Mark E. Kann

Penitence for the Privileged: Manhood, Race, and Penitentiaries in Early America

The American founders coupled the concept of manhood to the language of liberty. Benjamin Franklin proclaimed that his grandfather's essay on liberty was written with "manly freedom," and Thomas Paine explained that *Common Sense* was meant to prepare the way for "manly principles of independence." John Adams praised his ancestors for their "manly assertion of . . . rights" against tyranny, while Thomas Jefferson applauded his American brethren for demonstrating "manly spirit" by declaring independence.[1] The founders' use of gendered language to urge men into battle was a typical offspring of the ancient marriage of manhood to militarism. However, their use of manhood to promote self-discipline in the exercise of liberty, to deter and punish criminal activity, and to rehabilitate some convicts and restore their liberty was innovative.

The founders led a revolution in the name of liberty only to encounter what they considered men's tendency toward licentious behavior. They believed that ordinary male vices, such as swearing, gambling, drinking, promiscuity, and greed, fostered conflict and criminality that subverted the new republic. Accordingly, they urged men to consult religious doctrine, examine enlightened self-interest, commit to republican virtue, and follow their moral sensibilities to promote self-restraint in the exercise of liberty, social harmony, and law-abiding behavior. They also invoked the dominant norms of manhood to prompt men to moderate their conduct.

In general, the founders defined "manhood" as a combination of individual independence and family responsibility. They saw this mix as a positive source of social order and stable citizenship. They also relied on it to deter white men from engaging in criminal conduct and to punish and rehabilitate white convicts. Prison reformers in the early republic threatened to deprive lawbreakers of their manly freedom and dignity by incarcerating them and isolating them from their families in newly conceived penitentiaries. Men who were actually convicted of crimes and imprisoned were encouraged to use their isolation as an opportunity to repent and reform in order to regain their manhood and liberty.

The founders' Enlightenment optimism about deterring crime and rehabilitating criminals had racial limits. Many white leaders considered black males as inherently unmanly because they lacked individual independence and control of their families. This putative absence of manhood precluded public officials from deterring and punishing black men's crimes by threatening to confiscate their manhood. It also eliminated any incentive for rehabilitation, because black convicts had no manly freedom to redeem. Black convicts were often considered incorrigibles. For them, the new penitentiaries were not innovative houses of penitence but old-style prisons for punishment.

Male Licentiousness

The American founders were obsessed with maintaining order in the ranks of men. From the first protests against British authority in the 1760s, through the Revolution, and into the turbulent politics of the 1790s, patriot leaders wondered whether most American men would ever consent to be governed and comply with legitimate political authority. Once the rhetoric of liberty and equality was unleashed, many men used it to justify rebellions against parents, masters, teachers, ministers, and magistrates. Bernard Bailyn writes, "Defiance to constituted authority leaped like a spark from one flammable area to another, growing in heat as it went." Men's defiant attitudes and licentious conduct were symbolized by the figure of the libertine. He represented all males who were enslaved by passion and who acted in ways that had a destructive impact on lovers, families, and neighbors, as well as on republican society.[2]

The founders were especially concerned about men's lustful tendencies, because they believed that men's failure to discipline sexual desire represented a more general failure to restrain passion, impulse, and avarice. For example, during the Great Awakening—a general revival of evangelical religion in the American colonies—congregational ministers attacked New Light evangelicalism not simply by interrogating its theology but also by associating its spiritual individualism with devastating images of "sexual anarchy," "sexual libertinism," "sexual promiscuity," and "a generally sexualized climate" that destroyed individual faith and reason, family integrity, and social stability. Men's sexual transgressions were seen as indicators of their potential for moral, social, economic, and political subversion.[3]

Consider the young men in post-revolutionary New York City who constituted "crowds of 'bloods' . . . who lounged on city sidewalks and, affecting the contemptuous stance of the aristocratic libertine, tossed provocative remarks at any single woman who passed." These young rakes were known for their aggressive sexuality and their tendency to make contempt for women an "emblem of high style." Some of them went beyond provocative words to violent deeds only to be charged with "attempted rape" or "rape." "Attempted rape" referred to coercive sexual acts up to and including forcible penetration; "rape," the more serious charge, involved penetration and ejaculation. Legislators had two concerns: First, they wanted to reduce the number of single mothers and bastard children who made claims on the public treasury. Second, they believed that the crime of rape was rooted in "the sudden abuse of a natural passion" and "perpetrated in a frenzy of desire." Rape indicated that liberty without self-restraint resulted

in abusive, frenzied actions that were inconsistent with liberal reason and republican order.[4]

The founders consistently condemned rape as "a horrid crime" that excited "universal abhorrence." Certainly, some American men, however, blamed the victim. In one notorious case, a defense attorney claimed that the accused rapist had actually been seduced by a carnal thirteen-year-old. But most civic leaders blamed rapists for impassioned violence against innocent females. Josiah Quincy and others expressed outrage at the "brutal ravisher." William Bradford declared rape an unmanly crime that demanded manly vengeance: "Female innocence has strong claims upon our protection, and a desire to avenge its wrongs is natural to a generous and manly mind." Like most founders who prided themselves on gentility and civility, Bradford saw nothing manly in sexual promiscuity or sexual violence.[5]

American leaders also associated same-sex relationships with subversion. Same-sex relationships represented a "potential in the lustful nature of all men" and "a potential for disorder in the cosmos." During the eighteenth century, public perception transformed sodomy from a mortal sin against God into a passion "against the order of nature" and therefore an abuse of natural laws that regulated "the peace, government, and dignity of the state." Why did private sexual acts among consenting adults have public meaning? John Winthrop's explanation was the enduring one. He argued that same-sex relations "tended to the frustrating of the ordinance of marriage and the hindering [of] the generation of mankind." Like the libertine, the sodomist separated sexual pleasure from marital restraint, unleashed passion and licentiousness, and thereby undermined men's commitment and conformity to stable family life.[6]

Following the Revolution, men's licentiousness appeared to be expanding. Many founders saw libertinism, along with itinerancy, pauperism, frontier bloodshed, slave unrest, military disorder, and criminality, as the crest of a wave of male degeneracy swelled by men's dealings in blasphemy, alcoholism, gambling, prostitution, adultery, fighting, dueling, thievery, and murder. So many men seemed to be "intemperate zealots"; so many took part in "the most shameful depredations"; so many joined mobs that committed "indecent outrages"; so many followed "factious demagogues."[7] In part, the founders responded by invoking the dominant norms of manhood to urge males to discipline desire and channel passion into family responsibilities and sober citizenship.

The Dominant Norms of Manhood

Eighteenth-century Americans debated the meaning of manhood. Images of traditional patriarchy vied with aristocratic ideals of the gentleman, republican images of benign fathers, and nascent notions of self-made manhood.[8] However, two facets of manhood were common to all contenders.

First, manhood required individual independence. A mature male was an autonomous thinker and actor. He disciplined passion and impulse, consulted reason, and relied on virtue to guide his actions. A mature male was also self-supporting, determined the nature and pace of his labor, and kept free of other men's patronage and government relief. He could afford to resist adverse pressures and exercise his own will to defend

his liberty, property, and community. He was an independent agent of his personal and public destiny. His independence stood in opposition to slavery in particular and subordination in general. Judith Shklar writes that a white male's sense of dignity, reputation, and public standing was a function of distinguishing himself "from slaves and occasionally from women." He measured his worth by his distance from dependency. The main marker of that distance was suffrage, which functioned as "a certificate of full membership in society." A man without the vote saw himself and was seen by others as slavish, effeminate, or childish.[9]

Second, mature manhood entailed family governance. The founders saw "a bachelor of age" as a slave to desire and greed. They presumed that a family patriarch assumed sober responsibility for provisioning and protecting his loved ones, continuing his family line, and caring for his posterity. His deep and abiding commitment to his family provided him an enduring stake in social stability and the public good. Although popular culture warned that a married man might be degraded by a domineering wife, Benjamin Franklin explained that "Every man that is really a man is master of his own family." He governed firmly but lovingly. Ideally, he ruled his household by joining traditional patriarchal authority to republican benevolence.[10]

Many founders saw patriarchal family status as a basis for citizenship. Thomas Jefferson wrote, "I cannot doubt any attachment to his country in any man who has his family and peculium in it. . . . I [am] for extending the right of suffrage (or in other words the rights of a citizen) to all who [have] a permanent intention of living in the country. Take what circumstances you please as evidence of this, either the having resided a certain time, or having a family, or having property, any or all of them." At the Constitutional Convention, George Mason proposed enfranchising family patriarchs, arguing that "the parent of a number of children whose fortunes are to be pursued in his own country" merited "the common rights of their fellow citizens."[11] In early America, independent manhood, family patriarchy, and social stability were nearly synonymous.

Ideally, males who exercised the self-discipline associated with independence, assumed the responsibilities of family life, and exhibited the long-term caring conducive to citizenship would voluntarily limit licentiousness and obey legitimate laws. After all, if a husband could restrict sexual passion to the marriage bed, then he could also make the small sacrifices necessary for republican order. Of course, some husbands were adulterers who indulged lust despite their marriage vows. Jacob Rush asserted that their adultery constituted a "cruel breech of trust" that fostered a "universal depravity of morals" that "must utterly destroy society."[12] The founders hoped that most men would exhibit manly self-restraint and marital fidelity, but they knew that many men failed to discipline desire only to run afoul of the law. They continued to rely on state coercion to deter criminal activity and punish criminals, but they infused traditional state coercion with an Enlightenment ethic of benevolent reform.

Traditional State Coercion

The American founders believed that criminal behavior on a prosperous continent could not be justified. Crime in class-divided Europe was understandable. There, William

Bradford explained, an impoverished "wretch" had little or no opportunity to transform his labor into individual independence or a family estate. Lacking alternatives, he engaged in crime to support his family or better his children's prospects. However, poverty was different in America, where "every man is or may be a proprietor" and his "labor is bountifully rewarded." Here, even the poorest man could invest individual effort in economic opportunity to build a stake, start a family, and accumulate patrimony for the next generation.[13] Because America was a land of economic opportunity, a man who turned to crime as a way to wealth had no legitimate excuses. The state had a duty to use its coercive apparatus to deter crime and punish criminals.

In colonial America, state coercion focused on capital punishment, corporal punishment, and public humiliation. Many crimes were capital crimes. Magistrates and ministers designed public executions to display the supremacy of civil and religious authority over the forces of chaos and evil. The scaffold was a sort of communal pulpit for warning spectators about the lethal consequences of criminality. Civic leaders used lesser penalties, such as public whippings and the pillory, to punish and humiliate lesser offenders and to deter onlookers from future crimes. After the Revolution, criminologists added public labor to their roster of punishments and humiliations.[14]

Humiliation was an effective punishment in some circumstances. The first Continental Congress drew up a strict code of moral conduct that banned vices related to "unbridled sensuality": cockfighting, horse racing, and the theater. Communities enforced the code by way of social pressure, stigma, and ostracism. Local committees pressured offenders to recant. They stigmatized men who tried to conceal their vices, by accusing them of "unmanly equivocation," subjected them to ridicule, and urged them to confess and conform. Finally, they forced perpetrators beyond persuasion to endure rituals of shame that included being tarred and feathered or drummed out of town.[15]

Prisons played a minor part in colonial criminal justice systems. Few cities or towns had prisons. Where they did exist, Kermit L. Hall observes, "Incarceration was a temporary rather than a punitive measure." A man might be detained or warehoused in a local jail until his trial. If he was found guilty, he was more likely to be sentenced to be hung, whipped, branded, or subjected to the stocks or public labor than to be remanded to the lengthy custodial care of the state. For the most part, "The colonists placed a premium on schemes of punishment that emphasized retribution, humiliation, and shame." Jails were for short-term detention, not long-term punishment.[16]

In the late 1780s, significant opposition to traditional state coercion surfaced in Pennsylvania. Critics suggested that republican ideals militated against cruel executions, draconian physical punishments, and barbaric humiliation. They also pointed out that extreme public punishments failed to deter crime. For example, some critics contended that capital punishment actually invited more crime by providing degenerate males with an unearned opportunity to redeem their lost manhood. In 1788 "A Citizen of the World" complained that audiences at hangings were more concerned with the conduct of the condemned than with the justice of the sentence: "The populace depart, either applauding the criminal's hardness, or as they term it, his spirit, in 'dying like a cock'—or else condemning his weakness—'He died like a d****d chicken hearted dog.'" To die like a cock was to be remembered as a man. It was as if a manly performance on the scaffold could erase a lifetime of immorality and crime.[17]

The most notable case in which a criminal was executed only to redeem his manhood involved British Major John André, who was hung for spying during the Revolution. On his capture, André sent to General George Washington a letter marked "with a frankness becoming a gentleman and man of honor and principle." He asked to "die as a soldier and man of honor [by being shot], not as a criminal [by being hung]." Washington denied the request but praised André for exhibiting "that fortitude which was to be expected from an accomplished man and gallant officer." When a teary-eyed servant brought André a dress uniform for the scaffold, he ordered, "Leave me until you show yourself more manly." When André was hung, observers reported, "the tear of compassion was drawn from every pitying eye that beheld this accomplished youth a victim to the usages of war." Alexander Hamilton was one of many Americans who memorialized André for having been "a man of honor" whose final request was "to "die like a brave man."[18]

More than a decade later, Benjamin Rush was still rankled by André's celebrity. He wrote, "The spy was lost in the hero; and indignation everywhere gave way to admiration and praise." Men who believed that a shortcut to manly dignity was to exhibit courage before the gallows had an incentive to commit capital crimes. Moreover, the "admiration which fortitude under suffering excites has in some instances excited envy [and] induced deluded people to feign or confess crimes which they had never committed on purpose to secure to themselves a conspicuous death." According to Rush, a proper punishment for terrible crimes should deter would-be criminals and dissuade innocents from confessing; it should not invite them to seek manhood through criminal notoriety.[19]

Critics also charged that most public punishments were counterproductive. On one hand, criminals' presence in public places was dangerous. The penal scene became "a vortex of viciousness, ominously seducing and contaminating the larger society." Philadelphia official Caleb Lownes opposed punishments such as street cleaning and road repairs because they afforded criminals an opportunity to engage "crowds of idle boys" in "indecent and improper conversation." Criminality was infectious and epidemic; it needed to be quarantined. On the other hand, the sight of convicts being whipped, pilloried, or weighed down by a ball and chain while doing public labor sometimes evoked public sympathy, not antipathy. Spectators showered admiration on convicts who exemplified fortitude; they showed compassion for men suffering obvious distress; and they expressed disdain toward penal officials who inflicted the distress. Critics wanted criminals condemned and officials honored.[20]

Redemptive State Coercion

Reformers' main alternative to severe public punishments was imprisonment in a new institution called a penitentiary, or "house of repentance." Michael Meranze observes, "In the colonial period, the prison had been a minor support of the scaffold, whipping post, and pillory. Now the scaffold and whipping post were infrequent supplements to the prison."[21] Reformers' emphasis on incarcerating convicts for prolonged periods was based on Enlightenment optimism that, under proper conditions, prisoners could

experience feelings of penitence, welcome rehabilitation efforts, redeem their manhood, and be restored to their freedom and families.

The dominant norms of manhood were central to the idea of the penitentiary as an institution of deterrence, punishment, and rehabilitation. If a mature man was an independent agent of his destiny and master of his family, then imprisonment was a frightful punishment that deprived him of his manhood. Italian criminologist Cesare Beccaria put it this way: "It is not the terrible but fleeting sight of a felon's death which is the most powerful brake on crime." Rather, it was "the long-drawn-out example of a man deprived of freedom." A male who was subordinated to his captors and separated from his family was less than a man. He suffered the psychic pain of knowing that he approached the dreaded condition of a slave. Benjamin Rush spread Beccaria's message in America. Writing against capital punishment, Rush argued, "The death of a malefactor is not so efficacious a method of deterring from wickedness as the example of continually remaining . . . a man who is deprived of his liberty."[22]

A man deprived of liberty was less than a man. He lost his independence and his family. Rush wanted to push emasculation as far as possible. He suggested that convicts be sent to distant, isolated penitentiaries: "Let a large house . . . be erected in a remote part of the state. Let the avenue to this house be rendered difficult and gloomy by mountains or morasses. Let its doors be of iron; and let the grating, occasioned by opening and shutting them, be increased by an echo from a neighboring mountain, that shall extend and continue a sound that shall deeply pierce the soul." Within soul-piercing penitentiaries, older convicts would be isolated from young ones and vicious criminals would be locked in isolation cells. Rush reasoned that isolation from family and friends "is one of the severest punishments that can be inflicted upon a man," because "attachment to kindred and society is one of the strongest feelings in the human heart."[23]

During an age when individualism was still identified with selfishness, most founders felt that a man's isolation was truly terrible. James Otis Jr. called "solitude" an "unnatural" state in which men "perish." John Dickinson declared "that to be solitary is to be wretched." Thomas Jefferson wrote that isolation from loved ones "is worse than death inasmuch as [death] ends our sufferings whereas [isolation] begins them," transforming a man into a "gloomy monk sequestered from the world." Samuel Quarrier put it best. Petitioning to be released from a debtors' jail, he wrote to President Jefferson, "This ignominious imprisonment unmans the heart."[24]

The idea that isolation "unmans" the heart implied that incarceration could be promising as well as painful. Isolated men suffered a degrading loss of manly freedom and dignity. Officials locked them up and treated them like dependent slaves, or women, or children. Simultaneously, penitentiary officials provided criminals with a chance to regain their manly independence and patriarchal prerogative. Quaker reformers encouraged convicts to use prison solitude as an opportunity to search their souls, reorder their faculties, experience penitence, and cooperate with officials who taught them to discipline their passions and learn useful trades in preparation for repatriation to society. Benjamin Rush rhapsodized at the prospect of a rehabilitated convict returning to his freedom and family: "I already hear the inhabitants of our villages and townships . . . running to meet him on the day of his deliverance. His friends and family bathe his cheeks with tears of joy; and the universal shout of the neighborhood is, 'This our

brother was lost and is found—was dead, and is alive.'"[25] A redeemed prisoner was a born-again man.

The possibility of prisoner rehabilitation was intimately connected with whether penitentiaries could motivate men to discipline desire, especially symbolically charged sexual desire. Meranze reports, "The threat of sexual contact obsessed prison reformers." The September 26, 1787, *Pennsylvania Gazette* reported that a Philadelphia grand jury and the Philadelphia Society for Alleviating the Miseries of Public Prisons complained of "a general intercourse between the criminals of the different sexes" resulting in "scenes of debauchery." They condemned overcrowding and "inadequate provision of bedding" as conducive to same-sex contact among male inmates. When an old jail was transformed into a penitentiary, officials enacted rules to separate male and female convicts so that they "shall have no intercourse with each other." They also sought to improve prison cleanliness and sleeping conditions to reduce disease and eliminate sodomy. Aspiring to create a strictly controlled environment, reformers were confident that male criminals could learn to discipline desire.[26]

If most men could learn to discipline desire, then even sexual criminals could be reformed. Early American penal codes mandated hanging for convicted rapists. After the Revolution, Pennsylvania eliminated the death penalty for rape and substituted a maximum penalty of property forfeiture and ten years in prison. Because reformers believed that rape stemmed from frenzied desire, they considered it an "atrocity" that should be punished but an atrocity rooted in excessive passion, not "incorrigibility of the criminal." A rapist did not suffer "irreclaimable corruption." With solitude, he could repent and be rehabilitated to manhood, family, and community.[27] Similarly, sodomy in early America was usually a capital offense. Bradford opposed the death penalty for "the crime against nature." America was "a country where marriages take place so early, and the intercourse between the sexes is not difficult." With females abundant and accessible, no man had a real motive to engage in a same-sex relationship. Indeed, "the wretch who perpetrates [sodomy] must be in a state of mind which may occasion us to doubt whether he be *Sui Juris* at the time; or whether he reflects on the punishment at all." Sodomy was a sort of temporary insanity manifested in a man enslaved by sexual impulse.[28] He too could be rehabilitated by solitude, penitence, and fortified self-restraint.

By 1805, Pennsylvania's experiment with penitentiaries had spread to New York, New Jersey, Connecticut, Massachusetts, and Virginia.[29] What made penitentiaries innovative, and ostensibly progressive, was the idea that they employed state coercion not simply for social control but for male reformation. Theoretically, state coercion was a benign application of power to liberate disorderly men from slavery to desire and thereby clear the way for them to exercise manly freedom. Penitentiaries forced men to be free.

Black Male Incorrigibility

In actuality, the rehabilitation theory was applied to white men. Reformer optimism about male rehabilitation did not extend to the belief that *black* convicts could regain

manly freedom. The founders did not attribute to black males a clear gender identity. They were seen as outsiders who lacked the manly ability to discipline their passions and the manly freedom to govern, provision, and protect their families. Essayist J. Hector St. John de Crévecoeur's American Farmer was typical of Euro-Americans. He praised liberty and abhorred slavery, but he could not imagine including Africans among the rich mixture of immigrants who could "become men" within the new race "called Americans."[30]

Most white leaders saw blacks as "outcasts from humanity." Revolutionary officials sometimes sought to humiliate disorderly white men by associating them with black men. A duplicitous Tory might be publicly degraded by being handcuffed to a black man for a period of time or by being whipped by a black man before being banished from the vicinity. What made this juxtaposition so humiliating as to render the Tory "impotent" was white America's belief that black males were lower-order creatures such as cattle.[31] Not surprisingly, then, the founders had difficulty imagining that the two races could live together in freedom and equality. Jefferson's well-known assertions about inherent racial differences were adopted by followers such as Tunis Wortman, who argued that interracial mingling and marriage were tantamount to a "universal prostitution" that would produce "a motley and degenerate race of mulattos." Other white leaders ranted against "the infamy of such a mongrel coalition," condemned "the disgraceful and unnatural" evil of interracial unions, and proclaimed that a "free nation of black and white people [will] produce a body politic as monstrous and unnatural as a mongrel half white man and half negro."[32]

Why were the founders fearful of race mixing? Many founders saw black males as inherently impassioned and incorrigible. They viewed them as oversexed creatures whose uncontrollable desires threatened to pollute and debase the white race. Jefferson observed that black males were "more ardent after their female" but lacked "a tender delicate mixture of sentiment and sensation." This combination of black lust and coarseness stemmed from black inferiority in "body and mind" as well as "imagination," where blacks were "dull, tasteless, and anomalous." Jefferson portrayed black males as promiscuous and mindless. He wrote, "Never yet could I find that a black had uttered a thought above the level of plain narration; never see even an elementary trait of painting or sculpture." Frank Shuffelton observes that Jefferson was quite blind to the diversity of African cultures and the creativity of the black artisans in his own household.[33] This blindness allowed him and other founders to view black males as less than men.

Whereas whites occasionally perceived black women to be "remarkable for their chastity and modesty," they nearly always saw black males as immutably lustful. A white rapist suffered a redeemable abuse of natural passion but a black male's character was defined by irredeemable lust. New England rape narratives centered on black lust. A 1768 narrative entitled *The Life and Dying Speech of Arthur* was typical. Arthur was a black slave who discarded piety and industry for a "licentious liberty" that included drinking, promiscuity, running away, theft, and ultimately the rape of a white woman, for which he was hung. Daniel Williams suggests that Arthur's story helped to solidify the white stereotype of the African male as an "immoral, hypersexual black wildly pursuing women to satisfy his prodigal lusts." Indeed, the stereotype was already well

established. It was manifested at least as early as 1682, when Pennsylvania Quakers briefly eliminated the death penalty for white rapists but retained hanging for black rapists, apparently because they believed black males were beyond rehabilitation.[34]

One reason the founders felt that black male slaves were beyond rehabilitation was that they were not true family patriarchs. Slave status meant that black males could do little to start families, keep them together, prevent wives' victimization, or protect children. Many male slaves lived in small, isolated households and had little or no contact with potential brides. Often, slave traders forced married male slaves to separate from wives and children, and slaveholder wills required the distribution of slave family members among various heirs. Meanwhile, owners and overseers might force slave husbands "to prostitute their wives and mothers and daughters to gratify the brutal lust of a master." The result, according to Benjamin Rush, was that slave husbands had little confidence "in the fidelity of their wives" or certainty that their wives' children were their own. Thus, male slaves showed little regard "for their posterity." Even when slave fathers were confident of their paternity, they could not "partake of those ineffable sensations with which nature inspires the hearts of fathers" because "paternal fondness" was compromised by the fact that their children would be "slaves like themselves."[35]

For many founders, then, black males could not be "men," because they lacked human status, manly independence, and family mastery. Worse, these hypersexual, coarse creatures carried a grudge against white society that threatened to escalate into racial violence. Jefferson spoke out against slavery, but he opposed combining emancipation with integration, lest free blacks act on "ten thousand recollections . . . of the injuries they have sustained." Similarly, John Taylor detested slavery, but he also hated the abolitionism that encouraged the "black sansculottes" to cut their masters' throats.[36] For the indefinite future, disorderly blacks would have to be controlled by coercion, because it was unlikely that they could be rehabilitated.

How did the founders hope to control incorrigible black males? First, the founding generation was more likely to prosecute, convict, and hang blacks for their crimes. Traditional capital and corporal punishment was by no means obsolete or exceptional for black male criminals. Second, blacks who were not executed or tortured were likely to be sold away from their families and banished from the vicinity. Finally, many black criminals were sent to prison. In the 1790s, for example, blacks constituted one-third of the prisoner population in Philadelphia's Walnut Street penitentiary. For black convicts, however, the penitentiary was not a substitute for traditional state coercion or an innovative institution for rehabilitation. Instead, it was one more option for detaining, disciplining, and controlling a select population of men whose putative passions and licentious behavior were believed to be incurable.[37]

Two-Tiered Criminal Justice

The American founders considered themselves republicans who defended liberty as a basis for men to act virtuously. After the Revolution, however, most founders worried that many men were investing their liberty in licentiousness that resulted in an "epidemic of crime," or an "unprecedented crime wave."[38] The founders' first line of defense

against criminality was to encourage males to adhere to the dominant norms of manhood. Young men were enjoined to fortify individual independence with self-discipline, settle down into patriarchal family responsibilities, and become law-abiding citizens. The founders' next line of defense was to apply the dominant norms of manhood to the criminal justice system. They developed innovative ideas and institutions for deterring and punishing crime and for rehabilitating criminals.

Enlightenment criminology proposed two major principles that American reformers adopted and adapted. First, the certainty of punishment, not its severity, best deterred criminal behavior. American elites used this principle to justify replacing traditional punishments such as hanging, branding, and whipping with ostensibly lesser penalties such as incarceration. Second, rehabilitation, not retribution, was the proper goal of punishment. Civic leaders did not support prisoner isolation because it was painful (although they believed it was painful) but because it provided prisoners with opportunities for rehabilitation. The penal road between lesser penalties and rehabilitation was paved with manhood. Convicts were stripped of manhood as a motivation for them to reform, and reformed convicts were promised renewed manly freedom and dignity. The outcome was crucial to the republic. William Bradford explained that when "the offender becomes humbled and reformed, society, instead of losing, gains a citizen."[39]

Of course, the founders did not consider all men eligible for citizenship. White men who owned real property fit the English freeholder tradition. They qualified for citizenship. When a potential or actual citizen engaged in criminal activity, leaders generally assumed that he could be rehabilitated and restored to manhood and citizenship. However, the founders thought that males who lacked the attributes of manhood and citizenship were unlikely candidates for rehabilitation. In particular, they saw black males (along with libertines, lower-class mechanics, immigrants, itinerants, orphans, regular soldiers, backwoodsmen, and Indians) as licentious characters who exhibited a "sordid ferocity and savageness of spirit."[40] They doubted that these "creatures" could learn manly self-restraint, honor family responsibility, or show respect for the law. They had to be controlled because they could not be redeemed.

In conclusion, the founders' conjuncture of manhood and liberty legitimized a two-tiered criminal justice system. The founders applied state coercion to white male criminals in the service of benevolent rehabilitation and restoration to manhood and liberty. Simultaneously, their new penitentiaries functioned as coercive custodial institutions for warehousing disproportionate numbers of blacks and other males whose ostensible unmanly conduct excluded them from liberty and justified severity and subordination to control them. Penitence was for the privileged.[41]

Notes

1. Benjamin Franklin, "The Autobiography," in *The Autobiography and Other Writings,* by Benjamin Franklin, ed. L. Jesse Lemisch (New York: New American Library, 1961), 18; Thomas Paine, "Common Sense," in *The Life and Major Writings of Thomas Paine,* ed. Philip S. Foner (New York: Citadel Press, 1945), 40; John Adams, "Dissertation on the Canon and Feudal Law" (1765), in *The Political Writings of John Adams,* by John Adams, ed. George Peek (Indianapo-