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## 1

## The Birth of a Prison Nation

[T]here was some deep meaning in it, most worthy of interpretation, and which, as it were, streamed forth from the mystic symbol... On the breast of [Hester Prynne's] gown, in fine red cloth, surrounded with an elaborate embroidery and fantastic flourishes of gold thread, appeared the letter A.

*The Scarlet Letter*, Nathaniel Hawthorne<sup>1</sup>

Throughout *The Scarlet Letter*, Hawthorne underlines the hermeneutic allure of this immoderate sign. Since its first appearance this first letter has been read perhaps more closely than any other symbol in American literary history and yet the 'deep meaning' of this article has proved most indefinite. The 'A' has been explicated as 'Artist' and 'Angel', as 'America' and 'Anarchy', as 'Abject' and 'Alienation' and even as an allegory of 'Allegory'. There is a danger in these readings, however, not exactly of interpolation, but of focusing so intently on what the sign does not say that one loses sight of its explicit social signification as a form of punishment. The Puritan letter penalty for adultery, like Poe's 'Purloined Letter', lies hidden in plain view. In *Discipline and Punish*, his gothic genealogy of the prison, Michel Foucault claimed that modern modes of discipline aim to render punishment increasingly invisible. The aim of this study is to resist that process. *Cruel and Unusual* will highlight the extent to which punishment has been a conspicuous feature of American history and culture from the Puritan colonies to the present day. Although it is sometimes hidden, although it may not be recognised even when in plain view, punishment has been as intricately woven into the fabric of American society as Hester Prynne's crewelwork.

Hawthorne's preoccupation with needlepoint performs an historical correction. By expunging the practice of branding and tattooing the criminal body the son exculpates his Puritan forefathers. The guilty flesh was often used as folio for an indelible sermon on sin. Given a strict sartorial code that insisted on covering as much skin as possible, Puritan disciplinary mnemonics were

typically inscribed on the face and hands. 'A' or 'AD' indicated adultery, 'B' was for blasphemy, 'D' for drunkenness, 'F' for fighting or fornication, 'I' for incest, 'M' for manslaughter, 'P' for prostitution, 'R' for roguery, 'S' for swearing, 'T' for thievery and 'V' for 'venal' or lewd behaviour. One legacy of Puritan stigma was the nineteenth-century practice of tattooing inmates with the name of their prison. A more recent patrimony is suggested by Martin Scorsese's 1991 remake of *Cape Fear*. As the semi-naked Max Cady exercises in his cell, the camera catechises a body covered in scripture. The centrepiece, on the subject's spine, is a set of scales weighing Justice (a knife) and Truth (the Bible). A detective remarks on this display during a lineup: 'I don't know whether to look at him or read him.' Cady's body might be read as a parodic emblem of the New Puritanism in US corrections and of the vogue amongst prisoners for scarification. It has been estimated that around 60 per cent of white and 85 per cent of Hispanic-American prisoners have ignored the injunction in Leviticus, 19.28: 'You are not to gash your bodies when somebody dies, and you are not to tattoo yourselves.' The significance of the tattoo in contemporary prison subculture is underscored by Oz. The opening credit sequence of this cult prison drama is sutured with shots of a figure, rumoured to be the series creator, Tom Fontana, having 'Oz' tattooed on his biceps. From branding to brand names, from letter penalties designed to enforce ostracism to gang markings that are a badge of belonging, from sadistic wounding to self-inflicted torture that signifies an elision between desire and hurt: a genealogy of punitive signs illustrates that their meanings are far less ingrained than a criminal's tattoo.

Like the scarlet letter, 'punishment' is a protean sign. Hester's judges intended that the 'A' would denote the sinful act which Hawthorne, with a prudery only partly feigned, never mentions by name. According to the letter of Puritan law adultery was punishable by death. By the mid nineteenth century, at the time *The Scarlet Letter* was published, numerous novels of adultery still registered the perceived dangers of this transgression by dramatising its unravelling of economics and desire. Adultery, of course, is no longer codified in most Western societies as an offence under criminal law, although pecuniary penalties may be incurred in civil proceedings. In ancient Greece, however, the punishment for adultery was decided by the 'victim'. Cuckolded husbands enjoyed considerable latitude, but often plumped for the insertion of root vegetables in the anus of their rivals. Revenge by *rhapanidosis* was a favourite as radishes,

although small, produced a particularly unpleasant burning sensation. Conversely, anal sex between consenting males was not considered a punishable act in ancient Greece or Rome, but was illegal throughout the US until the 1960s and is currently defined as criminal according to sodomy laws in 14 states and the US military.

Even a cursory glance at the history of punishment proves that penal practices vary dramatically between societies and across time. Although the specific forms are constantly changing, the brute fact of punishment itself is immutable. *The Scarlet Letter* opens with 'The Prison Door' and Hawthorne's insistence that all societies begin by preparing to punish those who pose a threat:

The founders of a new colony, whatever Utopia of human virtue and happiness they might originally project, have invariably recognised it among their earliest practical necessities to allot a portion of the virgin soil as a cemetery, and another portion as the site of a prison. (p.47)

Boston established its inaugural 'House of Correction' in 1632, just two years after the founding of the Massachusetts Bay Colony. This key penal institution has since been the subject of a lexical proliferation that foregrounds how difficult it is to contain the meanings of 'prison'. The American prison has acquired a range of formal titles that reflect differences in organisation and philosophy (county jail and state penitentiary, federal correctional and detention facility, reformatory, boot camp and brig) and colloquialisms that capture the regional and ethnic diversity of the inmates (bird and the Big House, the can, the clink and the cooler, the calaboose and the chokey, the glasshouse, the hoosegow and the joint, the pen and the pokey, the slammer and the skookum house). Historical links between America and the Big House predate even the first Puritan prisons. Ogden Nash joked that 'Columbus discovered America and they put him in jail for it'.<sup>2</sup> On his release from Las Cuevas monastery in Seville, Columbus organised a final expedition to a continent which had since been christened after a rival explorer. Emerson bemoaned the decision of Waldseemuller, the German mapmaker, to name the New World after a figure suspected by many of fraud: 'Strange that broad America must wear the name of a thief! Amerigo Vespucci ... in an expedition that never sailed, managed in this lying world to supplant Columbus, and baptise half the earth with his own dishonest name!'<sup>3</sup> Doing a six-year stretch for burglary between 1946

and 1952, an inmate at Charlestown State Prison renounced his own 'dishonest name' in favour of a symbol, 'X', that signified a 300-year history of theft and imprisonment. Malcolm X, alongside a generation of African-Americans politicised by incarceration, insisted that for his people 'America' had always meant 'prison'.

Enslaved Africans were amongst the first arrivals in the New World for whom the American experience was of imprisonment rather than new-found liberty, but they were not alone. Throughout the colonial period, America received significant numbers of transported convicts, indentured servants, impressed sailors and military conscripts, united by their carceral condition. In Virginia, by 1618, only 600 of the original 1,800 colonists had survived. The early colonial period witnessed acute labour shortages and these were resolved, in part, by the deportation of convicts. Seventeenth-century English law saw a steady increase in the number of crimes punishable by death (including stealing a lady's petticoat or a silver spoon), but a decline in the number of executions. Deportation to the colonies was often the only alternative to death, and this established a long-lasting precedent in American history for the integration of capital and punishment. Despite the profits made by colonial merchants, the prisoner trade was not met with unequivocal enthusiasm. The General Court of Virginia expressed concern about the 'danger to the colony caused by the great number of felons and other desperate villains sent over from the prisons of England'.<sup>4</sup> When Sir John Popham tried to establish a community in Maine, some critics complained that it was made up from 'all the gaols of England'.<sup>5</sup> For much of the seventeenth century in Britain, prior to the revolutionary war, deportation was the most common sentence imposed on felons. During this period, over 50,000 convicts were transported to America, accounting for almost 25 per cent of all British emigrants. When news of colonial resentment at this practice made its way back to England, Samuel Johnson retorted: 'Why they [Americans] are a race of convicts, and ought to be thankful for anything we allow them short of hanging.'<sup>6</sup>

*Genesis story of America and Sin*  
The attempt to cultivate a New Eden in the Wilderness was itself a response to original deportation from the Garden. As well as acknowledging affinities between early America and the penal colony, it is essential to recognise the punitive caste of the religion which the Pilgrim Fathers took to the New World. For the Puritan sensibility the central sign in Christian culture, the cross, retained much of its significance as an instrument of torture and execution. The Puritan

God was a profoundly disciplinary deity. Seventeenth-century sermons embarrass the apocalyptic imagination on display in the Hollywood disaster film: floods and rivers running red with blood; famine, disease and fire; plagues of insects, vermin and reptiles; brimstone and fire raining down on cities; the sacrifice of sons, and mothers ordered to eat their own babies. Alexis de Tocqueville judged that '[t]here is no country in the world where the Christian religion retains a greater influence over the souls of men than in America'.<sup>7</sup> Whilst the power of the church has waned in most other western societies, religion has remained a potent force in the US and has always been entangled in notions of divine vengeance and earthly retribution. The Heavenly Father, in God's own country, has often been cast as a strict disciplinarian, and according to Thomas Paine, 'belief in a cruel God makes a cruel man'.<sup>8</sup>

Paine's writings helped inspire the push for independence and the Revolution furthered the fledgling Republic's sensitivity to the subject of punishment. In the War of Independence more Americans died as prisoners than were killed in combat. The British held rebels in overcrowded and unhygienic conditions in camps and a flotilla of prison ships. In the wake of the war, the debate concerning the shape and direction of American government returned frequently to the importance of criminal and civil justice. A determination to fulfil the ideals established in the Declaration, and to distance themselves from the tyrannical treatment of prisoners by their former masters, encouraged a reconsideration of penal practice. Alongside programmes to improve transport infrastructure, education and houses of refuge for the poor, the fledgling Republic sought to forge a national identity that was distinct from Old World despotism through humane treatment of the criminal population. One of the signatories on the Declaration, Benjamin Rush, called for the abolition of capital punishment and the establishment of a new penal philosophy founded on the ideal of social and spiritual rehabilitation. Rush believed that 'a prison sometimes supplies the place of a church and out-preaches the preacher in conveying useful instruction to the heart'.<sup>9</sup> Punishment ought, therefore, to be tailored 'according to the temper of criminals and the progress of their reformation'.<sup>10</sup> Pennsylvania, with its sizeable Quaker population, was a focal point for the reforms that Rush requested. It was the first state to abolish capital punishment for all but the most serious felonies, and replace it with hard labour. The Quakers were also instrumental in the evolution of a new form of prison, modelled on the monastery and

*Christian hegemony 1800s*

*Prison reform in War of Independence*

↓  
 geared towards the spiritual instruction of inmates. In the 'penitentiaries' that appeared in the late eighteenth and early nineteenth centuries, regimes based on solitary confinement, silence and hard work were introduced for the first time. Incarceration was no longer simply a punishment, but an opportunity to redeem lost souls.

These innovations in penal style generated considerable interest in Europe. In 1831 the French government sent two magistrates to investigate and report on the penitentiary system. Alexis de Tocqueville, travelling with Gustave de Beaumont, toured various facilities, including Eastern State and Sing Sing, before submitting *On the Penitentiary System in the United States and Its Application in France*. This report was guarded in its optimism. The authors suggested that the penitentiary had developed into a monomania which reformers saw as 'a remedy for all the evils of society'.<sup>11</sup> They went on to conclude that 'while society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism.'<sup>12</sup>

*Democracy in America*, regarded as a seminal statement on the 'extended liberty' enjoyed by US citizens, grew out of de Tocqueville's study of the nation's prison system. Although he was troubled by the failure to realise the ideals of the penitentiary, de Tocqueville remained convinced that the Land of the Free lay just beyond the prison walls. However, when the situation of those deprived of fundamental liberties is considered – the slaves held on plantations in the South, the native Americans coerced onto reservations, the industrial working class corralled in factories, and the women increasingly confined to the domestic sphere – the distinctions between inside and outside are not as clear-cut as de Tocqueville assumed.

The legends of 'extended liberty' evolved partly in response to increasing historical pressures placed on romantic ideals at the heart of the Republic's formation. The focus on frontier freedom, for example, cloaked the increasingly carceral experiences of many to the east of this mythical line. As David Rothman notes, the pinnacle of enthusiasm for prison reform coincided with the era of Jacksonian democracy:

At the very moment that Americans began to pride themselves on the openness of their society, when the boundless frontier became the symbol of opportunity and equality ... notions of total isolation, unquestioned obedience, and severe discipline became the hallmarks of the captive society.<sup>13</sup>

A century and a half later, the same disparity is starkly evident. Political and business rhetoric insists routinely on the democratic virtues of small government and the free market, at the same time as an unprecedented lockdown of US citizens is taking place. Since the end of the Vietnam war, the prison population has increased tenfold, from approximately 200,000 to over 2,000,000 inmates. If public works embody the spirit of the age, then the zeitgeist of millennial America is profoundly carceral. When Clinton declared, in 1996, that the 'era of big government is over', he could not have been referring to the Department of Corrections. Between 1990 and 1995, a massive building programme produced 168 state and 45 federal prisons, bringing the total to 1,500, alongside 3,300 local jails and over 5,000 additional correctional facilities. Historically, plans for prison building have been met with vociferous opposition from local communities. In the current climate, however, the same groups lobby feverishly to secure the boost to regional economies promised by a new prison. A maximum-security facility can cost anywhere between \$30 million and \$75 million. The average cost of a single cell, at around \$80,000, now rivals suburban property values. Construction expenditure is quickly dwarfed by operating costs. It takes more tax dollars to send someone to prison than to study law at Harvard, and the education they receive at both institutions helps keep the wheels rolling on the Justice Juggernaut.

The 'ceiling' of America increasingly involves lucrative partnerships between private capital and state and federal authorities.<sup>14</sup> Between 1985 and 1995 there was a 500 per cent increase in the number of private prisons. The privatisation of the prison landscape has been accompanied by increasing use of convict labour. Alongside the traditional manufacture of licence plates, prisoners now make uniforms for McDonald's employees, pack Microsoft products and golf balls, make motherboards and furniture, as well as being involved in telemarketing and drug testing for pharmaceutical companies. This convergence of business and political interests has made the concept of decarceration 'unthinkable'. The rise and rise of a multi-billion dollar corrections industry is largely unopposed, and prison hegemony is systematically reinforced within mainstream media culture. Dostoyevsky famously declared that 'the degree of civilisation in a society can be judged by entering its prisons'.<sup>15</sup> Even before we examine the interior, however, degrees are suggested by the sheer number of prison doors to open in contemporary US society. The prison that Hester Prynne emerges from is described by

Hawthorne as 'weather-beaten' and the 'rust on the ponderous iron-work of its oaken door looked more antique than anything else in the New World' (p.48). The prisons produced by the New Puritanism in US corrections belong increasingly to the realm of science fiction: automated locking systems, unbreakable polycarbonate screens, infrared surveillance cameras, digital voice-recognition software, impulse radar systems for perimeter security and guards armed with stun guns and tasers. The SuperMax is the new City on the Hill and a flagship monument for the Big House nation.

Officially, from the birth of the penitentiary system to the early 1970s, there were no prisons or prisoners in America. According to ruling definitions, the Department of Corrections provided its 'inmates' with vocational training, educational opportunities, counselling and psychiatric treatment. The contemporary expansion of the penal system, however, has witnessed a wholesale rejection of rehabilitative ideals and a return to a profoundly Puritanical insistence on punishment as retribution. This regression poses problems for the influential historical model offered by Foucault in *Discipline and Punish*. Foucault argues for a fundamental break in the practice of punishment between the preindustrial and industrial eras. The *ancien régime* is exemplified by an account of the execution, in 1757, of a regicide. The body of the condemned man, Damiens, was subjected to prolonged public torture, before being pulled apart by horses and burnt to ashes. The function of this spectacle was to make visible the absolute power of the sovereign, and thus intimidate his subjects into obedience. The opening pages of *Discipline and Punish* juxtapose this execution with a timetable that establishes a strict daily routine in a house of young prisoners in 1838 in Paris. Foucault asserts that the characteristics of this new technology of power are discipline, surveillance and self-control. The transition between these two penal styles displays an increasing interiority. The privatisation of punishment replaces public spectacles of torture. The gallows, the stocks and pillories disappear, and discipline is administered behind locked doors. In the new system, the focal point of punitive violence is no longer the body but the criminal 'soul'. The infliction of pain is secondary to psychological correction. Within this regime it is not enough to punish the criminal; the criminal must learn to punish himself. Whilst liberal histories have traditionally seen the birth of the prison as part of the march of civilisation, Foucault sees instead the appearance of new modes of social control that are if anything more pervasive and insidious. These new tactics were pioneered in

prison and then applied throughout society, in asylums, hospitals, schools, workplaces and the home. For Foucault, the birth of the prison means the birth of a prison society.

The paradigmatic form for these developments is the panopticon. Jeremy Bentham's model prison was a tiered, circular structure with a watchtower at the centre. The advantage of this design was that the prisoners, held in barred cells around the circumference walls, could be ceaselessly monitored. In fact, Bentham contended, over time the prisoners would learn automatically to feel and fear a disciplinary gaze, and at this point a human presence in the watchtower would be redundant. Panopticon principles may be evident in other institutions, but currently, in US corrections, the *ancien régime* is enjoying a renaissance. Rather than being internalised and hidden, punishment is arguably more conspicuous in American public life than it has ever been. At current rates of construction, Bentham's dream of having a panopticon at the heart of every town and city may even be realised. There is, however, little room in the modern Big House for the rehabilitative ideals that initially informed experimental prison design. Contemporary American justice is unashamedly founded on the ethos of *lex talionis* (an eye for an eye). A number of states have reintroduced the chain gang and judges have rediscovered a Puritan zeal for sentencing offenders to public penance for misdemeanours. Crucially, the ultimate expression of the power of the state over its subjects remains in the US despite its abolition in most other nation-states in the west. The death penalty, first codified as law by King Hammurabi of Babylon in the eighteenth century BC, still plays a vital role in American punishment practice. Following *Furman v. Georgia* in 1972, a moratorium was ruled in accordance with the Ninth Amendment, but this lasted only until 1976, when in *Gregg v. Georgia*, *Proffitt v. Florida* and *Jurek v. Texas* it was ruled that the death penalty per se did not constitute cruel and unusual punishment. Between 1977 and 2000 there were almost 700 executions in the US, with 98 in 1999 alone. This has been accompanied by clamouring for televised executions. Various interest groups, especially in relation to high-profile cases, such as that of Timothy McVeigh, have lobbied on behalf of the public's constitutional right to witness the administration of justice.

When the Foucault model follows in the footsteps of de Tocqueville to visit the US penal system it encounters problems caused by the resilience of the *ancien régime*. Additional problems stem from one of the most telling lacunae in *Discipline and Punish*.

Somewhat surprisingly for the devotee of de Sade and author of *The History of Sexuality*, Foucault seems largely uninterested in the erotics of punishment. Sadism and masochism, the desire to punish and be punished, play a vital role in discipline and are a key feature in the history of cruelty in the US. According to psychoanalytical theory, relationships with the law are shaped by oedipal dynamics. This terrain was originally mapped by Freud in *Three Essays on the Theory of Sexuality*, 'A Child is Being Beaten' and 'The Economic Problem of Masochism'. Although S&M subsequently passed into the collective imagination as synonymous with sexual deviancy, Freud's work sometimes narrowed the gap between perversion and normality. In classical psychoanalysis, the roots of sadism lie less in aberrance than in a perfection of the oedipal complex. The sadist is the subject who over-identifies with the Father and his Law. In the sadistic personality, the superego becomes so powerful that it requires subjects to punish as surrogates for internal weaknesses associated with the maternal imago.

Although the Marquis de Sade's infamy is more widespread than Leopold von Sacher-Masoch's, sadism has enjoyed less critical coverage than masochism. This preference is evident in Freud's work where, building on Krafft-Ebing's *Psychopathia Sexualis*, masochism is subdivided into three categories: erotogenic, moral and feminine. Erotogenic masochism involves deriving sensual gratification from physical pain. Moral masochism concerns the subject whose ego is tortured incessantly by a distended superego and whose desire for punishment becomes so irresistible that he is constantly tempted to commit those deviant acts that will result in self-castigation. Freud devised the term 'feminine masochism' to categorise male patients who desired to assume the 'feminine position' and female patients who ventured beyond the bounds of socially-sanctioned submissiveness. The history of this perversion is traced to infantile fantasies of being bound, beaten and 'treated like ... a naughty child'.<sup>16</sup> Whether it is physical correction or self-chastisement, the 'true masochist ... always turns his cheek whenever he has a chance of receiving a blow'.<sup>17</sup> But who is delivering this punishment, and why is it desired? Freud read the beating scene as a passage from the oedipal script in which cruelty was the cipher of love: 'the wish, which so frequently appears in phantasies, to be beaten by the father stands very close to the other wish, to have a passive (feminine) relation to him and is only a regressive distortion of it'.<sup>18</sup>

Classical psychoanalysis has established the parameters within which the meanings of masochism have been contested, and it is important to recognise that Freud's own models were themselves somewhat conflicted. In *Male Subjectivity at the Margins*, Kaja Silverman offers a persuasive deconstruction of the Freudian paradigm that begins with the recognition that 'feminine masochism doesn't have much to do with women, [and] moral masochism doesn't have much to do with virtue'.<sup>19</sup> Silverman illustrates how classical Freudianism itself jeopardises the hegemonic sexual coding of 'healthy' and 'sick'. The prominence of male subjects in case studies of female masochism, for example, suggests that there are socially-acceptable levels of self-torture for women: 'It is an accepted – indeed a requisite – element of "normal" female subjectivity, providing a crucial mechanism for eroticising lack and submission ... what is acceptable for the female subject is pathological for the male.'<sup>20</sup> For both sexes, masochism differs from the psychic economy of the 'normal' subject only in 'degree and erotic intent'.<sup>21</sup> The margins between the upstanding citizen and the pervert are less certain than Freud may have wanted to concede. Those mainstays of Victorian ideology – the Protestant Work Ethic, 'suffer and be still', spiritual self-surveillance – lie on a continuum with masochistic desire.

Silverman quite rightly challenges the moral imperatives of classical psychoanalysis, but confirms Freud's judgement that masochism is a 'dangerous' condition, one with the 'revolutionary' potential to spill out of the boudoir and onto the barricades, 'contaminating the proprieties of gender, class, and race'.<sup>22</sup> According to this reading, the masochist 'radiates a negativity inimical to the social order'; he is involved in the transgression of boundaries (pain/pleasure, male/female, animal/human, victim/aggressor, life/death) and forms of 'phallic divestiture' that might result in the 'ruination of masculinity'.<sup>23</sup> This hard-core and brazenly utopian definition of masochism is partly indebted to Deleuze. In *Masochism: Coldness and Cruelty*, Deleuze turns Freudian orthodoxy on its head to propose that sadism and masochism, rather than being reciprocal complexes, are in fact profoundly antithetical and politically charged. The sadistic desire to dominate the other is oedipal in origin, whilst masochism is motivated by a desire to recover a pre-oedipal bond with the mother. For Freud, the classical S&M scenario is a drag, with the dominatrix as Daddy in disguise. Conversely, Deleuze insists that the female 'master' is not masquerading as the oedipal father, but

1000... beating Sacher-Masoch's

human - masochist's transgression

instead embodies a forceful return of repressed maternal power: 'a pact between mother and son to write the father out of his dominant position within both masochism and culture, and to install the mother in his place'.<sup>24</sup> Male masochism is not, as Freud believed, a symptom of repressed homosexual attraction to the patriarch, but a desire to overturn the father's law as it is embodied in the willing slave: 'what is beaten, humiliated and ridiculed in him is the image and likeness of the father'.<sup>25</sup> Neither Deleuze nor Silverman are especially precise about the means by which private acts are translated into public transgressions, and it is perhaps a recognition of this that leads the latter to conclude with a cautionary note: 'Perversion always contains the trace of Oedipus within it – it is always organised to some degree by what it subverts'.<sup>26</sup> Pursuing the logic of this position to its extreme, as is his wont, Foucault argues in *The History of Sexuality* that perversions, rather than subverting the grammar of the oedipal narrative, simply extend it into the margins. Masochism is not a modern manifestation of Dionysian energies, but a masquerade that mimics cruelty within the family. Those desires and practices labelled 'masochistic' are produced and managed by the dominant fictions of sexuality, helping to reinforce the norm by simply inverting the hegemonic dualities of heterosexuality.

*Cruel and Unusual* will examine cultural representations of punishment in relation to these rival definitions of sadism and masochism. The aim of this study is to foreground not only the bonds between discipline and desire, but also to explore the entanglement of erotics and economics. Punishment can be read as a lynchpin between relations of domination and submission in political and libidinal economies. If psychoanalysis can contribute to our understanding of the latter, Marxist critical theory is essential to grasping the operations of the former, since as Rusche and Kirchheimer argue: 'Every system of production tends to discover punishments which correspond to its productive relationships'.<sup>27</sup> According to the Marxist reading, the concept of the 'political prisoner' is tautological, since the history of punishment is always a 'history of the relations [between] the rich and the poor'.<sup>28</sup> Or, as Norman Mailer suggests more romantically:

There is a paradox at the core of penology, and from it derives the thousand ills and afflictions of the prison system. It is that not only the worst of the young are sent to prison but the best – that

is the proudest, the bravest, the most daring, the most enterprising, and the most undefeated of the poor. There starts the horror.

Whether it occurs in public or private, punishment is always enacted in a network of social relations. As Scott Christianson insists, any history of punishment must expand to include

the slave traders and spirits and crimps and transporters and outfitters and masters and drivers and overseers and locksmiths and jailers and wardens and judges and bail bondsmen and guards and chaplains and prison reformers and inspectors and jurors and executioners and sheriffs and marshals and cops and probation officers and parole officers and correction officers and their families.<sup>30</sup>

At the same time, any history of punishment cannot consider the punitive act in temporal isolation, but must address the before and after. Every narrative of punishment is also a crime story. Every disciplinary act leaves its mark. Foucault contends that punishment is always a mode of representation. At times, *Discipline and Punish* seems preoccupied with the perspective of those who practise the punitive arts rather than the subjects who are their raw materials. To consider punishment from the perspective of the victims of torture, the prisoners and the condemned is to recognise the extent to which punishment is the end of representation. The effects of punishment – bodily pain, trauma and death – produce crises in signification that destroy both word and world. A history of punishment must therefore move simultaneously out into the material contexts of social relations and inwards towards the body, its desires and the silent centres of unspeakable hurt.

To this end, *Cruel and Unusual* will offer readings of a range of cultural representations in relation to key phases and cohorts within the history of punishment in the US. We will begin with the early colonial period and the role played by Puritan religion in regulating social, sexual and punitive relations. Hawthorne's *The Scarlet Letter* will be closely scrutinised both for what it has to say about punishment in Puritan New England and the antebellum North. The fiction of Hawthorne's friend and contemporary, Herman Melville, will be inspected with regard to developments in discipline in the nineteenth century. The ghosts of Puritanism will be hunted in the Cold War era through a consideration of the execution of the Rosenbergs and its fictional recreation in E. L. Doctorow's *The Book*

of Daniel and Robert Coover's *The Public Burning*. The African-American experience and representation of punishment will be surveyed from slave narratives to recent prison writings. In conclusion, the prison film will be examined in relation to discipline and punishment on the contemporary American scene. Although the materials examined in each part of this survey are disparate, the intention remains the same: to explore the conflict between hegemonic fables of American national identity and the secret and silenced sexual and economic histories of punishment. In 1921 the LAPD arrested Upton Sinclair for reading aloud the Declaration of Independence in a public space. This might be read as a paradigmatic moment in the long history of punishment in North America. The mythology of the Land of the Free can be seen as an ideological smokescreen designed to obscure the systematic deprivation of liberty and infliction of punishments, both cruel and unusual.

## 2

## *The Scarlet Letter* and the Long Forever of Puritan Punishment

He turned towards the scaffold, and stretched forth his arms.

*The Scarlet Letter*, Nathaniel Hawthorne<sup>1</sup>

To begin a history of punishment in America with the Puritans is problematic. Although the Pilgrim Fathers believed otherwise, they did not invent discipline in the 'wilderness'. Spanish soldiers constructed a substantial prison in 1570 at St Augustine in Florida. The first recorded execution in North America took place in 1608 when George Kendall was hanged for allegedly betraying Virginia Colony to the Spanish.<sup>2</sup> In 1611, almost a decade before the *Mayflower* moored near Plymouth Rock, Jamestown had already instituted a code of 'Laws Divine, Moral and Martial'. 'Dale's Laws', named in honour of the governor, could be as unforgiving as the marshland on which the colony was founded. One of the earliest recorded punishments at Jamestown documents a seamstress being whipped for sewing her lady's skirts too short. For uttering 'base and detracting words' against Dale, Richard Barnes was sentenced to the following:

[he shall be] disarmed and have his arms broken and his tongue bored through with an awl and [he] shall pass through a guard of 40 men and shall be butted by every one of them and at the head of the troop kicked down and footed out of the fort; and he shall be banished out of James City and the Island, and he shall not be capable of any privilege of freedom in the country.<sup>3</sup>

In recognition of the punitive severity of early Jamestown, Karen Kupperman has compared the first permanent European settlement in North America to a prison camp.<sup>4</sup> The history of punishment in America thus pre-dates the Puritans, and not just by the odd decade. For centuries prior to the establishment of Camp Jamestown, what came to be known as America had already been the site of punishments as diverse (tribal, martial, religious, domestic, erotic) as the indigenous population who practised them.<sup>5</sup>



The problems confronting a history of punishment that begins with the Puritans do not end here. Historians of the colonial period have warned against collapsing early America into Puritanism and Puritanism into caricature. The colonial period stretches over 150 years (1620–1776) and sees a population increase from a few thousand to over 3 million. The majority of this demographic were not Puritans. There were significant numbers of Quakers, Antinomians, Anabaptists, Jesuits, Diggers, Seekers, Familists and Ranters. In addition, there were many colonists who did not belong to a church or were excluded from one (including many servants and slaves). Diversity in the colonial period can be obscured by a preoccupation with the Pilgrim faithful. Equally, differentiation within this community can be erased by casual assumptions about a monolithic Puritan order. There were critical differences between and sometimes within Puritan communities and these extend to the punishment practices that were continually evolving throughout the pre-revolutionary era.

To commence a history of punishment in America with the Puritans is thus problematic, but also necessary. Although they did not invent discipline, the Puritans' code either supplanted or helped to shape most other penal styles. In part the potency of this code is a function of the importance placed on punishment by the Puritan colonies from their inception. In his historical study, *Of Plymouth Plantation*, William Bradford described the Pilgrim Fathers' exodus as itself a flight from punitive persecution: 'what wars and oppositions ever since [the Reformation], Satan hath raised, maintained and continued against the Saints ... Sometimes by bloody death and cruel torments; other whiles imprisonments, banishments and other hard usages.'<sup>6</sup> The irony of fleeing persecution in the Old World only to repeat it in the New has often been noted. Popular conceptions of the colonial period gravitate towards the 'cruel torments' of witches, Quakers, backsliders and others unfortunate enough to incur the wrath of stern Puritan judges. The tactics and technologies of discipline are amongst the most significant patrimonies bequeathed by the Puritans to the Republic. This chapter will explore the nature of punishment in Puritan society and its continuing legacy in relation to *The Scarlet Letter*. Hawthorne's canonical text has been instrumental in shaping popular conceptions and misconceptions about Puritan society. This novel will be examined both in relation to punishment in the early colonial period

(the novel's historical setting) and then alongside disciplinary developments in antebellum America (the novel's historical context).

#### THE 'BODY OF LIBERTIES'

With dismal chains, and strongest reins,  
like Prisoners of Hell,  
They're held in place before Christ's face,  
til He their Doom shall tell.  
These void of tears, but fill'd with fears,  
And dreadful expectation  
Of endless pains and scalding flames,  
stand waiting for Damnation.

.....  
It's now high time that ev'ry Crime  
be brought to punishment.

*The Day of Doom*, Michael Wigglesworth<sup>7</sup>

*The Scarlet Letter* is entitled by the letter of the law. Hester Prynne is sentenced to wear an 'A' on her person, at all times, to signify her guilt as an adulteress. When Hester is introduced as a subject of shame on the scaffold, she clutches her bastard child, Pearl, to her breast and is addressed by her secret lover, the Reverend Dimmesdale. Subsequently, the scaffold is the site of a clandestine meeting between these three in the middle of the narrative (in private, at midnight) and of the climactic revelation of Pearl's paternity at the close (in public, at noon). Hawthorne's narrative patterns are as carefully woven as his heroine's symbol, and the prominence of the scaffold on which the three figures converge three times underlines the centrality of punishment to this tale. *The Scarlet Letter* is sometimes mistakenly cited as a novel of adultery. The 'crime' itself, however, is banished from the narrative in much the same manner that one of its perpetrators is expelled from the community. This most unromantic of romances is preoccupied with the punishment that pursues 'lawless passion'. Alongside Miller's *The Crucible*, the other canonical text set in this milieu, *The Scarlet Letter* has encouraged a conception of Puritan New England as virtual penal colony. But just how important was punishment to the Puritans?

John Winthrop records a meeting between leading members of the Puritan elite that took place in 1636 in Boston. The meeting was convened by Henry Vane to discuss the subject of discipline, and specifically whether, 'in the infancy of a plantation, justice should be administered with more lenity than in a settled state'.<sup>8</sup> Winthrop found himself in the minority, forwarding a case for the political expediency of a clement criminal justice system. Church leaders, however, insisted on rigid adherence to the Levitical code, and the meeting resolved that 'strict discipline, both in criminal and martial affairs, were more needful in plantations than in a settled state, as tending to the honour and safety of the gospel'.<sup>9</sup> In the light of this decision Nathaniel Ward, a retired minister, drafted the 'Body of Liberties', which was duly ratified in 1641 by the General Court. This document was the first attempt at a fully codified penal system in the English-speaking world. The meeting documented by Winthrop can thus be seen as a watershed, since it helped establish the legal framework and general character of the Puritan judiciary for subsequent generations. Although colonial justice in some respects mirrored the forms of English common law, its animating spirit was Mosaic. At the same time Liberty, that key word in national myth, was conjoined in its earliest official usage with the practice of punishment.

The 'Body of Liberties' included an injunction against punishments 'that are inhumane, barbarous or cruel'.<sup>10</sup> This did not, however, dissuade Puritan judges from sentencing offenders to violent, shaming rituals in the stocks and pillories, whipping, mutilations of face and body, banishment and execution. It is important to recognise the cruelty of Puritan punishment, but it should not be overstated. At this time such practices were commonplace throughout the Old World. The notorious Salem witch trials resulted in 19 executions, a figure dwarfed by the number of hangings and public burnings for witchcraft in early modern Europe, estimates of which vary from 60,000 to a holocaust of 9 million. Criminal justice in colonial New England was not significantly more barbaric than that in Europe. What was more distinctive, however, was its extent and the fervour with which it was administered. During Hester's ordeal on the scaffold, Hawthorne describes the Puritans as 'a people amongst whom religion and law were almost identical, and in whose character both were so thoroughly interfused, that the mildest and the severest acts of public discipline were alike made venerable and awful' (p.55). Lawrence Friedman confirms Hawthorne's assessment of Puritan theocracy, insisting that

it would be hard to overemphasise the influence of religion ... in shaping the criminal codes, in framing modes of enforcement, and, generally, in creating a distinctive legal culture. The criminal justice system was in many ways another arm of religious orthodoxy.<sup>11</sup>

Puritan punishment was invested with religious vehemence, and its religion inspired with a punitive zeal. The Puritan deity in Jonathan Edwards' *Sinners in the Hands of an Angry God* was a merciless judge:

'I will tread them in mine anger, and will trample them in my fury, and their blood shall be sprinkled upon my garments, and I will stain all my raiment' (Isaiah, 63.3) ... There will be no end to this exquisite horrible misery. When you look forward, you shall see a long forever, a boundless duration before you ... So that your punishment will indeed be infinite.<sup>12</sup>

Edwards' jeremiad was delivered in 1741, the centennial anniversary of the 'Body of Liberties', and sustained the tradition in Puritan culture of representing the Father as cruel disciplinarian. Michael Wigglesworth's *The Day of Doom*, the best-selling poem in seventeenth-century America, suggests that Puritan eschatology was at least as concerned with His vengeance as with the prospect of salvation:

already under a sentence of condemnation to hell ... justice calls aloud for an infinite punishment of their sins ... the pit is prepared, the fire is made ready, the furnace is now hot, ready to receive them; the flames do now rage and glow. The glittering sword is whet, and held over them, and the pit hath opened its mouth under them.<sup>13</sup>

According to the doctrine of predestination, the Preterite had no possibility of pardon from this 'infinite punishment'. This did not imply, however, that the Elect were automatically exempt from chastisement. The Saints, as God's Chosen People, were in fact more, not less likely to feel His Wrath. As Winthrop explained in *A Model of Christian Charity*: 'the more Jealous of our love and obedience so he tells the people of Israel, you only have I known of all the families of the Earth therefore will I punish you for your Transgressions'.<sup>14</sup> Since it was a coded expression of His Love, the Puritans were keen to encounter signs of divine punishment all around them: in famines

Punishment of Liberty

and floods, in battles and deaths, even in the humdrum details of everyday life. An entry in Wigglesworth's diary interprets the nightly banging of a neighbour's door as punishment for his own lascivious thoughts. Since, as Minister Samuel Danforth declared, 'the holiest man hath as vile and filthy a nature as the Sodomites', the New Canaan was not a sanctuary, but a site permanently on the brink of experiencing Divine Justice as apocalyptic as that administered at Sodom and Gomorrah.<sup>15</sup> Inspired by heavenly precedent the Puritans devised their own severe retributions, but rather than eliminating wrong-doing, their unforgiving regime seemed to increase its likelihood. In his history of Plymouth Colony William Bradford detected a fiendish circuitry between the righteous justice administered by Puritan law and the preternatural tortures visited upon them:

Marvellous it may be to see and consider how some kind of wickedness did grow and break forth here, in a land where the same was so much witnessed against and so narrowly looked unto, and severely punished when it was known, as in no place more, that I have known of or heard of ... the devil may carry a greater spite against the churches of Christ and the gospel here, by how much the more they endeavour to preserve holiness and purity amongst themselves and strictly punisheth the contrary when it ariseth.<sup>16</sup>

Despite, or perhaps because of this double bind, the Puritan judiciary continued to administer punishment with devotion. The 'Body of Liberties' annotated an exhaustive list of crimes with biblical citation. There were crimes against the church, against figures of authority (from parents to government officials), crimes of a sexual nature, crimes that disturbed the peace, crimes against property and person; but ultimately all were seen as offences against God. This perspective had various consequences. Firstly, it collapsed distinctions between 'crime' and 'sin'. Puritan theocracy drew no lines between man-made laws and God's Law. Any transgression was thus an affront to the covenant between God and His Chosen People. Secondly, as a consequence of this, Puritan penalty found it difficult to distinguish between 'major' and 'minor' offences. The concept of the misdemeanour was anathema. As Wigglesworth warned in the *Day of Doom*: 'Eternal smart is the desert, / ev'n of the least offence.'<sup>17</sup> Encouraged by the Calvinist doctrine of innate depravity, the Puritans perceived a continuum between all classes of offence, so that the

most petty could be treated as a harbinger of the most heinous. Thirdly, this perspective provided ideological sanction for draconian measures and for the colonisation of everyday life by discipline. Court records are crowded with accounts of offenders severely castigated for apparently trivial acts: idleness, cursing an animal, the wearing of a silk hood.

In a given day ... the court might take notice of persons who drank too much, who were 'without the use of their reason', who lived a scandalous life, who dressed in inappropriate clothes or let their hair grow too long, who swore, bragged, or talked too much, who disobeyed their parents or engaged in frivolous games. The saints did not appreciate the distinction invented by later generations between persons who infringe the customs of the group and persons who flatly violate the law, for the Word of God governed everything and had to be protected with all the machinery at the state's disposal.<sup>18</sup>

The Puritans did not allow for peccadilloes, and similarly, as Hawthorne recognised, there were no inconsequential corrections: 'a penalty which, in our days, would infer a degree of mocking infamy and ridicule, might then be invested with almost as stern a dignity as the punishment of death itself' (p.55). The import of any transgression and its retribution was magnified by the Puritan communal ethic: 'If one member suffers, all suffer with it; if one be in honour, all rejoice with it.'<sup>19</sup> Puritan sermons interminably underlined the possibility that a crime by an individual could jeopardise His Judgement on the Holy City. In a classic Durkheimian analysis of deviance in Puritan society, Kai Erikson argues that crime waves in the colonial period (including the outbreak of witchcraft at Salem) do not suggest breakdown in social structure so much as an essential means of solidifying it. Punishment - divine, demoniac and social - seems to have been a cement that encouraged social cohesion in early colonial America.

#### THE PRISON DOOR, THE ROSE-BUSH AND THE WILDERNESS WITHIN

[Hawthorne] wrote about a wild woman. This woman challenged the society by fucking a guy who wasn't her husband and having

innate  
depravity

discipline  
as  
colonisation  
of  
life

\*  
Quality  
of life  
law &  
become  
the  
ep  
modern  
equivalent

punishment as unifying against God's  
wrath

his kid. The society punished her by sending her to gaol, making her wear a red 'A' for adultery right on her tits ... *Wild* in the Puritan New England society Hawthorne writes about means *evil anti-society criminal*. Wild. Wild. Wild.

*Blood and Guts in High School, Part Two, Kathy Acker*<sup>20</sup>

This cursory glance at criminal and cultural history seems to confirm Hawthorne's positioning of punishment near the heart of Puritan society. Recognising its prominence, however, does not guarantee the accuracy of Hawthorne's depiction. *The Scarlet Letter* opens with 'The Prison Door' and the insistence that new communities must begin by preparing to punish those who threaten social stability:

The founders of a new colony, whatever Utopia of human virtue and happiness they might originally project, have invariably recognised it among their earliest practical necessities to allot a portion of the virgin soil as a cemetery, and another portion as the site of a prison. (p.51)

Following the building of Boston's first 'House of Correction' in 1632, prisons became increasingly conspicuous in seventeenth-century New England, far outnumbering other public buildings such as hospitals or schools. Fines were introduced to encourage every county to prioritise prison construction. By the 1650s, a few years after the historical setting of *The Scarlet Letter*, almost every small town and village in the colonies could boast a purpose-built detention facility. It is worth remembering that imprisonment as a punishment was still extremely rare, costly and contrary to the Puritan emphasis on public retribution. Nevertheless, the establishment of a network of jails served vital social, economic and symbolic imperatives. The imposing presence of a prison near the heart of each Puritan community underscored the insistence on discipline. Prisons were also integral to relations of production and were used to detain and discipline convict labour exported from England in the prisoner trade, as well as servants, slaves and those who refused to work.

Hawthorne's description of the Boston prison aims to transcend these historical contingencies:

Certain it is that, some fifteen or twenty years after the settlement of the town, the wooden jail was already marked with weather-stains and other indications of age, which gave a yet darker aspect to its beetle-browed and gloomy front. The rust on the ponderous iron-work of its oaken door looked more antique than anything else in the New World. Before this ugly edifice, and between it and the wheel-track of the street, was a grass-plot, much overgrown with burdock, pig-weed, apple-pern, and such unsightly vegetation, which evidently found something congenial in the soil that had so early borne the black flower of civilised society, a prison. But, on one side of the portal, and rooted almost at the threshold, was a wild rose-bush, covered, in this month of June, with its delicate gems. (pp.52-3)

The naturalising metaphor here is carefully cultivated, uprooting the prison from history and planting it in a timeless, organic tradition. The opposition of the wild rose-bush and the prison door ushers in a Puritan cartography whose antipodes are desire and the law. Throughout *The Scarlet Letter* this polarity is mapped onto the dark forest (where lovers meet alone) and the marketplace (whose cynosure is the scaffold, where lovers and others are disciplined). At times, however, this opposition seems less secure than the Boston prison. The juxtaposition of the 'black flower' and the 'rose-bush' hints at cross-fertilisation between desire and the law and this fecundity produces anxiety. The rose-bush offers 'delicate gems', but is also 'wild'. Closer inspection might reveal those thorns that signify, like the dark forest beyond, the dangers attendant on desire. The prison door is similarly decorated 'with iron spikes' and is 'antique' and 'gloomy.' It lacks the enchantments of the rose, but denotes stability and permanence. The romance reader knows which side of that door Hester ought to be on but Hawthorne is perhaps less certain: he may regret the suffering produced by punishment in the prison and the marketplace, but he seems even more concerned about the pleasures of the forest.

The black flower of punishment promises redemption, but nature in *The Scarlet Letter* is still blighted by Puritan phobias. The 'primeval forest' has the 'wild, free atmosphere of an unredeemed, unchristianised, lawless region' (p.159). The Puritan geographical imagination located itself on a middle ground between the hypertrophied corruption of Old World civilisation and the heathen wilderness of the New World. Their 'errand in the wilderness' was to

Prison expansion  
1600s

Prisons as  
a tool of  
discipline  
in Puritan  
community

cultivate the pleasant gardens of Christ. Thomas Hooker warned that 'there is wild love and joy enough in the world, as there is wild thyme and other herbs, but we would have garden love and garden joy'.<sup>21</sup> Puritan horticultural tropes are part of a cultural pathology that often borders on the agoraphobic. The wilderness was shunned as the home of savages, diseases, environmental dangers and assorted shapes of the devil. Even more worryingly, these badlands did not end at the edge of the Puritan's well-tended gardens:

the Puritan community had helped mark its location in space by keeping close watch on the wilderness surrounding it on all sides; and now that the visible traces of that wilderness had receded out of sight, the settlers invented a new one by finding the shapes of the forest in the middle of the community itself.<sup>22</sup>

Mistress Hibbins, Hawthorne's witch, invites Hester to come into the woods at night and meet her master, 'the Black Man'. Hester declines, but throughout *The Scarlet Letter* 'shapes in the forest' make the return journey. 'Wild' is the keyword that marks their presence and the frequency with which it appears suggests the rampant colonisation of the Puritan garden by the lawless wilderness. Hester is vitalised by a 'wild energy' that is merely contained by punishment, never extinguished: '[a] passion, once so wild, and even yet neither dead nor asleep, but only imprisoned within the same tomb-like heart' (p.144). This wildness is also her daughter's defining feature. Pearl has 'bright, wild eyes', makes 'wild, inarticulate, and sometimes piercing music' and is prone to 'wild outbreak[s] ... fit[s] of passion, gesticulating violently, and throwing her small figure into the most extravagant contortions' (pp.164, 177). As the 'effluence of her mother's lawless passion', '[Pearl] could not be made amenable to rules', '[t]here is no law, nor reverence for authority ... mixed up with [her] composition' and she has no 'principle of being ... save the freedom of the broken law' (pp.82, 112). The lawlessness of the daughter is linked to the mother's stigmatic sign. Pearl is 'the scarlet letter in another form; the scarlet letter endowed with life' (p.90). The ease with which the letter of the law, through its conjunction with Pearl, comes to signify 'Anarchy', accents Hawthorne's anxieties about both social and semantic instability.

Although Hester declines Mistress Hibbins' invitation she is still associated by Hawthorne with witchcraft. The indeterminacy of the law's letter is foregrounded through references to the 'spell' cast by

the scarlet sign, a hex that encloses the lawless body of the female criminal and her 'witch-baby' in a 'magic circle.' Witchcraft was arguably the most feared form of *wildness* in Puritan New England. It was established as a capital crime in the 'Body of Liberties' and early victims of this law included Margaret Jones in 1648, Mistress Hibbins in 1656, and four alleged witches executed in 1662 in Hartford, Connecticut. Events at Salem in 1692 were less a freak occurrence than the climax to a punitive persecution spanning 50 years. In addition to the 19 recorded executions, the witchcraft hysteria resulted in one death by interrogation (Giles Corey was crushed to death under rocks), two further necromancers died in prison and hundreds of suspects endured lengthy incarceration.

Various explanations have been offered for the Puritan punishment of witches. Carol Karlsen, for example, has examined patterns of property ownership and inheritance to reveal how many of the women who were convicted and executed enjoyed levels of economic self-sufficiency that perturbed Puritan patriarchs.<sup>23</sup> Although economics may have been an underlying determinant, erotics played a defining role in the demonology. Riding her phallic broom and screaming into the night, the witch was accused of wild sexual crimes. She allowed both body and soul to be entered by Satan, had intercourse with her familiar and assumed the form of a succubus to assault victims in their beds. Interrogation of witches involved intrusive physical examination for proof of these deviant practices. The discovery of a 'witch's teat', at which the familiar was suckled in grotesque perversion of maternity, invariably resulted in execution. Bridget Bishop was hanged after discovery of the 'Devil's Mark', a 'preternatural Excrescence of flesh between the pudendum and Anus much like to Teats & not usual in women'.<sup>24</sup> As the dark, wild Pearl was suckled on the scaffold and is subsequently seen forever at her mother's side, Hawthorne hints at the folklore that condemned Hester's historical sisters and sustains the Puritan equation between the devil and female desire.

#### THE 'STRANGE JOY' OF PURITAN PUNISHMENT

The 'Devil's Mark' was a sign of fearful libidinal excesses that were not exclusive to witches. All Puritans were forced to struggle with what Wigglesworth termed the 'Sodom within'. When New Haven introduced ordinances classifying masturbation as a capital crime, it reflected the suspicion that Puritan society was being subjected to

Center this  
with  
Pearl  
Williams  
Wilderness  
Theology

female  
sexual  
as  
punishable

an erotic endo-colonisation: 'many, many are guilty ... so many that if stoning were the punishment a mountain could not afford stones enough'.<sup>25</sup> Prohibitions did not finish at sexual pleasure, leading H. L. Mencken to deride Puritanism as 'the haunting fear that someone, somewhere, may be happy'.<sup>26</sup> It is important not to rely on platitudes concerning Puritan prudery. The considerable degree of repression in Puritan society implies, of course, that there was a lot to repress. At the same time, the ferocity with which 'deviant' pleasures were pursued and the sheer number of injunctions against them cannot be ignored. The statutes prohibiting games (such as cards and shuffle board), forms of fashion (pertaining to colours and materials) and indulgence (especially drinking) were legion, and were reinforced by interminable sermons and tracts (Increase Mather's *Arrow against Profane and Promiscuous Mixt Dancing* is not untypical of Puritan literature in this respect).

Alongside these interdicts colonial justice possessed an alarmingly expansive definition of crimes that were sexual in nature. Captain Kemble was confined to the stocks for two hours when, after returning from three years at sea, he was seen kissing his wife, in public, on the Sabbath. Section 94 of the 'Body of Liberties', 'The Capital Laws of New-England', ranks 15 offences in order of seriousness. Five of the top ten were sex crimes (bestiality, sodomy, adultery, sex with a child under the age of ten, rape) and one of the remaining five, witchcraft, was automatically associated with sexual deviance. The crime that Hester is convicted of was one of the most common in colonial New England. Mosaic Law was unambiguous on the penalty for adultery: 'And the man that committeth adultery with another man's wife ... the adulterer and the adulteress shall surely be put to death' (Leviticus 20.10). Although, in accordance with the Pentateuch, adultery was classified as a capital crime, the full penalty was very rarely enforced. A few years prior to the historical setting of *The Scarlet Letter*, Mary Latham and James Britton were executed for adultery, but following this case juries grew reluctant to find offenders guilty and magistrates settled for lesser charges of 'lewd misconduct'.

As the capital punishment of adulterers became a dead letter, alternative strategies were devised that often involved the use of letters. Puritan logocentricism is apparent in its propensity for letter penalties, with its translation of the criminal body into script. Offenders were typically taken through the streets in a cart, or required to stand for a specified period in prominent public spaces

whilst wearing a letter that signified their crime. The Plymouth Colony records document the use of letter penalties for adulterers as early as 1639, and this practice was codified in 1658 by the Boston General Court. In *The Scarlet Letter*, Hester is made a 'type of sin' and the narrator underlines the potency of this punishment:

Tomorrow would bring its own trial with it; so would the next day, and so would the next ... she would become the general symbol at which the preacher and the moralist might point, and in which they might vivify and embody their images of woman's frailty and passion ... the figure, the body, the reality of sin. (p.74)

The Puritans were notoriously hostile towards theatre, and yet their punishments were staged with a keen eye for dramatic effect. Puritan justice, with its emphasis on public performance, conforms in this respect to Foucault's model of classical punishment. The guilty were carted through the streets, confined to the stocks or the whipping post, displayed on the pillory, gallows, or church steps, often at midday to guarantee exposure to the largest possible audience. Lengthy sermons were routinely delivered prior to an execution, with the intention of extracting a spectacular last-minute confession and repentance from the condemned.

In a 'scene of public witnessing', Hester is placed centre-stage in a carefully chosen costume to be heckled by the crowd and lectured by her critics (p.193). In this opening set-piece Hawthorne captures the theatricality of Puritan punishment, but much of its cruelty is kept backstage. The element which Hawthorne masks is that which Nietzsche sought to unveil in *The Genealogy of Morals*:

all religions are at their deepest foundations systems of cruelty ... there is, perhaps, nothing more frightening and more sinister in the whole prehistory of man than his technique for remembering things. Something is branded in, so that it stays in the memory: only that which hurts incessantly is remembered.<sup>27</sup>

The punishments devised for those who transgressed the 'Body of Liberties' invariably focused on the body. Culprits charged with adultery, or any crime of a sexual nature, were automatically whipped. Failure to comply with a letter penalty, or the repetition of an offence, would often result in the sign being branded into flesh. Branding was not the only form of mutilation practised by the

magistracy. The head was a focal point for disfigurement, with ears removed, nostrils slit and holes bored through tongues.

*The Scarlet Letter* wills amnesia concerning the Puritan 'technique for remembering things'. Hawthorne's narrator insists on the 'cunning cruelty of [Hester's] sentence', but the physicality of Puritan discipline is erased by exclusive concentration on psychological trauma (p.120). This omission is further obscured by the corporeal tropes deployed to depict Hester's suffering. The criminal's first steps from the prison, the gaze of the crowd, the touch of her daughter, husband and lover and the glow of the scarlet letter itself are all described as 'torture', but these torments remain strictly figurative. Hester is not whipped (as all adulterers were) and she is permitted to keep her child (as all adulterers were not). Her prison experiences are similarly sanitised. Early colonial jails tended to be crowded, unhygienic and disease-ridden. For the female offender enduring same-sex incarceration, sexual assaults by other inmates and jailers were commonplace. Hester's confinement, however, appears to have been solitary, aside from her daughter and a jailer benevolently watching over his charge.

Hawthorne's sanitisation of Puritan punishment represses the slippage between desire and law that characterised corrections in the colonial era. Puritanism frowned on sexual deviancy, but offered surrogates in the form of socially-sanctioned sadism and masochism. The Puritan God was a cruel master always prepared to correct his servants. The Puritan faithful were willing victims, cringing in submission. In *Meat Out of the Eater*, Wigglesworth reminds his reader that 'God doth chastise his own in Love'; his children must learn, therefore, to find pleasure in pain and 'the Rod in Meekness kiss'.<sup>28</sup> Wigglesworth's *Day of Doom* typifies the Puritan jeremiad with its catalogue of lacerations, bristling with erotic undercurrents, that await the fallen. Fantasies of heavenly hurt could be acted out in punishment practice whilst simultaneously disavowing the libidinal energies that fuelled them.

The response to the erotic economy of Puritan punishment in *The Scarlet Letter* is somewhat conflicted. Hawthorne appears to valorise the masochistic personality, whilst the sadistic excesses routinely practised in public are cathected towards the private sphere. Following Hester's 'exquisitely painful' humiliation before the crowd, she learns how to sublimate her wild desires into the 'positive and vivacious suffering' of self-punishment: 'Hester Prynne had no selfish ends, nor lived in any measure for her own profit and enjoyment'

(p.200). This self-disciplining threatens to realise the capital punishment required for adultery by Puritan law:

imitation of the Virgin Mary and Christian martyrs ... self-sacrifice and self-denial ... serve as proof of physical and spiritual purity, [and] can be seen as embodying fantasies of a masochistic turning inward of the death drive that results in self-negation and self-obliteration.<sup>29</sup>

Rather than opposing this self-imposed death sentence, Hawthorne endorses the curative benefits of masochism: the 'lees of bitterness' is a 'cordial of intensest potency', offering 'to cure by wholesome pain' (pp.176, 153). Hester's daughter illustrates the importance of taking your medicine: 'She wanted - what some people want throughout life - a grief that should deeply touch her, and thus humanise and make her capable of sympathy' (p.147). Pearl punishes her parents, laughing in 'extravagant ecstasy' at their pain; she is the scourge of Puritan children and the community faithful, and in the dark forest her cruelty is given free rein to drown snails, lay jelly-fish out to melt in the sun and stone small birds in 'perverse merriment' (p.112). Critically, it is pain on the scaffold that is the catalyst to her transformation from unrepentant sadist. The imp of polymorphous perversity is exorcised as her father dies in the shadow of the gallows: 'Pearl kissed his lips. A spell was broken. The great scene of grief, in which the wild infant bore a part, had developed all her sympathies' (p.196). The only kiss Hawthorne permits in this romance is public, involving family members, and it produces a therapeutic flood of grief rather than desire. The premise behind Puritan penology, that pain is the essential prerequisite for moral growth, is thus dramatically confirmed.

Dimmesdale's acceptance of paternity and punishment on the scaffold facilitates his daughter's entry into the symbolic. The law accepted by the father dispels the wild witchcraft of women. The gender opposition that informs Hawthorne's drama of punishment, however, is both confused and confirmed by the insistent feminisation of Dimmesdale. Although he is introduced alongside Puritan patriarchs and participates in their interrogation of Hester, the gap between the male judges on the balcony and the female offender on the scaffold is bridged by a preoccupation with Dimmesdale's appearance:

Hawthorne  
played  
down the  
suffering  
in the  
scarlet  
letter

a white, lofty, and impending brow, large, brown, melancholy eyes, and a mouth which, unless when he forcibly compressed it, was apt to be tremulous, expressing both nervous sensibility and a vast power of self-restraint ... coming forth, when occasion was, with a freshness, and fragrance, and dewy purity of thought, which, as many people said affected them like the speech of an angel ... the young pastor's voice was tremulously sweet, rich, deep. (pp.66-7)

When Dimmesdale recognises that Hester will not fold under interrogation and reveal the name of the father, his own name, he clutches his hand to his heart and sighs 'with a long respiration' (p.68). Unlike her loquacious and practically pre-Raphaelite partner in crime, Hester is courageous, reticent, determined on a course of noble self-sacrifice, and thus plays the part in this punitive drama of the hardened con: '[her] temperament was not of the order that escapes from too intense suffering by a swoon ... With the same hard demeanour, she was led back to prison' (ibid.).

The 'A' branded on Dimmesdale's breast may then signify an androgyny that was anathema to Puritan patriarchy. At the witch trials, George Jacobs was hanged after physical examination uncovered '3. Teats, which according to the best of our Judgement we think is not natural'.<sup>30</sup> Puritan gender codes encouraged a robust manliness that problematises the reverence that Dimmesdale, a veritable Angel in the House of God, receives from his parishioners. Wrestling, weight-lifting, hunting and vigorous outdoor pursuits were popular pastimes within the clergy. Roger Thompson's report of a 'church member [who] scorned a limp minister as "fitter to be a lady's chamberman"', suggests that his flock would have limited tolerance for the perpetually ailing Dimmesdale.<sup>31</sup> Predictably, Puritan masculine ideals were accompanied by a vigorous homophobia. 'Sodomitical uncleanness' was classified as a capital crime in the 'Body of Liberties', and generally regarded as 'far more abominable than adultery ... the most abominable unnatural sin'.<sup>32</sup>

Although *The Scarlet Letter* is nominally concerned with adultery (without ever mentioning this crime by name), the 'lawless passion' of homosexuality plays a pivotal role. The heterosexual romance between Hester and Dimmesdale is in part a catalyst to a homoerotic plot centred on Chillingworth and Dimmesdale. The public punishment of the female offender is in fact eclipsed by a private drama, suffused with sadomasochistic overtones, between her

husband and lover. The relationship between these two confirms Girard's influential assertion, that in 'any erotic rivalry, the bond that links the two rivals is as intense and potent as the bond that links either of the rivals to the beloved'.<sup>33</sup> Hester recognises this bond and appears threatened by it: 'no man is as near to him as you. You tread behind his every footstep. You are beside him, sleeping and waking ... Your clutch is on his life' (p.137).

In the private drama of punishment between illicit lover and cuckold, Dimmesdale is the masochistic partner. The persistent references to his 'secret' are double-edged and intimate heteroclitic desires beyond the purely adulterous. Dimmesdale punishes himself for avoiding his punishment, only to relish the erotic compensations of self-torture. Hawthorne describes a midnight visit to the scaffold by Dimmesdale as a 'vain show of expiation', but penitence hardly seems to be the reverend's motivation: 'a thrill of the heart, - but he knew not whether of exquisite pain, or pleasure as acute ... [he] was already trembling at the conjunction in which - with a strange joy, nevertheless - he now found himself' (p.125). In a repetition of his heterosexual partner's appearance on the scaffold, there is something 'exquisitely painful' about Dimmesdale's anguish. The proximity of this 'strange joy' and Puritanism's taboo desires is accented by supernatural allusions: his tortured cry is mistaken, at the witching hour, for necromancy. Dimmesdale feverishly performs acts of penitence guaranteed to intensify his guilty displeasure. He attempts to transform the pulpit into a pillory, publicly castigating himself for his sinful nature, but the more he punishes himself the more he is revered: 'his heart vibrated in unison with theirs, and received their pain unto itself, and sent its own throb of pain through a thousand hearts ... It is inconceivable, the agony with which this public veneration tortured him!' (pp.118-19) Following Cotton Mather and other Puritan dignitaries, Dimmesdale resorts to flagellation:

In Mr Dimmesdale's secret closet, under lock and key, there was a bloody scourge. Oftentimes, this Protestant and puritan divine had plied it on his own shoulders; laughing bitterly at himself the while, and smiting so much the more pitilessly, because of that bitter laugh. (p.120)

Whilst Hester grows ever-stronger as a result of accepting her punishment, Dimmesdale undergoes physical and spiritual collapse for trying to avoid public correction. When Hester persuades the



minister to run away, his self-destructive masochism, freed from guilt, threatens to flower into anarchic sadism. On the road back from the dark forest he undergoes 'a revolution in the sphere of thought and feeling' that confirms Puritan moral mappings of the 'Sodom within':

... nothing short of a total change of dynasty and moral code ...  
At every step he was incited to do some strange, wild, wicked thing or other, with a sense that it would be at once involuntary and intentional; in spite of himself, yet growing out of a profounder self than that which opposed the impulse. (pp.169-70)

Dimmesdale's decision not to run, but to reveal his sinful self on the scaffold, may betoken a triumph over his 'profounder self', or the id's most spectacular success. As he tears off his tunic to reveal the scarlet letter 'imprinted in the flesh', Dimmesdale stands with 'a flush of triumph in his face, as one who, in the crisis of acutest pain, had won a victory' (p.196). The 'death' that follows might be stained by metaphoric connotations commonplace in the Elizabethan theatre the Puritans loved to loathe.

Dimmesdale's partner in this S&M play, Chillingworth, pursues a path of 'cruel purpose' against his willing victim in which punishment is similarly bonded with aberrant desires: 'He could play upon him as he chose. Would he arouse him with a throb of agony? The victim was for ever on the rack; it needed only to know the spring that controlled the engine; - and the physician knew it well!' (p.116). Whilst Dimmesdale's masochism is associated with insidious feminisation, Chillingworth's sadism is tied to an equally problematic hyper-masculinisation. In contrast to his victim, whose spirit is so 'shattered and subdued it could hardly hold itself erect', Chillingworth appears as a phallic agent of punitive vengeance: '[he] thrust himself through the crowd, or, perhaps ... he rose up out of some nether region' (pp.156, 193). The climax to Chillingworth's torture takes place whilst his victim is sleeping:

The physician advanced directly in front of his patient, laid his hand upon his bosom, and thrust aside the vestment, that, hitherto, had always covered it even from the professional eye. Then, indeed, Mr Dimmesdale shuddered, and slightly stirred ... the physician turned away. But with what a wild look of wonder, joy, and horror! With what a ghastly rapture ... bursting forth ... and making itself riotously manifest by the extravagant gestures

with which he threw his arms towards the ceiling, and stamped his foot upon the floor! (pp.115-16)

Chillingworth's 'moment of ecstasy' in Dimmesdale's chambers recalls Pearl's relish at the suffering of others. The physician and the elf-child are kindred sadistic spirits, plaguing their willing victims, the adulterous couple. These mirrorings confirm the Puritan demonisation of desire. Deviant eroticism (adultery, homosexuality, S&M) is not opposed to a healthy heterosexuality; desire itself is defined as a threat to social stability and gender identity. Because she has been subjected to the proper public discipline, Hester proves best able to control the 'lawless passion' unleashed elsewhere. The 'perverse merriment' of children, the 'ghastly rapture' of physicians and the 'strange joy' of ministers are opposed to the socially-sanctioned masochism of Hester, who is taught by the letter of the law to forgo desire and accept a deathly life sentence as sombre Puritan subject.

#### MRS HUTCHINSON, FRIENDS AND THE PENITENTIARY SYSTEM

The rehabilitation of Mistress Prynne was by no means guaranteed. Hawthorne stresses the precariousness of her situation by drawing an analogy between Hester and an infamous contemporary. Tracing the history of the wild rose-bush that Hester passes on leaving the prison, Hawthorne refers to local legend: 'it had sprung up under the footsteps of the sainted Ann Hutchinson as she entered the prison-door' (p.52). This comparison is repeated when the narrator remarks that motherhood has saved his heroine from following in Hutchinson's footsteps. If not for Pearl, Hester may have blossomed into a religious and political radical and suffered 'death from the stern tribunals of the period, for attempting to undermine the foundations of the Puritan establishment' (p.134). Ann Hutchinson escaped execution, but she was excommunicated and banished for her role in the Antinomian controversy (1636-38). As Hawthorne explains in his sketch of 'Mrs. Hutchinson', she challenged the church by drawing a distinction between the 'chosen of man' and the 'sealed of heaven'.<sup>34</sup> In Puritan theocracy this was no minor matter of exegesis, but a major challenge to social and political authority. This is the pivotal point in Hawthorne's apology for the Puritan's treatment of Hutchinson: