

inception. For two hundred years, that tradition was regarded as distinctly American, a break with the corrupt and cruel ways of the Old World, a democratic necessity, and a matter of national pride. The changes documented here are profound and far-reaching. We have yet to see where they will take us.

CHAPTER 1

When Punishment Is the Subject, Religion Is the Predicate

IN 1634, THOMAS HARTLEY, from Hungars Parish, Virginia, sent a letter to John Endicott, the former governor of Massachusetts. The letter contained an account of torture by ducking stool: "It is undeniable ye they endeavor to live amiably, keep ye peece in families and communities, and by divers means try to have harmony and good-will amongst themselves and with Strangers who may sojourn among them. For this they use a device which they learned in England, they say, to keep foul tongues that make noise and mischief, silent, and of which I must faine tell you."

The "device," explained Hartley, was especially for punishing women, being designed to deal with a particular area of crime associated with females. One might call it misdemeanor-by-mouth: "They have a Law which reades somewhat in this wise: 'Whereas it be a sinn and a shame for scolding an lying Tongues to be left to run loose as is too often the way amongst women, be it therefore enacted ye any woman who shall, after being warned three severall times by ye Church, persist in excessive scolding, or in backbiting her neighbors, shall be brought before ye Magistrate for examination, and if ye offence be fairly proved upon her, shee shall be taken by an Officer appointed for ye purpose, to ye nearest pond of deepe streame of water, and there, in ye presence of said Magistrate and of her accusers, be publickly ducked by said officer in ye waters of ye pond or

streame until shee shall make a solemn promise ye shee'l never sin in like manner again.' ”

The law wasn't just on the books. It was used.

I saw this punishment given to one Betsey, wife of John Tucker, who, by ye violence of her tongue had made his house and ye neighborhood uncomfortable. She was taken to ye pond near where I am sojourning, by ye officer who was joyned by ye Magistrate and ye Minister, Mr. Cotton, who had frequently admonished her, and a large number of People. . . . At ye end of ye longer arm is fixed a stool upon which sd Betsey was fastened by cords, her gown tied fast around her feete. The Machine was then moved up to the edge of ye pond, ye Rope was slackened by ye officer, and ye woman was allowed to go down under ye water for the space of half a minute. Betsey had a stout stomach, and would not yield until she had allowed herself to be ducked 5 severall times. At length shee cried piteously, “Let mee go! let mee go! by God's help I'll sin no more.” Then they drew back ye Machine, untied ye Ropes and let her walk home in her wetted clothes, a hopefully penitent woman.¹

The colonial American ducking stool could cause physical shock and hurt. If misused, it could kill. In his letter, Hartley reveals both the public's engagement in the spectacle and the woman's terrified expectation of drowning as, again and again, the ducking stool arm forced her to remain under water for half a minute.

Betsey was a loudmouth and nasty. Such types are usually not popular in intimate social contexts, such as a contemporary office building or, in 1634, a small village. The selection of Betsey for several minutes of terror and struggle for air likely had some serious neighborhood, not to mention spousal, animosity behind it. In the American colonies, many punishment practices (most, like this one, imported from Europe to the New World) tended to be public performances, as Hartley's reference to “a large number of people” indicates. Betsey—vulnerable, captive, ridiculous, messy, sodden—makes a ghostly appearance in today's dunking booths, common at rural American fairs. Nowadays, such games are supposed to be all in fun, dumping Boy Scouts and local softball heroes

into waters where they choke and struggle and gasp as members of the public try out their aim in a ritual that has no little hint of mock payback.

In colonial times, though, a dunking was a serious legal concern. Governmental representatives oversaw the application of hurt to the local nuisance. A less visible but more significant presence than the magistrate, officer, and crowds in the scene Hartley evokes is what Betsey appeals to as “God.” The punishment Betsey fights and succumbs to is a religious ceremony.

As I will argue, American punishment has, with the possible exception of several decades in the twentieth century, been a religious and, more properly, a Christian activity. Religion provides some of the comfort and the pleasure the American public and politicians can derive from punishment. In other words, it is more satisfying to cause pain to another if you know you are right. And the easiest way to know you are right is to understand your actions as God's will. But as this history of American punishment unfolds, it will become clear that the God the punishers call upon commands different punishments at different historical moments.²

In Betsey's case, the God represented by the officer, the magistrate, and the minister has, via ostensibly divine—but locally administered—law, ordered the immersion of a loud woman. Hartley understands the punishment in religious terms. He writes that Betsey “would not yield until she had allowed herself to be ducked 5 several times.” Yielding mimics religious conversion. After fighting her punishment for several minutes, the woman gives in to it and calls out, promising to turn to “God” for “help” and to “sin no more.” A sharp tongue, which in today's world would be annoying behavior, is for Betsey and the people who witness her punishment an offense against both community and God.³ Only after they see evidence that Betsey has undergone inspired change do the officials end the punishment.

Hartley's final words—that Betsey, walking home in her “wetted clothes,” is “a hopefully penitent woman”—are revealing. “Penitent” is a religious term, meaning one who has done penance. According to the 1551 Council of Trent, which articulated Roman Catholic Church doctrine in response to the challenges of reformers like Martin Luther, “as a means of regaining grace and justice, penance was at all times necessary for those who had defiled their souls with any mortal sin” and was a process “for the

Why is a Catholic penitent here? End choice

reconciling of the faithful who have fallen after Baptism.”⁴ “Penance” and its associated meanings have been present in American punishment for centuries. One of the synonyms for prison is penitentiary, which derives from the Middle English *penitenciarie*, an “episcopal prison.”⁵

THE SOURCES OF AMERICAN PUNISHMENT

In his recent history of the death penalty in America, Stuart Banner makes a point of discounting myths about execution scenes in the early United States. The philosopher Michel Foucault, one source of those myths, in *Discipline and Punish* described European execution scenes as something of a free-for-all, replete with pickpockets and raucous, sometimes rebellious crowds. In the new country, at least, writes Banner, such scenes, characterized by gravity and quiet, resembled church services.⁶ Prominent ministers of the day presented well-attended gallows sermons and related moral tales about the life and downfall of those about to be executed. Printed broadsides of such texts sold so well that one scholar sees execution literature as the root of American popular culture.⁷

In addition to religiosity, pain, and its accompanying anticipatory terror, characterized these more serious punishments. Early American executions, both the colonial and the postrevolutionary variety, were for the most part accomplished through hanging. The goal of hanging was an efficient and less-than-painful death. In practice, however, those close enough to watch got an eyeful. In a history of the British death penalty, V. A. C. Gatrell describes deaths on the hanging scaffolds, also popular in the American colonies. “What they watched was horrific,” writes Gatrell. “People did not die on it neatly. Watched by thousands, they urinated, defecated, screamed, kicked, fainted, and choked as they died.” The choking, kicking migration to death often took minutes.⁸

Executions could follow a more painful course if the crime seemed heinous. Under early American laws, women who murdered their husbands and slaves who murdered their masters burned at the stake, a slow and excruciating execution method intended to punish “petit treason.” These crimes were a small version of treason, or the act of overthrowing the state, because the law interpreted the home as mirroring governmental power relationships.⁹

Execution methods shared an emphasis on pain, but they had other commonalities as well. Shame was integral to American colonial punish-

ment. Like pain, shame attached to particular bodies via public displays and in some cases through physical marks. The woman in the stocks, the man with his ears nailed to the pillory, the heretic with an *H* seared into her forehead, the drunkard standing in bilboes (a kind of leg iron) in the hot sun, the woman convicted of sodomy with a half-inch hole carved into the cartilage of her nose (a practice Thomas Jefferson recommended), and the loud woman wearing a gag or a cleft stick—all of these criminals endured great shame. The proximity of shame to pain is evident in this list. The physical marking of faces and forcing of bodies into uncomfortable postures both cause hurt and set the suffering body apart from others, so that onlookers will notice and disapprove.¹⁰

For the most part, the American colonies inherited their criminal codes from Europe. The predominant influence was Britain, although the legal system of the Netherlands influenced punishments in New York. As the preceding examples have suggested, many laws that the American colonies inherited had their roots in medieval Christian, specifically Roman Catholic, religious practices.¹¹

The European rulers of the American colonies used painful physical punishments as a way of maintaining social order from overseas. The king had two bodies: his physical body housed in Europe and the spiritual body, which could inflict severe pain from thousands of miles away.¹²

Corporal punishment thus had a religious component even when the punisher was a monarchical government and not a church. The overseas royalty enjoyed their power through a godly endowment. But the religious aura translated nicely to governments that understood crimes as offenses against God. In a bow to Deuteronomy, the Massachusetts legal code of 1648 prescribed execution for children older than sixteen who “shall curse or smite their natural mother or father.” The Massachusetts God was a jealous one. The prevailing Calvinist sensibility in that colony selected Quaker “heretics” for special treatment. The Massachusetts Colonial Records of 1657 list the punishment for Quakers who return to towns that had banished them: “A Quaker if male for the first offense shall have one of his eares cutt off; for the second offense have his other eare cutt off; a woman shalbe severly whipt; for the third offense they, he or she, shall have their tongues bored through with a hot iron.”¹³

The nexus of punishment and religious belief is obvious in some colonial laws, such as those that insisted upon church attendance or re-

how have
you not read
this in my
system yet?

buked blasphemy. But it is also present, for example, in laws regulating sexual activity. More expansive than our contemporary definition of sodomy as anal sex between two men, sodomy laws of the day included, for example, sex with animals.¹⁴

Sodomy laws began as church laws. In the sixteenth century, however, the English royal court usurped the right to punish sodomy crimes. The transfer of punitive power coincided with the decision of Henry VIII to leave the Catholic Church, which had refused to annul the king's marriage to Catherine of Aragón.¹⁵ Under Henry VIII, church and royal law were no longer in tension. The king was aligned with God, and the king's wishes dressed in divine clothing. Sodomy laws, like other felonies, provided an opportunity for the king to wrest moral power from the church.

One of the sodomy laws of Henry VIII is important in American history because versions of it, derived from medieval church law, traveled into colonial jurisprudence. In 1533, the Act of 25 Henry VIII, chapter 6, determined that the "detestable and abominable vice of Buggery [sodomy] committed with mankind or beast" was a felony punishable by death.¹⁶ Both Plymouth Colony and the Massachusetts Bay Colony maintained laws punishing sodomy with death, a law that continued when the two became a single colony.

Other colonies adopted the death penalty for sodomy. Some imitated the 1533 law. For instance, Rhode Island's first attempt to regulate sodomy was explicit about its lineage: "First of sodomy, which is forbidden by this present assembly throughout the whole colony, and by sundry statutes of England. 25 Henry 8, 6; 5 Eliz. 17. It is a vile affection. . . . The penalty concluded by that state whose authority we are is felony of death without remedy. See 5 Eliz. 17."¹⁷ In this way, the colonies inherited the tradition of eliding civil and religious power and transferred the practice to colonial governance.

PUNISHMENT, COLONIAL STYLE

Between 1608, the date of the first execution in the colonies, and 1785, when Joseph Ross, one of the last executed for the crime of sodomy, was hanged in Pennsylvania, just over fifty people were executed in the American colonies for sex crimes including "sodomy," "bestiality," "buggery," rape, attempted rape, and adultery.¹⁸ The heyday for sex-crime executions occurred during the first few decades of punishment in the American

colonies. In the thirty-six years that followed the first execution in the new colonies, a full third of the twenty-four executed died for sex crimes. These included five sodomites and two adulterers. One was a convicted rapist.¹⁹

Although the southern and northern colonies alike followed the English law, "the New Englanders' reliance on the Old Testament caused them definitional difficulties," writes Mary Beth Norton. Sodomy law in those colonies had a definition that was both expansive and unstable.²⁰

"Sodomy" was a flexible term. Under one set of legal codes, that of the Reverend John Cotton of Plymouth Plantation, the "unnatural filthiness" of sodomy that was to earn the punishment of death included "fellowship of man with man" and "of woman with woman" as well as "buggery, which is carnal fellowship of man or woman with beasts or fowles." A succeeding version of the law in the Massachusetts Bay Colony eliminated the prohibition against what we now call lesbian sex, and a later version also saved young boys and those who suffered homosexual rape from the death penalty. These last two groups, which our current society would consider victims rather than perpetrators, still suffered punishments but not execution.²¹

New Haven provides an example of how broad lawmaking in the colonies could get. The New Haven legal code of 1656 adopted the provisions against sodomy and bestiality that appeared in the Laws and Liberties of the Massachusetts Bay Colony, "but New Haven did not stop there," writes Norton. The New Haven legal code also considered sex between women, sex with immature girls, and masturbation in front of others to be potential capital crimes.²²

In practice, sloppy application aroused public antagonism. Although capital convictions for sodomy generally required two witnesses, local governments did not always follow such rules. For instance, George Spencer came to the attention of authorities because "it was thought that a recently born deformed piglet resembled him."²³

Death for sex crimes may have seemed unduly harsh to some colonists. "As was true in adultery cases, some colonists expressed their dissatisfaction with the application of the death penalty to those found guilty of sodomy and bestiality," writes Norton. As earnestly as the New Englanders appear to have believed in the importance of regulating sexual behaviors, vocal disagreement may have slowed down the rate of capital convictions. Moreover, some sex crimes received more frequent punish-

1/3 of
executions
were
for
sodomy
1608-1736
years

Capital Punishment

ment than others, and sex regulation via execution happened relatively early in the life of most colonies. The colonies held only two executions for adultery. Both of these occurred in the Massachusetts Bay Colony in 1643. Likewise, the most concentrated executions for sodomy and bestiality occurred before 1644.²⁴

DEVILISH CRIME WAVE

After the first surge of hangings for sex, such punishments lost popularity as the colonies turned to executions for piracy or witchcraft. The colony with the reputation for witchcraft executions is Puritan Massachusetts. It is important to note, however, that possessions and witch trials occurred in other colonies and countries and in the decades before 1692, the year of the Salem witchcraft trials. "Colonial courts tried more than eighty such cases from 1647 to 1691, resulting in twenty executions and many more fines, banishments, and whippings," writes historian Kenneth Silverman. "Dozens of other episodes circulated by conversation and gossip."²⁵

The infatuation with execution for witchcraft lasted until the famous Salem trials, which produced nineteen hangings and one "pressing" under rocks. The pressing was an attempt to persuade Giles Corey to confess to being "a dreadfull wizard," as his accusers Ann Putnam and Mercy Lewis put it. Corey, who didn't utter a confession, died for his silence. Thereafter, the number of hanged witches dropped precipitously. From 1693 on, the colonies executed no witches.²⁶

Witchery proved to be as slippery a category as sodomy. Determining what makes a witch a witch was a definitional puzzle that helped along the famous Salem bloodbath.

Like sex crimes, witchcraft was an offense against God; a witch worshipped outside of Christianity and was in league with Satan. The Devil seemed urgently present in the decades leading up to the Salem trials; possessions were more numerous. Beginning in 1647, the number of witchcraft executions increased, with eight accused witches getting the noose between 1647 and 1660. During that same period, just three died for sodomy and bestiality crimes.²⁷

Kai Erikson, author of an influential sociological study of the Salem witch trials, perceives 1692 to be the year of a Puritan "crime wave."²⁸ His understanding of the witch trials as a crime wave is a link to contemporary society. In making his argument, Erikson draws on the writings of Emile

Durkheim in *The Division of Labor in Society*. Crime "may actually perform a needed service to society by drawing people together in a common posture of anger and indignation," writes Erikson, summarizing Durkheim.²⁹

To argue in this vein is to claim that crime waves say more about societal needs than they do about crime rates. That is, the witch crimes achieved social prominence (and led to so many deaths) because the Puritans profoundly needed the kind of self-definition that denied membership to some formerly included in their community.³⁰

The need arose not because the number of witches increased but because of other pressures. In the 1670s and 1680s, the Puritans faced the possible loss of their Massachusetts charter, Erikson notes. "The sense of impending doom reached its peak in 1686," he writes. "For a moment, it looked as if the holy experiment was over." Adding to these pressures were local battles. "In a colony that depended on a high degree of harmony and group feeling, the courts were picking their way through a maze of land disputes and personal feuds," notes Erikson.³¹

Lest his point get lost, Erikson notes that during crime waves communities begin to penalize behaviors they formerly tolerated. The number of crimes doesn't necessarily increase, but the punishments swell. In recent years, scholars of American imprisonment have begun using Durkheim to explain recent American crime waves. They argue that contemporary American crime waves gain energy in response to what Erikson (in writing of the Puritan "crime waves") describes as "a rash of publicity."³²

Some of the Puritan crime publicity came from the prominent Boston minister Cotton Mather. In 1689, several years before the Salem executions, Mather, minister of Old North Church, published *Memorable Providences, Relating to Witchcraft and Possessions*. The book described the possession of the Godwin children, from "a pious Family in Boston," and the trial and execution of Goody Glover, a washerwoman.

Memorable Providences was the talk of Puritan communities throughout New England. About eighteen months after its publication, observers began to see the events of Mather's book echoed in the possessions that hit Salem Village. As the Reverend John Hale put it, the young women in Salem were "in all things afflicted as bad as John Goodwin's children at Boston, in the year 1689."³³ Samuel Parris, whose daughter and niece started the fits of possession that spread to other girls in Salem, used

from sex crimes + first 25

role of crime in society

yes!

Mather's methods in attempting to cure the girls of witchcraft. The methods failed.³⁴

In *Memorable Providences* Mather promises to give proof of witches, writing that "New-Engl. has had Exemples of their Existence and Operation." Mather recounts the narrative of the eldest daughter of the afflicted family, who questioned Goody Glover about some missing laundry. Glover responded with the sort of loud-mouthing that condemned Betsey to the ducking stool. The result of the verbal nastiness was bad news for Glover. The girl acted as if possessed.³⁵ Odd behaviors spread through her siblings. The family consulted doctors, one of whom decided that the behaviors were so inexplicable that "nothing but an hellish Witchcraft could be the Original of these Maladies."³⁶

During the daylight hours, reports Mather, the children made bizarre physical movements and complained of pains: "Sometimes they would be Deaf, sometimes Dumb, and sometimes Blind, and often, all this at once." The children exhibited strange physical behaviors. "One while their Tongues would be drawn down their Throats; another-while they would be pull'd out upon their Chins, to a prodigious length," he reports. "They would have their Mouths opened unto such a Wideness, that their Jaws went out of joint; and anon they would clap together again with a Force like that of a strong Spring-Lock." A similarly violent spring motion happened "to their Shoulder-Blades, and their Elbows, and Hand-wrists, and several of their joints."

The behaviors ended at the same time of day. "About Nine or Ten at Night they alwaies had a Release from their miseries, and ate and slept all night for the most part indifferently," he writes. The oddity of a demonic possession that allows children to eat when hungry and sleep when tired does not appear to have occurred to Mather.³⁷

Mather took the oldest girl to live with him, where he plied her with tests. One of his frequent quizzes involved reading materials. Noting that the Bible caused the child "very terrible Agonies," Mather determined that she could read works that his Puritan sect considered heresies. "I brought her a Quakers Book; and That she could quietly read whole pages of; only the Name of God and Christ she still skip't over, being unable to pronounce it, except sometimes with stammering a minute or two or more upon it," writes Mather. "I entertained her with a Book that pretends to prove, That there are no Witches; and that she could read very well, only

the Name Devils, and Witches, could not be uttered by her without extraordinary Difficulty." Books that conveyed beliefs Mather would have agreed with were unacceptable to the spirits. "I produced a Book to her that proves, That there are Witches, and that she had not power to read," he writes. Catholicism, on the other hand, appealed to the demon. "A popish Book also she could endure very well; but it would kill her to look into any Book, that (in my Opinion) it might have bin profitable and edifying for her to be reading of," writes Mather, who never seems to wonder that the spirits capture his prejudices like a photo negative.³⁸

As with Goody Glover, the Salem accusations at first fell against townspeople who made others uncomfortable: a woman who neglected to attend church, a beggar who muttered phrases under her breath when townspeople refused to give her food, and a slave who had baked a "witch cake." As the circle widened, however, it enclosed what Salem considered upright citizens. Eventually, 160 people awaited trial.³⁹

Salem
Witch
trial

HOW MAMMON TURNED HOLY

The British bequest to the colonies included what was called "common law." The first appearance of British common law on the new continent was established in Virginia between 1609 and 1612. Capital offenses in this legal system included murder and manslaughter, rebellion, tumult, conspiracy, sedition, mutiny, rape, adultery, and incest.⁴⁰

Common
law
1609

But Britain also allowed the early colonies some punitive independence. For instance, the 1609 Second Charter given to the Virginia Company stipulated that the colony could, within reason, establish its own legal code. In addition to the hanging crimes Britain bestowed, the new colony also executed people guilty of speech crimes, most of them religious in nature: blaspheming "Gods holy name," speaking "impiously or maliciously against the holy and blessed Trinitie, or any of the three persons," uttering "any word," or carrying out "any act, which may tend to the derision or despight of Gods holy word," or pronouncing "traitorous words against his Majesties Person, or royal authority." Virginia's laws also punished sodomy, sacrilege (theft from or trespass in a church), robbery and burglary, and making a false oath.⁴¹

Witch
inquisitions

In addition to the hanging crimes, Virginia colonial law specified corporal punishment for small-time religious offenses. A person who "unworthily" demeaned herself "unto any Preacher, or Minister" earned

several whippings and had to plead forgiveness three times in a public place. Missing one of the twice-daily church services meant loss of pay for one day's work. As with other punishments, multiple infractions led to more severe treatment. A citizen inclined to avoid church would get a whipping for a second infraction and six months in the galleys doing hard labor for the third. Other Sabbath infringements were more serious. Those who worked or played on the holy day would lose a week's pay. On the second offense, such criminals got a whipping. The third transgression merited death. Sex with the wrong person led to public whippings, which increased to three per month for the third such violation. Uttering "disgracefull words" or committing "any act to the disgrace of any person in this Colonie" were punished in 1610 with what must have been an uncomfortable sleeping arrangement: "being tied head and feete together, upon the guard everie night for the space of one month," in addition to other penalties.⁴²

Accompanying the crimes against God were crimes against money and property. "There were . . . several capital crimes dealing with the economic well-being of the colony," writes political historian Ronald J. Pestritto. These included: "stealing from a Native American coming to trade, trading with the Native Americans without authority, embezzling or defrauding the colony, embezzling or robbing a fort, selling overpriced goods, and destroying an animal without permission of the government. The colony later extended the death penalty to such crimes as taking a fruit or vegetable from a garden or vineyard. There were several capital crimes associated with exploration and shipping: deliberately failing to return from a scouting, fishing, hunting, or trading voyage; departing by ship without permission; and selling any commodity of the colony to a departing ship."⁴³

Pestritto suggests that Virginia's expansive capital statutes may have had to do with anxiety about the success of the colony. "From the earliest criminal law in Virginia, it is apparent that strict discipline was a top concern," given the failures that had occurred at Jamestown, he writes. Virginia also maintained a number of corporal punishments designed to regulate the work and economic habits of its populace. Any first offender for the crime of leaving work early spent the night with head tied to feet. Second and third offenses for that crime earned a public whipping and a year in the galleys, respectively.⁴⁴

Penal Structure + Capitalism

Virginia's capital code may have been extensive, but the colony executed only ten people between 1609 and 1699. In numbers of hangings, it was outdone by Connecticut, which hanged a dozen malefactors during the same time period; Maryland, which executed fifteen; and Puritan Massachusetts, which topped all the colonies at ninety-nine hangings.⁴⁵

Colonial execution in the 17th century

During the eighteenth century, Virginia grew bloodier as the colony and, in the later years, the new state shifted the directives of the extensive code into physical reality. At 386 executions during that century, out of 1,391 in the colonies as a whole, Virginia saw more than a quarter of all capital killings, more than any other colony. Notable in this century were the many hangings for economic crimes, which had claimed only one life in the seventeenth century—that of Daniell Frank, hanged in 1622 for stealing a calf. Also notable is the lack of executions overall in the colony for traditional religious crimes.⁴⁶

18th Cent Execution

In its accelerated executions for and attention to property crimes during the eighteenth century, Virginia appears to have been a colonial shadow of Britain. During the eighteenth century, the mother country enforced bloody statutes protecting economic property as never before and developed new laws designed both to control the labor force and to confine wealth to those who already possessed it.

During the eighteenth century, "most of those hanged had offended against the laws of property," writes Peter Linebaugh of British executions in *The London Hanged*. Whereas punishments had once been attached to religious prescriptions, observe several historians, in Britain moral energy had begun to transfer to property and wealth. "Labour, the curse of fallen man, had become a religious duty, a means of glorifying God in our calling," writes Christopher Hill of eighteenth-century Britain in *Puritanism and Revolution*. "Poverty had ceased to be a holy state and had become presumptive evidence of wickedness."⁴⁷

Punishment Death Capitalism

In these few sentences, Hill captures two peculiarities that also characterize American punishment. The first, rather obvious, is that moral, legal behavior changes over time. The second is that as those definitions change, they tend to draw with them a religiosity that endows the new rules with ancient authority. Thus, punishment for vastly different, even conflicting, offenses will often take power from religion, even when the punishing government is expressly secular.

Poverty ≠ Pious instead Poverty levity

In eighteenth-century Britain, the number of crimes meriting the

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

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

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

CHAPTER 2

“A Heart Is Not Wholly Corrupted”

REVOLUTION, RELIGION, PUNISHMENT

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

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

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