.

Within this symbol of governmental strength, the pamphlet authors assured, all was to be kindness, conducted on behalf of the improvement of the inmates. "Every means which have been devised by philanthropy and experience for effecting reformation will be zealously applied."

Yet, even as it celebrated its hulking achievement, the society was on the defense. Those who favored a less expensive prison model had already attacked extensive solitary confinement as cruel. The pamphlet authors, who saw isolation as fundamental to their redemptive project, offered the Eastern State Penitentiary as evidence and protested that those who accused the new institution of hardness just didn't understand. "From this outline of the system it is obvious that the charge of cruelty, which ignorance and misrepresentation have attempted to attach to it, is untenable," they wrote. "The humane and intelligent, who have sanctioned its adoption in our community almost unanimously, certainly require no defence of the purity of their motives."⁶

Purity of motive was on display down to the building's name. "Let the name of this house convey an idea of its benevolent and salutary design, but let it by no means be called a prison, or any other name that is associated with what is infamous in the opinion of mankind," Rush had proclaimed. Rush was a founding member of the Philadelphia Society for Alleviating the Miseries of Public Prisons—the group that so desired the prison it would call by a very different name. "Penitentiary," for the moment, fulfilled the longing. With the newly popular word came a powerful metaphor. The inmates were more than criminals; they were religious penitents seeking repentance, forgiveness, and religiously inspired transformation. That any repentance from the inhabitants emerged under duress did not seem to trouble the penitentiary fans.⁷

The Eastern State Penitentiary of Pennsylvania was a panopticon—the prison model the British inventor and statesman Jeremy Bentham propounded. The panopticon design resembled an octopus with a central body (which housed the warden and the guards) and eight surrounding legs (cell blocks). Bentham's design allowed the guards to observe the prisoners at all times without being seen. This architectural pattern,

which became for philosopher Michel Foucault a metaphor for surveillance and power in his 1979 classic *Discipline and Punish*, characterized several early American prisons.⁸

INDOOR PAIN

Despite assurances of benevolence, in practice, prison policies and cultures retained codes requiring repetitive inmate pain. In some cases, the pain that communities had employed out-of-doors moved inside. This was true of whipping, a common punishment both before and after reformers invented the penitentiary.

But the nineteenth century also saw painful innovations. The new prisons, by nature, corralled hundreds who didn't want to be there. As Foucault noted, an ideology of control guided penitentiary construction.⁹ Day-in, day-out solitary confinement did not free inmates from extra measures of control, or from punishments that emphasized denial of their bodily needs. Common punishments in the Pennsylvania system, noted an anonymous pamphlet from the Boston Prison Discipline Society, included "being deprived of meals, put into a dark cell, and a straight jacket."¹⁰

Five years after the Eastern State Penitentiary received its first inmate, a legislative investigation found severe ill treatment. "It was substantiated beyond a question of a doubt that iron gags, strait jackets, the practice of ducking, mad or tranquilizing chairs, severe deprivations of food and more minor punishments were made use of, in some cases with severe results," writes historian Negley Teeters. Rush's tranquilizing chair, intended as a kindness, appeared as a torture machine.¹¹

Cruelty was not isolated to Philadelphia. At the penitentiary in Pittsburgh, notes the pamphlet published by the Boston Prison Discipline Society, guards put disobedient prisoners into a box. Such a container, described as "just large enough to hold one man," would have restricted movement. It also hurt. The box is "so fixed, that the inmate cannot lean one way or the other; while, to prevent kneeling down, there is a piece of hard wood or iron put through the box," says the pamphlet. A disobedient inmate would have had to stand bolt upright. Painless at first, the box would shortly cause fatigue and, after hours, exhaustion and physical distress.¹²

In 1839, the *North American Review* reported, "In one case a man had died under the infliction of the gag," at the Eastern Penitentiary. "Another

yes!

18/11/1835
Rush
Penitentiary
Bentham

more of
solitary
pen.

had been seriously injured by the profuse dashing of water upon him in mid-winter. Other cases existed of the excessive use of the strait jacket, of bruising, and confining prisoners in dark cells with only eight ounces of bread daily." The article concluded with an understatement: "These are sufficient to show, that the solitary system is, by no means, of necessity merciful."¹³

Within fifteen years of the opening of the first penitentiary in the world, prisons sprang up in Connecticut, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia. Each featured extensive isolation.¹⁴ But there were problems with solitude. In 1821, not long after a serious riot at Newgate Prison in New York State, the state separated out eighty-three of the most serious offenders for isolation, where they were to remain silent. A year later, five of those men had died, and many had lost their minds. One convict "jumped to his death as soon as his door was opened," reported the brochure for a recent exhibit on the Auburn prison. The state, in a panicked response, pardoned those who were still living and adopted what became known as the "silent system," also called the "Auburn system," a prison style that most of the country quickly imitated. The Auburn system housed inmates in solitary cells by night but allowed them to gather during the day for such activities as work, meals, and worship. This "silent" system forbade talking at all times.¹⁵

Beliefs that crime was communicable posed a challenge. Auburn, and many of the prisons that imitated it, often maintained disciplined silence via liberal use of the lash.¹⁶ Punishment for talking and other infractions was commonly a flogging. In colonial governments, whippings had been ritualistic, public affairs, generally preceded by trial and often recorded in official documents. Such formalism did not suit the silent system.

"At the Sing-Sing prison they punish with whips," records the pamphlet of the Boston Prison Discipline Society. "In the workshops, under the elevated seats where the keepers sit, may be seen these implements, which the keepers have power to use on the bare back, without reporting the case, and without a hearing for the prisoner." New York's Auburn prison was a bit less informal: "The officers use cowhides. They inflict punishments without consulting a higher officer, and report their doings about once a month."¹⁷

Our contemporary use of such words as "lash," "whip," or "flog" usually means a single-stranded or a three-stranded braided rope or piece

of leather. But in the mid-nineteenth century, American prison inmates were thrashed with a tool that ensured multiple blows for every swing. A popular weapon capable of causing excruciating pain, the "cat" (or cat-o'-nine-tails) was often handmade and consisted of a handle fastened to either six or nine leather thongs, each tied around a bullet.¹⁸

In a July 17, 1844, letter that the legendary reformer Dorothea Dix claims she received "from the Warden at the state prison at Auburn," the warden describes the process he used to determine that the cat was more humane and effective than isolation. "Close confinement is injurious and uncertain in its effects. I should resort to it if reasonable flogging proved insufficient," he wrote. "After much anxious reflection I have come to the conclusion, that moderate punishment with the cat, producing temporary smart, without permanent injury, is the most consistent with true humanity." He recognized, however, that even the cat could have drawbacks. "Where this punishment has been carried to excess, as has been at times the case in former years, both mind and health were permanently injured."¹⁹

Dix's writings indicate that other colonial torments had made their way indoors. *not only violence of* "The gag is another form of punishment, which seems to me shocking and extremely objectionable; yet it is sometimes employed," writes Dix, who notes that guards had twice gagged an "incurable prisoner" in Philadelphia's Eastern State Penitentiary.²⁰ If the gag was not "a usual means of discipline" at the Eastern State Penitentiary, it seems to have been common at Sing Sing. "Application of the gag" often affected female mouths, as Sing Sing had a rule against lashing women. *gross*²¹

Water punishments also soaked criminal bodies. Guards rebuked inmate infractions with "douche or bolt-bath" at both the Trenton and the Auburn prisons, Dix says, but both wardens had stopped using the punishment. As the Auburn warden explained his decision to cease discipline by *douche* in his July 17, 1844, letter to Dix, "Punishment with cold water has often been most effectual, in subduing the refractory, but I believe is often detrimental to health, and has therefore been discontinued at this prison."²²

Two years later, an inmate died due to what a local coroner's jury called "severe flagellation." The government responded with a new law: "No keeper in any state prison shall inflict any blows whatever upon a convict, unless in self-defense or to suppress a revolt or insurrection."²³

And so, cold water returned to Auburn. A brochure accompanying a 2003 exhibit at the Cayuga Museum in Auburn, New York, offers a description of what contemporaries called "the shower bath." This "true torture device . . . consisted of a barrel about 4 1/2 feet high with a discharge tube at the bottom. The prisoner was stripped naked, bound hand and foot, with a wooden collar around his neck to prevent his moving his head. The barrel, with the inmate inside, was placed directly under an outlet pipe, where water, sometimes iced, would pour down."²⁴ The Auburn shower bath suffered a fate similar to that of the cat. It "was discontinued at Auburn Prison in 1858, after the death of an inmate from this punishment."²⁵

By 1869, *Western Monthly*, a Chicago magazine, was boasting of the accomplishments of "the prison reform organizations of New York, Boston, and Philadelphia," which it credited with doing away with "many of the evils" in prisons. The motivating energy in bringing about these changes, claimed the publication, was "the spirit of Christianity," which ensured that "the lash, the shower bath, and other tortures which ignorance and cruelty invented for the punishment of prisoners, have now almost entirely disappeared from the State Prisons and Penitentiaries."²⁶

SQUEAMISH REFORMERS

In *Discipline and Punish*, Foucault noted that the movement of the times was toward shutting away those who violated the law, so that punishment became, in Foucault's term, something "hidden." Foucault associated this shift with a state that had begun to feel shame about the punishments it enacted. Others, particularly the historian V. A. C. Gatrell in writing about the movement of British executions indoors, have suggested a middle- and upper-class "squeamishness": "Aversion to the scaffold crowd was the chief reason for abolition, but the higher squeamishness played its part too. At executions 'a new sheriff occasionally almost faints,' it was reported in 1866."²⁷

American reformers were also squeamish about public executions. Charles Spear targets visceral squeamishness—discomfort at seeing another in physical pain—in his much-read 1844 book, *Essays on the Punishment of Death*. He includes several stories designed to show just how ghastly hanging can be and to create a brew of emotions in the reader. Composed of anxiety, squeamishness, disgust, and (somewhere in there)

sympathy, these emotions furnished Spear and his public with a belief in their own humanity. Such words as "feeling," "sympathy," and "humane" recur throughout Spear's writings and those of his fellow reformers. Against "feeling," Spear places the "unfeeling," those who carry out the punishments: "The law stands all ghastly and bloody! There is the judge ready to pronounce the sentence! There is the cold, unfeeling sheriff ready to do its bidding."²⁸

But even as the reformers complimented themselves with the language of sensibility and insulted those who punished as "unfeeling," their movement backfired. Executions did not end. They, along with other physical punishments, moved indoors.²⁹

But there is more to the story of American punishment. While public punishment worried the reformers, what was happening *inside* the prisons, away from public view, also troubled the Pennsylvania society and other reform organizations.

In 1787, the Philadelphia Society for Alleviating the Miseries of Public Prisons published its constitution. In the preamble, its members announced their project as religious. Because of the Christian necessity to treat those who commit crimes with kindness, they determined, the society would "extend our compassion to that part of mankind who are the subjects of those miseries" inside prisons.³⁰ The preamble suggests that the Philadelphia Society was from its beginning cognizant of the mistreatment that could hide away in prisons. "By the aid of humanity, their undue and illegal sufferings may be prevented."³¹

The society demanded changes. In fall 1788, a later article reports, "the following defects and abuses were indicated in the treatment of prisoners." The list includes "insufficient clothing for the untried" (the clothing the society was sending into the prison for poor inmates was "taken by force" and "exchanged for rum"); extreme lack of food for some prisoners ("the daily allowance to persons committed for trial was only a half of a four-penny loaf, while those detained as witnesses had no allowance at all"); lack of beds ("the inmates of the gaol lying indiscriminately upon the floor, unless supplied with something better by their friends"); "promiscuous association" of inmates of different sexes, who were "even locked up together in the rooms at night"; the "indiscriminate intermingling of criminals, untried prisoners and debtors," which, the society argued, "led, in many instances, to the conversion of debtors and

Christian
reforms



innocent parties into criminals"; children of the prisoners housed in the jail and "exposed to all the corrupting influences of association with confirmed and reckless villains"; and idle prisoners.³²

Fifty years later, the society was still investigating the prison. In April 1849, it uncovered racial disparities: "The attention of the Society was called to what was alleged to be a marked difference between the length of sentences passed on colored convicts compared with those passed on whites, and also the comparative mortality of the two classes."³³

A process of experiment and critique continued into the late twentieth century. When the sick failed to heal and the penitent lost faith, prison reformers took note. Reformers both inside and outside the heavy walls managed to reinvent the prison and shield the prison from controversy, by critiquing it and changing it themselves.³⁴

THE COUNTER-REFORMERS

Reform had more than one voice in nineteenth-century America. "We are told by a class of objectors to the death penalty that it is a relic of a barbarous age, and if once proper, is no longer so when society has made such advances as we now behold," writes the Reverend Timothy Alden Taylor in a book published in Massachusetts in 1850. "Our reply to this is, that capital punishment originated with the Most High; that it was enacted as a legal, civil statute on earth in the purest period of the world since sin entered the Garden of Eden."³⁵ Among Taylor's complaints is what he perceives as misplaced sympathy. "The victim of his appalling deed is immediately forgotten; the wife who has been made a widow, and the children who have been rendered fatherless in consequence of the assassin's blow are left to weep in unpitied solitude, while the wretch who has filled them with grief and covered them with mourning is embraced by numberless comforters."³⁶

Southern prisons resembled the heavy structures of the northern cities, and the southern states constructed them at about the same rate.³⁷ But southern criticisms of incarceration were many.

Edward Ayers in *Vengeance and Justice: Crime and Punishment in the Nineteenth-Century American South* describes the northern states as invested in "dignity," or "the conviction that each individual at birth possessed an intrinsic value at least theoretically equal to that of every other

person," however much society violated that principle in practice.³⁸ Dignity motivated its believers like a religion and contributed to the North's enthusiasm for penitentiaries. As the nineteenth and twentieth centuries progressed, reformers extended the mantle of dignity to more and more people—slaves, prisoners, workers, immigrants, children—who in an earlier century would not have sheltered beneath dignity's folds.³⁹ By contrast, the early American South celebrated "honor," which, writes Ayers, applied to "only adult white males."⁴⁰

For those skeptical about dignity, government intervention in the lives of convicts seemed like serious overreaching. "To Southerners at the time and to many subsequent historians, the element of coercion that lay behind so many of these reforms seems to make a mockery of dignity," writes Ayers.⁴¹

"How is this pretended humanity to be exercised?" questioned Louis Reneau, a Tennessee state representative, in 1826. "It is by taking a man who by the present law can only be sentenced to have a few stripes, and a few weeks imprisonment, and shutting him up in the penitentiary, there to be kept at hard labour, and to be whipped and driven at the whim and pleasure of his master." The word "master" reveals a tactic disgruntled southerners employed—comparing the penitentiary to slavery.⁴²

For some critics, the new prisons were "dangerously un-republican" because they "hid the coercion of the state from its citizens," writes Ayers, who quotes a Georgia politician asking the perceptive question, "Which was the more barbarous, to whip at the whipping post, or to turn them over a barrel within the walls of the Penitentiary and paddle them?"⁴³

If the debate over punishment never ended, the voices of Taylor and other southern critics were muted for about two hundred years. But when they gained power again in the late twentieth century, they did so with gusto.⁴⁴

GOD'S CHILDREN OR GOD'S MADMEN?

Day-in, day-out solitary confinement was supposed to heal spirits. In a tiny cell, with the company of only the Bible, the guards, and spiritual advisers, former crooks were expected to become God seekers. Such metaphors as "child" and "religious penitent" implied the treatments prisoners were to receive. "It is with convicts as with children; unseasonable

1849
Sewing machine
Prison

North
vs.
South
penalty

★

indulgence indiscreetly granted, leads to mischiefs which we may deplore, but cannot repair," wrote the reformer Dix, implying a child/prisoner-raising strategy of guarded rewards.⁴⁵

But once "separate system" prisons were up and running, critics began to say that years of loneliness could indeed change crooks. Change them into madmen. *Yup - Dickens quote*

As the penitentiary model spread from Pennsylvania to other locations, some new prisons while incorporating solitude also deemphasized it. This was true in places that followed what became known as the New York, or Auburn, system, also called the silent system, which, in addition to solitary cells, maintained open areas where inmates could congregate. "The great difference of the two prisons is this: at Pittsburg, the prisoners sleep in their cells; work in their cells; receive instruction in their cells; worship in their cells, and (what shall I say?) have a soil-pan in their cells," notes the anonymous author of a nineteenth-century pamphlet. The author contrasts this thoroughly confined inmate life with a prison in Massachusetts: "At Charlestown, the prisoners sleep and eat in their cells; work in the shops; worship in the chapel; receive instruction in the chapel, in the shop, at the cell doors, or wherever the warden, chaplain, inspectors, or other authorized persons, wish to communicate it." Pittsburg, the writer makes clear, is modeled on the Pennsylvania system advocated by Rush. Charlestown is more akin to that featured in the Auburn, New York, prison. Because of its ability to bring inmates together in groups for such events as work duty or worship, the Auburn system proved less expensive than the Pennsylvania model. The pamphlet makes this claim often enough to suggest it is authored by someone who is as concerned with finances as he is with the well-being of prisoners.⁴⁶

But the writer of the pamphlet makes some troubling criticisms. Quoting from prison documents, he traces several years in the life of the Philadelphia and Charlestown prisons. On January 1, 1838, for instance, the physician of the "New Penitentiary" in Philadelphia reported "fourteen cases of dementia," all of which the physician attributed to masturbation (also called "the solitary vice" and "onanism" in this pamphlet). The Charlestown physician, by contrast, recorded no such cases. In January 1839, the medical reports showed a similar trend: eighteen in Philadelphia, one in Charlestown. And on January 1, 1840, Philadelphia recorded twenty-six prisoners with symptoms of mental illness: "White prisoners,

thirteen; colored prisoners, thirteen; mania, one; monomania, one; hallucination, seven; dementia, nine; other forms of diseased mind, eight; caused by the solitary vice, fifteen; by intemperance, four; unknown, seven."⁴⁷ In Charlestown, characterized by the silent system the author prefers, things were different. "No case of insanity is mention by the physician for the year ending September 30, 1839."⁴⁸

The pamphlet also lists the death rate in the Pennsylvania-style prisons as much higher than that at Charlestown. "Dividing the number of prisoners by the number of deaths, it gives one death in twenty-five prisoners at Pittsburg, Penn.," whereas the Charlestown prison reported a single death among 171 prisoners.⁴⁹ The author does not make clear what he believes caused the differences in death rates.

Among those the pamphlet quotes is a doctor at a New Jersey penitentiary modeled on the Pennsylvania version, who suggested that some of the childlike qualities so idealized by reformers of the day might have been symptoms not of redemption but of mental breakdown. "Among the prisoners, there are many cases of insanity," reported the doctor in 1840. Although some of the convicts had shown evidence of mental illness when admitted, "there are many who exhibit a childlike simplicity, which shows them to be less acute than when they entered." The childlike traits appeared with time and affected all of the inmates "who have been more than a year in the Prison." The doctor, who attributed insanity to "onanism," suggested that the development of mental "softening" was likely to reduce crime. He thus advocated isolation as a way of encouraging a soft, childlike mind. "Continue the confinement for a longer time, and give them no other exercise of the mental faculties than this kind of imprisonment affords, and the most accomplished rogue will lose his capacity for depredating with success upon the community."⁵⁰

But, the physician suggested a more dire future for convicts who did not receive the benefits of "kind usage, religious and moral instruction," that he witnessed at the New Jersey Penitentiary. "Were another course pursued in this institution . . . in less than a year the New Jersey Penitentiary would be a Bedlam."⁵¹ Instead of leading penitent criminals to conversion, critics maintained, solitary confinement destroyed their minds. *Yup*

Many European countries adopted the Pennsylvania model, and American advocates trumpeted this widespread affection as proof that the separate system was beneficent. In an 1847 pamphlet about the prevalence

infantile + idiotism

of the Pennsylvania system in France, a Mr. Sumner, a resident of Boston traveling in Europe, recounts the words of Count Dichatel, minister of the interior for France. Like his counterparts in America, the minister understood extreme captivity as permitting spiritual freedom. "The cell must be regarded as a means of living alone, and in a state of complete moral liberty," Dichatel tells Sumner. "The system of separate imprisonment is one of protection rather than of constraint. The cell of the prisoner is his house." Having removed criminals from their previous, presumably unfit, homes, the cells become enclosures of domestic tranquility.⁵²

Sumner continues, demonstrating the French liking for convict solitude. "There are now twenty-three of these prisons occupied and many more in the course of construction. In all of them which I have visited,—what with their wooden floors and doors, their nicely painted walls, their fountains and garden walks,—there is a neatness and an air of comfort and cheerfulness, which would surprise those, who in America, have conjured up horrors at the idea of separation." The paint, "neatness," "garden walks," and "cheerfulness" all emphasize an idealized, large, well-kept home where a man, tired of public life, might make his retreat.⁵³ In European penitentiaries, argues Sumner, death and sickness among the inmates who live in solitude are rare. So is mental illness.⁵⁴

Sumner, like other reformers of his day, uses the language of kindness and comfort in his discussion. The noun "abuse" also appears frequently, suggesting a struggle over its meaning. Sumner uses the word to condemn the city of Boston's plan to do away with solitary confinement, a rumor he heard from the French undersecretary of state for the interior. He warns that his hometown "will certainly enjoy an unenviable notoriety if it determine to defy public opinion, to reject the example of wise governments, and to maintain an abuse, which the voices of so many wise and good men have been raised to denounce." The abuse, for Sumner, is not years of isolation but the endangering of men's souls through exposure to other criminals.⁵⁵

But while reformers praised the French penitentiaries and haggled over the meaning of "abuse," European prisoners in solitary were, like their American counterparts, losing their minds.

"The American penitentiary, and the Philadelphia System, became world-famous; no important visitor to the United States neglected to tour its penitentiaries and to bring back their principles for emulation in Eu-

rope," writes former Harvard Medical School psychiatrist Stuart Grassian. "The results of this national experiment with prolonged solitary confinement were catastrophic. The incidence of mental disturbances among prisoners so detained, and the severity of such disturbances, was so great that the system fell into disfavor and was ultimately abandoned."⁵⁶

Scandinavian countries relished solitary confinement. The Danish Institute for Human Rights tells the story of a farmhand named Henrik Nielsen who in 1866, at eighteen years of age, was sentenced to imprisonment at Vridsløselille penitentiary. "Henrik was in good health when arriving, and the initial phase of his imprisonment seemed to go well," reports the human rights group. But, after a time, "It was recorded in the prison files that Henrik hallucinated; in particular, he started hearing things. He believed that someone bore him ill will, and that the warders wished to harm him. Henrik was generally very timid and anxious. After this the young man was assigned work in the open air, but upon his return to the cell he became completely deranged. Henrik Nielsen was then moved to a mental hospital in the province of Vordingborg."⁵⁷

Nielsen was one among thousands. An 1890 ruling by the U.S. Supreme Court noted that as a result of solitary confinement, "[a] considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide; while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community." The Court suggested that in the mid-nineteenth century, "the whole subject attracted the general public attention, and its main feature of solitary confinement was found to be too severe."⁵⁸

In Europe, popular opinion also turned against the punishment method that once seemed humane. Even Denmark ended the practice. "The Scandinavians were, rather interestingly, much more reluctant to leave behind large-scale isolation, but solitary confinement was abandoned in Vridsløselille during the 1930s."⁵⁹

Use of solitary confinement declined over the course of most of the twentieth century. But in the 1980s and 1990s, despite the lessons of the nineteenth century, long-term isolation again seemed a good idea. When Grassian presented testimony in 2005 to the Commission on Safety and

Abuse in United States Prisons, an organization funded by the Vera Institute of Justice, he spoke of the past as a means of addressing contemporary concerns—the return of madness to isolated prisoners, now housed in the new supermax prisons.

THE STORY OF HARRIE

In 1871, a man who called himself “Harrie” published *An Illustrated History and Description of State Prison Life by One Who Has Been There. In Two Parts: One Showing the Cruelties and Horrors of the Old System; the Other, the Reformatory Advantages from the New. Together with a True and Detailed Account of the Maltreatment and Cruelties Formerly Practiced upon Prisoners; also, Shame-Faced Criminalities with Female Convicts, Mutinies, Murders, Starvings, Whippings, Hair-Breadth Escapes, Sketches and Incidents, Narratives and Pen-Pictures, Sunshine and Shade, Illustrative of Prison Life.* If that title is not enough to tickle curiosity, Harrie provides an affidavit of sorts: “WRITTEN BY A CONVICT IN A CONVICT’S CELL. THE AUTHENTICITY OF WHICH IS VOUCHERED FOR BY THE HIGHEST OFFICIALS AND COMMITTEES.”⁶⁰

Harrie claims to be writing from the state prison in southern Indiana where he is serving a sentence for a crime he does not name. Halfway through his tale of penitentiary life, he offers a mini-history of U.S. punishment. Nineteenth-century reformist pamphlets often provided such histories, making the present look good by comparison with past cruelties. But though reform is Harrie’s aim, he decries the ease of corporal punishment. The exchange of “the gallows, the whipping post, and the pillory,” for the penitentiary was a merciless one, he argues. “These modes of punishment . . . were really not more barbarous and degrading to humanity than the corporal punishment almost daily inflicted on convicts in the penitentiary, with that more modern and facile instrument known as the ‘cat-o’-nine-tails.’”⁶¹

Not only were the punishments of the American colonies “civilized,” Harrie insists they were downright mild. “Standing in the pillory a few hours on court-day, exposed to public gaze, or the application of a few stripes, generally laid on very lightly by the sheriff of the county, though humiliating, were by no means cruel or unreasonable penalties for grand larceny, arson, burglary, and other crimes of greater turpitude.”⁶²

Unlike the southern penitentiary critics motivated by a culture of honor, Harrie believed in the dignity of his fellow prisoners. He wrote for

an audience of reformers, those who called for improvements in the treatment of inmates but who also tended to invest their faith in the potential of prisons to wreak powerful, conversion-style changes in their inhabitants. This audience would have found Harrie’s declaration shocking.

In the context of the treatment Harrie claims he witnessed, his nostalgia for colonial punishments is more than reasonable. Shortly after he entered the prison, a guard gave him a list of rules to read. Several of them described the requirement of absolute quiet—a clue that the southern Indiana prison was an Auburn- or silent-style one. The list ended with these two sentences: “For all violation of the prison rules the laws of the State authorize the warden to inflict such punishment as he may deem necessary. This authority will be exercised in all cases when it is necessary to secure strict discipline and obedience to the prison rules and regulations.” The warden of the Indiana prison served as the judge and jury for physical punishments, as did other wardens at the time.

The guard returned and asked Harrie whether he had read the list. When Harrie answered that he had, the guard emphasized the final, broad policy.

“Did yer notice the last one?”

“Yes, sir.”

“Well, sir! Do you know what we do with men here for punishment?”

“No, sir.”

“We lick ’em! shirt ’em, and lick ’em! and, mind you now! if yer hit a lickin here yer’ll carry it to yer grave; come on now!”⁶³

By “carry it to yer grave,” the guard meant that the whippings left scars.

Harrie invited his readers to peer at a scene reformers were unlikely to glimpse. “There, surrounded by half a dozen fiends in human shape; naked and upon his knees, is the poor fellow who just passed us on his way to the office,” Harrie writes, his vision transforming the crowd of guards into agents of the underworld:

A powerful brute stands over him, grinning like a fiend incarnate. In his brawny hand he holds that merciless instrument of torture, the cat-o’-nine-tails; rising upon his toes, he brings the

hard-twisted, bullet-tipped thongs ~~down~~ upon the poor victim's bare back, each blow counting nine lashes, eating into the tender flesh, and drawing forth the shrieks of pain we heard. Five blows are struck, counting forty-five lashes, when his torturer stops for breath.

"Talkin' in yer sleep, was yer?"

"Yes, sir!" sobs the victim, "If I talked at all, I talked in my sleep."

"Well, d—n yer! if yer can't sleep without talkin', yer had n't better sleep. Here, Jo! give him five more."⁶⁴

For the Calvinists, crime was the work of the Devil and physical punishment the demand of God, but in this scene representatives of the underworld are not criminals but government agents. "Fiend," the word Harrie repeatedly associates with the guards, means "Devil," "demon" (both words associated with the Christian concept of Hell), and "an extremely cruel person," according to the *Merriam-Webster Dictionary*. Like Harrie's claim that public, corporal punishments are preferable to mistreatment inside prisons, this symbolic reversal was designed to shock his reform-minded readers, many of whom were liberal Christians who saw punishments as, at least in potential, godly pursuits. As if to skewer the conscience of his audience, Harrie comments, "Let us draw a veil over the scene; let us not listen to his groans, his prayers, or his curses. Think you *he* will reform?"⁶⁵

The Southern Indiana State Penitentiary made private the once-public whippings, increased pain with the cat, and made arbitrary use of the lash. "This is not much of a document, but it is enough upon which to get you whipped," Harrie writes—"document" meaning the guard's claim against an inmate. The prisoners, whom Harrie calls "victims" (turning conventional crime-and-punishment vocabulary on its head), did not learn that they were up for punishment until they received the command to "*strip for the cats!*" Harrie reports that the inmates saw no one but the men who whipped them. A word with the warden was out of the question, as was an appeal. "Very often the men do not know for what they are punished," notes Harrie. "No questions are tolerated!"⁶⁶

In one morning, as many as thirty inmates might be "catted," Harrie reports. A single cat involved nine lashes. "Twenty-seven lashes, or three

'cats' are the least ever given," Harrie writes. "Some will take ninety or a hundred without flinching or uttering a groan. But as they come out, the white lips and set teeth tell how they have suffered."⁶⁷

In this depiction of prison life, the prisoners offer each other mercy and a gentle touch. Harrie writes of a man "who had received *two hundred and seventy* lashes." Harrie describes pulling the man's shirt, caked with blood, up from his skin. "I have loosed it, the bruised skin coming away in places with the coarse shirt, and covered the raw flesh with oil. As I did so, my heart has grown sick and my head dizzy."⁶⁸

The act of touching the skin with oil is a New Testament reference; the disciples of Jesus anointed him. With this image, Harrie turns the "catted" prisoner into the opposite of the "fiends" who whipped him. He becomes holy in his physical pain and his anointment. It is no accident that Harrie next turns to a religion-tinged censure of the reformers: "Oh, ye prison philanthropists! Why do ye not, instead of surfeiting us with tracts, and words that can only produce contempt under this treatment, *remedy our wrongs?*"⁶⁹

Harrie also has choice words for the misuse of punitive work. Punishment reformers of the eighteenth and nineteenth centuries placed a high value on labor, which the convicts were to perform whenever not engrossed in sleeping, eating, Bible study, or worship. As the author of *A View and Description of the Eastern Penitentiary of Pennsylvania* explains, "The labour in which the convict will be employed, is considered as an alleviation, not an aggravation of his sentence." Work will seem appealing "perhaps for the first time in his life, as a means of preventing uneasy feelings, of producing relief and pleasure." Guards sometimes punished disobedient inmates at the Eastern State Penitentiary by *prohibiting* them from work.⁷⁰

Toil does not offer the inmates "relief"; rather, it helps to relieve several of them of their lives. Harrie tells the story of William Board, a big young man. "He was the largest man in the prison, and a noble-looking fellow." When Board took ill, he received a job assignment that guaranteed he would not recover easily. Board "was put at work upon the brickyard," a job change not so much for Board's benefit. "Men are not put at work here until they are weakened down by sickness, for fear, if they are well and strong, they will run off," comments Harrie.⁷¹

The brickyard was not a plum job: the yard "is situated outside the

Confession

Yes!

walls, is without shelter, and intolerably hot. The poor fellows who work here come dragging themselves in at night, so tired that it is with difficulty they gain their cells." Board was a dedicated laborer. He resisted the pleas of his fellow prisoners to seek a doctor, saying "that if he went to the hospital he would never come out alive." But "one day he had been pushed very hard; that night he was so ill that, time and again, he asked to be taken to the doctor." The guards did not respond to his requests. The next morning, "he was carried to the hospital, and in five hours this great strong man was a corpse—worked to death!"⁷²

Work is a theme in the death of Patrick Maher, known to the inmates as "Crazy Pat." When Maher first arrived at the prison, Harrie says, he "was deranged." Even so, he "would still do what was told him, and work very well if let alone and not urged." But the work ethic didn't last. After committing what Harrie terms a "slight absent-mindedness," Maher endured a lashing. "He returned to the shop raving, and absolutely refused to work," according to Harrie. The guard sent Maher to the office, where he again endured another whipping "and a ball and chain ordered on him," in addition to a diet of bread and water. After several days, the guards again ordered Pat to work, but "he would only jabber Irish and grow wild."⁷³

The guards placed shackles on Maher's hands and feet and let him sit near the shop door. Harrie reports that the guard in charge of the shop resented Pat's new privilege. "'If he won't work, I'll make it hell for him any way,' said he, and taking Pat to the office, he got a straight-jacket added to the other irons."⁷⁴

The straitjacket that Harrie describes bears little resemblance to the fabric styles that bound the arms to the back. It "consists of a bar of iron reaching from the top of the head to the small of the back," writes Harrie. "About six inches from the top is a clasp ring which passes around the neck, completely throttling its victim. At the shoulders there is a cross-bar with a ring on each end. Through these rings the arms are passed, and then the upper ring clasped around the throat." The position may sound uncomfortable, but it is relaxed in comparison with what comes next. "By means of a screw at the back, all of these are now tightened, drawing the shoulders back, the head up, and the victim straight as an arrow. It is impossible to move the shoulders or back, and if the head is moved, the iron collar around the neck strangles the victim."

According to Harrie, the guards would keep Maher in the straitjacket until the man began to faint. Then they would remove the device from his body, "and sometimes a bucketful of cold water thrown upon him to keep him from playing off, as they called it." Harrie blames the straitjacket for turning "poor, addled Pat" into "a raving maniac."⁷⁵

Once the straitjacket came off, guards chained Maher during the day to a ball and at night to an anvil. When Maher grew agitated, the guards experimented. "I'll stop his running and jerking around," announced the warden in response to Maher's thrashing. The warden summoned a guard with a body-sized sack. "After a severe struggle," during which time Maher bit the warden's finger, "he was got into the sack, with his handcuffs still on, and it sewed close about his neck." The warden then began to tease Maher. "And taking a stout linen handkerchief from his pocket, he would whip it about Pat's face, until he would snap at it with his teeth; then, after letting him get a good hold, he would give it a sudden jerk." Meanwhile a guard who stood close to Patrick "would kick him in the breast and side."⁷⁶

Later, guards removed Maher from the body sack. After that, "they never opened his cell-door again until they opened it to carry him to his grave." The prison staff rationed Patrick's food. "Sometimes for two days he would have nothing but water; then F—r would come down and throw him some bits of corn bread, as you would throw food to a caged animal," writes Harrie. Maher responded in kind. "And much like a famished beast would poor Pat grabble up the last fragments and eat them."

After about seven weeks of such treatment, Maher expired. Harrie uses the event to press his religious argument. "My reader, Patrick Maher was starved to death!" he writes. "He died alone, in his iron-bound cell, with no eye but God's upon him. The angel who recorded his death recorded its manner, and at the same time wrote that fearful indictment upon which his murderers must be tried *in the day of judgment*."⁷⁷

Not all is a hell of ill treatment in Harrie's 500-plus-page memoir of prison life. On page 221, scandal arrives at the Southern Indiana State Penitentiary, and by page 225, the investigating committee fires the warden. After that, things changed for the better.⁷⁸

Harrie devotes the second half of his book to explaining the positive effects that could be realized if inmates were treated well. "Why, I have seen the hardened criminal, the brutal murderer, weep at the gambols of

an innocent child," he writes. "Was not each tear a message from the heart that told of buds there, ready to burst into a new life?"⁷⁹

Harrie's insistence on the humanity of those around him and on their goodness continues to the end. In the book's final pages, Harrie receives a pardon that will allow him to return to his wife and child. He begins "crying" and comments, "I tell you there are men within yonder walls whose friendship we value. Many poor fellows who, although they have been unfortunate, carry within their striped jackets honest hearts."⁸⁰

Sentimentalized portrayals of captive groups characterized reformist writings throughout the nineteenth century. The rhetorical practice, which was broad enough to include women and children, captives of the home, implied the worth of the speaker or writer. Earlier, in the eighteenth century, what became known as "sensibility," or the capacity to feel deeply, became a moral marker.⁸¹

By the 1830s, a sympathetic understanding of physical pain became a critical emotive force in the antislavery movement. Although "slaves had suffered for many generations," writes historian Elizabeth B. Clark, "in the 1830s their stories became newly audible and visible in the North, where graphic portrayals of slaves' subjective experience of physical pain emerged as common antislavery fare." The genre of the slave narrative, argues Clark, "served as a vehicle for new arguments for a 'right' to bodily integrity." Clark argues that shifts in liberal and evangelical philosophy, a broad phenomenon that encompassed many different churches as the influence of Calvinism faded, led to a pervasive turn against both godly and human cruelty.⁸² In addition to the physical hurts of slavery, reformers focused their sympathetic energies on other forms of suffering, including wife and child beatings, bodily hurt to animals, and corporal punishment in mental hospitals and prisons. The language of rights communicated in the Constitution began to extend to individuals the original document did not name.⁸³

By the mid- to late nineteenth century, when Harrie wrote his book, these moral values were in full leaf. The burgeoning anticruelty movement is visible in the organizations devoted to animals that appeared in the United States in the decades after the Civil War. The first animal welfare organization in the United States opened in 1866. By 1870, there were similar societies in five states, writes Jennifer Mason, and by the

of the propriety of sensibility

1890s, "Every major U.S. city and quite a few small towns had a society for the prevention of cruelty to animals."⁸⁴

As Mason points out, the theme of animal cruelty appeared in American literature of the period, including works by Harriet Beecher Stowe and Nathaniel Hawthorne. Often, the invocation of cruelty against animals allowed writers to address other social issues. For instance, the African-American writer Charles Chesnutt repeatedly uses the figure of dog killings to address the charged subject of lynching.⁸⁵ Chesnutt could assume his contemporary readers would understand the implications of dog killing because the humane movement of the time was not isolated from other social movements, including abolition. In 1890, when the novel *Black Beauty* appeared, it bore on its title page the words, "The Uncle Tom's Cabin of the Horse."⁸⁶

AFFECT AND THE PRISONER

In American literature about prisoners, emphasis on a convict's capacity to feel paralleled the rise of the reformers. In his anecdote about the beer-drinking wheelbarrow man who loved his dog, Rush emphasized the word "heart." That "heart" became evident because the criminal showed devotion to a dog.

But Harrie's use of "heart" has traveled a distance from Rush's. If Rush's analysis leaves room for a "heart" to be almost but not "wholly corrupted," Harrie's idealized prisoners have, despite their crimes, fully "honest hearts." Even if capable of murder, those hearts can "burst into a new life." Thus Harrie's emphasis, in his descriptions of his fellow convicts, on words like "hearts" and "weep" or "crying."

Sentimentality, particularly when applied to those under government control, was a potent thing, as both Harrie and the artist who illustrated his book seem to have realized. The book's first illustration shows Harrie arriving home after a government pardon. He has placed his hat on the ground and is kneeling, his wife's hand in his. In the pleasant room with the accoutrements of comfort and an impressive portrait on the wall, a child sleeps under a canopy. The prisoner is a gentleman.⁸⁷

animal rights
paws was for humans - I
said

theology
divide
of
heart