

**THEATER OF DEATH:  
CAPITAL PUNISHMENT IN EARLY AMERICA, 1750-1800**

by

**Gabriele Gottlieb**

Equivalent of B.A., Augsburg University, Germany, 1995

M.A., University of Pittsburgh, 1998

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This dissertation was presented

by

Gabriele Gottlieb

It was defended on

12/07/2005

and approved by

Seymour Drescher, University Professor, Department of History

Van Beck Hall, Associate Professor, Department of History

Wendy Goldman, Full Professor, Department of History, CMU

Dissertation Advisor: Marcus Rediker, Full Professor, Department of History

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## **Theater of Death: Capital Punishment in Early America, 1750-1800**

Gabriele Gottlieb, PhD

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This dissertation analyzes capital punishment from 1750 to 1800 in Boston, Philadelphia, and Charleston. All were important Atlantic ports with bustling waterfront and diverse populations. Capital punishment was an integral part of eighteenth-century city life with the execution day as its pinnacle. As hangings were public and often attended by thousands of people, civil and religious authorities used the high drama of the gallows to build community consensus, shape the social order, and legitimize their power. A quantitative analysis of executions reveals patterns of punishment over time. The number of executions was relatively low in the colonial period, varied greatly during the Revolution, rose sharply in the mid- to late-1780s, and then declined during the 1790s in Boston and Philadelphia but remained high in Charleston. There were also important differences between the cities which influenced the death penalty: the fusion of civil and religious authority in Boston, most visible in execution sermons; a penal reform movement and opposition to capital punishment in Quaker-influenced Philadelphia; and the relations between masters and slaves as well as the question of dual sovereignty over life by the state and the master in Charleston.

This study argues that capital punishment was an important tool of social control in early urban America. Executions were especially frequent in moments of real or perceived crisis. The mindset of juries was therefore essential in determining the punishment of a crime. More

importantly, the death penalty was especially deployed to control the lower classes, as the majority of the condemned were young, male, and poor. Executions were correlated to forced labor. Boston, the city with the lowest percentage of forced labor, experienced the lowest rate of executions. Charleston, the city with the highest percentage, also witnessed the highest rate. Philadelphia fell between. The 1780s, a time when contemporaries believed that they experienced an unprecedented crime wave, saw the highest numbers of executions in all three cities with a peak late in the decade. By then the protection of property had become the primary agenda of the death penalty in urban areas.

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## 1.0 INTRODUCTION

When Rachel Wall was hanged for the crime of highway robbery in 1789, thousands of men, women, and children gathered in Boston to join the parade of death. They came to hear the execution sermon and witness the “launching of a moral vessel... into the boundless ocean of eternity.” The procession, which included a minister and city officials, wound through the streets from the prison to the gallows. After a noose was put around her neck, Wall fulfilled her proper role as a penitent condemned, expressing the hope that “my awful and untimely fate will be a solemn warning and caution to every one, but more particularly to the Youth, especially those of my own sex.”<sup>1</sup> While there was nothing unusual about Wall’s execution, there is one aspect of her story that is exceptional: until this day Rachel Wall is known as the only female pirate of New England. Popular legend has it that Wall, together with her husband, lured her victims by posing on a ship’s deck pretending to be shipwrecked. After her husband’s death, she retired from pirating and settled in Boston where she was several times convicted of petty property crimes and eventually indicted for highway robbery. In court, Wall allegedly insisted that she was a pirate and should be tried as such. Although she maintained her innocence of the highway robbery, she was hanged on October 8, 1789.

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<sup>1</sup> [Rachel Wall], *Life, Last Words, and Dying Confession of Rachel Wall, Who with William Smith and William Dunogan, were executed at Boston, on Thursday, October 8, 1789, for Highway Robbery* (Boston, 1789). For more detail on the case of Rachel Wall, see Chapter 5.

Rachel Wall is only one of the many condemned in early America. By uncovering the stories of those who walked to the gallows and placing them into a larger historical context, my dissertation analyzes the application of capital punishment in Boston, Philadelphia, and Charleston in the second half of the eighteenth century (1750-1800). Executions were a common sight and usually well-attended public events in early America. For civil and religious authorities, the theater of death on execution day presented an opportunity to convey lessons of virtue and morality to the assembled crowd. Most importantly, however, the occasion was a display of terror and extreme state power designed to enforce social order and to establish unity and consensus among members of a community. By tracing these individual and local moments of state power and terror, my dissertation analyzes how, when and against whom the death penalty was applied in the three cities. It also links executions to developments and dynamics in the respective communities, uncovering patterns of punishment.

Capital punishment in early urban America was a “punishment in reserve.” Authorities used it neither routinely nor randomly but applied most systematically it at moments of a real or perceived social crisis. Therefore the mindset of a given community was essential in determining whether an accused person would be sentenced to death and then actually executed. At times such crises were local in nature. In the 1750s, for example, the slaveholders in the South Carolina low country believed that they faced an unprecedented wave of poisonings by slaves. At other times, the crisis took place on a national level. After 1783, the inhabitants of all three cities tried to recover from the revolutionary upheaval. The mid- to late-1780s brought social and economic insecurity around the country, which in turn greatly influenced the application of the death penalty. Executions in each of the cities rose dramatically, peaking in the years 1788 and 1789. Although the domestic situation in the United States stabilized by the early 1790s, the

outbreak of revolutions and rebellions around the Atlantic brought new challenges to the social order and another rise in executions. The number of executions therefore increased at those moments of crisis and declined at times of relative tranquility and peace. Even when the crime of the condemned was unrelated to the crisis, the atmosphere in which the crime and trial took place was essential in determining the outcome of the case.

Commonalities and differences among Boston, Philadelphia, and Charleston determined my decision to pick them as foci of research. They were among the largest cities in the colonies and would therefore allow me to analyze the death penalty in the most urban of settings. They were important ports in the Atlantic economy and essential in connecting their respective backcountries to the larger economy of the Atlantic. People of various backgrounds mingled in their streets, socialized in their bars, and worked together in the cities' shops, stores, and wharves. Despite these commonalities, each of the cities presented a different social setting to analyze the application of the death penalty. As a New England town, Boston carried with it the legacy of Puritanism, which was still visible in traditions such as the execution sermon. Boston also was the city with the most homogeneous population and the lowest rate of forced labor. Philadelphia, the largest and fastest-growing city among the three, was unique for its large Quaker population. Although their political power and influence had significantly declined by the second half of the eighteenth century, Quakers continued to play a prominent role in the city's life, especially in reform movements like the penal reform movement and the abolitionist movement. Up to the Revolution, Philadelphia's employers – merchants as well as artisans – relied heavily on indentured servants and, to a lesser extent, on slaves for labor. After the Revolution, wage labor slowly replaced both forms of forced labor. Charleston, the city furthest south, had the highest percentage of forced labor, as its workforce consisted predominantly of

slaves, which would permit me to evaluate the role of race in the application of the death penalty in Charleston. There are several questions that arise with the large presence of slaves: what role did race played in the punishment of white offenders? Were they punished less severely in an effort to preserve racial solidarity necessary to uphold the slave system? Furthermore, did race have any impact on the punishment of female slaves or did gender act a mitigating factor like in Boston and Philadelphia?

The second half of the eighteenth century (1750-1800) provided an illuminating timeframe to study the application of capital punishment. It gave me the opportunity to study continuity and change of executions during a formative period in the history of the United States. By 1750, all three cities had well-established social, political, judicial, and economic institutions, all of which had matured beyond the rather simple social system of the initial settlement period. Beginning the analysis in the late colonial period would allow me to establish a basis against which to compare and contrast developments in the revolutionary period and the early republic. After the Stamp Act Crisis in 1765, all three cities experienced turbulent years with popular unrest and confrontations with British and local authorities. During the Revolution, their inhabitants lived through military occupation, internal conflict, and the interruption of their social and political life. Following the war of independence, the country suffered through an economic crisis that brought high unemployment, poverty, and rural uprisings. Although the domestic situation stabilized by the early 1790s, rebellions and revolutions throughout the Atlantic posed new challenges to social order. I wanted to explore how the application of the death penalty worked in and through these turbulent times.

The comparative approach over time and across region appeared to be a fruitful approach in uncovering patterns of punishment in regard to the death penalty. How would the different

social composition of the population, especially that of the labor force, in each city influence capital punishment? The needs of discipline and social control in a slave society seemed to be quite different than those in a more homogeneous community like Boston. The existing literature on slavery has well established the fact that violence was a part of controlling slaves and that slaves were executed for crimes against their masters and the white community.<sup>2</sup> In Philadelphia, the workforce consisted of considerable less forced labor than that in Charleston. Most forced laborers were servants who eventually would achieve freedom. The main question that arises therefore is whether the level of forced labor had any influence on the rate of execution. Despite these important differences between the cities, they share some commonalities such as being important Atlantic ports that might have contributed to some similarities in the application of the death penalty.

If the execution day was designed to teach lessons of social order and morality, as the existing literature suggests, how then did the differences among the three cities influence these lessons and the overall ritual. Current literature portrays a basic ritual across the colonies/states throughout the eighteenth century.<sup>3</sup> There were, however, important regional differences. The publication of broadsides and pamphlets about executions appears to have been more frequent in the North. The Puritan tradition of the execution sermon still played an important role in

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<sup>2</sup> For examples, see Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge: Harvard University Press, 2001); Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: Belknap Press, 1998); Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Low Country, 1740-1790* (Ithaca: Cornell University Press, 1998); Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: University of North Carolina Press, 1998); Douglas R. Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey* (Madison: Madison House Publishers, 1999).

<sup>3</sup> For an analysis of the execution day, see Stuart Banner, *The Death Penalty: An American History* (Cambridge: Harvard University Press, 2002), chapter 2 and Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford University Press, 1989), chapter 2.



eighteenth-century New England while a prominent part of ministers seems to be absent in both Philadelphia and Charleston. Do those variations point to significant differences in the ritual of execution in the three cities? Furthermore, what was the impact of such rituals on those who witnessed them? How far did the ritual penetrate the larger community beyond the actual execution?

While popular memory has preserved Rachel Wall's life, historians of early America have largely ignored her story and others like hers. Crime and punishment, and the death penalty in particular, have received little attention by scholars of early America. There has been an increasing interest in the history of crime and related topics such as law enforcement and criminal justice over the last two decades but many of those books emphasize study long periods of time and offer broad generalizations. More close-grained treatments of crime and society have been fewer.<sup>4</sup> Other studies focus on certain crimes such as witchcraft, infanticide, and piracy.<sup>5</sup>

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<sup>4</sup> Samuel Walker, *Popular Justice: A History of American Criminal Justice* (New York: Oxford University Press, 1980); Douglas Greenberg, *Crime and Law Enforcement in the Colony of New York, 1691-1776* (Ithaca: 1976); Lawrence Friedman, *Crime and Punishment in American History* (New York: BasicBooks, 1993); N. E. H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts* (Chicago: University of Illinois Press, 1987). Puritan New England is the only area that has received more detailed study. Eli Faber, "Puritan Criminals: The Economic, Social, and Intellectual Background to Crime in Seventeenth-Century Massachusetts," *Perspectives in American History*, vol. 10 (1977-1978), p. 81-144; Richard Ross, "The Legal Past of New England: Notes for the Study of Law, Legal Culture, and Intellectual History," *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 22 (July 1993), p. 28-41; Jules Zanger, "Crime and Punishment in Early Massachusetts," *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 22 (July 1965), p. 471-477; George Haskins, *Law and Authority in Early Massachusetts: A Study in Tradition and Design* (New York: Macmillan Company, 1960); David Konig, *Law and Society in Puritan Massachusetts: Essex County, 1629-1690* (Chapel Hill: University of North Carolina Press, 1979); Edwin Powers, *Crime and Punishment in Early Massachusetts, 1620-1690: A Documentary History* (Boston: Beacon Press, 1966) For the nineteenth century, see Michael Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: University of North Carolina Press, 1980); Eric Monkonen, *The Dangerous Classes: Class and Poverty in Columbus, Ohio, 1860-1885* (Cambridge, 1975).

These topics, however, have not yet become an integrated part of the larger narratives of early America and have not yet been linked to the studies of slavery, labor, and gender.

Historians, however, have analyzed certain aspects of the death penalty in early America. These studies have focused on published broadsides and execution sermons. The most important work is Daniel Cohen's *Pillars of Salt, Monuments of Grace*, which New England crime literature published before or after an execution, to analyze the development of American popular culture from 1674 to 1860.<sup>6</sup> Similarly, Ronald Bosco's essay "Lectures at the Pillory: The Early American Execution Sermon" analyzes execution sermons between 1674 and 1750, placing them into the larger Puritan culture.<sup>7</sup> Although these studies illuminate an important cultural aspect of capital punishment in New England, neither scholar paid much attention to the condemned themselves or the role of capital punishment in that region.

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<sup>5</sup> For witchcraft, see Mary Beth Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692* (New York: Alfred A. Knopf, 2002); Paul Boyer and Stephen Nissenbaum, *Salem Possessed: The Social Origins of Witchcraft* (Cambridge: Harvard University Press, 1980); John Demos, *Entertaining Satan: Witchcraft and Culture of Early New England* (Oxford: Oxford University Press, 1982); Carol Karlson, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: Vintage Books, 1989). For infanticide, see Peter C. Hoffer and N. E. H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981) and Sharon Ann Burston, "Babies in the Well: An Underground Insight into Deviant Behavior in Eighteenth-Century Philadelphia," in Eric Monkonen (ed.) *Crime and Justice in American History*, p. 52-87. For piracy, see Marcus Rediker, *Villains of all Nations: Atlantic Pirates in the Golden Age* (Boston: Beacon Press, 2004); Robert C. Richie, *Captain Kidd and the War against the Pirates* (Cambridge: Harvard University Press, 1986); Philip Gosse, *The History of Piracy* (New York: Tudor, 1932); Hugh F. Rankin, *The Golden Age of Piracy* (New York: Holt, Rinehart and Winston, 1969); and C. R. Pennell, *Bandits at Sea: A Pirates Reader* (New York: New York University Press, 2001). Another crime that has received some attention is counterfeiting. See Kenneth Scott, *Counterfeiting in Colonial America* (New York: Oxford University Press, 1957).

<sup>6</sup> Daniel A. Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674-1860* (New York: Oxford University Press, 1993). See also Daniel A. Cohen, "In the Defense of the Gallows: Justifications of Capital Punishment in New England Execution Sermons, 1674-1825," *American Quarterly*, vol. 40 (June 1988), p. 147-164.

<sup>7</sup> Ronald A. Bosco, "Lectures at the Pillory: The Early American Execution Sermon," *American Quarterly*, vol. 30 (Summer 1978), p. 156-176.

Another aspect of the death penalty that has received considerable attention is the opposition to capital punishment, which developed as part of an Atlantic-wide penal reform movement.<sup>8</sup> In his path-breaking book *Rites of Execution*, Louis Masur studies the death penalty in post-revolutionary and ante-bellum America in relation to the rise of the middle class and the broad transformation of religious and secular values. Masur argues that the opposition to capital punishment after the Revolution grew out of three developments: a reevaluation of colonial values and practices; the shift in religious beliefs from a Calvinism to universalism and a more liberal theology; and an emphasis on self-control and privacy by the growing middle class. Although Masur begins his book with an analysis of the execution day, the condemned quickly move to the background as focus shifts to middle-class reformers such as Benjamin Rush and Charles Spear and their opposition to the death penalty.<sup>9</sup> Other scholars have also outlined the movement to abolish capital punishment, beginning either with the movement's origins in the

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<sup>8</sup> In studies of the penal reform movement, the death penalty is part of discussions about shifts in judicial thinking, popular attitudes towards punishment, and the development of new penal systems. David J. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston: Little, Brown, and Company, 1971); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York: Pantheon Books, 1978); Adam J. Hirsch, *The Rise of the Penitentiary: Prison and Punishment in Early America* (New Haven: Yale University Press, 1992); Michael Miranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill: University of North Carolina Press, 1996); and Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1995). Of those authors, Foucault has unquestionably been the most influential well beyond the topic of penal reform, especially in terms of theory. Foucault argues that the rise of the prison in France (and therefore in other parts of the Atlantic) is closely linked to the development of “disciplinary technologies” embedded in architecture and rules designed to discipline and control the soul rather than the body. Foucault, however, has no interest in social actors who influenced how prisons were designed or causation which would explain why prisons were built in a certain way rather than another.

<sup>9</sup> Louis Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York: Oxford University Press, 1989).

1780s or focusing on its second more widespread phase in the 1830s and 1840s.<sup>10</sup> These studies illuminate the philosophical controversies surrounding capital punishment by focusing primarily on middle- and upper-class reformers and their opponents but they shed little light on the social functioning of capital punishment in early America. They are nevertheless essential for understanding the historical role of the death penalty, as the debates between opponents and supporters of capital punishment expose contemporary views of the death penalty. Discussions of penal policy also had the potential of directly affecting the application of the death penalty. It is therefore important to push these studies further and link them with social histories of the death penalty that uncover patterns of punishment and social profiles of the condemned.

The best historical work on the death penalty and other punishments as tools of social control, has been done by historians of early modern England. One of the most influential but also controversial books on crime in England is the collection of essays *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, edited by Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson and Cal Winslow. In his essay "Property, Authority, and Criminal Law," Douglas Hay analyzes the relationship between the rise of capitalism and punishment. Once property became the "measure of all things," human life was also "weighed in the scales of wealth and status." Hay argues that, although the number of actual executions was relatively small compared to earlier times, it was the relations between property, power and authority that were crucial. Criminal law was "as much concerned with authority as it is with property," defining the social context in which punishment took place. The effectiveness of the criminal law

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<sup>10</sup> David Brion Davis, "The Movement to Abolish Capital Punishment in America, 1787-1861," *American Historical Review*, vol. 63 (Oct. 1957), p. 23-46; Alan Rogers, "'Under Sentence of Death:' The Movement to Abolish Capital Punishment in Massachusetts, 1835-1849," *New England Quarterly*, vol. 66 (March 1993), p. 27-46; and Edward Schriver, "Reluctant Hangman: The State of Maine and Capital Punishment, 1820-1887," *New England Quarterly*, vol. 63 (June 1990), p. 271-287.

lay in its inconsistency and weaknesses, which reformers would come to condemn. The criminal law and the punishments inflicted were among the ruling class's chief ideological instruments, embodying "majesty, justice, and mercy."<sup>11</sup> Hay demonstrates in his essay how punishment cannot be understood in isolation but has to be placed in its larger social context, as "the law defined and maintained the bounds of power and wealth."<sup>12</sup> In eighteenth-century England, the criminal law and its enforcement reflected the interests of the ruling classes, mainly the protection of property. Moments of division among the ruling classes such as a push for penal reform, however, could lead to moderation in punishment. As in England, property and authority were closely linked in early urban America and therefore Hay's approach is very useful for analyzing capital punishment in early America.

Another essay in *Albion's Fatal Tree* that is important in the analysis of capital punishment is Peter Linebaugh's "The Tyburn Riots Against the Surgeons." Linebaugh analyzes the battle between friends and family of the condemned and surgeons who wanted to claim the condemned's body in the name of science. This conflict, according to Linebaugh, embodied the class struggle that raged in and around the Tyburn tree in eighteenth-century London.<sup>13</sup> Linebaugh makes a similar but broader argument in his book *The London Hanged*, in which he analyzes executions, class conflict, and the rise of capitalism in London. Criminal activities changed as the forms of exploitation changed. At the same time, "forms of crime caused major

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<sup>11</sup> Douglas Hay, "Property, Authority, and Criminal Law," in Douglas Hay, et. al., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), p. 17-63, quotes p. 19, 26.

<sup>12</sup> *Ibid.*, p. 61.

<sup>13</sup> Peter Linebaugh, "The Tyburn Riot against the Surgeons," in Hay et. al., *Albion's Fatal Tree*, p. 65-117.

changes in capitalism.”<sup>14</sup> Linebaugh therefore sees executions and the surrounding context in a dialectical way, capturing both initiative and response on both the working-class and ruling-class sides.

Both Linebaugh’s essay and his book are useful in thinking about the role of capital punishment in early America, especially the dialectical relations between executions and the larger social context. Although the execution days in Boston, Philadelphia, and Charleston were usually not as tumultuous as those in eighteenth-century London, they nevertheless represented a sharp and dramatic moment of class conflict. This dialectical approach raises several important questions for early urban America: how did the developing struggle with the British, which questioned colonial authority, impact the application of the death penalty and the ritual of execution day? Did this conflict play out at the place of execution? What is the relationship between the hanging of effigies during protests and actual executions? Most importantly, did the nature of the death penalty changed with the transition of power from colonial elites to local American elites? What role did it play in this transition and what does that tell us about class relations after the Revolution?

The question remains, however, why scholars of early America have paid so little attention to capital punishment. Why have they failed to analyze crime and punishment in its social context? In a 1982 article, historian Douglas Greenberg suggested several reasons for this neglect: the lack of technical knowledge among social historians necessary to engage in criminal justice research; attention to procedure, precedent, and process in the few studies that exist; and an image that such history “was either a rather dismal story, which could only reveal embarrassing divisions and conflicts, or that it was likely to tell us little that would illuminate the

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<sup>14</sup> Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (New York: Cambridge University Press, 1992).

contributions of inarticulate groups to American history and culture.”<sup>15</sup> In my view, Greenberg’s last reason is the most important. Early American history has long and variously been dominated by the concept of deference, notions of American exceptionalism, and an insistence that colonists were unified in their fight against the British.<sup>16</sup> Although historians of race, class, and gender have seriously challenged those notions and complicated the narrative of early American history, the influence of the older, more conservative approach persists. This is especially true for the American Revolution, where a conservative consensus sets the framework of discussion.<sup>17</sup> As Gordon Wood argued in his book *The Radicalism of the American Revolution*, the American people transformed from “monarchical, hierarchy-ridden subjects on the margin of civilization” to “the most liberal, the most democratic, the most commercially minded, and the most modern

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<sup>15</sup> Douglas Greenberg, “Crime, Law Enforcement, and Social Control in Colonial America,” *American Journal of Legal History*, vol. 26 (October 1982), p. 293-294.

<sup>16</sup> Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Belknap Press, 1967, 1992); Pauline Maier, “Popular Uprisings and Civil Authority in Eighteenth-Century America,” *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 27 (January 1970), p. 3-35; Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Vintage Books, 1991). Even more radical historians such as Alfred Young use the concept of deference to uncover the lives of the lower-class people and their actions during the Revolution. Alfred F. Young, *The Shoemaker and the Tea Party: Memory and the American Revolution* (Boston: Beacon Press, 1999), especially p. 4, 55-56, 59, and 63-64. For a challenge of deference, see Michael Zuckerman, “Tocqueville, Turner, and Turds: Four Stories of Manners in Early America,” *Journal of American History*, vol. 85 (June 1998), p. 13-42 and Billy G. Smith and Simon Middleton (ed.), “Deference in Early America: The Life and/or Death of a Historical Concept,” *Early American Studies*, vol. 3 (Fall 2005). The notion of American exceptionalism has been seriously challenged by Atlantic history.

<sup>17</sup> One recent example of such influence is the struggle over the national history standards during the “history wars” of the 1990s. Gary Nash, Charlotte Crabtree, and Ross Dunn, *History on Trial: Culture Wars and the Teaching of the Past* (New York: Vintage Books, 2000). This influence can also be seen in the recent publications of numerous biographies of revolutionary leaders. For examples, see David McCullough, *John Adams* (New York: Touchstone, 2001) and *1776* (New York: Simon and Schuster, 2005); R. B. Bernstein, *Thomas Jefferson* (New York: Oxford University Press, 2003); John K. Alexander, *Samuel Adams: America’s Revolutionary Politician* (Rowman and Littlefield Publishers, 2002); Harlow Giles Unger, *John Hancock: Merchant King and American Patriot* (New York: John Wiley and Sons, 2000); and James MacGregor and Susan Dunn, *George Washington* (New York: Times Books, 2004).

people of the world.” Furthermore, according to Gordon, the Revolution “brought respectability and even dominance to ordinary people long held in contempt and gave dignity to their menial labor.”<sup>18</sup> The explanation for the persistence of this approach, I believe, has much to do with the role the American Revolution plays in the ideological mythology of the nation’s founding and the myth of liberty, democracy, and freedom evoked on an almost daily basis in the media and in politics. The history of crime and punishment – a history of misery, terror, blood, and brutality – has little room in such a narrative, as it necessarily introduces issues of conflict and social control. As shown by historians of eighteenth-century England, such history can greatly illuminate the power relations in early urban America and how power and the representation thereof functioned in a public setting. What does it mean that those who, according to Gordon, achieved “respectability and even dominance” were the ones who most frequently walked to the gallows?

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<sup>18</sup> Wood, *Radicalism*, p. 6-7, 8.



## 2.0 “I AM MADE A SPECTACLE TO THE WORLD:” EXECUTION DAY IN EARLY AMERICA

In the late morning hours of May 9, 1800, pirates Peter Lacroix, Joseph Baker and Joseph Berouse – dressed in white and accompanied by a Presbyterian minister and a Roman Catholic priest – were “brought from prison by civil officers, and conducted in a cart to Market-street wharf.” After winding their way through Philadelphia’s streets, they were put on a boat to be conveyed to the place of execution, an island in the city’s harbor. When they arrived “at the fatal spot, the prisoners kneeled down, and after some time spent in prayer...they were prepared for the conclusion of the awful scene.” Before they were “launched into eternity, in the view of an immense concourse of spectators, who crouded the wharfs and the shipping,” all three begged “the world to forgive them.” An hour later after the hanging, “their bodies were put into coffins and buried near the gallows.”<sup>19</sup>

The above scene exemplifies the basic structure of the execution spectacle in early America: the parade of death from the prison to the place of execution; the presiding presence of religious and civil authorities; the address of the crowd by the condemned; and the burial, often in an unmarked and eventually unknown grave. This ritual of punishment inherent in the execution day is essential for understanding the role of the death penalty in early America. The

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<sup>19</sup> *Pennsylvania Gazette*, May 14, 1800 (hereafter *Pa. Gazette*) and *Execution of LaCroix, Berouse & Baker for Piracy: The Last Words and Dying Confession of the Three Pirates, Who Were Executed This Day* (Philadelphia: Folwell’s Press, 1800), p. 8.

execution day was the pinnacles of ultimate state power – the taking of a human life – in a carefully staged ceremony in front of a large crowd. The lessons of the execution day were geared towards building community cohesion and order by reinforcing principles of social discipline and morality. Each participant – the ministers and civil officials, the condemned, and the crowd – had “assigned” roles to play in this theater of death. Even if authorities pardoned a condemned man or woman, the reprieve was generally not handed down until the condemned had a rope around his or her neck. This provided the authorities with the “benefits” of the ritual of punishment without the deadly end, making a moment of power one of mercy and forgiveness.

While the execution day in early America generally followed the basic structure described above, there were important regional, social, and religious distinctions. In New England, the Puritan tradition of the execution sermon continued throughout the eighteenth century and well into the early nineteenth century. In other regions such as the mid-Atlantic colonies/states and the South, however, ministers played a far less central role in executions than in New England. They were usually present at the gallows for a prayer but did not convey moral lessons to the larger community. More importantly, the modes of execution varied from region to region, involving different symbolisms and levels of violence. Hanging in chains and especially burning alive were almost never used in the mid-Atlantic and New England colonies during the eighteenth century but both modes of execution were common in the South in the punishment of slaves. Furthermore, slaves were also the victims of an extra-legal death penalty administered by their masters, overseers, and other whites, as the killing of slaves was accepted to a certain extent and, if at all, punished as a property crime (restitution to the master) rather than as a personal crime (murder).

One aspect of the execution day that has not been addressed by scholars of early America is the impact the theater of death had beyond the actual execution. This impact extended to publications that often followed an execution, into popular culture, in particular into popular protests. Symbolic expressions of power were inherent in the ritual of punishment displayed at an execution. That same symbolism, however, was also part of protests by the popular classes, who, by using the same rituals, engaged in a counter-theater of “ridicule or outrage against the symbolism of authority.”<sup>20</sup> During the revolutionary period and in some instances afterwards, the ritual of the execution day was used by popular crowds when hanging local officials in effigy as a sign of protest and discontent. Most of these protests also included a certain ritual which resembled closely that of the execution day: the hanging of an effigy on a tree; a parade through the streets; a possible visit to the town’s gallows; and, in some cases, the effigy’s burning at the end of the protest.

This chapter examines first the theater of death in early America by focusing largely (though not exclusively) on the three cities of Boston, Philadelphia, and Charleston. The second part of the chapter analyzes publications that surrounded executions such as dying speeches, ballads, and execution sermons. This part also includes an examination of the woodcuts and other contemporary images of the early American execution day which often accompanied broadsides. This chapter concludes by assessing the impact of capital punishment beyond the execution day by providing a short analysis of the hanging of effigies.

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<sup>20</sup> Historian E. P. Thompson described gentry-plebian relations in eighteenth-century England as a “societal field-of-force,” in which the symbolism of power and protest was important. See E. P. Thompson, “Eighteenth-Century English Society: Class Struggle without Class?,” *Social History*, vol. 3 (May 1978), p. 133-165; quote, p. 145.

## Theater of Death

The theater of death began with a procession from the local jail or prison to the place of execution, which was headed by the condemned, at least one minister, civil officials, and a group of guards. Spectators lined the streets and followed the procession to the place of execution. At times, the procession stopped at or near the scene of the alleged crime. In 1788, Archibald Taylor and Joseph Taylor were “taken from the jail, attended by Rev. Mess’rs. Stillman and Thacher, and the respective Sheriffs, together with a large concourse of people.” Following the “county stage, on which they were to make their exit,” the procession slowly snaked its way through Boston’s streets “to the place where the robbery was committed” and then to the gallows on the Boston Neck.<sup>21</sup> At other times, the condemned were brought to the place of execution by boat. In Philadelphia, Samuel Lyons and Samuel Ford were shot “on board the galleys in the river, nearly opposite to Market street wharf” in 1778.<sup>22</sup> In 1791, Charleston’s sheriff was reimbursed for the “hire of a Pilot boat to convey Pirates to place of Execution” – Hangman’s Point in the city’s harbor.<sup>23</sup>

The place of execution was often carefully chosen, at times to enhance the symbolic meaning of the spectacle. Most executions in an urban environment occurred in a large public space such as a market, the wharves, or the commons to make the theater of death accessible to as large a crowd as possible. In many cases, the place of execution had a symbolic link to either the crime or the occupation of the condemned. Sailors were frequently hanged on an island in a city’s harbor, the gallows visible to incoming and outgoing ships and from the wharves. The

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<sup>21</sup> *Boston Gazette*, May 12, 1788. For other examples, see *Pa. Gazette*, May 17, 1764; *Columbian Herald*, June 28, 1787.

<sup>22</sup> *Pa. Gazette*, August 29, 1778.

<sup>23</sup> The four pirates were executed in June 1788. Charleston Day Book, “James Kennedy, July 1, 1791,” *South Carolina State Treasurer, Lower Division (Vouchers 1791, Box 1)*, South Carolina Department of Archives and History (hereafter SCDAH) and *City Gazette*, June 17, 1788.

execution of naval sailors took often place on board a ship. When a sailor was to be executed on board the *Mermaid* in Boston harbor in 1768, “a yellow flag was displayed in the foretopmast head of the Commodore’s ship, after which the boats from other men of war in the harbour rowed along the *Mermaid*.”<sup>24</sup> Locations near the slave market or the workhouse were common sites for the execution of slaves. In Charleston, for example, slaves were often hanged or otherwise punished at the lower market where slaves engaged in independent economic activity and thereby endangered, whites thought, the city’s security. On September 24, 1794, “french negro” Noel was convicted of theft and sentenced “to Receive thirty & nine Lashes on the Bare back at the Lower Market.” The same day a slave named Silvan was also whipped for theft and a week later Mingo and Tim received a severe whipping for burglary.<sup>25</sup> In rural areas, the place of execution was usually the intersection of busy roads or near taverns and inns. In some cases, gallows were erected for an execution at a specific location. In Philadelphia, five men were hanged “near to where they committed the robbery and barbarous murder” in 1789.<sup>26</sup>

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<sup>24</sup> *Boston Chronicle*, Nov. 28-Dec. 5, 1768.

<sup>25</sup> State vs, Noel, September 24, 1794 (No. 1, Pope & Hayes); State vs. Silvan, September 24, 1794 (No. 3, Pope & Hayes); and State vs. Mingo and Tim, October 3, 1794 (No. 6, Pope & Hayes), all in “Account of Abraham Seixces for Cash Paid the Constables,” *Charleston Cash Book*, April 19-30, 1794, State Treasure – Lower Division, Box 10, South Carolina Department of Archives and History, Columbia. For slave activities in Charleston’s markets, see *South Carolina and American Gazette*, January 29, 1768 and December 3, 1779; *Columbian Herald*, October 21, 1785 and October 16, 1786; *South Carolina Gazette*, November 15, 1770, March 29, 1773, and May 17, 1773. Some white Charlestonians believed that the slaves’ freedom in the market might actually keep slaves calm and quiet. See Henry Laurens to Theodore Rossel, April 8, 1766, *Papers of Henry Laurens*, vol. 5, p. 99-100. See also Olwell, *Masters, Slaves, and Subjects*, p. 168-169, Berlin, *Many Thousands Gone*, p. 156-157, 312-313; Morgan, *Slave Counterpoint*, p. 250-252.

<sup>26</sup> *Pa. Packet*, October 13, 1789.

Once the procession reached the gallows, the sheriff usually read the death warrant in front of the assembled crowd.<sup>27</sup> In Boston, a minister would often climb up on the cart with the condemned and address the crowd with an execution sermon, although at most times such sermons were given days before the execution. In Philadelphia and Charleston, ministers were present as well but usually restricted their role to a prayer or a short address to the spectators and moral support for the condemned. In 1791, Thomas Walsh “was assisted in his devotions by the Rev. Dr. Keating, pastor of the Roman Catholic church” before he was hanged for counterfeiting in Charleston.<sup>28</sup> Similarly, John Fuller, condemned for forgery in 1792, received support from Rev. Mr. Hamett when he “threw himself upon his knees, and prayed aloud with great fervency and apparent devotion.”<sup>29</sup> Ministers also attended the execution of soldiers. When Brint Debadee, a soldier of the Tenth Pennsylvania regiment, was shot for desertion on Philadelphia’s commons in 1777, he was accompanied “by the Rev. Mr. Coombe and the Rev. Mr. Rogers; the last gentleman, being a Chaplain in the service.” Rev. Rogers delivered “a pathetic address, suitable to the melancholy occasion” before the execution.<sup>30</sup>

After the minister’s prayer or sermon, the condemned took center stage. Authorities expected him or her to address the assembled crowd by confessing to a sinful life, warning spectators against the sins and crimes they had committed, and confirming the justness of the death sentence. According to newspaper reports, the condemned played their role properly. In 1752, John Webster, hanged for robbery, “made no Confession till he was under the Gallows” but then admitted to several robberies in the Philadelphia area. Thomas Ruth did the same the

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<sup>27</sup> For examples, see *The Massachusetts Spy*, August 6, 1778; *Life, Last Words and Dying Speech of Stephen Smith: A Black Man, Who Was Executed at Boston This Day Being Thursday, October 12, 1797, for Burglary* (Boston, 1797).

<sup>28</sup> *City Gazette*, March 24, 1791.

<sup>29</sup> *City Gazette*, June 26, 1792.

<sup>30</sup> *Pennsylvania Gazette*, March 12, 1777 (hereafter *Pa. Gazette*).

following year. In 1772, a man named Smart declared that he was “only guilty of the Murder and Robbery for which he suffered, and acknowledged the Justice of his Sentence.” In the same year, Moses Paul, a Native American hanged for murder in Connecticut, “took a most affectionate Leave of his Countrymen, the Indians (many of whom were present) and exhorted them to shun those Vices” such as drunkenness and revenge. In 1788, William Rogers who was condemned for piracy declared under the gallows that he “only hoped his unhappy fate would produce the effect of deterring others from committing similar offences.” In 1795, a North Carolina slave – runaway and member of a “nest of miscreants” – confessed to plundering several plantations and allegedly “acknowledged the justice of his sentence.” In other cases, the newspapers described the condemned’s behavior more generally. Brint Debadee, shot for desertion in 1777, was described as behaving “in his last moments with great resignation and calmness.” John Martin’s and John Downey’s conduct seemed to an observer to be “decent, and suitable to their unhappy situation.” A slave of Mr. Bulgin, who was executed for robbing his master, “appeared to be penitent for his conduct, and met his unhappy fate with fortitude and resignation.”<sup>31</sup>

While some of the condemned played their parts as penitents, just as many others refused to play the “role” authorities had designed for them. Such behavior, especially when it included a declaration of innocence, seriously undermined authorities’ claim of legitimacy and justness in taking a human life. Richard Wheldon, executed for burglary in 1753, “declared himself innocent of the Fact for which he was to suffer.”<sup>32</sup> In 1792, John Fuller “solemnly swore that he was not guilty of the crime for which he was about to suffer,” although he admitted that he “had lived a

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<sup>31</sup> *Pa. Gazette*, May 7, 1752 and October 25, 1753. Thomas Ruth was executed for murder. *Pa. Gazette*, July 9, 1772 (Maryland). *Pa. Gazette*, September 16, 1772. *Charleston City Gazette* (hereafter *City Gazette*), June 17, 1788. *Pa. Gazette*, July 29, 1795. *Pa. Gazette*, March 12, 1777. *Pa. Gazette*, July 21, 1784. *Charleston Morning Post*, July 8, 1786 (hereafter *Morning Post*).

<sup>32</sup> *Pa. Gazette*, January 30, 1753 (Nova Scotia).

vicious life.”<sup>33</sup> Sally Arder, hanged for murder in 1795, “persisted to the last in declaring herself to be innocent of the crime for which she suffered, and forgave those whom she said had been the cause of her unjust condemnation.” She nevertheless met “her fate with a surprising degree of fortitude or boldness.”<sup>34</sup> Declarations of innocence also appeared in broadsides published after an execution. John Sheehan, executed for burglary in 1787, declared “that I never robbed either Mr. Elliot or Mr. Fennerly” but he admitted, “when I was purchasing the Plate I supposed them to be stolen.”<sup>35</sup>

Such last minute declarations and confessions often created anxiety and discomfort among authorities and some spectators rather than the tranquility and safety of a just display and confirmation of state power. When a South Carolina slave was gibbeted for the murder of his master in 1754, he “till within an Hour before he expired, constantly declared his Innocence; but at last confessed.” In his confession, Robin declared “that he himself had perpetrated that Murder and at the same Time disclosed a Scene equally shocking,” revealing a conspiracy among several slaves. Robin and eight other slaves had planned “the Murder of two other Gentlemen in Beaufort” and then “they were to have taken a Schooner” to get to St. Augustine in Florida.<sup>36</sup> Others defied death, and therefore authorities, under the gallows. Thomas Walsh, hanged for counterfeiting in 1791, “politely waved his hand to the crowd and said, ‘Good day, gentlemen’” before he “pulled the cap over his face” and was “immediately launched into

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<sup>33</sup> *City Gazette*, June 26, 1792.

<sup>34</sup> *City Gazette*, October 20, 1795.

<sup>35</sup> *Life, Last Words, and Dying Speech of John Sheehan, Who was Executed at Boston, on Thursday, November Twenty-Second, 1787, for Burglary* (Boston, 1788).

<sup>36</sup> *South Carolina Gazette*, August 29, 1754.



eternity.”<sup>37</sup> Similarly, John Fuller “addressed the audience in a firm, manly tone of voice, declaring that he was not afraid to die – to him death had no terror.”<sup>38</sup>

An extraordinary instance of impenitence was given by “One-Armed” Tom Robinson, hanged for highway robbery in Philadelphia in 1784. While standing under the gallows, Robinson confessed that “he was the man who committed the rape and murder of a young woman on the Gray’s ferry road” several years earlier. He further declared that he had watched the execution of the innocent man while he “picked a drover’s pocket of a large sum of money.” After his confession, “One-Armed” Tom continued to mock the spectacle of terror by turning to Peter Brown, one of his accomplices, and asking him with a smile “don’t you think after we get there, (pointing downwards) we can manage to bilk the Old Fellow and get out again?” When a minister approached him for prayer shortly before the rope was put around his neck, Tom “declined, and stood upright during the whole prayer, and was not observed to tremble or display any dread of his approaching fate.”<sup>39</sup>

Open resistance by the condemned against an execution was rare but especially dramatic when it happened. In Albany in 1773, the execution of John Wall and two others for counterfeiting required “the Militia and the whole City...under Arms.” The day before the execution, Wall and his “Fellow prisoners” made their escape but were quickly retaken. By the next morning, they had again removed their irons, had “barred the Room,” and “bid Defiance to the Sheriff and his Party.” Wall, determined to avoid the gallows, “set Fire to the Goal, and expected to die so.” The fire was quickly extinguished, but Wall did not surrender. Apparently,

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<sup>37</sup> *City Gazette*, March 24, 1791.

<sup>38</sup> *City Gazette*, June 26, 1792.

<sup>39</sup> *Pa. Gazette*, October 20, 1784. Henry K. Brooke, *Book of Murders, Containing an Authentic Account of the Most Awful Tragedies that have been Committed in this Country* (Philadelphia, 1858), p. 27.

he had gotten “about two Pounds of Powder from some malicious Fellow,” had “put it into a Bottle, and had a Match to put to it when the Sheriff or any other Person dare venture in.” While Wall and his accomplices “thus kept the City in an Uproar for some Time, at last a Party suddenly broke in upon them.” The powder in Wall’s hand failed to ignite and “they were carried to the Gallows, and executed according to their Desert.”<sup>40</sup>

Authorities were concerned about the condemned’s behavior because executions were generally attended by a large crowd, on some occasions more than ten thousand. Since the seventeenth century, spectators flocked to executions, sometimes the vast majority of a given town. In 1686, “some thousands of the People” assembled along Boston’s streets to witness and then follow the “parade of death” to the gallows “about one mile out of Boston” to see James Morgan being hanged for murder.<sup>41</sup> In 1701, at least four or five thousand out of a total population of approximately seven thousand attended the execution of Esther Rodgers for infanticide in Boston.<sup>42</sup> Joshua Hempstead, a farmer of New London, estimated the crowd that watched the hanging of Sarah Bramble in 1753 at ten thousand.<sup>43</sup> In 1773, Levi Ames – hanged for burglary in Boston – “was turned off just at four o’clock” in front of a “vast concourse of people, who attended this awful scene, supposed to consist of seven or eight thousand persons.”<sup>44</sup> In 1774, more than twelve thousand were thought to have watched the execution of

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<sup>40</sup> *Pa. Gazette*, April 21, 1773 (Albany).

<sup>41</sup> “James Dunton to Mr. George Larkin” March 25, 1686, in Miller and Johnson, *The Puritans*, p. 414-420. Dunton estimated the crowd at about five thousand people.

<sup>42</sup> John Rogers, *Death the certain wages of sin to the impenitent: life the sure reward of grace of the penitent: together with the only way for youth to avoid the former, and attain the latter. Deliver’d in three lecture sermons; occasioned by the imprisonment, condemnation and execution, of a young woman, who was guilty of murdering her infant begotten in whoredom. To which is added, an account of her manner of life & death, in which the glory of free grace is displayed* (Boston: Printed by B. Green and J. Allen for Samuel Phillips), p. 153.

<sup>43</sup> Joshua Hempstead, *Diary* (New London: New London Historical Society, 1901), p. 619.

<sup>44</sup> Samuel Mather, *Christ Sent to Heal the Broken Hearted* (Boston 1773), p. 36.

Daniel Wilson for rape in Providence.<sup>45</sup> About five thousand people were estimated to have lined the streets of Worcester to witness the parade of death and then assembled at the place of execution to watch the hanging of James Buchanan, Ezra Ross, and William Brooks.<sup>46</sup> In 1790, the Connecticut Journal reported about the hanging of Joseph Mountain for rape that “it is estimated that ten thousand people attended the execution.”<sup>47</sup> By the early nineteenth century, crowds were often estimated into the tens of thousands: 30, 000 at the execution of Jesse Strang in Albany and 50, 000 at the hanging of John Johnson in New York.<sup>48</sup> At other times, estimations were less precise but still pointed to the attendance of large crowds. The execution of “One-Armed” Tom and Peter Brown “drew a large concourse from the city to witness their punishment.”<sup>49</sup> In 1768, the hanging of Isaac Frasier for burglary “was attended by a very great Concourse of People.”<sup>50</sup> Executions therefore were among the biggest events in those cities rivaled only by gatherings during the Great Awakening.

Beyond their numbers crowds occasionally drew the attention of observers. When two young men in Georgetown in South Carolina in 1786 were hanged for horse stealing, “their contrite behaviour, at the place of execution, drew tears from the eyes of most spectators.”<sup>51</sup> At the execution of Thomas Rogers and James Harvey in 1787, “the heart-rending sight of four young men” (two of whom were pardoned) “preparing to bid adieu to time and mortal life, occasioned most of the spectators to shed tears.” The crowd’s affection for the condemned

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<sup>45</sup> *The Life and Confession of Daniel Wilson* (1774).

<sup>46</sup> *The Massachusetts Spy*, August 6, 1778.

<sup>47</sup> *The Connecticut Journal*, October 27, 1790.

<sup>48</sup> [Jesse Strang], *The Authentic Confession of Jesse Strang, executed at Albany, Friday, August 24, 1827, for the murder of John Whipple* (Albany: E. M. Murden & A. Ming, Jr., 1827); *Trial and Sentence of John Johnson* (1824).

<sup>49</sup> Brooke, *Book of Murders*, p. 28.

<sup>50</sup> *A Brief Account of the Life and Abominable Thefts of the Notorious Isaac Frasier Who Was Executed at Fairfield, Sept. 7<sup>th</sup>, 1768* (New Haven, 1768).

<sup>51</sup> *Morning Post*, November 21, 1786.

presented opportunities: the newspaper also reported that “some hardened offenders picked several gentlemen’s pockets, without being detected” during the execution of Rogers and Harvey.<sup>52</sup> Reports of dissent or disagreement during executions in early America were rare but nevertheless exist. In 1756, the execution of Owen Syllavan, who was also called the “forty thousand Pound Money-Maker,” had to be postponed twice in New York; the first time, “for the Want of a Hangman” and the second time, because “the Gallows being cut down on Friday Night by Persons unknown.”<sup>53</sup> A poem written a few days before the execution of Levi Ames in 1773 expressed concerns about the crowd’s possible behavior in Boston:

See! round the Prison how the Throng  
From every Quarter pour;  
Some mourn with sympathising Tongue  
The ruder Rabble roar.<sup>54</sup>

When John Dixon was executed for burglary in Taunton in 1784, “a considerable number, chiefly of the populace, manifested their doubts and dissatisfaction concerning the lawfulness of the intended execution,” declaring “that it would be a murderous bloody deed.”<sup>55</sup> At times, resistance to an execution appeared well after the actual hanging. In Chester County, Pennsylvania, “some infatuated adherents of the noted James Fitzpatrick, lately executed...for highway robbery, have killed the horses, and set fire to a hay stack of Mr. McAfee, who took him [Fitzpatrick] in the attempt to plunder his dwelling.”<sup>56</sup>

Although reports of resistance by spectators on the execution day were rare, authorities often nonetheless worried about the very possibility of such resistance. On many occasions,

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<sup>52</sup> *Columbian Herald*, June 28, 1787.

<sup>53</sup> *Boston Weekly News-Letter*, May 20, 1756.

<sup>54</sup> *A Solemn Farewell to Levi Ames: Being a Poem Written a Few Days before his Execution, for Burglary, Oct. 21, 1773* (Boston, 1773).

<sup>55</sup> *The American Bloody Register*, Appendix 1.

<sup>56</sup> *Pa. Packet*, October 29, 1778.

authorities ordered local militia or other troops to accompany the parade of death and be present at the execution. In 1788, a “troop of Col. Cogswell’s corpse of Light Horse attended as support to the Sheriff, in the execution of his Office” during the hanging of Elisha Thomas for murder in Dover.<sup>57</sup> When Thomas Powers was hanged in Haverhill, New Hampshire, for rape in 1796, the Haverhill “Company of Light Infantry...and a detachment of Light Horse from the town of Plymouth” were ordered to attend the execution “at the request of the High Sheriff.”<sup>58</sup> In 1797, “the order of the Executive for a large military force” to be present at the execution of John Young for murder caused a public controversy in New York. The newspaper *Herald* reported that, in the opinion of many, “the city is disgraced by the supposition that any of its inhabitants could wish to [save] a murderer from punishment.”<sup>59</sup> The presence of guards and troops was also replicated in the portrayal of execution scenes in broadsides, published before or after the event.

After a short prayer by the attending minister, “the *HALTER* was put around the *Culprit’s neck*, the white *CAP* drawn over his eyes,” and the “vessel of morality” was launched “into the boundless ocean of eternity.”<sup>60</sup> This generally concluded the spectacle of terror and the crowd would disperse. At times the body of the condemned was then handed over to physicians for dissection. In 1676, after the execution of three Native Americans in Boston, several doctors “spent the day...dissecting the middlemost of the Indians” executed the day before.<sup>61</sup> Convicts who died or were killed in prison were delivered to local surgeons for dissection. After a riot in

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<sup>57</sup> *A Brief Account of the Execution of Elisha Thomas* (Dover, 1788)

<sup>58</sup> *The Grafton-Minerva*, July 28, 1796.

<sup>59</sup> *The Herald*, August 19, 1797.

<sup>60</sup> For quotes, see *Life, Last Words and Dying Speech of Stephen Smith* (Boston, 1797) and Noah Worcester, *A Sermon Delivered at Haverhill, in the State of New Hampshire, July 28, 1796, at the Execution of Thomas Powers, Who was Executed for a Rape, Committed at Lebanon on the 7<sup>th</sup> of December, 1795* (Haverhill, 1796).

<sup>61</sup> M. Hasley Thomas (ed.), *The Diary of Samuel Sewall, 1674-1729* (New York: Farrar, Straus and Giroux, 1973), v.2, p. 22.

the Philadelphia prison in 1787 that was put down by an “armed force,” the *Evening Herald* reported that two convicts had been severely wounded, one of whom “is since dead and dissected.”<sup>62</sup> Most frequently, however, those who had committed suicide were delivered to local surgeons for dissection.

There is also some evidence that doctors bargained with the condemned for their bodies. In *The Narrative and Confession of Thomas Powers, a Negro*, Powers declared that, about a month and a half before his execution, “a number of Doctors made application to me for my BODY, for DISSECTION.” Powers “consented for a small sum of ten dollars, thinking it might afford me a comfortable subsistence while here, and my BONES be of service to mankind after the separation of soul and body.”<sup>63</sup> In 1788, a pamphlet circulated (along with countless rumors) among Boston’s inhabitants that Joseph Taylor, recently hanged for highway robbery, had survived his execution with the help of a doctor. Taylor declared in the pamphlet, that “when the Doctor came to bargain for my body” and saw Taylor in great distress, he “left me without mentioning the sale of my body.” Apparently, Taylor too tried to bargain for his body after death. Returning the next day, the doctor “communicated his design of attempting to recover me to life.”<sup>64</sup> Because of the persistent rumors that Taylor was still alive, “four men...on Friday last took a sail down to the island on which he was buried, and upon looking into his coffin, found him in the manner in which he was interr’d.”<sup>65</sup>

Authorities usually buried the body of the condemned unless a relative or friend claimed the corpse. After the execution of William Autenreid and John Williams, Philadelphia minister

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<sup>62</sup> *Pa. Eve. Herald*, March 21, 1787. For another example, see *Boston Gazette*, January 15, 1739.

<sup>63</sup> *The Narrative and Confession of Thomas Powers, a Negro, Formerly from Norwich in Connecticut, Who Was in the 20<sup>th</sup> Year of His Age* (Norwich, 1796).

<sup>64</sup> [Joseph Taylor], *The Wonderful Monitor; or, Memorable Repository; Containing a Curious and Most Astonishing Account of the Revivication of Young J. Taylor* (Boston, 1788), p. 7.

<sup>65</sup> *Boston Gazette*, July 7, 1788.

Henry M. Muhlenberg and another minister were present when the “bodies were buried in potter’s field.”<sup>66</sup> Unlike England where families and friends often had to battle for the bodies of the condemned, authorities in North America surrendered the bodies to any relatives and friends who wished to claim it. After Lowe Jackson was hanged near Williamsburg in 1753, Jackson’s body “being put into a Coffin, with this Inscription, MERCY! TRIUMPH OVER JUSTICE, was delivered to his Friends, and is to be interred.”<sup>67</sup> After being hanged for infanticide, Elizabeth Wilson’s body was taken home by her brother and “decently interred” in front of “a large number of respectable people” in 1786.<sup>68</sup> At times, however, the gallows site became a burial ground. In 1800, the pirates Peter Lacroix, Joseph Baker and Joseph Berouse were put into coffins and buried near the gallows an hour after their execution.<sup>69</sup> In Boston, Robert Hunt’s “carcase was carried in a cart to the Neck, and buried near the gallows, having a stake drove thro’ it according to law.” Hunt, after being arrested for “shooting a lad,” had hanged himself by tying his stockings “to one of the iron bars in the window.”<sup>70</sup>

The display of bodies after the execution added to the symbolic meaning of the execution itself. In the eyes of authorities, such display intensified the terror because it denied traditional burials to the condemned. It also increased the number of people who would “benefit” from the execution’s lessons, as bodies were usually displayed on transportational cross-roads, ports, or other public places. Hanging a corpse in chains occurred mostly in the South. After William McSkinning was executed for mutiny in 1777 “at the publick place of Execution” in

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<sup>66</sup> Theodore G. Tappert and John W. Doberstein (ed.), *The Journal of Henry Melchior Muhlenberg* (Camden: Picton Press, 1942), v. 2, p. 77.

<sup>67</sup> *Pa. Gazette*, May 17, 1753 (Virginia).

<sup>68</sup> *A Faithful Narrative of Elizabeth Wilson, Who was Executed at Chester, Pennsylvania, January 3d, 1786. Charged with the Murder of her Twin Infants*, reprinted in *Boston Magazine*, May 1786, p. 217-221, quote on p. 221.

<sup>69</sup> *Pa. Gazette*, May 14, 1800 and *Execution of LaCroix, Berouse & Baker for Piracy*, p. 8.

<sup>70</sup> *Pa. Gazette*, April 27, 1749.

Philadelphia, it was ordered that his body should “hang till Sun Set that Day” with “a Label on the Prisoner’s Breast with the words – Condemned for Mutiny.”<sup>71</sup> In 1751, John Stedman was executed for the murder of his wife “and afterwards hung in Chains on a Gibbet.”<sup>72</sup> After the execution of John Wright and Mulatto Toney for murder in 1754, “their Bodies [were] afterwards hung in Irons, about 10 Yards asunder on the two Gibbets at Hacket Point.”<sup>73</sup> In Charles County, Maryland, “William Stratton, Negro Toney the Poison Doctor, and Negro Jemmy, were all executed” for the poisoning of Jeremiah Chase, “their Bodies were all hung in Chains the same Day, in different Parts of the County.”<sup>74</sup> On June 16, 1788, Richard Cain, Richard Williams, William Rogers, John Masters, and William Pendergrass were executed for piracy and murder at Hangman’s Point opposite the city of Charleston. Thereafter “the bodies of William Rogers and Richard Williams, being the principal aggressors, were cut down and conveyed to Morris’s island, there to be hung in chains.”<sup>75</sup> Punishment of dismemberment was extremely rare in eighteenth-century America but not unknown. A slave boy was “sentenced to be hanged, drawn and quartered” for “assisting and aiding in the murder of Col. Presly” in 1750 in Virginia.<sup>76</sup> In 1771, Benjamin Merrill, who was convicted of high treason in the North Carolina backcountry, was sentenced to “be hanged by the Neck; ...be cut down while you are yet alive, that your Bowels be taken out and burnt before your Face, ...your Head be cut off, your Body divided into Four Quarters, and this to be on at his Majesty’s Disposal.”<sup>77</sup> Usually

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<sup>71</sup> Philadelphia, October 29, 1777, Sergeant Major Richards, *Orderly Book, October 26 – December 17, 1777*, in United States National Archives, *Orders, Returns, Morning Reports, and Accounts of British Troops, 1776-1781* (microfilm).

<sup>72</sup> *Pa. Gazette*, May 9, 1751 (Maryland).

<sup>73</sup> *Pa. Gazette*, August 15, 1754 (Maryland).

<sup>74</sup> *Pa. Gazette*, July 10, 1755 and July 24, 1755 (Maryland).

<sup>75</sup> *City Gazette*, June 17, 1788.

<sup>76</sup> *Pa. Gazette*, August 2, 1750 (Virginia).

<sup>77</sup> *Pa. Gazette*, July 18, 1771 (North Carolina).



authorities used hanging in chains in cases where the community was especially outraged about a crime, when a crime was seen as especially threatening to the social order such as poisoning or the murder of a socially superior, or when authorities targeted certain groups in society such as sailors with the lessons of order and morality.

Some slaves were hanged in chains and left to die slowly of exposure and starvation. Robin, a slave of Mr. Charles Purry, “was hung on a Gibbet last Thursday” for the murder of his master in 1754. On August 29, the *South Carolina Gazette* reported that Robin had not died until a week later and not before he had revealed a conspiracy among several slaves to escape to St. Augustine in Florida.<sup>78</sup> In 1759, a slave, “who the beginning of last Month most cruelly murdered several white People at the Congarees,” was “to be hung in Chains...at the dividing Path between the two *Quarter-Houses*” in Charleston.<sup>79</sup> A penalty that was applied exclusively to slaves in the late eighteenth century was burning at the stake. In 1754, two female slaves of Mr. Croft were burned alive for setting fire to their master’s main house and several plantation outbuildings in Charleston.<sup>80</sup> A slave belonging to John Cadman was burnt at the stake for killing his master in Charleston in 1755; another one was hanged for the same crime. Both allegedly believed that their master’s will provided for their freedom in case of his death.<sup>81</sup> Two more slaves – Dolly and Liverpoole – were burned in 1769 in Charleston. Dolly was convicted of poisoning her mistress’s infant and attempting to poison her master; Liverpoole was

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<sup>78</sup> *South Carolina Gazette*, August 22, 1754 and August 29, 1754.

<sup>79</sup> *South Carolina Gazette*, April 21, 1759.

<sup>80</sup> *South Carolina Gazette*, June 11-20, 1754.

<sup>81</sup> Michael Newton and Judy Ann Newton, *Racial and Religious Violence in America: A Chronology* (New York: Garland Press, 1991), p. 42.

condemned for providing the poison.<sup>82</sup> At times, the punishment of hanging and burning was combined. Thomas Jeremiah, a free black of considerable property, was hanged and then burned in 1776 after being accused of assisting slaves to escape bondage.<sup>83</sup>

An important but too-frequently ignored aspect of the execution day was the pardon. Authorities often took advantage of the ritual of punishment – the parade of death, the address by the minister, and the condemned’s last words – before pronouncing a pardon. As British historian Douglas Hay pointed out in his essay “Property, Authority and the Criminal Law,” the relationship between executions (acts of ultimate state power) and pardons (acts of mercy by the state) is essential in understanding the functioning of capital punishment in the eighteenth century. According to Hay, the criminal law in eighteenth-century was one of the ruling class’s chief ideological instruments, embodying “majesty, justice, and mercy.” The effectiveness of the criminal law and its penalties lay in its inconsistency – its frequent pardons, mitigation by juries, and reductions of sentences to a lower penalty.<sup>84</sup> In the North American colonies and in the early republic, criminal law, especially in regard to the death penalty, functioned in a similar way, allowing authorities to prevent or counter possible community opposition to an execution and thereby present the representatives of the state as merciful and forgiving.

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<sup>82</sup> *South Carolina Gazette*, August 1, 1769 (extraordinary issue) and *Georgia Gazette*, August 16, 1769. For other examples of burning at the stake, see *South Carolina Gazette*, July 30, 1772 and *General Gazette*, March 26, 1779.

<sup>83</sup> For Jeremiah’s execution, see William Campbell to My Lord, August 31, 1775, in *Transcripts of Records in the PBRO: America and West Indies*, vol. 35, South Carolina Department of Archives and History, p. 196-209; “Mr. Milligen’s Report of the State of South Carolina,” Sept. 15, 1775, in *Transcripts of Records in the PBRO: America and West Indies*, vol. 35, South Carolina Department of Archives and History, p. 233-234; Henry Laurens to John Laurens, June 18, 1775, *Papers of Henry Laurens*, vol. 10, p. 184; Governor Lord William Campbell to Lord Dartmouth, August 19, 1775, reprinted in George Athan Billias (ed.), *The Manuscripts of the Earl of Dartmouth*, v. II (Boston: Gregg Press, 1072), p. 354.

<sup>84</sup> Douglas Hay, “Property, Authority, and the Criminal Law,” in Douglas Hay, et. al., *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), p. 26-27, 40-49.

Authorities frequently handed down pardons at the place of execution, thereby benefiting from the ritual of punishment without a deadly conclusion. When a sailor was scheduled to be executed on board of a navy ship in Boston harbor, “boats from the other men of war in the harbour rowed along side” to witness the hanging. By late morning “the rope was put around his neck, and everything prepared for his execution, when the Commodore was pleased to send him a pardon.”<sup>85</sup> More often, pardons were announced under the gallows amid several simultaneous executions, which gave authorities the opportunity to demonstrate their ultimate power and mercy simultaneously. In May 1764, William Autenreith, John Williams and John Benson were carried to the place of execution in Philadelphia. Benson was pardoned but not until “the others were turned off, having gone through all the Solemnity of that dismal Scene, being blind folded, tied up, as he imagined, and about to step into Eternity” with the others.<sup>86</sup> Similarly, after James Harvey and Thomas Rogers “were turned off” in Charleston, the sheriff announced a free pardon for William Irons and Richard Underwood.<sup>87</sup>

The possibility of last-minute reprieves or pardons, however, carried a certain danger: the malefactor might be executed before the pardon arrived. In most cases pardons were granted before the execution day but there are two cases in which the pardon arrived too late and the condemned had already been hanged. In 1768, schoolteacher Ruth Blay was executed for infanticide in front of a large crowd in Portsmouth after the body of her illegitimate child was found hidden in a classroom. Some of Blay’s friends obtained a reprieve from the governor in the hope that she would be eventually pardoned on evidence that her baby had been still-born.<sup>88</sup>

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<sup>85</sup> *Boston Chronicle*, Nov. 28-Dec. 5, 1768.

<sup>86</sup> *Pa. Gazette*, May 17, 1764.

<sup>87</sup> *Columbian Herald*, June 28, 1787.

<sup>88</sup> C.S. Brewster, *Rambles about Portsmouth: Sketches of Persons, Localities, and Incidents of Two Centuries* (Portsmouth: C.W. Brewster and Son, 1859-1869), No. LIX.

According to a ballad (perhaps based on local lore) written by Albert Loughton in 1859, the sheriff refused to wait for the reprieve despite the fact that it was well known that Blay's friends had petitioned for a stay of execution:

And a voice among them shouted,  
'Pause before the deed is done:  
We have asked reprieve and pardon  
For the poor misguided one.'

Only minutes after Blay had been hanged in front of thousands of spectators, the reprieve arrived:

Then the people, pale with horror,  
Looked with sudden awe behind  
...

For distinctly in the distance,  
In the long and frozen street,  
They could hear the ringing echoes  
Of a horse's sounding feet.

Nearer came the sound and louder,  
Till a steed with panting breath,  
From its sides the white foam dripping,  
Halted at the scene of death.

And a messenger alighted,  
Crying to the crowd, "Make way!  
This I bear to Sheriff Packer;  
'Tis a pardon for Ruth Blay!"

That evening the people assembled in outrage at the house of Sheriff Packer:

And that night, with burning bosoms,  
Muttering curses fierce and loud,  
At the house of Sheriff Packer,  
Gathered the indignant crowd,--

Shouting, as upon a gallows  
A grim effigy they bore,  
'Be the name of Thomas Packer

A reproach forevermore!’<sup>89</sup>

Attached to the effigy of Sheriff Packer was the following inscription:

Am I to loose my dinner  
This woman for to hang?  
Come draw away the cart, my boys –  
Don’t stop to say amen.  
Draw away, draw away the cart!<sup>90</sup>

The execution of Ruth Blay and the open resistance of the people in its aftermath presented a nightmare for authorities in Portsmouth. An event designed to strengthen and legitimize state power turned into an open challenge of that authority, undermining the credibility of local officials.

A similar case occurred in Chester, Pennsylvania, when Elizabeth Wilson was hanged for the murder of her twin infants on January 3, 1786. Her brother, William Wilson, obtained a reprieve from Charles Biddle, the vice-president of the Supreme Executive Council of Pennsylvania, which ordered the sheriff of Chester not to “execute Wilson until you hear further from the Council.” The pardon arrived shortly after Elizabeth Wilson had been hanged. Although “they immediately cut her down” and “every means were used,” they “could not restore her to life.”<sup>91</sup> The author of the pamphlet *A Faithful Narrative of Elizabeth Wilson* published after her execution declared in the last paragraph of his pamphlet that “thus ended the life of Elizabeth Wilson...innocent, we believe, of the crimes for which she suffered, but guilty in concealing, or

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<sup>89</sup> Albert Laighton, “Ballad of Ruth Blay” (1859), in Albert Laighton, *Poems* (Boston: Portsmouth: Brown, Taggard and Chase, 1859).

<sup>90</sup> C.S. Brewster, *Rambles about Portsmouth*, No. LIX.

<sup>91</sup> Charles Biddle, *Autobiography of Charles Biddle, Vice President of the Supreme Executive Council of Pennsylvania, 1745-1821* (Philadelphia: E. Claxton and Co., 1883), p. 199-202, quotes p, 200, 201.

rather attempting to conceal, a crime of so horrid a nature.”<sup>92</sup> While Wilson’s execution did not generate the open protest that Blay’s had done in New Hampshire, it did have its impact. Charles Biddle, who had granted the reprieve for Wilson, declared in his autobiography that “when the Council met, and we heard of the execution, it gave uneasiness to many of the members.” Personally, Biddle came to the conclusion that “perhaps the punishment of death is too great for an unmarried woman who destroys her child,” believing that “while death is the punishment, a jury will seldom find a verdict against them.”<sup>93</sup>

### **Dying Speeches, Ballads and Execution Sermons**

While the ritual ended with the death of the condemned, the social process and meaning of executions persisted. Authorities and others continued the theater of death by following up with a variation of publications, reinforcing the lessons to be learned and the justness of the state’s action. Newspaper reports of executions and especially broadsides, execution sermons, and pamphlets served this purpose. During the eighteenth century, newspaper reports were usually short, often only one or two sentences.<sup>94</sup> Broadsides and pamphlets, on the other hand, frequently gave detailed descriptions of the condemned’s life and his or her execution.

At times, newspapers writers used the report of an execution to repeat the lessons to be learned or reflected on larger social issues connected to the event. In 1777, the *Pennsylvania Gazette* hoped that Brint Debadee’s “untimely and dreadful end will be a warning to others, who,

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<sup>92</sup> *A Faithful Narrative of Elizabeth Wilson, Who Was Executed at Chester, Pennsylvania, January 3d, 1786. Charged with the Murder of her Twin Infants*, republished in *Boston Magazine*, May 1786, p, 221. Within a year the pamphlet had been published not only in Pennsylvania but also in New York, New Hampshire, and at least twice in Massachusetts. See Williams, *Pillars of Salt*, p. 279.

<sup>93</sup> Biddle, *Autobiography*, p. 201-202.

<sup>94</sup> This changed significantly in the nineteenth century when newspapers carried detailed descriptions of the condemned’s life, the alleged crime, and the execution, slowly replacing the broadside and the pamphlet as a major source of information.

when they desert, not only defraud their officer, and abuse their country, but are guilty of the dreadful of heinous crime of perjury.”<sup>95</sup> According to an observer, Dirick Grout “*earnestly prayed and exhorted with the People; Cautioning them against the numerous Crimes for which he was now to be made a public Example, by suffering an ignominious and shameful Death.*”<sup>96</sup> In 1786, a writer of the *Morning Post* lamented when reporting the execution of two men in Georgetown, South Carolina that the frequency of horse stealing “occasioned a necessity for public examples”.<sup>97</sup> After the execution of Jeremiah Lancaster for murder in 1787, a correspondent of the *Columbian Herald* not only “hoped good people will hereafter be mindful of his afflicted family” but also “that all who saw, or ‘hear’ of these alarming instances of publick vengeance in behalf of the laws of the land, will ‘fear, and do no more so wicked.’”<sup>98</sup> In the South newspapers often repeated the warnings and advice a condemned allegedly had given at the place of execution. The *Columbian Herald* reported in 1787 that Richard Underwood “begged the Eternal King of Kings...that he would forgive their crimes, and so impress their sad fate upon the minds of the spectators, that reformation of manners might take place, and an honest industry banish every propensity to idleness and vice.”<sup>99</sup>

More important than newspaper reports, however, were broadsides that were published after an execution, describing the life and crimes of the condemned and reinforcing the symbolic lessons of the execution spectacle. Most of the surviving broadsides were printed in Pennsylvania, New York, and New England. The purpose of broadsides was multiple: to familiarize the public with the life – true or fictional – and the alleged crimes of the condemned;

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<sup>95</sup> *Pa. Gazette*, March 12, 1777.

<sup>96</sup> *The Life, Last Words and Dying Speech of Dirick Grout, a Dutch-man, of New-York State, Aged 36; and Francis Coven, a Frenchman, Belonging to Marseilles, Aged 22* (Boston, 1784).

<sup>97</sup> *Morning Post*, November 21, 1786.

<sup>98</sup> *Columbian Herald*, April 12, 1787. Lancaster and Black were executed in Savannah, Georgia.

<sup>99</sup> *Columbian Herald*, June 28, 1787.

to justify the execution; and to reinforce the lessons of social order and morality. Broadsides were designed for a broader audience – in time and space – than might have attended the execution itself or than might have been close enough to hear the sheriff, the minister, and the condemned. The large majority of broadsides were “last speeches” and “dying verses,” generally presented in the voice of the condemned but rarely, if ever, written by them. Most likely, a minister or other official, who had contact with the condemned before the execution, wrote them. Philadelphia minister Henry Muhlenberg, for example, noted in his diary that he had written “a report of the executed Autenreith’s honorable origin, godless life, and criminal death etc.” a few days after he had been hanged for burglary in 1764. Muhlenberg had repeatedly visited the condemned in prison before accompanying him to the gallows and his grave.<sup>100</sup> Although the authenticity of broadsides is sometimes questionable, they do provide valuable evidence about a condemned and some of the information, like birth place and occupation, can often be verified in court documents.<sup>101</sup> More importantly, they give a rare insight into what the author thought everyone was supposed to learn from the theater of death. There was no monopoly on the publication of broadsides and, at times, their authors expressed opposition to a particular execution, contesting the official message of the execution day.

“Last speeches” and “dying verses” reveal the educational value contemporaries of eighteenth-century America placed executions. Martha Ballard, a midwife, sent her two children to watch the hanging of Edmund Fortis. In Chenango County, New York, a lawyer’s son reported that “only 13 boys were in school” because “the rest had gone to see the execution” of

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<sup>100</sup> Tappert and Doberstein (ed.), *Journals of Muhlenberg*, v. 2, p. 43, 48, 63-64, 66, 68-69, 71, 84 (quote).

<sup>101</sup> For a discussion of credibility of crime narratives, see Peter Linebaugh, “The Ordinary of Newgate and his Account,” in J. S. Cockburn (ed.), *Crime in England, 1500-1800* (Princeton: Princeton University Press, 1977), p. 246-269, especially p. 263-264.



George Denison.<sup>102</sup> In Philadelphia, Joseph Tantom walked his apprentices to the place of execution whenever someone was to be hanged. He then lectured them on the sins that could lead to such an untimely death. By observing this theater of death, however, Isaac Hopper, one of the apprentices, eventually arrived at the conclusion that public execution might actually increase crime rather than decrease it.<sup>103</sup> While it is difficult to determine the effects of watching an execution on young spectators, there is some evidence that the consequences could be shocking and tragic. A five-year old servant boy hanged himself on a fence in Burlington in 1738, only days after he had observed the execution of two men.<sup>104</sup> In March 1772 several schoolboys, “in the Absence of their Master,” formed a court and put on trial “a Boy for wearing remarkably ragged Cloaths.” Unsatisfied with the sentence of whipping, “they ordered a Second Trial, before what they called the Superior court; when he was sentenced to be hanged.” The children proceeded with the execution and accidentally killed the “convicted” boy.<sup>105</sup>

Broadsides published in the aftermath of an execution frequently targeted young people as their audience, reflecting contemporaries’ belief in the potential benefits of a public hanging. Furthermore, as many of the condemned were in their late teenage years or early twenties, young people were seen as easily corruptible and possible “recruits” for committing crimes. Most broadsides had two parts. The first section recounted the story of the condemned’s life, including a short description of the act that caused their “untimely death.” The second section thanked local ministers and prison officials for their support and laid out the lessons to be learned from the theater of death. The vast majority of broadsides were written in the voice of the condemned,

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<sup>102</sup> Both examples took place in the late eighteenth century. Banner, *The Death Penalty*, p. 28.

<sup>103</sup> Margaret Hope Bacon, *Lamb’s Warrior: The Life of Isaac T. Hopper* (New York: Thomas Y. Crowell Company, 1970), p. 25.

<sup>104</sup> See Banner, *The Death Penalty*, p. 46.

<sup>105</sup> *Pa. Gazette*, March 26, 1772. See also *Boston Gazette*, March 9, 1772.

often as a confession to the goaler the night or just hours before the execution. A few broadsides concluded with a short description of the execution by an anonymous observer, who was most likely the author of the broadside.

Many execution broadsides began with the condemned's youth, which often included an exoneration of his or her parents from any guilt for their violent end. In 1774, a broadside declared that Valentine Dukett "received a good education of my parents, who lived credibly and were of good report."<sup>106</sup> In the *Last Words of William Huggins*, the author announced that Huggins "was born in *Fish-Kill*...in the year 1759, of creditable parents, who used their utmost endeavours to bring me up in the light of the Gospel, by giving me a pious education and good advice."<sup>107</sup> Similarly, John Bailey allegedly declared in 1790 that his parents had "brought [him] up in fear of God" and "instructed me in the principles of Christian religion."<sup>108</sup> Johnson Green was supposed to have been taught "the principles of the Christian Religion" by his master and advised by his mother "not to go to sea or into the army."<sup>109</sup> According to the respective publication in the aftermath of their executions, John Stewart was born of "good reputable Parents"; Thomas Goss's parents "sustained respectable characters;" and Francis Burdett Personel was "raised by careful and industrious parents."<sup>110</sup> Not always, however, were the

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<sup>106</sup> *The Life, Last Words, and Dying Speech of Valentine Dukett; Who was Shot for Desertion, on Boston Common, Friday Morning, Sept. 9, 1774* (Boston, 1774).

<sup>107</sup> *The Last Words of William Huggins and John Mansfield, Who are to be Executed this Day, June 19<sup>th</sup>, 1783, at Worcester, in the Commonwealth of Massachusetts, for Burglary* (Worcester, 1783).

<sup>108</sup> *Life, Last Words and Dying Confession of John Bailey. A Black Man, Who was Executed at Boston this Day, Being Thursday, October 14, 1790, for Burglary* (Boston, 1790).

<sup>109</sup> *The Life and Confession of Johnson Green, Who Is to Be Executed this Day, August 17<sup>th</sup>, 1786 for the Atrocious Crime of Burglary* (Worcester, 1786).

<sup>110</sup> *The Confession, Last Words, and Dying Speech of John Stewart* (Boston, 1797); *The Last Words and Dying Speech of Thomas Goss, in Private Conference, Previous to his Execution* (Connecticut, 1778) ; and *An Authentic and Particular Account of the Life of Francis Burdett Personel* (New York, 1773).

parents vindicated. The author of Stephen Smith's last words claimed, that Smith, a fugitive slave from Virginia, declared that his "Father was a religious Man" but "my Mother encouraged me to *Steal*."<sup>111</sup> The broadside about William Welch announced that his stepmother had been "very cruel to me, and prevented my Education."<sup>112</sup>

The description of the condemned's life was the inverse of the parents' exoneration. It emphasizes the condemned's own fault for his or her ignominious death. Others were not to blame. Most broadsides followed a pattern in telling the condemned's life stories: petty crimes at a young age quickly led to more serious crimes and, at the end, to the death sentence. According to the broadside *Life, Last Words and Dying Speech of Stephen Smith*, Smith "was guilty of many small Thefts," mainly stealing from his master, before he escaped slavery and engaged in more serious crimes such as shop- and house-breaking, arson, and robbery.<sup>113</sup> *The Last Words and Dying Speech of Levi Ames* announced that Ames's "first thefts were small" and that "this awful practice" began "by stealing a couple of eggs, then a jack-knife, after that some chalk." After running away from his master, according to the broadside, Ames, "having no honest way of supporting" himself, "robbed others of their property," until ascending the gallows at the age of twenty-one.<sup>114</sup> The author of *The Confession, Last Words, and Dying Speech of John Stewart* claimed that Stewart "began a wicked Line of Life about the Age of Fifteen, by defrauding [his] Parents of Part of their Property" and stealing his brother's money. The broadside then described Stewart's passage from Ireland to Pennsylvania where he "was Pedlaring about ten miles from

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<sup>111</sup> *Life, Last Words and Dying Speech of Stephen Smith. A Black Man, Who Was Executed at Boston this Day being Thursday, October 12, 1797 for Burglary* (Boston: 1797).

<sup>112</sup> *The Last Speech and Dying Words of William Welch, 23 Years of Age, Who Was Executed at Boston in New-England, on the 11<sup>th</sup> Day of April, 1754, for the Murder of Darby O'Brien* (Boston, 1754).

<sup>113</sup> *Life, Last Words and Dying Speech of Stephen Smith*.

<sup>114</sup> *The Last Words and Dying Speech of Levi Ames, Who Was Executed at Boston, on Thursday the 21<sup>st</sup> Day of October, 1773, for Burglary* (Boston, 1773).

Lancaster, in Chester County.” Soon “bad Company, and excess of Liquor, brought [him] to Thieving” and eventually to the more severe crime of burglary.<sup>115</sup>

Broadsides generally concluded with a warning to the people about a sinful life. In the *Life, Last Words and Dying Confession of Rachel Wall*, the author hoped that her “awful and untimely fate will be a solemn warning and caution to every one, but more particularly to the youth, especially those of [her] own sex.”<sup>116</sup> The writer of the *Life, Last Words and Dying Confession of John Bailey* wished that Bailey’s “unhappy fate will be a warning to all, especially the youth, and those of [his] colour, to abstain from the least appearances of evil, for one sin bringeth on another.”<sup>117</sup> In *Last Words of William Huggins and John Mansfield*, youth were also the explicit target of the warning, as the author desired that their “unhappy fate may be a solemn WARNING to YOUTH, and induce them to forsake the paths of vice and immortality.”<sup>118</sup> At other times, the warning was less specific. A broadside about Johnson Green announced that it was hoped “that all people would take warning by [his] wicked example; that they would shun the paths of destruction by guarding against every temptation.”<sup>119</sup> Similarly, the author of *The Life, Last Words and Dying Speech of Valentine Dukett* called on “all those addicted to the horrid ways of life that [he has] pursued,” to “take a warning from [his] unhappy situation, by the awful

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<sup>115</sup> *The Confession, Last Words, and Dying Speech of John Stewart, a Native of Ireland. Taken from Himself, at his Own Particular Request* (Boston, 1797).

<sup>116</sup> *Life, Last Words, and Dying Confession of Rachel Wall, Who, with William Smith and William Dunogan, were executed at Boston, on Thursday, October 8, 1789, for High-Way Robbery* (Boston, 1789).

<sup>117</sup> *Life, Last Words and Dying Confession of John Bailey: A Black Man, who was Executed at Boston this Day, being Thursday, October 14, 1790, for Burglary* (Boston, 1790).

<sup>118</sup> *The Last Words of William Huggins and John Mansfield, Who are to be Executed this Day, June 19<sup>th</sup>, 1783, at Worcester, in the Commonwealth of Massachusetts, for BURGLARY, Committed in October Last* (Worcester, 1783).

<sup>119</sup> *The Life and Confession of Johnson Green, Who Is to Be Executed this Day, August 17<sup>th</sup>, 1786, for the Atrocious Crime of Burglary; Together with his Last and Dying Words* (Worcester, 1786).

spectacle which this body of [his] will in a short time exhibit at the place where it is destined to suffer.”<sup>120</sup>

The final words of execution broadsides were frequently dedicated to local ministers and prison officials, who had attended to the condemned in the days leading up to the execution. The last paragraph of *The Last Words and Dying Speech of Levi Ames* announced Ames’ desire “sincerely to thank all the good ministers of the town, who have taken great pains with [him] of [his] unhappy situation” and “all the good people both of town and country, who...have offered up many prayers at the throne of grace” for him. The broadside concluded with the appreciation of “Mr. *Otis*, the goal-keeper and his family, who have all been very kind to me during my confinement in goal.”<sup>121</sup> Similarly, in *The Life, Last Words and Dying Speech of Dirick Grout...and Francis Coven*, the section about Dirick Grout ends with “my Thanks to all the Ministers of this Town, who have favored me with their assistance, in opening my blind Eyes” and “Thanks to Mr. *Otis* and Family for their kind Attention to me while under Confinement.”<sup>122</sup> The author of the broadside *Dying Confession [of] Pirates, viz. Collins, Furtado and Palacha* mentioned “the humane and kind treatment they have met with ever since their Confinement, from every Person concerned with them, and from the many kind Citizens, who have visited and comforted them.”<sup>123</sup> Some writers of execution broadsides expressed appreciation, perhaps on request of the condemned, to those who had spoken out on behalf of the condemned. In *The Last Words and Dying Speech of Elisha Thomas*, the author extended gratitude “to the Gentlemen and

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<sup>120</sup> *The Life, Last Words, and Dying Speech of Valentine Dukett, Who Was Shot for Desertion, on Boston Common, Friday Morning, Sept. 9, 1774* (Boston, 1774).

<sup>121</sup> *The Last Words and Dying Speech of Levi Ames* (1773).

<sup>122</sup> *The Life, Last Words and Dying Speech of Dirick Grout...and Francis Coven* (1784).

<sup>123</sup> *Dying Confession [of] Pirates, viz. Collins, Furtado and Palacha, Who Were [Executed] at Boston, this Day, being the Thirteenth of July, 1794, for the Murder of Mr. Enoch Wood* (Boston, 1794).

Ladies of the town of Dover, who so humanely petitioned his Excellency and council, for a short reprieve.”<sup>124</sup> The author of John Sheehan’s broadside mentions “General *Jackson*, Sheriff *Henderson* and the *Officers* of the late *Federal Army*, for the great kindness they have shewn me by their unwearied endeavors to procure my pardon.”<sup>125</sup>

In a few broadsides, the authors referred specifically to the trial of the condemned, exonerating juries, witnesses, prosecutors, and exposing or clearing alleged accomplices. Rachel Wall’s *Dying Confession* proclaimed her innocence of the robbery she was about to hang for. The “witnesses who swore against [her] are certainly mistaken” but “as a dying person I freely forgive them.”<sup>126</sup> The *Last Speech, Confession, and Dying Words of John Wall Lovely* claim that Wall not only forgave “Daniel Lewis, who swore falsely against me” but also “my prosecutors.”<sup>127</sup> In the *Confession and Declaration of George Burns*, the author declared that Burns had accused Ephraim Jones and Arthur Sykes of being accomplices in a letter to the South Carolina Attorney-General in order to be “admitted as King’s evidence.” Burns, according to the broadside, now exonerated Jones and Sykes and accused instead Thomas Grey, Jeremiah Fulson, and Nathaniel Foster. While Grey was hanged together with Burns, Jones and Sykes received a free pardon by the governor.<sup>128</sup> More unusual was the end of the broadside *The Life and Confession of Herman Rosencrantz*. While Rosencrantz had apparently accused “several reputable people...in his Confession,” the broadside’s author thought it “necessary, for the

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<sup>124</sup> *The Last Words and Dying Speech of Elisha Thomas, Who Was Executed at Dover, on the 3d of June, 1758 – for the Murder of Captain Peter Drowne* (Dover, 1758).

<sup>125</sup> *Life, Last Words, and Dying Speech of John Sheehan* (1787).

<sup>126</sup> *Life, Last Words, and Dying Confession of Rachel Wall* (1789).

<sup>127</sup> *The Last Speech, Confession, and Dying Words of John Wall Lovely, Who Was Executed at Albany, Friday the 2d of April, 1773 for Counterfeiting the Currency of the Province of New-York* (Albany, 1773).

<sup>128</sup> *The Confession and Declaration of George Burns, Now Prisoner in Charles-Town Goal, Convicted of the Robbery of Mr. John Scott* (Charleston, 1768).

clearing of the character of such persons, to publish” a list of seventeen names, Rosencrantz’s accomplices. The document was “signed by the said Rosencrantz.”<sup>129</sup> These proclamation, exonerations, and accusations most likely aimed to prevent any rumors of innocence or miscarriage of justice among the public, but also expressed, as in the case of Rachel Wall, a certain uneasiness with the proceedings.

Another form of publication after an execution were sermons, which appeared almost exclusively in New England, and pamphlets, which were more extensive than a one-page broadsides. In New England, execution sermons had a long tradition going back to the seventeenth century and continued to be an important form of gallows literature until their decline in the early nineteenth century.<sup>130</sup> Execution sermons had purposes similar to broadsides, as they too reinforced the lessons of morality and social order but also placed the hanging in the larger religious context. The sermons often started out with a theological discussion of sin and its effects on human nature before applying these general observations to the condemned. In his sermon *The Prayer and Plea of David*, minister Byles of Boston announced that he “shall endeavour to be as brief as I can upon these Points [the theological discourse], that I may hasten to that particular and solemn Application, which I am call’d to by the affecting Object before us.”<sup>131</sup>

During their sermons, ministers attempted to establish a direct relationship between the condemned and the crowd, impressing on the later that the former was not the only one who had

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<sup>129</sup> *The Life and Confession of Herman Rosencrantz* (1770).

<sup>130</sup> The first execution sermon that was published is most likely *The Cry of Sodom Enquired Into* by Samuel Danforth in 1674 in Cambridge, Massachusetts. Daniel A. Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674-1860* (New York: Oxford University Press, 1993), p. 3-13.

<sup>131</sup> Mr. Byles, *The Prayer and Plea of David, To Be Delivered from Blood-Guiltiness, Improved in a Sermon at the Ancient Thursday-Lecture in Boston, May 16<sup>th</sup>, 1751. Before the Execution of a Young Negro Servant, for Poisoning an Infant* (Boston, 1751), p. 6.

been sinful and needed to repent. In Providence, minister Perez Fobes announced that “the difference may consist only in this, that he [the condemned] is detected and condemned, but they [the crowd] as yet are concealed from human eye.” Fobes continued by impressing the future of the condemned on the spectators, proclaiming that “before this sun goes down, his body, now vigorous and active, will be a lifeless ghastly corpse, confined and buried, deep down among the sheeted dead.”<sup>132</sup> Similarly, Joshua Spalding cautioned the assembled crowd at the execution of Isaac Coombs in 1787:

Death is the King of terrors though viewed in his most frequent and common forms, but to see one to be cut down in the midst of life by the hand of justice, O how shocking! this fills the mind with ideas that cannot be expressed...He that is to suffer to die is not the only one in the assembly under the sentence of death; for death hath passed upon all, for all have sinned.<sup>133</sup>

Nathan Strong put it most bluntly in his sermon just before the execution of Richard Doane in 1797: “unless we all repent, we shall all likewise perish.”<sup>134</sup>

Execution sermons mirrored the broadsides in the messages of social order and obedience to one’s superior. In 1751, Mr. Byles pleaded with his audience to “forsake your Sins with the utmost Abhorrence; retire to plead for unbound Mercy” and “be convinced of your Transgression,...confess them with Freedom and Fulness, and deep Conviction.”<sup>135</sup> Charles Chauncy urged his congregation “not to make this melancholy Sight a Matter of *vain Curiosity*; much less of *Sport* and *Merriment*,” but to “recollect the Hazard you may have been in of committing this Sin [murder].” He especially called on the audience to “be upon your Guard against all the *Tendencies* towards this Sin, such as *Anger*, *Wrath*, *Hatred*, *Malice*, *Envy*,

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<sup>132</sup> Quoted in Masur, *Rites of Execution*, p. 43.

<sup>133</sup> Joshua Spalding, *The Prayer of a True Penitent for Mercy; or, the Publican’s Prayer, Illustrated. A Sermon, Delivered at Salem, Dec. 21, 1786* (1787), p. 5

<sup>134</sup> Nathan Strong, *A Sermon, Preached in Hartford, June 10<sup>th</sup>, 1797, at the Execution of Richard Doane* (Hartford: Elisha Babcock, 1797), p. 4.

<sup>135</sup> Byles, *Prayer and Plea of David*, p. 20.



*Revenge*; together with their immediate Effects, *contumelious* and *despiteful Language*, *Quarrellings* and *Fightings*.”<sup>136</sup> Andrew Elliot warned the younger members of his congregation in 1773:

May our children and young people be awakened to think on their ways and to turn their feet into the path of God’s commandments! Behold! O our children and youth! ...You begin with what you think smaller transgressions, and indulge to secret sin.<sup>137</sup>

At the end of his sermon, Elliot advised the whole congregation to “let us all implore the Spirit and grace of God, to preserve us from the great transgression – from every violation of his holy law – And may others hear and fear and not dare to do so wickedly!”<sup>138</sup>

Most execution sermons were primarily theological but at least two late eighteenth-century execution sermons – Nathan Strong’s *The Reasons and Design of Public Punishments* (1777) and James Dana’s *The Intent of Capital Punishment* (1790) – aimed to justify civil punishment and its intended messages of social order through religious reasoning. Both sermons responded to specific social crises of the time that will be discussed in later chapters in more detail. Nathan Strong gave his sermon before the execution of Moses Dunbar for treason in Hartford in 1777. The early years of independence saw high anxiety among patriots about the possible subversion of the revolutionary war effort by those who remained loyal to the British. Similarly, when James Dana gave his execution sermon in New Haven in 1790, the new republic had seen a decade of domestic upheaval. Events Shays’ Rebellion in Massachusetts, combined with contemporary fear of rising crime and the insecurities surrounding the passing of the

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<sup>136</sup> Charles Chauncy, *The Horrid Nature, and Enormous Guilt of Murder. A Sermon Preached at the Thursday-Lecture in Boston, November 19<sup>th</sup>, 1754. The Day of the Execution of William Wier, for the Murder of William Chism* (Boston, 1754), p. 22, 23.

<sup>137</sup> Andrew Elliot, *Christ’s Promise to the Penitent Thief. A Sermon Preached the Lord’s-Day before the Execution of Levi Ames, Who Suffered Death for Burglary, Oct. 21, 1773* (Boston, 1773), p. 28.

<sup>138</sup> Elliot, *Christ’s Promise*, p. 30.

constitution, caused widespread concerns about social order especially among elites who were trying to establish their authority and justify their rule.

When Nathan Strong stepped in front of the congregation at the first Church in Hartford, he announced that Moses Dunbar, the condemned, “refuses to be present at this solemnity; my discourse therefore will not be calculated, as hath been usual on such occasions, for a dying creature who is to appear immediately before the GREAT JUDGE; but to assist my hearers in making an improvement of the event, for their benefit.”<sup>139</sup> Arguing that the “government is a divine institution, equally designed to encourage those virtues GOD commands,” Strong declared that “there are the same reasons” in church and civil government that punishment “should be publicly inflicted – that others may fear and by guarded against the temptations” of worldly and godly sins. Violating the laws of one’s government meant nothing less than the violation of God’s laws. After establishing this close relationship between church and state, Strong contended that another reason “why sin should be punished by the power of the State” is the “safety of mankind” guarded in “the law of self-preservation implanted in the mind by its creator.”<sup>140</sup> Strong then urged his audience “to love and venerate our country, to obey the laws, honor the constitution, and despise all those who are wickedly undermining the privileges of mankind,” because “people are not far from destruction who disobey the public acts of their own government.” Those, however, who “are insensible of the veneration and punctual obedience due to the laws of the land,” should “fear, that a righteous GOD provoked by their dishonesty, will leave them to be tempted, and commit those political sins which must be punished by the halter and the gallows.”<sup>141</sup> Nevertheless, there was always hope for forgiveness. While “public safety

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<sup>139</sup> Strong, *Reasons and Design*, p. 5-6.

<sup>140</sup> Strong, *Reasons and Design*, p. 6-8.

<sup>141</sup> Strong, *Reasons and Design*, p. 15-16.

forbids him a pardon from the State, he may be pardoned by GOD ALMIGHTY.”<sup>142</sup> Ironically, Strong preached the necessity to obey one’s government less than a year after the North American colonies had declared their independence from Britain, committing what many considered an act of treason.

The sermon *The Intent of Capital Punishment* by James Dana pursued the same goal as Strong’s sermon – the justification of a state action backed by religious authority. Addressing “this numerous assembly, of all orders and characters,” Dana immediately launched into a discussion of capital punishment and how “it relates to society and this world:”

It is to rid the state of a present nuisance – to prevent the extension of the evil – to reclaim or preserve those who have been, or might be in danger of being, seduced by examples of profligate wickedness. *So shalt thou put the evil away from among you. And those which remain shall hear, and fear, and shall henceforth commit no more such evil among you.*”<sup>143</sup> (Deut. 19, 19-20)

Like Strong, Dana emphasized that the “civil guardians of a community” are “the ministers of God, by him appointed ‘revengers to execute the wrath upon such as do evil.’”<sup>144</sup> According to Dana, capital punishment was for “those who are so depraved in their moral character that they can neither be cured or endured”; they can “be cut off for the preservation of the state.” Dana further explained that another important object of the death penalty “is to *warn* and *restrain* others of evil dispositions, [t]hat *those which remain* may *hear and fear*.” Again, the “divine government is a pattern to earthly rulers,” as one can “readily call to mind various examples in scripture of the judgments of God, final as to this world.” Without capital punishment, “the

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<sup>142</sup> Strong, *Reasons and Design*, p. 18.

<sup>143</sup> James Dana, *The Intent of Capital Punishment. A Discourse Delivered in the City of New-Haven, October 20, 1790. Being the Day of the Execution of Joseph Mountain, for a Rape* (New Haven, 1790), p. 5-6.

<sup>144</sup> Dana, *Intent of Capital Punishment*, p. 6.

wicked would walk on every side, and the cry of the oppressed be in vain, the foundations would be destroyed, confusion and misery would prevail.”<sup>145</sup>

As there was no “monopoly” on the publication of broadsides or pamphlets by religious or civil officials, some executions generated numerous and at times critical publications. In 1773, the execution of Levi Ames for burglary sparked thirteen publications – nine ballads, one dying speech, and three execution sermons.<sup>146</sup> One of the broadsides referred indirectly to controversy surrounding the execution, announcing “some mourn with sympathising Tongue.”<sup>147</sup> Another broadside, *Theft and Murder! A Poem on the Execution of Levi Ames*, addresses the controversy more directly:

Look back to FIFTH of MARCH, and see  
The scarlet Murders! bloody stains!  
What peace think you, now can there be  
In such a Land where Guilt remains.  
...  
Must Thieves who take men’s goods away  
Be put to death? While fierce blood hounds,  
Who do their fellow creatures slay,  
Are sav’d from death? This cruel sounds.

Although Levi Ames walked to the gallows three years after the Boston Massacre on March 5, 1770, Bostonians remembered well the acquittal of the British soldiers. The real cause of the debate surrounding Ames’s execution – and the underlying theme of the above broadside – was,

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<sup>145</sup> Dana, *Intent of Capital Punishment*, p. 9-11.

<sup>146</sup> Five of the nine ballads were published before the execution of Ames. Of the thirteen publications, two were published in a second edition and one in a third edition. The two execution sermons by Boston minister Samuel Stillman were printed by two different printers and sold by two different booksellers. Daniel E. Williams, *Pillars of Salt: An Anthology of Early American Crime Narratives* (Madison: Madison House Publishers, 1993), p. 23, 186.

<sup>147</sup> *A Solemn Farewell to Levi Ames* (1773).

however, the increasing number of hangings for property crimes and a growing resistance among the population against such executions.<sup>148</sup>

In 1797, the execution of Abraham Johnstone, a former slave in New Jersey, triggered the publication of an abolitionist pamphlet in the condemned's voice. Although Johnstone had been convicted not on "positive evidence of the fact" but on evidence that was "founded entirely on presumption," the author feared that Johnstone's execution might "be made a handle of in order to throw a shade over or cast a general reflection on all those of our colour" by defenders of slavery. The author continued by comparing the number of executions of whites and blacks and concluded "that as they claim a pre-eminence over us in every thing else, so we find they also have it in this particular, and that a vast majority of whites have died on the gallows when the population is accurately considered."<sup>149</sup> Giving a short summary of the history of the North American colonies up to the Revolution, the author pointed out that "the unalienable rights were asserted, and the United States of America were declared sovereign, free and independent," but that "my dear brethren we were forgotten, or we were not conceived worthy their regard or attention, being looked on as a different species." "How preposterously absurd," continued the author, "must an impartial observer think the man whom he sees one moment declaring with a most incredible volubility in favour of natural rights and general freedom, and the next moment with his own hands for some very trivial offence inflicting the cruel and ignominious stripes of slavery, and riveting its shackles."<sup>150</sup> Staying with the topic of slavery, the author then discussed in more detail the physical and emotional violence of bondage and the need for its abolition

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<sup>148</sup> Williams, *Pillar of Salt*, p. 23-26.

<sup>149</sup> *The Address of Abraham Johnstone, a Black Man, Who Was Hanged at Woodbury, in the County of Gloucester, and State of New Jersey, on Saturday the 8<sup>th</sup> Day of July Last; To the People of Colour* (Phila-delphia, 1797), p. 2, 7.

<sup>150</sup> *Address of Abraham Johnstone*, p. 10-11.

before shifting the discourse towards religion. Calling on the pamphlet's readers to embrace 'do unto every man as you would be done unto' as a "divine commandment," the author declared "that God is neither a respecter of persons, nor colours, be they white, black, or mulatto, but respects them merely from their deeds and observance of his divine commands."<sup>151</sup> With this broadside race for the first time entered the debate surrounding capital punishment and would remain one of the main issues until this day.<sup>152</sup>

The entry of race into the discourse of capital punishment drew on a long tradition of Atlantic religious radicalism. Ranters and Diggers used it as a phrase of social and economic levelling during the English Revolution So did Quaker James Nayler when preaching revolution and jubilee – the restoration of land to its original owners, the freeing of slaves and servants, and a year without work. God as no respecter of persons also appeared in the early abolitionist tracts such as *Tyrannipocrit Discovered* (1649). During the first half of the eighteenth century, radical preachers of the Great Awakening in North America once again invoked the phrase to preach spiritual egalitarianism.<sup>153</sup> The author of the *Address of Abraham Johnstone* was not the only one

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<sup>151</sup> *Address of Abraham Johnstone*, p. 16-17.

<sup>152</sup> Race became a far more prominent issue in the early nineteenth century when discrimination based on race in executions was openly discussed in the North, especially with references to slavery. The execution of Johnstone initiated a trend in connecting the oppression of African Americans in slavery with capital punishment. In part this was due to the overlap between the abolitionist movement and the penal reform movement, which included an opposition to capital punishment. In late-eighteenth century, over half of the members of the Pennsylvania Prison Society, the major penal reform organization in Pennsylvania, were also involved in the abolitionist movement (47 out of 60 for which engagement in charities and political movements other than penal reform is known). For biographical information on members of the Pennsylvania Prison Society, see Peter P. Jonitis and Elizabeth W. Jonitis, "Members of the Prison Society: Biographical Vignettes" (1982), v. 1 and 2, Quaker Collection, Haverford College. On race and capital punishment, see also Masur, *Rites of Execution*, 14-15, 16-17, 18-19.

<sup>153</sup> For a more detailed discussion of the phrase "no respecter of persons," see Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolution-ary Atlantic* (Boston: Beacon Press, 2000), p. 82-87, 94-96, 190.

to use the phrase in an execution broadsides. In 1790, the author of *Life, Last Words, and Dying Confession of John Bailey* – a black man who had traveled around the Atlantic extensively – announced that Bailey had committed his soul to God, “sensible that with him there is no respect of persons.”<sup>154</sup> As Linebaugh and Rediker pointed out in *The Many-Headed Hydra* and as contemporaries of the late eighteenth century knew very well, “not to respect persons was to find unacceptable the power relations of hierarchy based on class, gender, or race.”<sup>155</sup>

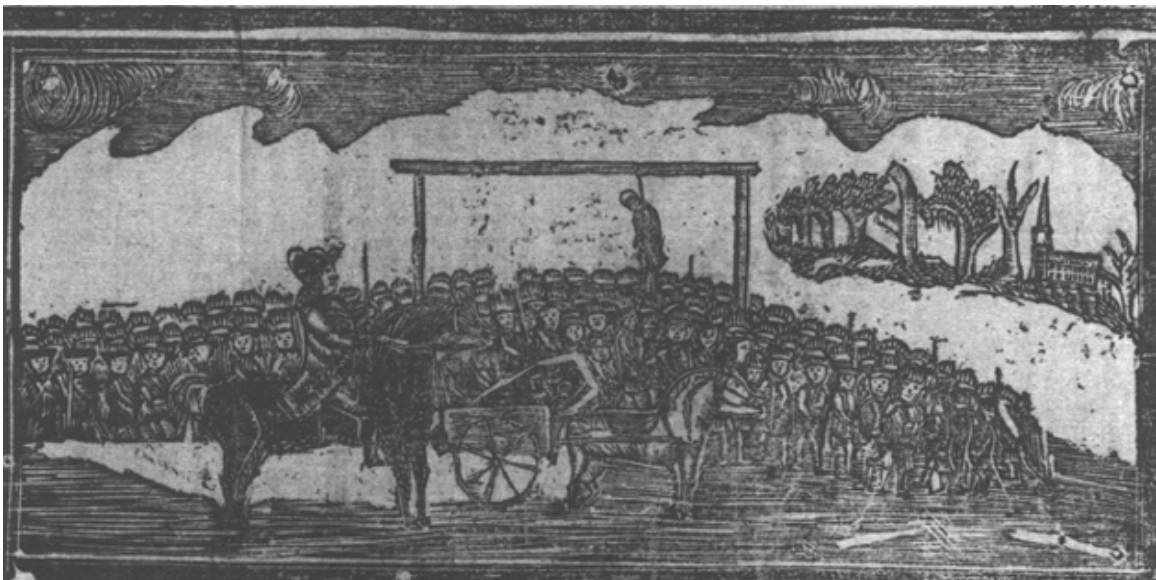


Figure 1: *The Last Words and Dying Speech of Elisha Thomas* (1788)  
American Antiquarian Society

By the mid-eighteenth century, the vast majority of broadsides included a woodcut portraying an execution scene or some other symbolic image. Many depicted scenes with the same elements – the gallows with a ladder, a person hanging, a cart with a coffin, at least one guard on a horse, and the crowd (see Figure 1). The same woodcut or print was used and reused

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<sup>154</sup> *Life, Last Words, and Dying Confession of John Bailey* (1790).

<sup>155</sup> Linebaugh and Rediker, *Many-Headed Hydra*, p. 103.

in various broadsides about different executions, suggesting the ritual's consistency throughout the eighteenth century. In many of the woodcuts, the gallows are in or near the center of the picture, but the viewer's attention is not necessarily drawn to the condemned, as the hanging figure often blended in with the crowd, distinguishable only by its slightly elevated position above the spectators. The condemned's position as a member of the crowd reinforced the message conveyed at an execution, especially by ministers, that some of the spectators were heading to a similar untimely death and that all had to beware the dangers of a sinful and disobedient life. Later in the eighteenth century, woodcuts focused increasingly on the condemned, who, hanging from the gallows, was now depicted with authorities such as the guards and only a few spectators or none at all. State power had trumped community participation. In part, this development reflected a rising uneasiness with and a concern about the behavior of the spectators during an execution beginning at the end of the eighteenth century. By the 1820s, the condemned had been individualized and was now the sole subject of the illustrations (see Figure 2). This shift in focus was also the result of doubts about whether condemned expressed true feeling of penitence or whether they just complied with their role in the theater of death to please authorities and spectators. Doubts about the utility of public executions became an important argument for moving executions into prison, thereby excluding the vast majority of the community.<sup>156</sup>

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<sup>156</sup> For a discussion of the value of public executions, especially in terms of crowd behavior and condemned's performances, see William Sullivan, et al., "Report on the Punishment of Death," Commonwealth of Massachusetts, House Documents, no. 15 (June 1831); "Letter on Capital Punishment," *New York Magazine; or Literary Depository*, January 1794; "Conversions Most Difficult on the Hour of Death," in *The Christian's Scholars and Farmers Magazine*, December-January, 1789-1790; Charles Caldwell, *Thoughts on the Impolicy and Injustice of Capital Punishment* (Louisville: G. H. Monsarrant, 1848); Masur, *Rites of Execution*, p. 95-97, 100-102.



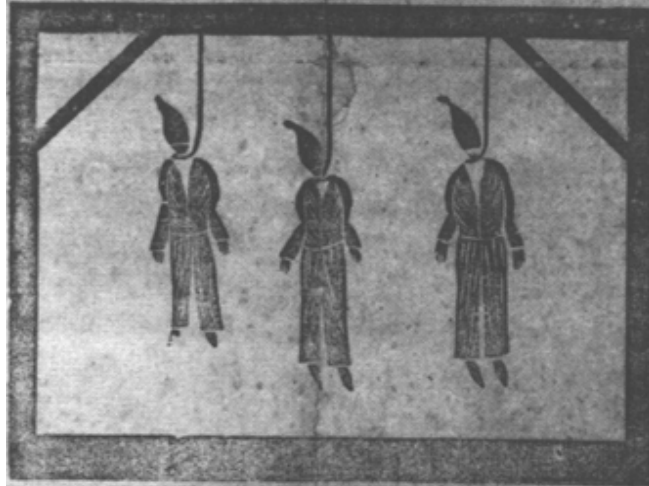


Figure 2: *The Dying Address of the Three Thayers* (1825)  
American Antiquarian Society

Until the late-eighteenth century, however, the crowd generally played a central role in the depiction of an execution scene. In *The Last Words and Dying Speech of Elisha Thomas*, the spectators were portrayed as numerous, well-behaved and respectful. They surrounded the gallows, taking up most of the space in the woodcut. Rather than observing the condemned hanging from the gallows, they faced the reader of the broadside. Another common part of these woodcuts was a cart with a coffin. The guard or guards took a prominent position in the scene, often standing in the center of the woodcut, emphasizing the presence of state power at the execution day not only as the convening authority but also as one willing to enforce its power with violence if necessary. At times, the position of the guards hinted at fears of unrest among the authorities. A second broadside about Elisha Thomas's execution showed a group of guards separating the crowd from the gallows.<sup>157</sup> The broadside *The Last Words and Dying Speech of Thomas Goss* (Figure 3) depicted a guard on horseback charging at the spectators who stand at a distance from the gallows.

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<sup>157</sup> *A Brief Account of the Execution of Elisha Thomas.*



Figure 3: *The Last Words and Dying Speech of Thomas Goss* (1778)  
American Antiquarian Society

While the woodcut of *The Last Words and Dying Speech of Elisha Thomas* exemplified the most common form of illustration, there were many variations. Some broadsides included more than one woodcut. The *Dying Confession* of three condemned pirates depicted a cage on wheels that also served as the gallows and another woodcut portraying a ship, which was certainly a reference to the alleged murder of a passenger. The *Dying Speech* of Stephen Smith, a runaway slave and sailor, pictured the same cage and gallows as the broadside about the three pirates but it also included a skull and crossed bones – a sign of mortal danger – on the one side and a coffin on the other, both of which appeared frequently in execution broadsides. Skulls and crossed bones were a common but not exclusive symbol of execution broadsides that concerned sailors and pirates. The woodcut of the *Last Words and Dying Speech* of Thomas Goss is framed with skulls and crossed bones on both sides. The same symbols featured prominently in the *Execution of La Croix, Berrouse, & Baker, for Piracy*, as one skull and crossed bones top the gallows and three others were drawn on the pirates' coffins. Similarly, the broadside *An Exhortation to Young and Old...Occasioned by the Unhappy Case of Levi Ames* shows an

execution scene and a coffin with skull and crossed bones next to each other.<sup>158</sup> At times, small illustrations with skulls and crossed bones were inserted into the text of pamphlets. The skull and crossed bones, like the gallows and the coffin, were symbols of the transiency of life that conveyed the lessons of the theater of death.



Figure 4: *The American Bloody Register* (1784)  
American Antiquarian Society

Some woodcuts disclosed information about the way or place of execution. The *Last Words and Dying Speech* of Valentine Dukett, a soldier executed for desertion in 1774, included a small woodcut portraying a firing squad – a rare form of execution and usually limited to the military. One popular illustration of an execution (Figure 6), used primarily in Boston, depicted an execution scene next to a windmill, which seems to refer to the place of execution. In the late seventeenth century, Samuel Sewall reported in his diary that “there were eight Indians shot to death on the Common, upon Wind-mill hill.”<sup>159</sup> Early American cities usually had one or two locations most commonly used for the spectacle of terror. The name of such places often

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<sup>158</sup> *Dying Confession [of] Pirates, viz. Collins, Furtado, and Palacha* (Boston, 1794); *Life, Last Words and Dying Speech of Stephen Smith* (Boston, 1797); *The Last Words and Dying Speech of Thomas Goss (Connecticut, 1778)*; *Execution of La Croix, Berrouse, & Baker, for Piracy* (Philadelphia, 1800); and *An Exhortation to Young and Old to Be Cautious of Small Crimes... Occasioned by the Unhappy Case of Levi Ames* (Boston, 1773).

<sup>159</sup> Thomas (ed.), *Diary of Sewall*, v. 1, p. 21, 25.

reflected the grim usage – as, for example, Hangman’s Point in Charleston.<sup>160</sup> Another frequently used image was a cage on wheels that also served as the gallows (see Figure 5). This image appeared almost exclusively in Boston broadsides in the later part of the eighteenth century. I have found no evidence of actual mobile gallows, which could be easily moved and stored, but it is not hard to imagine why such a thing would have been attractive. A mobile gallows would have precluded the necessity for permanent gallows, especially because the place of execution often varied from one hanging to another. Another explanation for a change in the construction of the gallows, however, might be that authorities feared that the gallows could become a place of protest, as they had at times during the revolution.

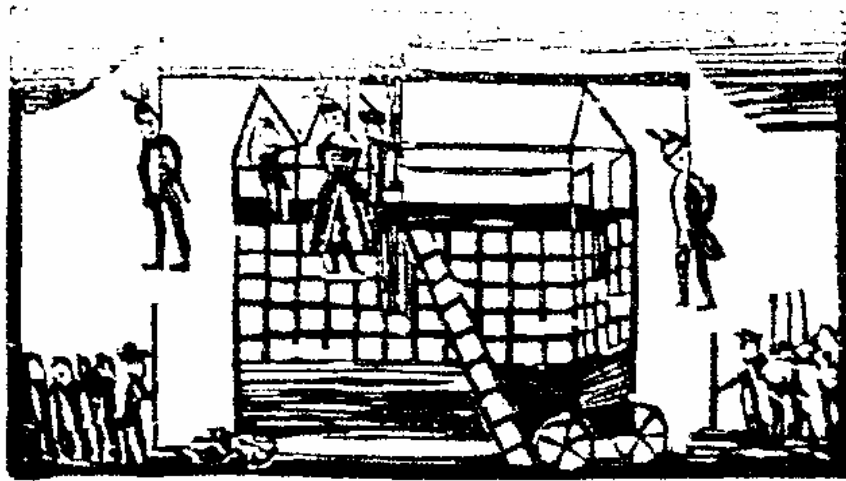


Figure 5: *Life, Last Words and Dying Confession of Rachel Wall* (1789)  
American Antiquarian Society

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<sup>160</sup> *City Gazette*, June 17, 1788.

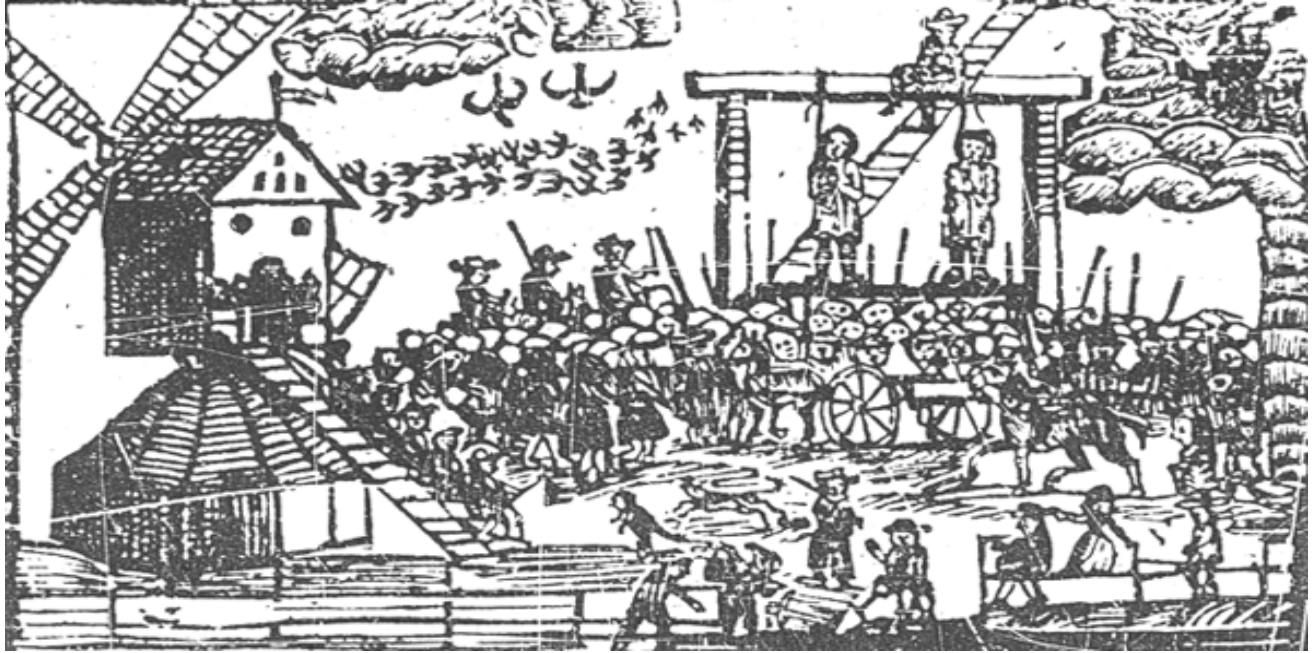


Figure 6: *A Solemn Farewell to Levi Ames* (1773)  
American Antiquarian Society

### **Beyond Execution Day**

While execution day was obviously the pinnacle of the death penalty, the ritual of punishment displayed at such a spectacle impacted early American culture far beyond the day of the execution itself. Historian E. P. Thompson described gentry-plebian relations in eighteenth-century England as a “societal field-of-force,” in which symbolic expressions of power and protest were of great and determining importance. Execution days, according to Thompson, represented a moment when rulers asserted their control, while poorer parts of the population – using the same rituals – often engaged in a counter-theater of “ridicule or outrage against the symbolism of authority.”<sup>161</sup> As in England, the gallows were a significant symbol of power in

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<sup>161</sup> E. P. Thompson, “Eighteenth-Century English Society: Class Struggle Without Class?,” *Social History* 3 (May 1978), p. 133-165, quote p. 145.

urban America, and were likewise threatened and mocked by American crowds, especially during the revolutionary period and early republic.<sup>162</sup>

These protests often imitated closely the culture of punishment displayed on an execution day, including the parade of death. In August 1765 during the Stamp Act controversy, “considerable Number of People” assembled in Annapolis, Maryland, “to shew their Detestation of, and Abhorrence to, some late tremendous Attacks on LIBERTY,” hanging a local officer in effigy:

They curiously dressed up the Figure of a Man, which they placed in a One Horse Cart, Malefactor-like, with some Sheets of Paper in his Hands before his Face: In that Manner they paraded through the Streets of the Town...[W]hen they proceeded to the Hill, and after giving it the MOSAIC LAW, at the Whipping Post, placed it in the Pillory; from whence they took it and hanged it to a Gibbet...and then set Fire to a Tar Barrel underneath, and burnt it...By the Many significant Nods of the Head, while in the Cart, it may be said to have gone off very penitently.<sup>163</sup>

Similar protests took place in other major cities such as Philadelphia, New York, and Charleston. In a 1766 confrontation between local stamp officer Henry Van Schaack and a popular crowd in Albany, New York, a note was posted on Van Schaack’s door to meet with the Sons of Liberty. Underneath the note another piece of paper was pinned on the door, displaying “gallows with a figure drawn in imitation of a man hanging” with the words “The just fate of a traitor.”<sup>164</sup>

Effigies played the largest part in protests against the British in Boston. On August 14, 1765, “a Great Number of people assembled at Deacon Elliotts Corner...to see the Stamp Officer [Andrew Oliver] hung in Effigy, with a Libel on the Breast, on Deacon Elliot’s tree & along side

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<sup>162</sup> This section addressed the use of effigies only shortly, as those protests took place primarily during the revolution and the early republic, both of which are the focus of later chapters.

<sup>163</sup> *Pa. Gazette*, September 12, 1765.

<sup>164</sup> Quoted in Thomas J. Humphrey, “Crowd and Court: Rough Music and Popular Justice in Colonial New York,” in Pencak, Dennis, and Newman (eds.), *Riot and Revelry*, p. 113-114.

him a Boot stuffed with representation, which represented the Devil coming out of Burk.”<sup>165</sup>

Pinned to the effigy was the following poem:

Fair freedom’s glorious cause I’ve meanly quitted  
For the sake of pelf;  
But ah! The Devil has me outwitted,  
And instead of stamping others, I’ve hang’d myself.<sup>166</sup>

When Chief Justice Thomas Hutchinson ordered the sheriff to take down the effigies, a crowd prevented him from doing so. Once it was dark, the crowd cut down the effigies and carried them through the city’s streets towards Andrew Oliver’s office. Within half an hour the crowd leveled the building, preserving the wooden planks – stamped in mockery of the new act – for a bonfire. The crowd then progressed to Oliver’s residential house, which they severely damaged inside and out.<sup>167</sup>

Other parts of the execution ritual were also well represented in pre-revolutionary Boston. Groups of young boys were responsible for several protests against merchants who violated the non-importation agreement. In February 1770, a large crowd of school-boys assembled in front of the house of Theophilus Lillie to protest his violation of non-importation with an effigy on a post. The effigy resembled the European custom, which was also widespread

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<sup>165</sup> Anne Rowe Cunningham (ed.), *Letters and Diary of John Rowe* (New York: New York Times and Arno Press, 1969), p. 88.

<sup>166</sup> Quoted in William Pencak, “Play as Prelude to Revolution: Boston, 1765-1776,” in William Pencak, Matthew Dennis, and Simon P. Newman (eds.), *Riot and Revelry in Early America* (University Park: Pennsylvania State University, 2002), p. 132.

<sup>167</sup> Nash, *The Urban Crucible*, p. 292-294. See also R. S. Langley, “Mob Activities in Revolutionary Massachusetts,” *New England Quarterly*, vol. 6 (March 1933), p. 108. Thomas Hutchinson, Oliver’s brother-in-law, encountered the crowd at Oliver’s residence. A few days later, Hutchinson became the victim of the crowd’s rage when it assembled in front of his own house. While confronting the crowd about to attack his house, Hutchinson cried out “You are so many Masaniellos!,” referring to a fisherman in seventeenth-century Naples who led a revolt that ended in the world turned upside down for ten days when lower classes governed the city. Linebaugh and Rediker, *The Many-Headed Hydra*, p. 112-116, 217. For other examples of hanging effigies in Boston, see Cunningham (ed.), *Diary of John Rowe*, p. 156.

in the American colonies throughout the seventeenth and early eighteenth centuries, and continued to be common in most slave societies, of putting a traitor's severed head on a pole and displaying it publicly.<sup>168</sup>

At times, tarring and feathering was combined with a "visit" to Boston's gallows. On January 25, 1774 John Malcolm was put "into a Cart, Tarr'd & feathered him – carrying thro' the principals Streets of this Town with a halter about him, from thence to the Gallows & Returned thro' the Main Street making Great Noise & Huzzaing."<sup>169</sup> The whole procession resembled that of the execution day and other punishments – the offender in a cart driven through town, a rope around his neck, and a stop of the parade at the gallows. Most importantly, contemporary depictions of the incident not only included the tarring and feathering of Malcolm in front of the liberty tree but also made direct reference to the death penalty by attaching a noose to the liberty tree even though Malcolm was not hanged in effigy. In the background of the picture is a ship, with boxes of tea being thrown over the side as happened in the Boston Tea Party. This was clearly intended to intimidate Malcolm and to suggest a threat of things to come if he did not comply with non-importation and other revolutionary policies.

While the symbolic hanging of local officials in effigy on quickly assembled gallows was a central to many protests, the actual gallows on which the condemned were hanged were parts of protests as well. In 1736, "a Troop of young Ladies or Female Foot Pads" confronted two young men suspected of adultery near the gallows in Boston.<sup>170</sup> In 1773, after the polls closed in a heated and contested election in Annapolis, Maryland, "it was proposed, and universally approved to, to go in solemn Procession to the Gallows, and to bury under it the much detested

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<sup>168</sup> Pencak, "Play as Prelude," in Pencak, Dennis, and Newman (eds.), *Riot and Revelry*, p. 129.

<sup>169</sup> Cunningham (ed.), *Diary of John Rowe*, p. 261.

<sup>170</sup> *New York Weekly Journal*, November 8, 1736, p. 3.



Proclamation” of one of the candidates, which was seen as an act “against the Rights of a free People.” The procession was headed by the two elected candidates and “Grave digger, carrying a Spade on his Shoulder,” followed by a coffin. The controversial proclamation had been placed into the coffin, “near which moved slowly on two Drummers, with muffled Drums, and two Fifers, playing a dead March.” The procession was “followed by a great Concourse of Citizens.” At the place of execution, the coffin “was for a Time suspended, then cut down and buried under a Discharge of Minute guns.”<sup>171</sup>

These examples demonstrate that the lessons of capital punishment and the symbolism of the theater of death were understood – and used – by all parts of society. While the state literally used its ultimate power to take a life, the popular classes employed the ritual of punishment to intimidate local officials. Henry Van Schaak, the stamp officer in Albany, surrendered to the threatening crowd and declared his opposition to the British.<sup>172</sup> In the end, the hanging of effigies conveyed a vision of the world turned upside down, in which power relations were reversed. While during the Revolution the hanging of effigies mainly targeted British officials, the same kinds of protests were also used in the early years of the newly founded republic against American elites. Revolutionary leaders who might have encouraged the hanging of British officials in effigy now found themselves facing the same fate.

### **Conclusion**

The ritual of punishment displayed at the execution day was carefully designed to create community cohesion and unity. Its cultural forms remained remarkably stable throughout the eighteenth century, despite major social, economic and political developments and transformation among the North American colonies and then the states of the early republic. Not

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<sup>171</sup> *Pa. Gazette*, May 26, 1773.

<sup>172</sup> Humphrey, “Crowd and Court,” p. 114.

only was the ritual similar from region to region, so were the lessons conveyed – the emphasis on social order and the need for a moral life. Nevertheless, there were subtle regional variations in the ritual of punishment, especially in terms of the role of religious representatives at the place of execution. The ritual of execution day was most elaborately worked out in New England, where executions were relatively infrequent by the eighteenth century, but a momentous when they happened, and an opportunity to convey the lessons of social order, discipline, and morality to a large crowd. By the early and mid-nineteenth century, however, regional differences expanded when northern states moved executions into prison yards while southern states continued to rely on public execution.<sup>173</sup>

Popular crowds utilized the execution ritual for their own purposes – to protest local injustices. In these protests, the crowd created for a moment a world upside down in which those in power were threatened with the symbol of state terror – the gallows. The frequent hanging of effigies and the use of a noose in protests demonstrates that the messages implied in the execution day were well understood by all classes and people from all backgrounds, even when executions themselves were an irregular occurrence.

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<sup>173</sup> Banner, *Death Penalty*, p. 151-156. In some states, public executions continued well into the twentieth century.

### **3.0 BOSTON, PHILADELPHIA, AND CHARLESTON: AN INTRODUCTION**

By the middle of the eighteenth century, Boston, Philadelphia, and Charleston were well established communities with defined political, social, and economic institutions. Much of each city's life evolved around their bustling waterfronts that tied them closely to the Atlantic economy and its constant flow of people and goods. Nevertheless, each city developed its own social, political, and economic environment, in which executions took place. This chapter introduces the cities in regard to their social and legal histories. Starting with Boston and then moving south to Philadelphia and finally Charleston, the first part briefly profiles the social make-up of the three cities during the second half of the eighteenth century. The second part describes the criminal judicial systems of each colony and then state, laying out legal developments from the founding of the colonies up to the late-eighteenth century.

#### **Boston**

Like Philadelphia and Charleston, Boston was an important port in the Atlantic economy and especially the West Indian trade. This was obvious to visitors, as one pointed out that Boston had a "fine capacious and safe harbour...sufficient for the great number of vessels, which carry on the extensive trade of Boston."<sup>174</sup> Despite this involvement in the Atlantic trade, Boston experienced a slight population decline by the mid-eighteenth century and a huge loss of

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<sup>174</sup> William Burke, *An Account of the European Settlements in America*, vol. 2, 2<sup>nd</sup> ed. (London, 1758), p. 172.

population during the British occupation in the Revolution, leaving less than 3000 inhabitants in the city. By 1780, Boston began a slow recovery when the population had once again increased to 10 000 which constituted about two-thirds of the inhabitants of 1770. In the last two decades of the eighteenth century, Boston continued to grow in size, reaching over 18 000 by 1790 and almost 25 000 by 1800. With population growth also came a diversification of the city's inhabitants, changing the ethnic character of a once largely homogeneous community.<sup>175</sup>

The city's elite consisted of merchants involved in the Atlantic trade and in local enterprises such as shipbuilding and distilling. They traded in grain and cattle from surrounding areas, lumber from New Hampshire, and shipped North Atlantic cod to the West Indies, Spain, and England. In return, merchants received finished goods from Great Britain and continental Europe, distributing those throughout New England.<sup>176</sup> By the 1730s, however, Boston's merchants faced serious challenges in maintaining their businesses, confronting competition by merchants and artisans from other communities in New England and from merchants in Philadelphia and New York. In contrast to the merchants further to the South, Boston's big men of commerce could not rely on a rich and fertile backcountry to fuel their enterprises, nor was Boston a prime geographic location in the highly competitive Atlantic market. As a result Boston's merchants were unable to employ large numbers of artisans and laborers necessary to maintain the commercial shipping fleet, load and unload ships, and handle raw materials and

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<sup>175</sup> Jacqueline Barbara Carr, "A Change 'As Remarkable as the Revolution Itself': Boston's Demographics, 1780-1800," *The New England Quarterly*, vol. 73, no. 4 (Dec. 2000), p. 583-585, 589. See also James A. Henretta, "Economic Development and Social Structure in Colonial Boston," *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 22 (Jan. 1965), p. 81.

<sup>176</sup> Nash, *Urban Crucible*, p. 54-55.

finished goods, leading to a population decline in the city by the mid-eighteenth century and the rise of smaller outports along the Massachusetts coast.<sup>177</sup>

Artisans, shopkeepers, and sea masters composed a second influential group in Boston. Although not all in this group were prosperous or even well-off, a significant number of them were affluent enough to exercise considerable power in the city. Many of the artisans engaged in shipbuilding, an important industry in Boston but one geared to the booms and busts of war and peace. At the bottom of this group were less-skilled artisans who were part of the property-owning class but not wealthy enough to own slaves, employ workers, or invest in commercial enterprises. Carpenters, blacksmiths, shoemakers, and small shopkeepers were the most vulnerable to economic downturns, losing the small property they had accumulated and sinking into poverty.<sup>178</sup> Boston's economy experienced a revival after the Revolution, attracting artisans such as shipwrights, caulkers, and those in other shipbuilding trades back to the city.<sup>179</sup>

The lower classes in Boston consisted of unskilled laborers, indentured servants, apprentices, journeymen, slaves, sailors, and recent migrants and immigrants, with seamen being the most numerous among them. This propertyless group was most vulnerable to the economic downturns Boston experienced during the eighteenth century. Furthermore, the city's lower classes were the ones who voluntarily entered or were involuntarily pressed into the military and navy to serve in the numerous imperial wars. Military service often brought death or injury,

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<sup>177</sup> Carl Bridenbaugh, *Cities in Revolt: Urban Life in America, 1743-1776* (New York: Alfred A. Knopf, 1955), p. 47-48. Henretta, "Economic Development and Social Structure," p. 81.

<sup>178</sup> Nash, *Urban Crucible*, p. 55-57. This close connection to times of war and peace also altered patterns of shipowning throughout the eighteenth century as wealthier owners were able to absorb the losses and risks involved in wartime shipping while others had to give up their shipping enterprises. See also Henretta, "Economic Development and Social Structure," p. 78-79.

<sup>179</sup> Carr, "Boston's Demographics, 1780-1800," p. 586-587.

leaving the families of the laboring poor without means of support.<sup>180</sup> In contrast to cities like New York, Philadelphia, and Charleston, Boston did not rely on the influx of immigrants or a steady importation of slaves for its labor supply. Therefore, according to historian Gary Nash, Boston “retained the most ethnically homogeneous labor force, composed mainly of free, native-born persons, supplemented by a modest number of slaves.”<sup>181</sup> In the last two decades of the eighteenth century, the ethnic make-up of Boston’s work force shifted with in-migration from other parts of the United States such as New York and Pennsylvania and from foreign countries such as England, Ireland, Scotland and Germany. Although prospects for the lower class improved with the city’s economic revival in the 1780s, the lives of the poor continued to be marked by insecurity, low pay, and poverty.<sup>182</sup>

As in the cities of Charleston and Philadelphia, slaves – although fewer of them – were at the bottom of the social hierarchy in Boston. The city’s involvement with slavery developed only a few years after its founding, when Bostonians exchanged several hundred Pequot Indians for African slaves. From then onwards, slaves arrived on a regular basis in Boston, even if the overall numbers were relatively small compared to other parts of the North American colonies. According to Gary Nash, “about one in every nine families owned at least one slave” in Boston. The majority of those slaves lived in the households of merchants and city officials where they worked as domestic servants. Thriving artisans also used slaves to help them in their businesses, teaching them the trades of baking, shipbuilding, and seafaring. Despite gradual emancipation after the Revolution in Massachusetts, African Americans in Boston found that many jobs were closed to them. Domestic service was the one of the few available employments. Like the other

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<sup>180</sup> Nash, *Urban Crucible*, p. 58, 64-65. Bridenbaugh, *Cities in Revolt*, p. 86-87.

<sup>181</sup> Nash, *Urban Crucible*, p. 102.

<sup>182</sup> Carr, “Boston’s Demographics, 1780-1800,” p. 591.

mostly unskilled laborers, the city's African American population was highly mobile after the Revolution, moving frequently within the city and back and forth from surrounding areas.<sup>183</sup>

More than in the other two cities, one factor in particular influenced the application of the death penalty in Boston during the late colonial period: the intensity of the crisis with the British. Historian Gary Nash argued that, with the coming of the revolutionary conflict, the "red-coated enemy (as well as a battery of customs officials and other royal bureaucrats) served to focus the attention of all Bostonians on the external crisis with England" and "interclass hostility was thus muted by the presence of an adversary whom the people in all ranks feared and detested."<sup>184</sup> Therefore internal conflict in Boston temporarily moved into the background. This, however, does not mean that class conflict was completely absent in Boston. Although the city's inhabitants faced a common adversary in the British during the revolutionary period, the same period also illustrates class friction when crowd actions at times targeted as much the local elite as British authorities. The gallows became a powerful symbol in the hands of the crowds during those protests, as the "mob" hanged British and local officials in effigy and paraded them through the city's streets.

### **Philadelphia**

In the second half of the eighteenth century Philadelphia had many faces: a bustling Atlantic port, indeed the wealthiest city in North America; a rapidly growing city, increasing from 12 736 inhabitants in 1750 to 67 811 in 1800;<sup>185</sup> a center of intellect, the performing arts,

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<sup>183</sup> Nash, *Urban Crucible*, p. 13-14. Carr, "Boston Demographics, 1780-1800, p. 596-599.

<sup>184</sup> Nash, *Urban Crucible*, p. 360.

<sup>185</sup> Smith, "*Lower Sort*", p. 206 (Appendix B, Table B.1).

education, and philanthropy; and the main entry point for immigrants in North America.<sup>186</sup> Contemporaries praised the orderly way of the city: the streets were “broad, spacious, and even; with proper spaces left for public buildings, churches and market-places” and most houses had “a small garden or orchard.” The city’s landscape was also clearly marked by its importance as a place of business, as warehouses were “large, numerous, and commodious, and the docks for ship-building every way well adapted to their purposes.”<sup>187</sup> The lives of those residing in Philadelphia – poor, well-off, or wealthy – were deeply shaped by the city’s ties to the Atlantic economy and its trading links to the surrounding backcountry.<sup>188</sup>

The organizers of commerce were the city’s merchants who oversaw the trade in agricultural products of commercial farming with the backcountry, sugar and molasses with the British Caribbean, and manufactured goods with Great Britain. According to the colony’s governor in 1744, Philadelphia “in some way or other depends upon the merchant, and if he cannot trade to advantage, it will soon be very sensibly felt by the whole.”<sup>189</sup> Not surprisingly, the merchants’ economic success translated into political and social power. They formed a relatively small but powerful elite, as one visitor observed in the 1790s that “amongst the uppermost circles in Philadelphia, pride, haughtiness, and ostentation are conspicuous.”

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<sup>186</sup> Many of the immigrants passed through Philadelphia on the way to the fertile land in backcountry Pennsylvania but a substantial number stayed in the city to work for the city’s artisans and merchants as indentured servants.

<sup>187</sup> William Burke, *An Account of the European Settlements in America*, 2<sup>nd</sup> ed., vol. 2 (London: Printed for R. and J. Dodsley in Pall-Mall, 1758), p. 203-204. For similar descriptions, see Lewis Evans, *Geographical, Historical, Political, Philosophical and Mechanical Essays. The First Containing an Analysis of a General Map of the Middle British Colonies* (Philadelphia: Printed by B. Franklin, and D. Hall, 1755), p. 1; and *An Accurate Description of the British Colonies in North America* (Salisbury: Printed by Collins and Johnson, 1777), p. 14.

<sup>188</sup> Philadelphia dominated not only the trade with eastern Pennsylvania but also with the Delaware Valley, western New Jersey and northern Maryland. Foner, *Tom Paine*, p. 21.

<sup>189</sup> Quoted in Foner, *Tom Paine*, p. 21.



“Nothing would make them happier,” wrote the visitor, “than that an order of nobility should be established.”<sup>190</sup>

Crucial to the city’s economic vitality were artisans who made up as much as half of the population. Their occupations varied greatly in the second half of the eighteenth century, as no single trade dominated the city’s economy. The largest group engaged in construction and building trades, followed by clothing and leather trades, food processing, shipbuilding, and metal crafts. The artisans’ prosperity or lack thereof depended to a large extent on the fluctuation of the economy. A recession often meant hardship, debt, the loss of one’s business, and poverty. Although independent in terms of skills and tools, artisans relied heavily on merchants for the supply of raw materials from the surrounding backcountry and for the consumption of produced goods. Merchants also provided credit and necessary capital to artisans who established their own workshops. This close but uneven relationship between merchants and artisans fractured with the coming of the Revolution and the growth of the non-importation movement when artisans’ interests differed sharply from those of many merchants.<sup>191</sup>

Hidden from many contemporary descriptions are the people who labored on the city’s wharves, in warehouses, and the artisans’ shops. Absent are the poor, the slaves, the sailors, and the countless indentured servants who were so crucial to Philadelphia’s wealth and success. Since the founding of Pennsylvania in 1682, the most important source of labor was indentured servants. The majority had initially come from England but, by the middle of the eighteenth century, Scot-Irish servants and German redemptioners dominated the supply of labor. By that time, most newly arrived indentured servants were sold to masters in Philadelphia, where many

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<sup>190</sup> Isaac Weld, *Travels through the States of North America and the Provinces of Upper and Lower Canada during the Years 1795, 1796 and 1797*, 4<sup>th</sup> edition, vol. 1 (New York: August M. Kelley, 1970), p. 21.

<sup>191</sup> Smith, “*The Lower Sort*”, p. 4-5, 138-142, 147-149 and Foner, *Tom Paine*, p. 21, 28-34.

remained even after their indenture had expired.<sup>192</sup> Servants' lives were far from easy. After a cruel voyage during which they encountered cramped conditions, disease and death, men were sold largely to artisans and women to middle- and upper-class households, where they would work as domestic servants. There was little security or stability in a servant's life: work was often hard and exploitative; work schedules were rigid and left little free time; and during harsh economic conditions, he or she could be sold at any time. After they were released from their indentures, the vast majority of servants lived a life of poverty, social hardship, and obscurity.<sup>193</sup> Despite the prosperity in Philadelphia, the lives of laborers and their families were often harsh, desperate, and marked by insecurity, injury, disease, and death.<sup>194</sup> By the second half of the eighteenth century, Philadelphia's labor force was fairly diverse, especially in regard to ethnicity and, to a lesser extent, to race.

Slaves also worked for the city's artisans and merchants but they were never as important a source of labor as servants in Philadelphia or slaves in other parts of the country. The number of slaves slowly decreased between 1750 and 1800. According to Sharon Salinger, there were 814 slaves of taxable ages in the city in 1767. By 1775, this number had been reduced to 405.<sup>195</sup> The importation of slaves usually rose at times when the trade in indentured servants was interrupted by warfare and would decline as soon as the influx of servants from Europe picked

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<sup>192</sup> Sharon V. Salinger, *"To Serve Well and Faithfully": Labor and Indentured Servants in Pennsylvania, 1682-1800* (Cambridge: Cambridge University Press, 1987), p. 52-56, 61-67. Foner, *Tom Paine*, p. 19.

<sup>193</sup> For a detailed analysis of post-indenture life in Philadelphia, see Salinger, *Labor and Indentured Servants*, p. 115-136 (Chapter 5).

<sup>194</sup> For a description of lives of the poor in Philadelphia, see Billy G. Smith, *"The Lower Sort"* and Simon P. Newman, *Embodied History: The Lives of the Poor in Early Philadelphia*.

<sup>195</sup> Salinger, *Labor and Indentured Servants*, p. 141. Gary Nash puts the number of slaves in Philadelphia between 1767 and 1775 considerably higher but he includes an estimation of slaves outside of the taxable ages (under 12 and over 50). He agrees with Salinger, however, that the number of slaves was cut in half by 1775. Gary B. Nash, "Slaves and Slaveowners in Colonial Philadelphia," *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 30 (April 1973), p. 237.

up again.<sup>196</sup> Gary Nash argues that the reason for the rapid decline in the number of slaves in Philadelphia after the 1760s was the “inability of the slave population to reproduce itself in a period when slave importations had virtually ceased.”<sup>197</sup> Another cause of decline, although far more important during and after the Revolution, was the growing abolitionist movement and the increasing uneasiness of Quakers with the institution of slavery.<sup>198</sup> By the end of the century, the black population – by then most of them free but many others locked into indentures with their former masters – had increased to about ten percent of the city’s population. Philadelphia was especially attractive to blacks because of the strong presence of the abolitionist movement.<sup>199</sup>

Indentured servants and slaves, together with the “free” laboring poor, sometimes raised anxieties about social order among the city’s middling sort and elites. Many commented nervously on a distinctive subculture in which servants, slaves, and the poor socialized seemed to exist. Most notorious was “Helltown,” a poor neighborhood where many of the poor lived and that housed numerous taverns known for their tough and rowdy atmosphere.<sup>200</sup> In 1741, for example, the Philadelphia Grand Jury expressed its concern about the “great disorders” committed by “servants, apprentice boys, and numbers of Negroes” on Sundays and on

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<sup>196</sup> During the Seven Years’ War, for example, slaves made up 75 percent of unfree labor in Philadelphia, as the influx of indentured servants had ceased. After the war, the trade in servants picked up once more and the number of slaves declined significantly. Salinger, *Labor and Indentured Servants*, p. 141. See also Nash, “Slaves and Slaveowners,” p. 229, 231-232.

<sup>197</sup> Nash, “Slaves and Slaveowners,” p. 238.

<sup>198</sup> Salinger, *Labor and Indentured Servants*, p. 71-72, 140. While individual Quakers were openly opposed to slavery well before the Revolution, the Quakers as a group did not take stand against slavery until the Yearly Meeting of 1776. Then, in 1780, the Pennsylvania legislature passed a gradual abolition law.

<sup>199</sup> Smith, *The “Lower Sort”*, p. 18-19. Salinger, *Labor and Indentured Servants*, p. 146-148. In part the number of blacks had grown so significantly in Philadelphia because of manumissions, refugees from Haiti who brought their slaves with them, and an increasing number of runaway slaves from the South.

<sup>200</sup> Smith, *The “Lower Sort”*, p. 21-24; Salinger, *Labor and Indentured Servants*, p. 101-102; and Eric Foner, *Tom Paine and Revolutionary America* (New York: Oxford University Press, 1977), p. 48-51.

weeknights.<sup>201</sup> “Helltown” was seen as a hide-out and safe haven for criminals, prostitutes, runaway servants and slaves, and the destitute in general. As we shall see in subsequent chapters, this subculture and “underworld” of the poor was linked to crime, and therefore to capital punishment. The cases of and other workers illuminate the alternative economy of the poor.

### Charleston

In the second half of the eighteenth century Charleston was an important port in the Atlantic economy, connecting European, African, American and Caribbean markets with the plantations of the South Carolina low and back country. The city lay at the outlet of an extensive and almost uninterrupted water system that stretched from North Carolina to Florida.<sup>202</sup> Despite its importance to the Atlantic economy, Charleston was a city of modest size, reaching a population of nearly 17 000 by the end of the century.<sup>203</sup> Its streets were “not paved except the footways...which are paved with brick in the principal streets.” Although hot and humid during the summer months, visitors thought Charleston to be “an agreeable and polite place.”<sup>204</sup> They also quickly recognized the city’s importance in the Atlantic trade, as they commented on “many good wharves for large ships” and the “warehouses erected for receiving different kind of merchandize.”<sup>205</sup>

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<sup>201</sup> Quoted in Foner, *Tom Paine*, p. 50.

<sup>202</sup> George C. Rogers, Jr., *Charleston in the Age of the Pinkneys* (Norman: University of Oklahoma Press, 1969), p. 8-9.

<sup>203</sup> The 1790 census reveals a population of 8089 whites and 8831 African Americans within the city limits. See Fraser, *Charleston! Charleston!*, p. 178.

<sup>204</sup> Pelatiah Webster, “Journal of a Visit to Charleston, 1765,” in H. Roy Merrens (ed.), *The Colonial South Carolina Scene: Contemporary Views, 1697-1774* (Columbia: University of South Carolina Press, 1977), p. 219-220, p. 225. See also Capt. Martin, “A Naval Officer’s View of the Metropolis, 1769,” in Merrens (ed.), *Colonial South Carolina Scene*, p. 230-231.

<sup>205</sup> “Charleston at the End of the Colonial Era, 1774,” in Merrens (ed.), *Colonial South Carolina Scene*, p. 281.

The city's most striking characteristic, however, was the institution of slavery, which dominated much of the inhabitants' daily life and the city's social relationships. According to one traveler, "the laborious business" in Charleston was "chiefly done by black slaves of which there is great multitudes."<sup>206</sup> Some visitors were shocked, even scandalized, by the extent of slavery. Josiah Quincy was stunned "to find out the true proportion" of slavery in Charleston and South Carolina.<sup>207</sup> Ebenezer Hazard believed that a "man can enjoy but little happiness who is under continual apprehension from his slaves."<sup>208</sup> The presence of large numbers of slaves in Charleston made it the most racially heterogeneous of the three cities and the one with the largest percentage of forced laborers.<sup>209</sup>

A small and wealthy ruling class of planters and merchants dominated Charleston's and South Carolina's public life, especially when it came to politics. In the eighteenth century, these merchants and plantation owners engaged mainly in the trade of rice and indigo in return for imports of slaves, food, manufactured products, and luxury goods. Leading families such as the Pinkneys, the Manigaults, and the Laurens's owned slaves both as part of their businesses and households in Charleston and on their plantations in the South Carolina low-country. Most of these families resided in Charleston mainly due to the slightly less oppressive climate, especially during the summer months. Economic power based on slavery underwrote the extraordinary political power of Charleston's ruling class in the colony and later the state of South Carolina.

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<sup>206</sup> Webster, "Journal of a Visit to Charleston, 1765," p. 220.

<sup>207</sup> Quoted in Olwell, *Masters, Slaves, and Subjects*, p. 48.

<sup>208</sup> Quoted in Olwell, *Masters, Slaves, and Subjects*, p. 48.

<sup>209</sup> The 1790 census reveals that African Americans constituted a little over fifty percent of Charleston's population compared to about ten percent in Philadelphia and less than five percent in Boston. For Charleston, see Fraser, *Charleston! Charleston!*, p. 178; for Philadelphia, see Smith, *The 'Lower Sort'*, p. 18-19; and for Boston, see Greene, *The Negro in New England*, p. 84-85.

Many elites served as representatives in the Commons House of Assembly and as city officials and commissions, churchwardens, jurors, and justices, including in the slave courts.<sup>210</sup>

Throughout the eighteenth century, slave owners saw themselves as patriarchs. They ruled over their families, the slaves, their communities. In a master's view, his household and plantation were his empire, his kingdom in which he possessed the ultimate power to rule all of his subjects, to reward them, to punish them, and to exploit them in any way he chose. These notions of patriarchy had their roots in sixteenth- and seventeenth-century England when gentlemen identified themselves as masters as well as father figures to their servants. Although masters thought themselves as all-powerful and expected unwavering obedience, in reality their "rule" was far from uncontested. According to historian Robert Olwell, slaves and masters engaged in a constant "tug of war" in which "slaves were not merely the passive subjects of the slave society but were intelligent agents whose choices and actions, while always shackled by their condition, nonetheless helped to shape the world they lived in."<sup>211</sup>

The nature of slavery in Charleston, and therefore slaves' lives, differed significantly from that in rural areas. Urban slavery gave slaves more autonomy, even freedom, than they would have had on a plantation. One reason for the limited but real independence of urban slaves was the practice of hiring-out. Masters who could not employ their slaves at all times leased them to those who had need for short-term labor. According to Douglas Egerton, almost a third of Charleston's slaves were involved in hire-out, compared to about six percent in rural areas.<sup>212</sup>

Although slaves were supposed to deliver all earned wages to their masters, hiring-out enabled

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<sup>210</sup> Rogers, *Charleston*, p. 3-25; Fraser, *Charleston! Charleston!*, p. 111-112; Morgan, *Slave Counterpoint*, p. 34; Olwell, *Masters, Slaves, and Subjects*, p. 32-33, 37-38, 73-74.

<sup>211</sup> Olwell, *Masters, Slaves, and Subjects*, p. 6-7 (quote, p. 7), 191-193, 204-210, 282-283. For a detailed discussion of patriarchy, see Morgan, *Slave Counterpoint*, p. 273-284.

<sup>212</sup> Douglas R. Egerton, *He Shall Go Out Free: The Lives of Denmark Vesey* (Madison: Madison House Publishers, 1999), p. 54.

many slaves to accumulate some money and even property. Slaves were also at times allowed to find their own employment. Not surprisingly, the practice of hiring-out frequently worried white Charlestonians. In the Slave Code of 1740, law-makers noted that “it has occasioned such slaves to pilfer and steal...as well as maintain themselves in drunkenness and evil courses.”<sup>213</sup>

One of the largest concerns of authorities and slave owners was slaves’ dominance of the local markets. As in the practice of hiring-out, slaves gained some independence from their masters by selling goods and products in the city’s market places. Their power and control of those markets was substantial. One commentator remarked that slave women especially had “such connection with and influence on, the country negroes...that they generally find means to obtain whatever they choose.”<sup>214</sup> Legislation and grand jury presentments repeatedly addressed such de facto freedom of slaves. In 1779, for example, a grand jury complained about the “excessive number of Negro Wenches, suffered to buy and sell about the streets, corners, and markets.”<sup>215</sup> Perhaps it was because slaves enjoyed some freedom, independence, and community in the markets of Charleston that such places became a major location for the punishment of slaves as discussed later in this chapter.

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<sup>213</sup> For quote, see “Slave Code of 1740,” p. 171. For hiring-out, see Olwell, *Masters, Slaves, and Subjects*, p. 161-162; Morgan, *Slave Counterpoint*, p. 350-352; and Duncun, “Servitude and Slavery,” p. 518-519. For examples of masters looking for their hired-out slaves, see *South Carolina Gazette*, October 1, 1741; December 4-11, 1762 and November 24-December 1, 1766; *South Carolina Gazette and Country Journal*, August 24, 1773 and January 22, 1787; Henry Laurens to James Laurens, July 2, 1775, *Papers of Henry Laurens*, vol. 10, p. 201.

<sup>214</sup> *South Carolina Gazette*, September 24, 1772. See also Morgan, *Slave Counterpoint*, p. 250-252.

<sup>215</sup> *South Carolina and American General Gazette*, December 3, 1779. For other examples, see *Journal of the Commons House of Assembly*, May 21, 1741, p. 16; “Slave Code of 1740,” p. 170, 172; *South Carolina and American General Gazette*, January 29, 1768; and *Columbian Herald*, October 21, 1785 and October 16, 1786. For slaves’ behavior in markets, see Robert Olwell, “‘Loose, Idle and Disorderly:’ Slave Women in the Eighteenth-Century Charleston Marketplace,” in Barry Gaspar and Darlene Clark Hine (ed.), *More Than Chattel: Black Women and Slavery in the Americas* (Bloomington: Indiana University Press, 1996), p. 97-110.

In their daily business, either during work or leisure time, slaves mingled and socialized with poor whites, free blacks, artisans, sailors, and servants.<sup>216</sup> From time to time, the cooperation between whites and blacks raised concerns among authorities and slave masters. One master complained that there were “despicable characters” in Charleston “who harbor and encourage the desertion of negroes from their owners and by furnishing them with tickets in their master’s name render their recovery extremely difficult.”<sup>217</sup> Such cooperation extended further than harboring runaway slaves. In the early 1770s at least three whites were hanged in Charleston for either aiding runaway slaves or stealing slaves. In 1774, the *South Carolina Gazette* reported the discovery of “a most infamous and dangerous Set of Villains,” a motley group of three whites, who were pilloried and whipped, and two slaves, who were hanged.<sup>218</sup> The gallows therefore a tool for drawing and redrawing racial lines within Charleston society and beyond.

### **English Heritage and Colonial Variation: The Criminal Legal Systems of Massachusetts, Pennsylvania, and Massachusetts**

The legal systems in three cities and their respective colonies of Massachusetts, Pennsylvania, and South Carolina were either based on the English system of common law or, to some extent, created in opposition to it. In all three colonies certain characteristics of the English criminal law took hold such as the right to a trial by a jury of one’s peers. Local conditions in each colony, however, influenced the development of legal institutions and application of legal codes. Massachusetts and Pennsylvania were both founded on dissenting religious beliefs that

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<sup>216</sup> About twenty-three percent of the city’s white population was impoverished at the time of their death. Olwell, *Masters, Slaves, and Subjects*, p. 34-35; Morris, *Government and Labor in Early America*, p. 184-185.

<sup>217</sup> Quoted in Morgan, *Slave Counterpoint*, p. 305.

<sup>218</sup> *South Carolina Gazette*, February 21 and 28, 1774; March 7 and 14, 1774.



included a critique of the English legal system.<sup>219</sup> The criminal laws of South Carolina appear to be the closest to English common law until the early nineteenth century, but they also evolved in a slave society with institutions such as the slave courts unknown in England and a separate code of law applicable to slaves and free blacks. Even though the colonies were instructed not to enact any laws contrary to those of England, each colony developed a judicial system that addressed its distinct local needs. Law was inevitably shaped by economic development, social conditions, religious beliefs, political circumstances, and the ethnic and racial composition of each city's population.<sup>220</sup>

### **Massachusetts**

Only a few years after the Puritans first settled in Massachusetts Bay, their leader John Winthrop expressed concern about the “want of positive laws.” The colony’s governing body, the General Court, therefore decided that “some men should be appointed to frame a body of grounds of laws, in resemblance to a Magna Charta.”<sup>221</sup> Several of its members to “make a draught of lawes agreeable to the word of God, which may be the Fundamentalls of this commonwealth.”<sup>222</sup> Puritan criminal law and definition of crimes in Massachusetts reflect the revolutionary aspects of Puritanism. One of the most significant facts about early Massachusetts law is that property crimes did not initially become capital offenses at a time when in England

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<sup>219</sup> Preyer, “Penal Measures in the American Colonies,” in Monkkonen (ed.), *Crime and Justice in American History*, vol. 1, p. 482-483; G. B. Warden, “Law Reform in England and New England, 1620 to 1660,” *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 35 (Oct. 1978), p. 668-690; Haskins, “Law and Colonial Society,” *American Quarterly*, vol. 9 (Fall 1957), p. 358-360.

<sup>220</sup> Preyer, “Penal Measures,” p. 476-477, 492-493. Olwell, *Masters, Slaves, and Subjects*, p. 60-61.

<sup>221</sup> [John Winthrop], Winthrop’s *Journal*, “*History of New England*,” 1630-1649, edited by James Kendall Hosmer (New York: C. Scribner’s Sons, 1908), vol. 1, p. 79.

<sup>222</sup> Quoted in Haskins, *Law and Authority*, p. 36.

countless men and women were being hanged for minor property crimes.<sup>223</sup> The first hanging for a property crime did not take place until 1681, when two Native Americans were condemned and hanged for arson.<sup>224</sup> The general absence of executions for property crimes until late in the seventeenth century illustrates that the first and perhaps second generation of Puritans did not perceive property crimes as a threat to the “city upon the hill.” For most of the seventeenth century, Puritan criminal law foreshadowed and then echoed the critique of capital punishment that arose with the revolutionary movement in England, in which numerous groups and individuals opposed frequent hangings for property crimes.<sup>225</sup>

Massachusetts criminal law combined these revolutionary impulses with the traditions of English common law. The so-called separating Puritans significantly and self-consciously departed from English legal traditions by relying on the Bible as major source for their criminal law. The initial criminal code of the Massachusetts Bay colony, passed in 1648, differed significantly from English common law, for Puritan colonists modeled their laws on the Mosaic code.<sup>226</sup> John Cotton wrote the first draft of a legal code called “A Model of Moses His Judicials.” It is not entirely clear why the General Court rejected Cotton’s draft but it might have been because of the long list of capital crimes, which covered twenty offenses. Nevertheless,

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<sup>223</sup> For executions in seventeenth-century England, see Radzinowicz, *A History of English Criminal Law*, p. 140-142, 263 (note 23).

<sup>224</sup> There were, however, four executions for murder before 1648, where the murder was committed during a property crime but only murder seemed to have been the indictment. Mather, *Diary*, p. 30; Mather, *Pillars of Salt*, p. 70; Powers, *Crime and Punishment*, p. 292.

<sup>225</sup> Hill, *The World Turned Upside Down*, p. 134-136; Linebaugh and Rediker, *The Many-Headed Hydra*, p. 105, 118-119; and Robert Zaller, “The Debate on Capital Punishment during the English Revolution,” *American Journal of Legal History*, vol. 31 (April 1987), p. 126-144.

<sup>226</sup> The controversy about the codification of laws was mainly between the magistrates who feared a loss of power and the deputies of the General Court who wanted to restrict and check the magistrates’ power. See Haskins, *Law and Authority*, p. 35-36; Powers, *Crime and Punishment*, p. 78-81; and Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692* (Amherst: University of Massachusetts Press, 1993), p. 7-8.

Cotton's code remained influential as many of its provisions made it into the final draft of the Body of Liberties. None of its ninety-eight articles – with the exception of article 94 dealing with capital offenses – provided for specific punishments and were called liberties rather than laws.<sup>227</sup> Nevertheless, article 96 called on authorities “to consider them as laws, and not fail to inflict condigne and proportionable punishments upon every man impartiallie, that shall infringe or violate any of them.”<sup>228</sup>

In the final draft of the Body of Liberties, Article 94 listed twelve capital crimes taken from the books of Exodus, Leviticus, Numbers, and Deuteronomy: idolatry; witchcraft; blasphemy; murder; manslaughter; poisoning; bestiality; sodomy; adultery; man-stealing; perjury in a capital case; and conspiracy and rebellion. The number of capital crimes increased dramatically to twenty-five over the course of the seventeenth century: cursing or smiting parents (1646); rape (1669); stubborn or rebellious sons (no date); burglary (1647, third offense); defiance by Jesuits (1647, banishment on pain of death); heresy (1652), arson (1652); defiance by Quakers (1658; banishment on pain of death); robbery (1672); piracy and mutiny (1673); several military offenses such as resisting an officer, desertion, and mutiny (1675); treason against the king (1678), and enlisting with the enemy (1684).<sup>229</sup> The above list shows that property crimes slowly entered the Massachusetts criminal law, initially only with the third offense as in the case of burglary. The number of capital statutes for property crimes increased significantly towards the end of the seventeenth century at a time when the religious emphasis of

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<sup>227</sup> Powers, *Crime and Punishment*, p. 81-82; Haskins, *Law and Authority*, p. 124-126, 151-152; and McManus, *Law and Liberty*, p. 8-11.

<sup>228</sup> “The Body of Liberties,” Article 96, reprinted in Powers, *Crime and Punishment*, Appendix A, p. 533-548, quote p. 548.

<sup>229</sup> Haskins, *Law and Authority*, p. 145-152 and Powers, *Crime and Punishment*, p. 264-273. Some of the offenses such as rape became capital crimes only after intense controversy over whether the bible offered justification of the punishment. For a discussion of the capital statute of rape, see Powers, *Crime and Punishment*, p. 264-268.

Puritan society gave slowly way to a more commercially-oriented society. The number of executions for each of the above statutes varied widely throughout the seventeenth century until the laws were repealed in 1692. Executions for murder and witchcraft occurred relatively frequently.<sup>230</sup> No one seems to have been executed for the crimes of idolatry, poisoning, perjury, curing or smiting parents, or man-stealing.

After the Glorious Revolution of 1688, the Massachusetts Bay colony came under the scrutiny of the royal government in London, which led to the overturning of the colony's laws in 1692. The General Court once again had to decide which crimes should be punishable by death. Their choices would then be sent to London for approval by the King's Privy Council. After several drafts the General Court submitted thirteen capital laws, of which seven – murder, burglary, piracy, rape, arson, infanticide and treason – were accepted while six others – idolatry, witchcraft, blasphemy, manslaughter, poisoning, and incest – were rejected. By 1736, the colony of Massachusetts had fourteen capital statutes, which would remain in effect until 1780. Six of those were property crimes: burglary, robbery,<sup>231</sup> piracy, counterfeiting, arson and stealing. Four crimes could be described as reproductive offenses: infanticide, rape,<sup>232</sup> polygamy, and sodomy and bestiality. The remaining four were personal crimes (premeditated murder; dueling if resulting in loss of life) and political offenses (treason; being a Jesuit).<sup>233</sup>

In 1780, the people of Massachusetts approved their own constitution. This new constitution included the following unusual statement: “no magistrates or court of law,

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<sup>230</sup> For an analysis of executions in early Massachusetts, see Gabriele Gottlieb, “‘Stretch by a Halter!’ Capital Punishment in Seventeenth-Century Massachusetts and Plymouth” (unpublished paper). See also Powers, *Crime and Punishment*, p. 252-320.

<sup>231</sup> In 1711, robbery was a capital crime only on the second conviction. In 1761, robbery became a capital crime on the first conviction.

<sup>232</sup> A death sentence was mandatory upon conviction.

<sup>233</sup> Powers, *Crime and Punishment*, p. 303-308; Preyer, “Penal Measures,” p. 482-484, 492.

shall...inflict cruel or unusual punishments,” a phrase that until this day is closely connected to arguments against capital punishment.<sup>234</sup> Once again, the General Court examined the previous capital statutes, reducing capital crimes from fourteen to seven: premeditated murder; sodomy (removed in 1805); burglary; robbery;<sup>235</sup> arson; rape; and treason against the Commonwealth. Between 1805 and 1852, the legislature further reduced capital crimes until first-degree murder remained as the only offense punishable by death. Such reduction was the result of strong opposition against the death penalty that spread across much of the North and impacted criminal legislation in the South. In 1835, Massachusetts abolished public executions and in 1984 for the death penalty was abolished.<sup>236</sup>

### **Pennsylvania**

The Quakers, like the Puritans in New England, evolved out of the English revolution in the mid-seventeenth century. Quakers, however, were far more radical in their demands than the Puritans who represented the conservative wing of the revolutionary movement. At several points of its history of the criminal law, Pennsylvania’s criminal codes reflected Quaker radicalism and the rejection of English criminal law. Pennsylvania’s first penal code was enacted in 1676 before the official founding of the Quaker colony. The criminal laws, known as the “Hempstead Code,” included eleven capital crimes: heresy, premeditated murder, manslaughter, poisoning, bestiality, homosexuality, man-stealing, perjury in capital cases, treason (two different offenses), and a child’s physical attack of a parent. The offense of arson also could also

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<sup>234</sup> Quoted in Powers, *Crime and Punishment*, p. 308, 309.

<sup>235</sup> Like sodomy, robbery was also removed as a capital crime in 1805 but soon reinstated in cases where the offender allegedly carried a dangerous weapon with intent to kill or maim or in cases where a victim actually had been assaulted.

<sup>236</sup> Powers, *Crime and Punishment*, p. 308-311 and Hindus, *Prison and Plantation*, p. 195-202. For the history of the anti-death penalty movement in Massachusetts, see Stuart Banner, *The Death Penalty: An American History* (Cambridge: Havard University Press, 2002), p. 154, 221, 222, 244, 277.

lead to a death sentence at the discretion of the court or to full restitution to the injured party. Robbery and burglary carried a death sentence after the third offense. Defendants charged with lesser offenses received monetary penalties, short-time imprisonment, or corporal punishment. The Hempstead Code was in effect only for a few years until William Penn was granted Pennsylvania by Charles II in 1681.<sup>237</sup>

In 1682, William Penn submitted “The Great Law or Body of Law” to Pennsylvania’s first assembly, which ratified it without major revisions, thereby overriding the 1676 statutes. “The Great Law or Body of Law” differed decisively from English common law and the penal codes of other colonies. Quaker opposition to cruelty and bloodshed coupled with their belief that offenders could and should be reformed led the assembly to pass a relatively mild penal code focused on rehabilitation rather than punishment. Unlike the colonies in New England, Pennsylvania’s law guaranteed religious toleration and freedom of conscience, therefore eliminating the need for laws dealing with religious offenses. Crimes against morality such as incest, sodomy, and rape made up the greatest number of offenses. Compared to other colonies, especially southern ones, Pennsylvania’s criminal code of 1682 was very lenient: violence against a person, property crimes, and disobedience of a parent was to be punished only with imprisonment at hard labor. Property crimes carried an additional penalty of double or triple satisfaction to the injured party. Both murder and manslaughter did not appear in the 1682 laws but were added in 1683, making premeditated murder the only capital offense in Pennsylvania, which was very unusual in seventeenth century.<sup>238</sup> The greatest departure from other

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<sup>237</sup> Barnes, *Evolution of Penology*, p. 9, 29-31. See also Surrency, “The Evolution of an Urban Judicial System,” in Monkkonen (ed.), *Crime and Justice*, vol. 2, p. 727-728.

<sup>238</sup> Barnes, *Evolution of Penology*, p. 32-34. Louis M. Waddell (ed.), *Unity from Diversity: Extracts from Selected Pennsylvania Colonial Documents, 1681 to 1780* (Harrisburg:

contemporary penal codes lay in the Quaker reliance on imprisonment at hard labor rather than corporal, public, and especially capital punishments.

This first penal code underwent revisions when the Pennsylvania assembly renewed the code in 1693, 1700, and again in 1706. Those confirmations generally prolonged the length of prison sentences or the severity of penalties. A second conviction for theft, for example, carried a life sentence in prison after 1700. The same was true for the offense of sodomy with an additional penalty of a whipping every three months for offenders who were single and castration for those who were married.<sup>239</sup> The Pennsylvania assembly also increased the punishments for people of color, providing the death penalty not only for murder but also for burglary, rape, and buggery. The increase of the severity of the criminal code in part reflects the gradual loss of influence of the Quakers in Pennsylvania. The legacy of this first penal code, however, should not be underestimated. Although there is no direct evidence, it must have been known to those late-eighteenth-century reformers who rewrote the state's penal laws in 1786. It also remained much admired in the nineteenth century for its humane effort to put a "just value on the life of man."<sup>240</sup>

In 1718, the 1682 penal code was repealed and the English criminal code was introduced as a result of a struggle between Quakers and colonial authority concerning oath-taking. In a compromise, Quakers were allowed to participate in political affairs by using affirmations instead of oaths. In return, Pennsylvania's laws were revised, declaring "the laws of property and

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Pennsylvania Historical and Museum Commission, 1982), p. 7-9; Preyer, "Penal Measures," p. 486-487.

<sup>239</sup> It is not clear if authorities actually carried out this punishment. Castration was also a punishment for second-time rape convictions. In 1705, the Privy Council, however, prohibited castration and sale into servitude (arson) as a penalty. Preyer, "Penal Measures," p. 487-488.

<sup>240</sup> Robert Vaux, *Notices of the Original, and Successive Efforts to Improve the Discipline of the Prison at Philadelphia* (Philadelphia: Kimber and Sharpless, 1826), p. 4.

likewise as to felonies, should be the same as they be in England,” because “the common law is the birthright of English subjects, so it ought to be their rule in British dominions.” Thirteen crimes became consequently capital offenses: property crimes such as highway robbery, burglary, robbery, and arson; personal crimes such as murder, manslaughter by stabbing, and serious maiming; reproductive offenses such as sodomy, buggery, rape, infanticide, accessory to infanticide, and witchcraft; and political crimes such as several types of treason.<sup>241</sup> The passing of those statutes did not, however, mean that offenders were executed for them. The first execution for burglary, for example, did not take place until 1736 – eighteen years, nine convictions, and several pardons later.<sup>242</sup> Another property crime – counterfeiting – was added to the list of capital crimes in 1756. The revision of the 1682 penal code also led to an increase in corporal punishment and a decrease of imprisonment as a penalty for lesser crimes. The 1718 penal code remained in force until 1786 when a major penal reform movement developed in Pennsylvania and pushed for an “enlightened” revision of the criminal code.

Despite the relative leniency of criminal laws in Pennsylvania even after 1718, Pennsylvanians saw a fair share of controversy and terror in their application. One of the most horrific cases took place in New Castle in 1731. Catherine Bevan was sentenced to be hanged for the murder of her husband. A servant who allegedly assisted her was also to be hanged and then burned. At the day of the execution, spectators were horrified when the fire burned Bevan’s rope and she fell into the flames struggling and burning alive. At other times, the infliction of corporal punishment took unexpected turns. In 1743, for example, a black man who was about to be

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<sup>241</sup> “An Act for the Advancement of Justice, And More Certain Administration Thereof, May 31, 1718,” partially reprinted in Waddell, *Unity from Diversity*, p. 44-46, quote p. 44. See also Barnes, *Evolution of Penology*, p. 37-39 and Banner, *Death Penalty*, p. 8.

<sup>242</sup> Herbert W. K. Fitzroy, “The Punishment of Crime in Provincial Pennsylvania,” *Pennsylvania Magazine of History and Biography*, vol. 60 (1936), p. 256.



whipped in Philadelphia pulled out a knife, slashed his own throat and died immediately. Over time, such examples of terror and brutality at the moment of punishment would translate into a substantial opposition to public punishments, including the death penalty. At its height in the late 1780s and 1790s, Pennsylvania's penal code was revised several more times: in 1786, public labor replaced the possibility of a death sentence in property crimes; in 1789, imprisonment at hard labor became the most common penalty after the alternative of public labor had failed dramatically; and in 1794, capital crimes were further reduced to first-degree murder only. By the end of the eighteenth century, Pennsylvania had almost returned to its original penal code of 1682 with only one capital crime and imprisonment at hard labor as the major penalty.

### **South Carolina**

The first settlers arrived in South Carolina in April 1670 on board the *Carolina*. Eight influential Englishmen, the so-called Lords Proprietors of Carolina, had financed their voyage. The settlers brought with them the first constitution of Carolina, the Fundamental Constitutions of Carolina, which set up an oligarchic government, an elected Grand Council, and an assembly of representatives which later became the Commons House of Assembly.<sup>243</sup> The Fundamental Constitutions of 1670 said little of criminal law. It did, however, provide for a state-wide circuit system of lower and upper courts and Chief Supreme Court for appeals. It also established "absolute power and authority" over slaves by "every freeman of Carolina."<sup>244</sup> Although not stated explicitly, it seems that those who wrote the constitution assumed that the English criminal law would apply in the case of criminal cases regardless whether the offender was free

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<sup>243</sup> Fraser, *Charleston! Charleston!*, p. 2-4.

<sup>244</sup> Ruth S. Green (ed.), "The South Carolina Archives Copy of the Fundamental Constitutions, Dated July 21, 1669," *South Carolina History Magazine*, vol. 71 (April 1970), p. 91, 95-96, 99 and M. Eugene Sirmans, "The Legal Status of the Slave in South Carolina, 1670-1740," *Journal of Southern History*, vol. 28 (November 1962), p. 463.

or enslaved. Even though South Carolinians never voted on or ratified the Fundamental Constitutions, the founding legal document had a lasting legacy in the colony, as it established religious toleration, huge land grants, a powerful ruling elite, and a representative political body.<sup>245</sup>

During the early years of settlement, Carolina colonists relied heavily on European indentured servants, Native American and African slaves as a labor force. Although the labor force was racially mixed, distinctions between white servants and black slaves existed from the beginning. This early legal distinction foreshadowed the later development of two distinct judicial systems based on race.<sup>246</sup> In 1690, the colony established its first laws dealing exclusively with slaves, prominently borrowing from the slave code of Barbados. The code established provisions for policing of slaves and the trial of criminal slaves. Most significantly, the slave code of 1690 acknowledged the distinct relationship between a master and a slave which was outside of English common law.<sup>247</sup> South Carolina settlers thus established a set of laws that recognized the centrality of the master-slave relationship as well as a means to control slave behavior without infringing on the masters' property rights. By establishing chattel slavery

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<sup>245</sup> The formal adoption of the Fundamental Constitutions was prevented by divisions among the powerful land-owners. Settlers from Barbados, the so-called Goose Creek men, again and again prevented the passing of the constitution. Fraser, *Charleston! Charleston!*, p. 9, 12. L. H. Roper, *Conceiving Carolina: Proprietors, Planters, and Plots, 1662-1729* (New York: Palgrave MacMillan, 2004), p. 29-50, 99-109.

<sup>246</sup> White inhabitants, especially poor whites and white servants, could expect severe punishments when they transgressed the racial boundaries of South Carolina. A white servant caught running away in the company of slaves could be sentenced to death without the benefit of clergy. Similarly, interracial sexual relationships often carried harsh penalties. In a 1717 act to govern servants, for example, masters of female servants could be awarded damages and additional service time if their servant had become pregnant during an interracial relationship. Children of those relationships were put into servitude until adulthood. Slaves were not included in those provisions. Clearly, the inclusion of slaves would have criminalized the sexual exploitation of female slaves by their white masters. Wood, *Black Majority*, p. 98-99; Higginbotham, *In the Matter of Color*, p. 158-159.

<sup>247</sup> Fraser, *Charleston! Charleston!*, p. 15 and Sirmans, "Legal Status of the Slave," p. 464-465.

under which slaves were only recognized as the property of their masters and not as human beings, South Carolina colonists created two different judicial systems – one dealing with slaves and free blacks; the other one dealing with white offenders.

The 1690 law, which was passed during a time of internal conflict among Carolina's elite, was annulled by the proprietors and replaced by a new code in 1696, the colony's first comprehensive slave code. By then the importation of African slaves had begun on a large scale, as rice had become a profitable staple crop.<sup>248</sup> Once again, South Carolina colonists turned to the law of Barbados, using its entire preamble and about three quarters of the statutes dealing with the policing of the slave population. The assembly saw this separate legislation as necessary because slaves had "barbarous, wild, savage Natures" and were "naturally prone and inclined" to "Disorders, Rapines, and Inhumanity." The law of 1696 reaffirmed the status of current and future slaves as "Slaves to all Intents and Purposes." While the code closely resembled the laws of 1690, it added provisions dealing with alleged crimes by slaves and provided for the trial of criminal slaves.<sup>249</sup>

Despite the legal separation of whites and blacks in the judicial system, blacks – free or enslaved – as well as whites were subject to the English criminal code which was explicitly adopted in 1712.<sup>250</sup> The "Act to put into force in this Province the several Statutes of the

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<sup>248</sup> The black population outnumbered whites in South Carolina by 1710. Thirty years later the blacks outnumbered whites two to one in the colony's low country and by 1780 the ratio had risen to almost four blacks to one white person. Berlin, *Many Thousands Gone*, p. 64-66; Morgan, *Slave Counterpoint*, p. 5-6; Wood, *Black Majority*, p. 54-55; Higgenbotham, *In the Matter of Color*, p. 151-152, 154-162; Olwell, *Masters, Slaves, and Subjects*, p. 30; and Andrew Fede, "Legitimized Violent Slave Abuse in the American South, 1619-1865: A Case Study of Law and Social Change in Six Southern States," *American Journal of Legal History*, vol. 29 (April 1985), 94-95.

<sup>249</sup> Sirmans, "Legal Status of the Slave," p. 466.

<sup>250</sup> For the "Act to put into force in this Province the several Statutes of the Kingdom of England or South-Britain, therein particularly mentioned," see *The First Laws of the State of South*

Kingdom of England or South-Britain, therein particularly mentioned” included the fifteen capital crimes, many without the benefit of clergy: the property crimes of robbery, burglary, highway robbery, arson, piracy, and forgery (second offense); the personal crimes of murder, manslaughter, poisoning, and petit treason; the reproductive crimes of rape and infanticide. Furthermore, being an accessory to crimes such as murder, robbery and arson was also an offense punishable by death.<sup>251</sup> In a few instances, the act included provisions that mitigated a death sentence by offering instead the option of transportation, by ensuring equal sentences for men and women who were convicted of the same crime, or by providing for lesser punishments for first-time offenders.<sup>252</sup>

Slaves were subject to the criminal code of 1712, but they also fell under the jurisdiction of the slave code of 1740, which not only regulated slaves’ freedom and mobility but added several additional capital and criminal offenses. Legislators acknowledged that “the peculiar ...situation and condition of this Province” required another set of laws that “could not fall within the provision of the laws of England” and that would apply exclusively to the colony’s slave population.<sup>253</sup> They also believed that South Carolina could “not be well and sufficiently managed and brought into use, without the labor and service of negroes and other slaves.” They

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*Carolina* (Wilmington: Michael Glazier, 1981), part 1, p. 25-100. See also “An Act for the better Ordering and Governing Negroes and other Slaves in this Province” (hereafter slave code of 1740), reprinted in *First Laws*, part 1, p. 167.

<sup>251</sup> Many of these offenses such as robbery and arson included several different definitions of the offense. All carried the death penalty.

<sup>252</sup> See “Act to prevent the malicious Burning of Houses, Stacks of Corn and Hay, and killing or maiming Cattle,” which gave offenders the possibility to “avoid Judgment of Death...shall make his Election to be transported beyond the Seas... for the Space of 7 Years.” The “Act to take away Clergy from some Offenders, and to bring others to Punishment” stated that a woman convicted of the same crime as a man should not suffer death if the “Man is to have the Benefit of his Clergy.” The criminal code also provided that those convicted of forgery for the first time should receive corporal punishment while those convicted for a second time should face death. *First Laws*, p. 80, 86, 63.

<sup>253</sup> Quoted in Olwell, *Masters, Slaves, and Subjects*, p. 62-63

added a rationale for the separate legal code for slaves, describing slaves once again as being “of barbarous, wild, savage natures” and therefore “wholly unqualified to be governed by the laws, customs, and Practices of this Province.” Therefore, separate laws were necessary “for the good regulating and ordering of them, as may restrain the disorders, rapines and inhumanity, to which they are naturally prone and inclined.”<sup>254</sup> The preamble’s authors obviously did not feel it necessary to hide their economic greed or their overt racism when writing the slave code.<sup>255</sup>

The 1712 slave code also established a legal system for the prosecution of slaves.<sup>256</sup> It further added several capital crimes to those of the English criminal law that exclusively applied to slaves and free blacks and that reflect crimes in the context of slavery. Punishments for running away or enticing other slaves to do so could be severe: an attempted or actual escape with intent to leave the province<sup>257</sup> was punishable by death.<sup>258</sup> Assaulting a white person was a capital crime in the third offense; by 1722, a death sentence was possible after the

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<sup>254</sup> Quoted in Higginbotham, *In the Matter of Color*, p. 167.

<sup>255</sup> The code required slaves to carry passes when leaving their masters’ plantations and restricted the slaves’ opportunities to trade unless they had their masters’ permission. The code further prohibited masters to hire out their slaves in return for wages because it gave the slaves “opportunities to steal, in order to raise money to pay their masters, as well as maintain themselves, and other slaves, their companions, in drunkenness and other evil courses.” See Higginbotham, *In the Matter of Color*, p. 167, 170-175 (quote, p. 172).

<sup>256</sup> The code established the Court of Justices and Freeholders, which dealt with alleged crimes by slaves, free blacks, and Native Americans. Higginbotham, *In the Matter of Color*, p. 184-185.

<sup>257</sup> For those slaves who absented themselves without intent to leave South Carolina, punishment consisted of severe whippings for the first, branding for the second, and a severe whipping and loss of an ear for the third offense. For male slaves, the third offense also included castration (repealed in 1722). A fifth offense carried the penalty of cutting a slave’s leg above the heel (Achilles tendon) or death.

<sup>258</sup> It is difficult to determine how many slaves were executed for running away. Among those condemned in South Carolina, however, are a number of slaves who were condemned for other crimes such as robbery or burglary but who also were runaways. Being a runaway slave, therefore, might have been an aggravated circumstance. If slaves escaped in groups, only one or two of them would be executed but the masters of those slaves who were spared had to contribute to the master’s compensation of the condemned slaves. Higginbotham, *In the Matter of Color*, p. 176-179.

first offense if a white person had been injured during the alleged assault. One capital offense dealt with possible white offenders: the stealing of slaves. The 1712 code acknowledged that “divers evil and ill-disposed person have hitherto attempted to steal away negroes or other slaves.”<sup>259</sup> Not surprisingly, the code did not provide any legal protection for slaves at all. Any protection, if it can be called that, came indirectly through the master’s economic interests, as the value of a living slave was usually far greater than the terror value of an executed slave.<sup>260</sup>

The slave code of 1712 underwent a major revision in 1740 after South Carolina slaves rose up in what has been called the Stono Rebellion.<sup>261</sup> Once the rebellion had been brutally crushed, legislators wrote the new law to keep slaves “in due subjection and obedience” but also to restrain masters and overseers “from exercising too great rigour and cruelty over them.”<sup>262</sup> The code remained in force throughout the colonial period and was reaffirmed immediately after the Revolution.<sup>263</sup> The code continued the judicial process set up in 1712.

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<sup>259</sup> Higginbotham, *In the Matter of Color*, p. 186-187.

<sup>260</sup> Because the trial of a slave often represented a conflict between the economic and property interests of an individual master and the security and protection of the white community, the 1712 act also provided for the full compensation of a master of an executed slave. By 1714, South Carolina’s treasury was “very much exhausted by the extraordinary sums that have been allowed for criminal slaves of all sorts,” resulting in the limitation of compensation to a maximum of fifty pounds. Higginbotham, *In the Matter of Color*, p. 184-185.

<sup>261</sup> On September 9, 1739, about twenty slaves, many of them Angolans, gathered in St. Paul’s Parish and began to make their way southward towards St. Augustine. On the way they raided a country store for arms and ammunition, killing two men. They continued to ransack and burn houses along the way. During a break, a group of armed planters attacked the ever-growing group of slaves, killing or injuring at least fourteen slaves. Not until a month later did a Boston newspaper announce that “the Rebellious Negroes are quite stopt from doing any further Mischief, many of them having put to the most cruel Death.” Wood, *Black Majority*, p. 314-320, quote p. 319. See also Olwell, *Masters, Slaves, and Subjects*, p. 21-25; Morgan, *Slave Counterpoint*, p. 455-456; Berlin, *Many Thousands Gone*, p. 73-74; and Sirmans, “Legal Status of the Slave,” p. 469-471.

<sup>262</sup> “An Act for the better Ordering and Governing Negroes and other Slaves in this Province” (hereafter “Slave Code of 1740”), reprinted in *First Laws of the State of South Carolina*, p. 163.

<sup>263</sup> The slave code of 1740 lost its governing power only with the end of the Civil War and the emancipation of slaves in South Carolina. Olwell, *Masters, Slaves, and Subjects*, p. 62-63.

Slaves accused of capital crimes were to be tried in front of two justices and three to five freeholders who were to meet within three days of the apprehension of the accused slave or slaves.<sup>264</sup> The slave code also devalued the life of a slave by increasing the power of private persons to beat, maim, or kill a slave without legal repercussions. Once again the economic consequences for slaveholders rather than the slave's well-being stood at the center of the provision, as the punishment for this crime consisted of compensation for lost labor time and reimbursement for the costs for the slave's recovery. Slaves who resisted examination or arrest by assaulting a white person could be "lawfully killed." As legislators believed that the cruel treatment of slaves could lead to unrest among slaves, the slave code of 1740 included some protection for slaves.<sup>265</sup>

In 1751, an important provision was added to the slave code of 1740. Worried about the African knowledge of herbs, poison, and other medications, South Carolina's legislators attempted to regulate slaves' access to poisons and, to limit the transfer of such knowledge, the teaching about it. The law's authors admitted that "notwithstanding the execution of several Criminals for that offence," capital punishment had "not been sufficient to deter others from being guilty of the Same."<sup>266</sup> Anyone who provided poison or assisted the person who administered the poison was also subject to execution. Monetary rewards were to be offered to

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<sup>264</sup> Slaves charged with lesser crimes appeared before one judge and two freeholders. In any case, two judges and one freeholder or one judge and two freeholder made a quorum.

<sup>265</sup> A slave owner could be charged "if any slave shall suffer in life, limb or member" in violation of the code. Unless, however, two white witnesses confirmed the master's action or presence, he or she would be acquitted. Another provision required masters to ensure adequate food, clothing, and care for slaves. Needless to say, the enforcement of this law and its penalties were minor and unlikely to ensure humane treatment of slaves. Only white persons were able to bring a complaint against a slave owner and an owner could clear himself or herself by swearing to his or her innocence. "Slave Code of 1740," in *First Laws*, p. 164-165, 172-173; and Sirmans, "Legal Status of the Slave," p. 471

<sup>266</sup> Thomas Cooper and David McCord (ed.), *The Statutes at Large of South Carolina*, v. 7, p. 422.

those slaves who disclosed attempted or actual instances of poisoning. No slave, however, could be convicted on another slave's testimony alone unless some physical evidence such as poison in the possession of the accused slave corroborated the accusation. Furthermore, the teaching of the "knowledge of any poisonous root, plant, herb or other sort of poison" became a capital offense for the teacher and a non-capital offense for the one being instructed.<sup>267</sup> Despite, or maybe because of, the hardening of the law against poisoning, the number of executions dramatically increased in the years immediately after its passage.

### **Conclusion**

The following chapters will demonstrate how much the different social make-up of the three cities and their differing legal systems impacted the application of the death penalty in each of them. The varying levels of forced labor in Boston, Philadelphia, and Charleston are of significant importance in explaining rates of executions. Boston, which had the lowest level of forced labor, also had the lowest rate while Charleston, which had the highest level, had the highest rate of executions. Similarly, the colonies' judicial systems reflect the distinctiveness of each. Both in Massachusetts and Philadelphia, the influence of radical religious beliefs influenced the development of their legal systems. In both colonies, the English criminal law was never fully adopted although each colony moved their criminal codes closer to that of England. Especially in Pennsylvania, however, the radical influence of the Quakers persisted into or at least resurfaced in the late eighteenth century when, by then, the state of Pennsylvania underwent an intense period of penal reform. The situation was significantly different in South Carolina. Not only was the English criminal code used from the beginning on, the development of slavery

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<sup>267</sup> Cooper, *Statutes at Large*, v. 7, p. 422-423.



as the predominant labor system necessitated a unique set of laws that applied exclusively to slaves and free blacks.

Despite these differences, the three cities shared one important characteristic that should not be underestimated in its significance. All three cities were important ports that connected their respective backcountries with the Atlantic. They experienced a constant fluctuation of people, an influx of ideas and information from around the world, and a steady flow of goods. These connections and influences at times directly influenced the application of the death penalty in each of the cities.

#### 4.0 EXECUTIONS IN BOSTON, PHILADELPHIA, AND CHARLESTON, 1750-1800: A STATISTICAL ANALYSIS

During the second half of the eighteenth century, 212 people – slaves, sailors, laborers, artisans, and women – were executed in the cities of Boston, Philadelphia, and Charleston. They were hanged, gibbeted, shot, and burned at the stake. The majority of them were young, male, and poor; a significant number had traveled throughout the Atlantic and beyond. Despite the considerably differing social, economic and social histories of the three cities, which will be analyzed the next chapter, each shared with the others certain communalities in the application of the death penalty. Boston stood out compared to the other cities with a low number of executions (0.5 executions/year), while Philadelphia and Charleston ranked almost equally (2 executions/year in Philadelphia and 1.8 executions in Charleston). A somewhat different picture emerges when the number of executions is put into the context of the cities' population size: Bostonians saw one execution per 696 residents; Philadelphians one per 347 inhabitants; and those living in Charleston one per 128 inhabitants.<sup>268</sup>

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<sup>268</sup> The numbers based on the average population of the cities in the second half of the eighteenth century. I then took that average and calculated how many executions took place per inhabitants between 1750 and 1800. For population size of Boston, see Allan Kulikoff, "The Progress of Inequality in Revolutionary Boston," *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 28 (July 1971), p. 393. For population size of Philadelphia, see Billy G. Smith, *The "Lower Sort:" Philadelphia's Laboring People, 1750-1800* (Ithaca: Cornell University Press, 1990), Appendix B, Table 1, p. 206. For Charleston, see Walter Fraser, *Charleston! Charleston!: The History of a Southern City*, p. 178.

When those numbers are compared to the city of London, an interesting pattern arises which contradicts the common image of scholars that London stands out for its high number of executions. The data available for eighteenth-century London suggests (one execution per 509 inhabitants) that the city experienced a comparable rate of executions per inhabitants to that of Boston (696) and a significantly lower rate than Philadelphia (347) and especially Charleston (128).<sup>269</sup> London like the three North American ports saw also a similar spike in hangings during the 1780s, raising the question whether certain economic, political, and social dynamics operated within the British empire or even within the Atlantic world as a whole that remain hidden by a narrow usually national framework of investigation.

All three cities witnessed a relatively lower number of executions during the colonial period than they saw after the Revolution. The revolutionary period (1776-1783) demonstrates significant differences experienced through the course of the conflict. Boston, for example, saw no executions as most fled the city during British occupation. Moreover, Bostonians were quite united in their fight against the British leading up to the Declaration of Independence.<sup>270</sup> Executions were relatively high during the Revolution in Philadelphia as competing factions staged their conflicts on the gallows. In Charleston, conflicts between masters and their slaves dominated the first year of the revolutionary period. Once the British governor and fleet left Charleston, taking with them thousands of runaway slaves, the atmosphere in city calmed down somewhat, although executions of white offenders significantly increased during that period. The

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<sup>269</sup> I arrived at the number for London the same way I did for the other three cities. I averaged in the population size of London for the fifty years in question and then divided it by the number of executions. For London, see Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (New York: MacMillan Company, 1948), vol. 1, p. 151-152, 163-164.

<sup>270</sup> For population information for Boston, see Kulikoff, "Progress of Inequality," *William and Quarterly*, 3<sup>rd</sup> series (July 1971), p. 393. In the year 1776, the population of Boston was down to 2719 compared to more than 16 000 inhabitants in 1771. By 1780, the population had again increased to about 10 000.

inhabitants of all three cities saw a relatively high number of executions in the 1780s, when many in the newly founded nation faced economic hardship, unemployment and poverty. In many ways, the death penalty seemed to have been reserved for those who drifted in and out of the workforce and committed crimes because of economic hardship. The initial years in the aftermath of the Revolution were a time when American elites attempted to establish and consolidate their power and authority, which is reflected in patterns of capital punishment. By the 1780s, as we shall see, the protection of property became an overriding concern and priority in legal procedures. During the 1790s, domestic upheavals in the United States had calmed down but Atlantic-wide revolutions and uprisings such as the French and Haitian Revolutions greatly impacted the application of the death penalty in Boston, Philadelphia, and Charleston.

The following quantitative analysis of executions in the three cities is based on nine distinct databases, three for each city. The first set of databases consists of executions in each city, including information about the alleged crime, the condemned's social, economic and ethnic background, and the execution itself. The second set of databases includes executions in the respective colonies/states, in which three cities are located. Court records of the superior courts, in which capital crimes were tried, supplied most information for a third series of databases, which place the application of the death penalty into a larger context of prosecutions at the colony/state levels. These databases were built from a variety of sources: primarily, court records – minutes, indictments, and witness statements supplemented by newspaper reports about court days and executions, legislative records, and other government sources such as financial records. Sources for Charleston were least forthcoming, as neither slave court records nor the records of the Court of General Sessions (with the exception of the years 1769-1776) exist. Overall, the databases for Boston and Philadelphia are the most complete, as legal sources

and newspaper accounts are readily available. Charleston is a far more difficult case, as there are hardly any legal sources available and the databases are pieced together from a wide variety of sources. I expect that with more research I will continue to add to the databases, including the one on executions in the city. A tenth database consists of executions in the North American colonies and subsequent states. Its basis is the database established by Watt Espy, to which I added the results of my own research.<sup>271</sup> While far from complete as research and sources differ widely from state to state, it is nevertheless a useful point of comparison to identify larger trends in the application of capital punishment in the North American colonies and the early United States.

### **Boston**

The city of Boston had a low rate of execution during the second half of the eighteenth century. Only 23 people – 21 men and 2 women – walked to the city's gallows or faced the firing squad. At no time were more than three people executed within one year and rarely did the condemned meet their fate in groups of two or more. The inhabitants of Boston witnessed six executions (26%) during the late-colonial period (1750-1775), constituting an execution rate of 0.2 executions per year. A similar – and surprising – fact is that there seem to have been no executions during the revolutionary years (1776-1783) in Boston. The number of executions increased during the early republic to seventeen hangings (74%) or one execution per year. The republic's first few years saw an especially dramatic rise in the application of the death penalty with twelve executions (38%) within six years (1784-1789). Overall, charges for property crimes (61%) were most frequently the cause for a death sentence and subsequent execution. Three more hangings were the result of a combined personal and property crime. Only three persons

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<sup>271</sup> Watt Espy has collected information on 19, 248 executions in the United States. A database of 14, 634 executions is available in paper form at the University of Alabama and is available on the Internet from the Inter-disciplinary Consortium for Political Science and Social Research at [www.icpsr.umich.edu](http://www.icpsr.umich.edu).

were executed for a personal crime such as murder (13%). One slave was hanged for poisoning. The remaining two were soldiers who were shot to death by a firing squad.

**Table 1: Executions in Boston by Year, 1750-1800**



Most common in the colonial period were executions for the alleged taking of a life. Two people were hanged for murder and one for poisoning in the early 1750s; the fourth execution was for burglary in 1773. The most unusual case of those in the colonial period was that of Phillis, a seventeen-year old slave who worked at an apothecary in Boston. Phillis was convicted of poisoning her master’s child by putting “Arsenick or Ratesbane” into the infant’s milk. She allegedly also confessed to killing another infant of the same family.<sup>272</sup> The last execution of the colonial period was the most controversial hanging Bostonians witnessed in the late eighteenth century. Levi Ames, convicted of burglary, was only 21-years old when he walked to the gallows

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<sup>272</sup> Mather Byles, *The Prayer and Plea of David, to be delivered from blood-guiltiness, improved in a sermon at the ancient Thursday-lecture in Boston, May 16<sup>th</sup> 1751. Before the execution of a young Negro servant, for poisoning an infant* (Boston, 1751).

on the Boston-Neck in October 1773. Thirteen separate publications – nine ballads, a broadside featuring Ames’s last speech, and three sermons – accompanied the hanging, making it the most publicized execution in early America.<sup>273</sup>

Three-fourths of Boston’s executions (74%) between 1750 and 1800 occurred between 1783 and 1800. Seventeen people – sixteen men and one woman – were hanged either on the Boston Common or on the Boston Neck. The majority of these hangings (11 of 17) took place in the initial years of the early republic when the North American colonies, including Massachusetts, experienced a failing economy – a post-war depression with high levels of unemployment and poverty. Thirteen of the seventeen executions (77%) were for property crimes; three more (18%) were for combined property/personal crimes; and only one was for a personal crime. One of the cases demonstrates that despite the relative infrequency of executions in Boston authorities were nevertheless concerned about proper implementation of a death sentence. In the aftermath of Joseph Taylor’s hanging for robbery, a pamphlet circulated in Boston, announcing Taylor’s survival and escape. Written in the form of a letter supposedly by Joseph Taylor himself, the author of *The Wonderful Monitor, or Memorable Repository: Containing a Curious and Most Astonishing Account of the Revivication of Young J. Taylor* claimed that he himself had been revived after being hanged and had fled the state. When rumors of Taylor’s survival spread throughout the city of Boston, authorities ordered “four men [of] this town” to “sail down to the island on which he [Taylor] was buried.” Upon “looking into his coffin, [they] found him in the manner in which he was interr’d.”<sup>274</sup>

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<sup>273</sup> Five of the ballads were published before the execution took place and several of the thirteen pamphlets and sermons appeared in several editions. See *Daniel E. Williams, Pillars of Salt: An Anthology of Early American Narratives* (Madison: Madison House Publishers, 1993), 186. For more details on Ames, see Chapter 4.

<sup>274</sup> *Boston Gazette*, July 7, 1788.

Those executed in Boston were mostly male, relatively young, and poor. Twenty-one of the twenty-three condemned were men; only two were women (see Table 2). Based on sixteen cases of which the age is known, the average age was 25.5 years old, with nine persons under the age of twenty-five, the youngest having been seventeen. In all but two cases, the occupation of the condemned is known. The two women were Phillis, a slave, and Rachel Wall, a widow and notorious pirate. Almost half were described as laborers in the court records; five others (22%) were employed as sailors; two were soldiers; and the remaining two were a bricklayer and a slave. The race of those executed (see Table 3 below) is more difficult to determine, as it was not always noted. Of the thirteen cases (57%) in which the racial background was mentioned, ten people were white (77%) and three black (23%). The fact that over half of the condemned were from the lower class illustrates the importance of capital punishment in the disciplining of the laboring poor.

**Table 2: Executions in Boston by Gender, 1750-1800**

	Frequency	Percent
female	2	8.7
male	21	91.3
Total	23	100.0

**Table 3: Executions in Boston by Race, 1750-1800**

	Frequency	Percent
unknown	10	43.5
black	3	13.0
white	10	43.5
Total	23	100.0



Another characteristic that several of the condemned shared comes to light with the analysis of broadsides and pamphlet. They were citizens of the Atlantic more than any single country. John Bailey – hanged for burglary in 1790 – was born free in New York. At the age of six he boarded a ship and began a lifetime of traveling around the Atlantic, sailing to St. Lucia, Ireland, Liverpool. He arrived in Boston and bound himself “apprentice to Mr. *Joseph Homberry*, tailor-chandler” but soon ran away and was shortly after sentenced to death at the age of nineteen.<sup>275</sup> John Baptist Collins was born in France and at the age of sixteen became a cooper’s apprentice in Holland. Collins was probably sold to the East India Company, as, according to the broadside’s author, “the Master...makes a Practice of sel[ling] them for Soldiers or Sailors [to the] *East India Company*.” According to his dying confession, Collins sailed to the East Indies and spent some time at the Cape of Good Hope. On one his voyages, he met his accused accomplices Emanuel Furtado, born in Portugal, and Augustus Palacha, born in Italy. In 1794, all three were executed for murder and piracy, allegedly committed on a voyage to Boston.<sup>276</sup>

Placed in the larger context of Massachusetts, Boston stands out as the place with the most executions. Of the sixty-six people executed in the state of Massachusetts, slightly more than a third (35%) were condemned in Boston.<sup>277</sup> Worcester had the second largest number of executions. It must be emphasized, however, that the location of twenty-nine executions in Massachusetts is unknown. Among those executed in rural Massachusetts were eight African Americans (19%), four of whom were slaves, and five Native Americans (12%). Four of the

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<sup>275</sup> *Life, Last Words and Dying Confession of John Bailey: A Black Man, Who Was Executed at Boston This Day, being Thursday, October 14, 1790, for Burglary* (Boston, 1790).

<sup>276</sup> *Dying Confession...Pirates, viz. Collins, Furtado and Palacha, who were...at Boston, this Day, being the Thirteenth of July, 1794, for the Murder of Mr. Enoch Wood* (Boston, 1794).

<sup>277</sup> The location of the execution is known in thirty-seven of sixty-six cases. If only those cases are taken into account, executions in Boston make up 62.2% of all executions in Massachusetts.

forty-three people (9%) executed outside of Boston were women. Unlike Boston, where hangings for personal crimes were significantly lower than those for property crimes, personal crimes (37%) were the most frequent cause of a death sentence and a subsequent execution outside of Boston. Property crimes made up twenty-three percent of the total. Therefore, fifty-nine percent of all executions in Massachusetts that involved property crimes took place in Boston, while eighty-four percent of all hangings for personal crimes occurred outside of Boston. Variation in the causes of capital punishment in rural and urban areas illustrates how different Boston was compared to the rest of Massachusetts. More commercialized and deeply involved in the Atlantic economy, Boston presented many opportunities for robberies and burglaries with its many warehouses, stores, wharves, and ships.

The protection of property as a priority in capital cases mirrors the general prosecution patterns in Suffolk's Superior Court of the Judicature between 1750 and 1794. Of the 715 cases prosecuted in the upper court, 528 cases (74%) involved alleged property crimes and ninety-five cases (13%) concerned personal crimes such as murder and assault. The significance of property in criminal cases is further confirmed in the conviction rates: eighty percent of defendants in cases involving property offenses were found guilty but only forty-six percent in cases involving personal crimes. Of the forty-eight charges for murder, only eleven defendants (23%) were convicted of the original charge (4) or a lesser charge such as manslaughter (7). Three cases resulted in a death sentence. All three defendants – William Welch in 1753, William Wyer in 1754, and Casumo Garcelli in 1783 – were hanged. Fifteen of 191 accusations for a capital property crime such as burglary, robbery, and counterfeiting resulted in the defendant's condemnation. Eleven of those convictions (73%) were eventually carried out while four defendants were pardoned. From those numbers, it becomes clear that, although death sentences

were rarely handed down, the convicted person had a high chance of actually being executed. Once condemned, a defendant had a 78 percent chance of ending his or her life on the gallows.

### **Philadelphia**

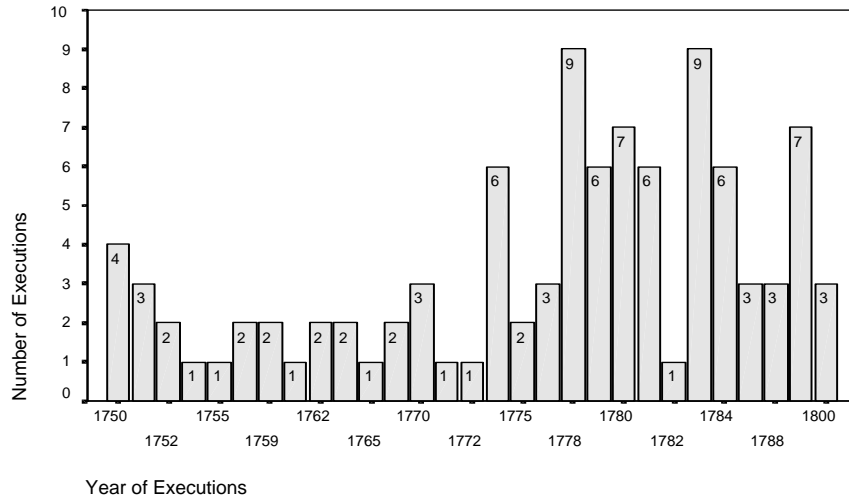
At the 1774 April Session of the Court of Oyer and Terminer in Philadelphia, the “following Persons received Sentence of Death, viz. James Swaine, for murdering his Wife; a Mulatto Woman, for murdering her Child; Barnaby Ripton, for counterfeiting Money; Joseph Price, James Hambleton, Richard Birch, Thomas Stephens, and Conrad Founder, for Burglary.”<sup>278</sup> About a week later, James Swaine, “Mulatto” Elizabeth, Barnaby Ripton, Joseph Price, and Richard Birch were executed “pursuant to their Sentence.”<sup>279</sup> While mass executions such as the one described above, especially for unrelated crimes, were rare in late-colonial Philadelphia, the five condemned were representative of those who met their fate at the city’s gallows. Between 1750 and 1775, thirty-six people, including the only two women executed in the second half of the eighteenth century, were hanged in Philadelphia for a variety of different crimes: almost two-thirds (64%) were executed for property crimes, primarily for burglary, including one woman, but also for counterfeiting and highway robbery; the second largest category of crimes that led to executions was the personal crime of murder (19%); three German servants (8%) were hanged for a combination of robbery and murder; during the French and Indian War (1754-1763), two soldiers of the First Battalion of Royal Americans were hanged for desertion (military crime); and “Mulatto” Elizabeth, was executed for infanticide (reproductive crime).

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<sup>278</sup> *Pa. Gazette*, April 30, 1774.

<sup>279</sup> *Pa. Gazette*, May 4, 1774.

**Table 4: Executions in Philadelphia by Year, 1750-1800**



The revolutionary period saw a significant increase of executions in Philadelphia compared to the colonial period. Between 1776 and 1783, forty-one men were hanged, which constitutes a rate of 5.1 executions per year compared to 1.4 hangings per year during the late colonial period (1750-1775). There were nevertheless some important similarities in the pattern of executions during the revolutionary and colonial periods. Of the forty-one hangings, twenty-five were for property crimes (61%). Once again burglary was the most frequent cause for execution among property crimes, followed by passing counterfeit money, robbery, highway robbery and piracy. Executions for personal crimes decreased somewhat in the revolutionary period (12%) compared to the colonial period (19%). Eleven executions (23%) were directly related to the struggle of independence and the outbreak of war with Britain. Six hangings (15%) were for political crimes such as treason and aiding the enemy. Among those executions were two of the most controversial hangings in Philadelphia – two well-off Quaker artisans for aiding the enemy during Philadelphia’s occupation by the British. Some of the executions for property crimes were also closely related to the revolutionary struggle, as the condemned were either also

accused or at least suspected of treason.<sup>280</sup> Not surprisingly, military executions also increased during the revolutionary period. All five executions took place early during the war of independence when authorities were especially concerned with desertion.

After the military defeat of the British, executions remained at a higher level than in the colonial period until 1789 with 3.1 hangings per year between 1784 and 1789 (see Table 4). No executions occurred between October 1789 and May 1800 when Philadelphia was the site of a substantial anti-death penalty movement, resulting in a reduction of capital crimes to first-degree murder only by 1794 and in a de-facto “moratorium” on executions in the city for ten years. Therefore the overall rate of executions in Philadelphia in the early republic was 1.4 executions per year, going back to the colonial rate. It is important to keep in mind, however, that the nineteen executions in the 1780s were concentrated at two moments: nine hangings took place in the first two years of the early republic (1784/1785); and ten executions occurred right around the passing of the Constitution (1788/1789). Seventy-seven percent of hangings involved a property crime, despite the fact that there was a drastic reduction in capital property offenses in the penal reform law of 1786, instituting hard labor as an alternative to the gallows.<sup>281</sup> Executions for personal crimes decreased further to nine percent. As in the revolutionary period, Philadelphians witnessed a controversial execution: the hanging of Abraham and Levi Doan in September 1788. The brothers – known as notorious highway robbers and Tories during the Revolution – had been outlawed in October 1782 after failing to appear at their trial for robbery and burglary in Bucks County. Only ten days after Congress had adopted the Constitution as the

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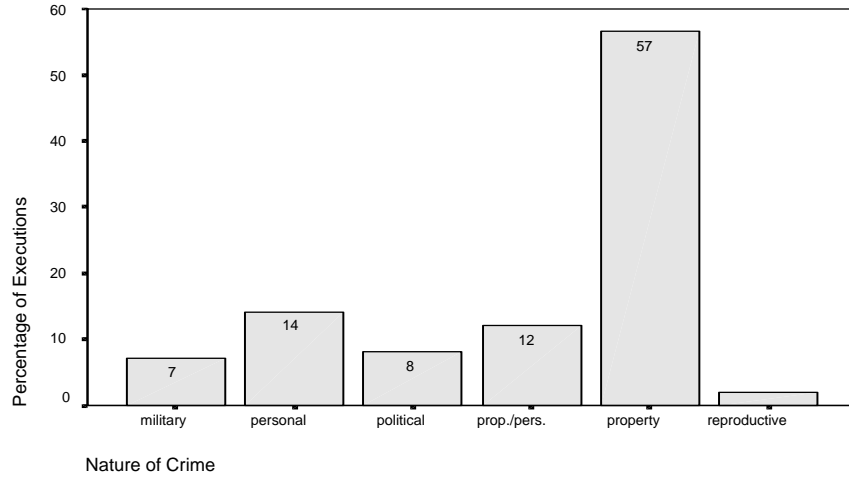
<sup>280</sup> Abijah Wright, for example, was hanged for burglary but also had been indicted for treason. Samuel Freeman, Lot Subzey, and Kemble Stackhouse were executed for burglary. Similar to Wright, they were also suspected of being spies for the British.

<sup>281</sup> The penal reform movement nevertheless had an impact as in forty-one percent of the cases the defendants were convicted of a property crime and personal crime (burglary/murder; piracy/murder). Only thirty-six percent involved only a property crime.

legal, political and economic framework for the United States, the two brothers were executed without the benefits of a trial.

Overall, ninety-nine people were executed in Philadelphia between 1750 and 1800. While executions during the colonial period occurred in an irregular pattern, this changed dramatically with the beginning of the revolutionary war when several executions took place every year. The early and late war years saw the highest number of executions: nine executions took place in 1778 and nine more in 1783, with slightly lower numbers throughout the years in between. Executions remained at a higher level in the initial years of the early republic than during the colonial period, as nineteen executions took place between 1784 and 1789. The remaining three hangings took place in 1800. Burglary (31%) was the crime that most often led to a capital conviction and execution, followed by murder (14%) and combined property and personal crimes (12%). Executions for certain crimes such as treason, desertion and aiding the enemy occurred almost exclusively during the revolutionary years, as those offenses were closely related to the struggle for independence. Executions for property and personal crimes were more evenly divided throughout the half-century although hangings for property and property/personal crimes spiked during the 1780s, resulting in execution peaks in 1783/84 and 1788/1789. Overall, executions for property crimes (see Table 5) were by far the most frequent with fifty-seven percent followed by personal crimes (14%) and combined property/personal crimes (12%). Executions for political crimes made up eleven percent (11%); those for military crimes four percent; and those for reproductive crimes such as rape and infanticide two percent.

**Table 5: Percentage of Executions in Philadelphia by Nature of Crime, 1750-1800**



While it is often difficult to determine the social and economic background of those executed, it is possible to establish a social profile of the condemned: they were, by and large, young, male, and poor. The vast majority of those executed were male (98%). Most of them were also white. There are only five cases known in which the condemned was not white: three were described as black and two as mulatto (see Table 7). The race of the executed is as in Boston hard to verify. Court records generally do not give the defendant's race but other sources such as newspapers or letters do sometimes mention race. In some cases, the name of the accused gives away his or her race, as in the case of "Mulatto" Elizabeth. Based on twelve known cases, the median age of the condemned was 26.2 years at the time of execution. It is important to note that eight of the condemned were younger than twenty-five and one was under eighteen years, pointing to the probability that most of those who walked to the gallows in Philadelphia were actually in their early twenties. The occupation of thirty-seven executed people (38%) can be

told from the court records.<sup>282</sup> Nine of the condemned (24%) were listed as laborers; six as servants (16%); five as artisans (14%) – a carpenter, a jeweler, a miller, a periwig maker, and a tailor; three as sailors (8%); two as professionals or businessmen (5%) – one doctor and one tavern owner; and two as slaves (5%). Soldiers, although in most cases they would have had another primary occupation, were the largest group with twenty-seven percent. Two more of the condemned – a man and woman – were transported convicts from England and most likely employed as servants.

**Table 6: Executions in Philadelphia by Gender, 1750-1800**

	Frequency	Percent
female	2	2.0
male	97	98.0
Total	99	100.0

**Table 7: Executions in Philadelphia by Race, 1750-1800**

	Frequency	Percent
black	3	3.0
mulatto	2	2.0
unknown	2	2.0
white	92	92.9
Total	99	100.0

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<sup>282</sup> The matter of occupation of the condemned is not as simple as it might appear. Occupations are mentioned in indictments but not court minutes, which are the most extensive trial sources available. The court records of the 1780s reflect the efforts of “equalizing” society in the aftermath of the Revolution when indicted men were all listed as “yeomen” rather than with a specific trade or profession.



Although parts of the available data are incomplete, certain conclusions can be drawn from it. Most of those executed, especially the laborers, servants, and sailors, should be considered poor and periodically living barely above or under the existence minimum. They experienced the ups and downs of the Atlantic economy, of which Philadelphia was an integrated part.<sup>283</sup> The only well-off condemned were two Quaker artisans – the miller and the carpenter – hanged as traitors during the Revolution. Although probably better off than most, Francis McCoy, the tavern owner, and his wife, who was also sentenced to death but then pardoned, might exemplify the pattern of life of many who walked to the gallows. Despite owning a business, they drifted in and out of Philadelphia’s underground economy, allegedly “supporting themselves and Family, chiefly by Pilfering and stealing for many Years.”<sup>284</sup> Fragments of evidence for those who appeared in the courts in the three cities point to a life that evolved around periods of employment and times of deep poverty when committing crimes such as burglary and theft became a means of survival.

To understand the role of capital punishment in Philadelphia, it is important to compare the application of the death penalty in the city with that in Pennsylvania as a whole. Between 1750 and 1800, two hundred people were executed in Pennsylvania. Therefore almost half (99 or 50%) of the executions occurred in Philadelphia (see Table 8). When looking at Pennsylvania as a whole, the distribution of executions over the fifty years resembles that of Philadelphia, with some notable differences. During the colonial period, seventy-nine executions took place in the

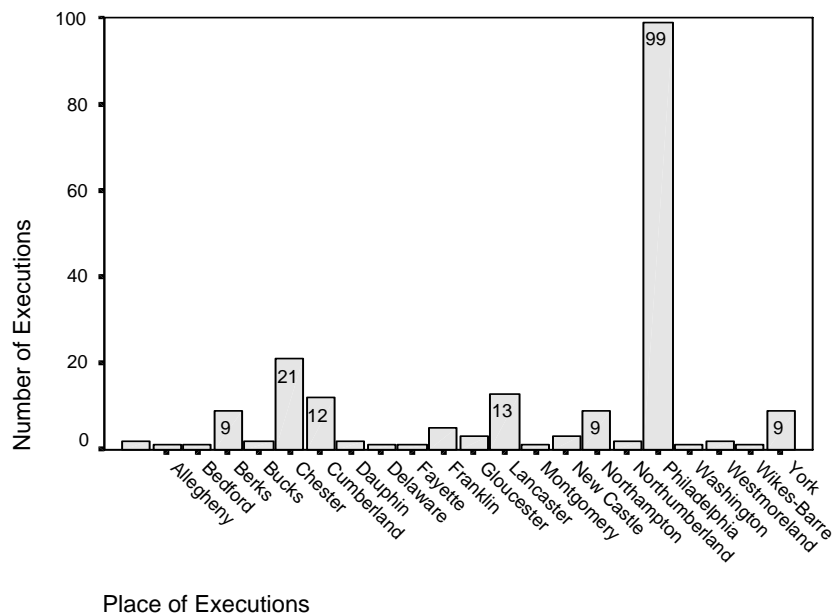
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<sup>283</sup> For economic conditions in Philadelphia during the second half of the eighteenth century, see Billy G. Smith, *The “Lower Sort:” Philadelphia’s Laboring People, 1750-1800* (Ithaca: Cornell University Press, 1990), especially chapter 3. For poverty levels in pre-Revolutionary America, see Gary B. Nash, “Poverty and Poor Relief in Pre-Revolutionary Philadelphia,” *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 33 (January 1976), p. 3-30

<sup>284</sup> *An Account of the Robberies Committed by John Morrison and his Accomplices, in and near Philadelphia, 1750* (Philadelphia, 1750-51), p. 11.

state of Pennsylvania, constituting a rate of three executions a year. With the outbreak of the war of independence, the execution rate increased to 8.3 executions per year (1775-1783). As in Philadelphia where the rate declined significantly after the Revolution, it also went down to pre-revolutionary levels in Pennsylvania as a whole (3.2 executions/year). The peak in executions during the Revolution was slightly delayed compared to that in Philadelphia: fourteen took place in 1779 and fifteen in 1780. As in Philadelphia, however, the other peak years were 1783 (11 executions) and 1784 (14). These same peak years appear in the analysis of Pennsylvania when the numbers for Philadelphia are excluded.

**Table 8: Executions in Pennsylvania by County, 1750-1800**



The most significant difference between executions in Philadelphia and those in more rural areas is the distribution of the crimes for which people were condemned. In Philadelphia, fifty-seven percent of the condemned were hanged for property crimes, while in rural areas they

made up only thirty-seven percent. Personal crimes were the leading cause of execution outside of Philadelphia at forty-nine percent. This means that seventy-nine percent of all executions for personal crimes (49 out of 63) happened outside of Philadelphia, while sixty percent of all executions for property crimes (56 out of 93) occurred in Philadelphia. Furthermore, eighty-seven percent of hangings for reproductive crimes (13 out of 15) such as infanticide and rape took place in rural Pennsylvania, while all the condemnations for combined property/personal crimes (12) happened in Philadelphia. Taking the economic and social history of Philadelphia – the main focus of the following chapter – into consideration, the above numbers are not surprising.

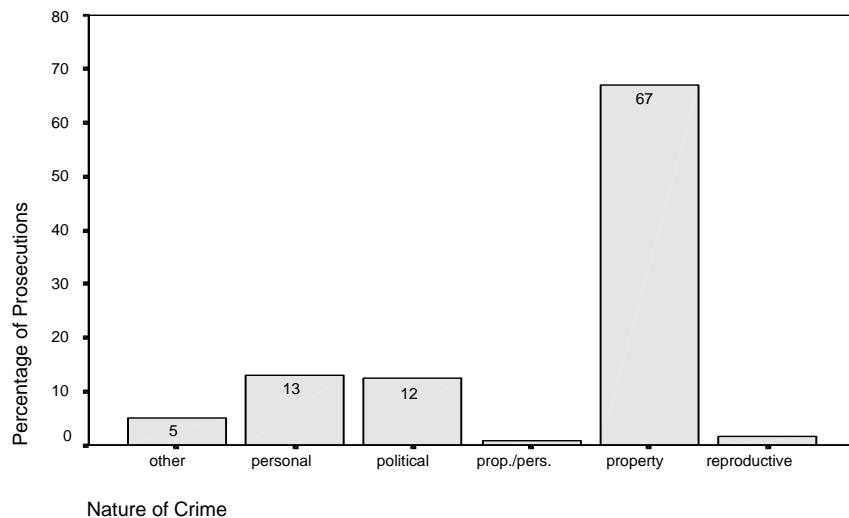
**Table 9: Rates of Execution in Pennsylvania, 1750-1800**

	<u>1750-1775</u>	<u>1776-1783</u>	<u>1784-1800</u>
<b>Philadelphia</b> (excl. Pennsylvania)	36 exec. – 36% or 1.4 exec./year	41 exec. – 41% or 5.1 exec./year	22 exec. – 22% or 1.3 exec./year
<b>Pennsylvania</b> (excl. Philadelphia)	exec. – 43% or 1.7 exec./year	25 exec. – 25% or 3.3 exec./year	33 exec. – 33% or 1.9 exec./year
<b>Pennsylvania</b> (incl. Philadelphia)	79 exec. – 40% or 3.0 exec./year	66 exec. – 33% or 8.3 exec./year	55 exec. – 28% or 3.2 exec./year

In the second half of the eighteenth century, Philadelphia was a thriving port engaged in Atlantic trade and commerce, which helped to make it the wealthiest city in North America at the time. In a city full of warehouses, stores, shops and homes of considerable wealth, opportunity for property crimes was far more abundant than in rural areas. More importantly, a closer look

shows that not all Philadelphians benefited from the city’s economic growth. Billy Smith argues in his book *The “Lower Sort”* that “the income, living standards, and economic and occupational mobility of the lower classes did not improve during the century’s last fifty years.” Despite “short periods of relative prosperity” for poor Philadelphians, “the specter of poverty and deprivation haunted their lives,” pushing them into the hands of private and public charities, other relief institutions such as the poor house or the workhouse, and, at times, into an underground economy where stolen goods, including provisions, could be bought and sold.<sup>285</sup> In 1751, for example, John Morrison allegedly confessed to several burglaries. While Morrison and his accomplices sold most of the stolen goods, at times transporting them to New York, or hid their bounty in stables and haylofts for later sale, they also used some of the goods for themselves, wearing stolen goods and giving food to those who offered them hide-outs and cover.<sup>286</sup>

**Table 10: Percentage of Prosecutions by Nature of Crime in Philadelphia, 1750-1800**



<sup>285</sup> Smith, *The “Lower Sort,”* chapter 3, p. 91 (first quote), p. 125 and Nash, “Poverty and Poor Relief in Pre-Revolutionary Philadelphia,” *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 33 (January 1976), p. 3-30.

<sup>286</sup> *An Account of the Robberies Committed by John Morrison and his Accomplices, in and near Philadelphia, 1750* (Philadelphia, 1750-51), p. 7-8.

The prevalence of property crimes among executions in Philadelphia is duplicated in the records of the Superior Court for Philadelphia County (see Table 10). Although the full records for all court sessions are not available, the existing documents illustrate certain tendencies in prosecution, which parallel the analysis of executions in Philadelphia. In sixty-seven percent of “true bills” (404 cases) – those indictments that went to trial – the accused were charged with property crimes. In almost seventy-five percent (75%) of the cases, the trial ended in the conviction of the defendant: sixty-eight were guilty verdicts according to the indictment and another six percent were partial verdicts in which the juries convicted of a lesser crime. Seventy trials (23%) ended in a death sentence and thirty-eight defendants were actually executed, meaning that fifty-four percent of those capitally convicted were hanged and 45.8 percent were pardoned. The execution rate was even higher for personal crimes, although the overall conviction rate for such crimes was lower (65%) compared to that for property crimes (75%). There were fifty-five convictions for personal crimes in eighty-three cases. Sixteen of those – all of them indictments for murder – resulted in a death sentence; twelve defendants were executed according to their verdict. Positive indictments and subsequent trials for political crimes (74 cases) were almost as frequent as those for personal crimes (83 cases) during the second half of the eighteenth century. While forty-five defendants were found guilty, only three death sentences were pronounced and two men were actually hanged, speaking to the unpopularity among Philadelphians of charges such as treason. Reproductive crimes appeared least frequently in the Superior Court. Of the nine cases, five ended in conviction, including three death sentences. Two people – “Mulatto” Elizabeth for infanticide and Francis Courtney for rape – were hanged.

## Charleston

In July 1769, Dolly and Liverpoole were burned at the stake on the green in front of Charleston's workhouse. Dolly for the poisoning of her mistress's child and the attempted poisoning of her master; Liverpoole for providing the poison.<sup>287</sup> On November 1773, Williamson Willis and Levi Sparkman were convicted for stealing a Negro. Both were given a respite for two weeks but Willis was hanged at the end of November.<sup>288</sup> Sparkman was probably pardoned, as there is no further mention of his case. On December 21, 1797, Figaro and Jean Louis were hanged for treason and conspiracy. A few days later, Mecredi, a free black was hanged as an accomplice.<sup>289</sup> These three incidents are representative of executions in Charleston during the second half of the eighteenth century. Not surprisingly, slavery, and therefore race, dominated the application of capital punishment in Charleston and in South Carolina as a whole.

During the late colonial period (1750-1775), thirty-eight people were hanged, burned or gibbeted in Charleston, constituting a rate of 1.5 executions per year. Executions peaked in 1750 and 1755 with five executions each year and again in 1771 with six executions. The crime that led to the accused's execution is known in twenty-five cases (66%): property crimes made up fifty-two percent; personal crimes thirty-two percent; and the crime of poisoning<sup>290</sup> sixteen percent. Among the thirteen condemnations for a property crime were five cases that involved alleged crimes typical for a slave society – “stealing negroes” and aiding runaway slaves. Four

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<sup>287</sup> *South Carolina Gazette*, August 1, 1760 (extraordinary issue) and *Georgia Gazette*, August 16, 1769.

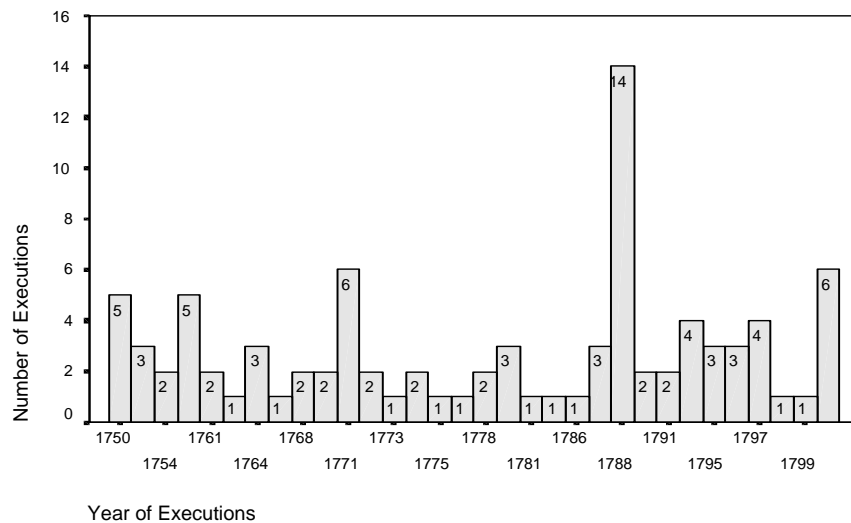
<sup>288</sup> *South Carolina Gazette*, November 1, 15, and 29, 1773.

<sup>289</sup> For quotes, see Petition of John Desbeaux, December 4, 1798 (trial transcript), *General Assembly Petitions, 1783-1800*, South Carolina State Archives and *Boston Gazette*, December 18, 1797. For Mecredi, see transcript of the Court of Justices and Freeholders, Charleston, November 27, 1797, in James Lowndes, *Legal Documents*, South Caroliniana Library, University of South Carolina.

<sup>290</sup> Because of the significance of poisoning in slave societies, I categorized the offense as a separate crime rather than putting it into the category of “personal crime.”

additional executions were the result of suspected poisonings by slaves of their master, mistress or his/her family. Among the condemned were five women – all of them slaves. Another twenty condemned can be identified as male, while for the remaining thirteen the gender remains unknown. Of the thirty-eight people executed between 1750 and 1775, twenty-five (66%) were slaves, including two slave doctors. At least one of the condemned was a free black piloting boats and ships in and around Charleston’s harbor. In 1764, Wholanawidzie, a Creek Indian, was hanged in Charleston for the murder of a settler, making him the only Native American executed in the city during the second half of the eighteenth century.<sup>291</sup> The remaining ten people (26%) were white. The race of only one condemned is unknown, suggesting that “race” was a more important social marker in Charleston than elsewhere.

**Table 11: Executions by Year in Charleston, 1750-1800**



Like Boston and Philadelphia, Charleston saw its share of unusual, bizarre and controversial cases. In 1761, Jacob Weber was hanged for the murder of two members of his

<sup>291</sup> *Georgia Gazette*, November 15, 1764.

own religious sect, the Weberites. A Swiss-German named Weber apparently killed his fellow believers in a moment of religious frenzy by burying and suffocating them under several mattresses.<sup>292</sup> The most controversial execution was that of Jeremiah Thomas, a free black and boat pilot, on the eve of the revolution. Thomas's conviction and condemnation led to a serious disagreement between American and British authorities who accused the Americans of using the execution to cause fear and mobilize the population for the looming war of independence. Thomas was hanged and then burned on August 18, 1775 after he was found guilty of assisting runaway slaves. Two slaves testified against him. Sambo claimed that he had met Thomas at on Simmon's wharf when Thomas spoke about the coming of war "to help the Poor Negroes."<sup>293</sup> Even more damaging was the statement of Jemmy who claimed that Thomas had asked him to deliver guns to another runaway slave "to be placed in Negroes hands to fight against the Inhabitants of this Province."<sup>294</sup> British officials, including the royal governor, believed, however, that the charges against Thomas were "the most notorious falsehoods propagated, to work up the people in every part of America."<sup>295</sup>

The revolutionary period (1776-1783) apparently saw a decline in executions in Charleston, although the generalization should be treated with caution, as sources are difficult to come by. Only seven executions can be documented with certainty. Not surprisingly, the majority of those executions were for military and political crimes. Two soldiers – John McNamara and Thomas Malcom – were shot for desertion in 1778. Three others, two in 1779 and one in 1781, were hanged for treason. The remaining two – John Jacobs and a slave – were

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<sup>292</sup> G. D. Bernheim, *History of the German Settlements and of the Lutheran Church in North and South Carolina*, p. 195-205.

<sup>293</sup> Declaration of Sambo, June 16, 1775, *South Carolina Public Records*, vol. 35, p. 216.

<sup>294</sup> Declaration of Jemmy, June 16, 1775, *S.C. Public Records*, vol. 35, p. 215.

<sup>295</sup> Letter by William Campbell (governor), August 31, 1775, *S.C. Public Records*, vol. 35, p. 191.



condemned for counterfeiting and arson. The most famous execution of the Revolution in Charleston and probably South Carolina was that of Isaac Hayne who was hanged for treason by the British in 1781. Hayne, a gentleman and planter, was charged with being in arms against the British although he had taken the oath of allegiance to the king.<sup>296</sup> How can one explain only one execution of a slave? This number might point to a shift of power from established institutions such as the Court of Justices and Freeholders, in which slaves were usually tried, to the individual master at a time when the city experienced major disruptions of daily life due to war and occupation. Furthermore, slave owners were concerned about their slaves' discipline. Runaway slaves could and did seek refuge with the British army in hope that they would be freed, and the specter of slave rebellion must have loomed large in slave owners' minds at a time of conflict and war. Harsh and excessive punishment by slave owners easily could have triggered large-scale resistance from mass desertions to outright revolt.

**Table 12: Rates of Executions in South Carolina, 1750-1800**

	<u>1750-1775</u>	<u>1776-1783</u>	<u>1784-1800</u>
<b>Charleston</b> (excl. South Carolina)	38 exec. – 42% or 1.5 exec./year	7 exec. – 8% or 0.9 exec./year	45 exec. – 50% or 2.6 exec./year
<b>South Carolina</b> (excl. Charleston)	183 exec. – 76% or 7.0 exec./year	4 exec. – 2% or 0.5 exec./year	55 exec. – 23% or 3.2 exec./year

<sup>296</sup> E. Alfred Jones (ed.), *The Journal of Alexander Chesney, a South Carolina Loyalist in the American Revolution and After* (Ohio State University, 1921), p. 94-95. William Hazzard Wigg, *A Brief Memoir of the Life, and Revolutionary Services, of Major William Hazzard Wigg, of South Carolina* (Washington: C. Alexander, 1860), p. 14-20.

<b>South Carolina</b> (incl. Charleston)	221 exec. – 42% or 8.5 exec./year	11 exec. – 3% or 1.4 exec./year	99 exec. – 30% or 5.8 exec./year
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The period of the early republic saw the highest rate of executions in Charleston for 1750-1800 with 2.6 executions per year. Twenty-three (52%) of the forty-five condemned were slaves, one was a free black, and nineteen (41%) were white; the race of two people is unknown. The majority of those executed (69%) were hanged, gibbeted or burned for property crimes or a combination of a property and a personal crime. Five people (11%) were hanged for personal crimes, and three more – two slaves and one free black – for treason and conspiracy involving a suspected slave revolt. The percentage of white people executed during the early republic increased significantly compared to the colonial period, suggesting that authorities and elites were as much concerned about the discipline among the white population as they were about it among slaves. The year 1788 stands out in particular when fourteen people were hanged, eleven of them within days of each other in the month of June. Six people – five men and one woman – were hanged on June 16 for the alleged robbery and murder of Nicholas John Whiteman. Several of the condemned had not been present at the scene of the crime but were convicted of being accomplices and members of a gang of highway robbers.<sup>297</sup> Four days later, four pirates met their fate on the gallows for two separate incidents. Two more pirates were hanged in July.<sup>298</sup>

Eighteen of the twenty-four slaves who were condemned between 1783 and 1800 were executed between 1791 and 1800. With the outbreak of a major slave revolt and subsequent revolution in St. Domingue (Haiti), the specter of revolt once again preoccupied the minds of

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<sup>297</sup> *City Gazette*, June 9, 1788; *Boston Gazette*, July 7, 1788; and Treasury Voucher by James Kennedy, July 1, 1791, South Carolina State Archives.

<sup>298</sup> *Boston Gazette*, July 7, 1788 and Treasury Voucher by James Kennedy, July 1, 1791, South Carolina State Archives.

slave owners in Charleston. While not all eighteen executions are clearly linked to the Haitian revolution, fears reached new heights in Charleston and South Carolina, especially after French refugees, including slaveholders and their slaves, flooded into the city. Throughout the 1790s, rumors of an imminent slave revolt circulated almost constantly in the streets of Charleston. In 1793, a New York newspaper reported about Charleston “that the NEGROES have become very insolent, in so much that the citizens are alarmed.”<sup>299</sup> In 1796, William Read wrote to his brother that “an attempt...was made on our part of the city last Sunday night” after a deliberately set fire was discovered. In 1797, rumors of an alleged slave revolt once more created a scare among Charleston’s inhabitants. As mentioned above, two slaves – Jean Louis and Figaro – and a free black were hanged in December 1797, accused of planning “to set fire to the city as they had formerly done in St. Domingo.”<sup>300</sup>

In the case of Charleston, it is difficult to establish a social profile of those executed, as little to no information is known about them. Forty-nine of the condemned (55%) were slaves but not much can be determined about their lives. In many cases, the name of the slave owner who petitioned the assembly for reimbursement after the execution of his or her slave is the only information available. The same lack of evidence into the social and economic background is true for the whites who were hanged or shot. They too merited no more than a short notice in the newspaper. For a few of the condemned, the occupation in the most general sense is obvious: forty-nine (55%) were slaves, including two slave doctors; ten (11%), both black and white, worked in maritime trades – eight sailors, a captain, and a pilot; and three more (3%) were soldiers. One characteristic that can be determined in many of the cases is the condemned’s gender, which is known for seventy-two people (81%): sixty-three (71%) were men and nine

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<sup>299</sup> Quoted in Aptheker, *Negro Slave Revolts*, p. 96.

<sup>300</sup> *Boston Gazette*, December 18, 1797.

(10%) were female. A closer look at the crimes for which women were condemned illustrates the primacy of arson and poisoning. Ten slaves – four men and six women – were executed after being convicted of poisoning (4) or arson (6).

**Table 13: Executions in Charleston by Gender, 1750-1800**

	Frequency	Percent
female	9	10.0
male	64	71.1
unknown	17	18.9
Total	90	100.0

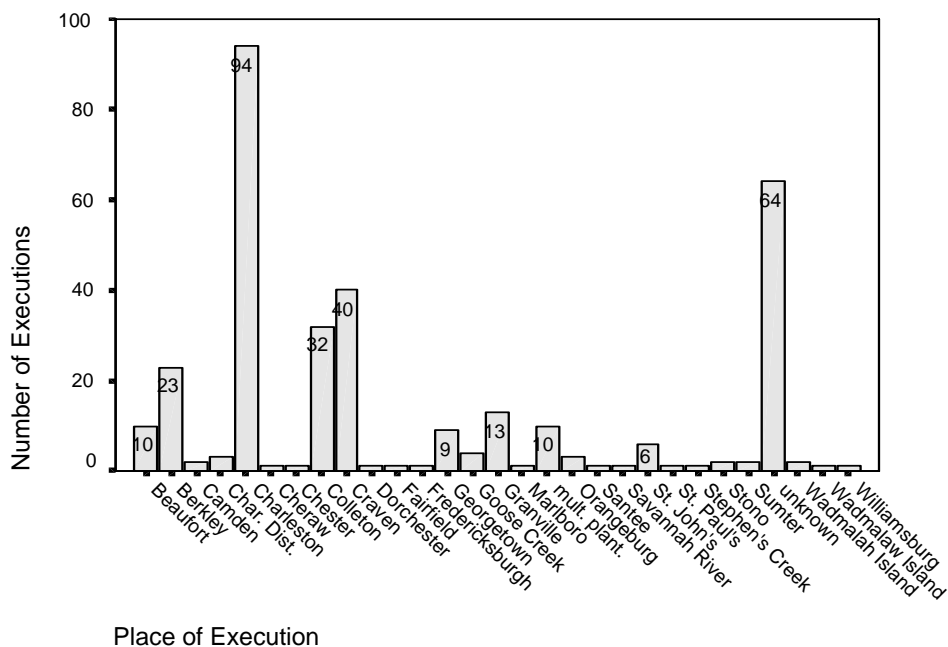
**Table 14: Executions in Charleston by Race, 1750-1800**

	Frequency	Percent
black	51	56.7
Nat. Am.	1	1.1
unknown	3	3.3
white	35	38.9
Total	90	100.0

The statistics for South Carolina confirm the significance of race when it comes to the application of the death penalty. Of the 331 people executed in the state, 277 (84%) described as black or mulatto, all except two being slaves. Only 49 (15%) were white. Race becomes an even more dominating characteristic when Charleston is excluded from the analysis. In rural South Carolina, 224 (93%) of 242 people executed were slaves. Therefore, capital punishment was clearly an essential tool to enforce discipline among slaves and to uphold the racial order of the slave society. Like Philadelphia and Boston, Charleston stands out with the highest number of execution in the state. In 256 cases, the place of execution can be determined. Ninety-six of those

executions (38%) took place in Charleston District, with ninety executions in the city proper. Forty executions (16%) occurred in Craven County and thirty-two (13%) in Colleton County. Compared to the other states, where the vast majority of the condemned were hanged, South Carolina's inhabitants also witnessed burnings and gibbeting. Of the 123 cases in which the way of execution can be determined, thirteen people – twelve slaves and one free black – were burned and eight others, including two pirates, were gibbeted. The actual number was most likely significantly higher, because the manner of execution, especially for slaves, is unknown for the majority of cases (63%).

**Table 15: Executions in South Carolina by County, 1750-1800**



As in Massachusetts and Pennsylvania, personal crimes constituted the reason for the majority of executions in rural South Carolina. In 103 cases the alleged crime is known: forty-five (44%) involved personal crimes and another twenty-six cases concerned accusations of

poisoning; property crimes were the cause of execution in thirty cases (12%). By comparison, in Charleston forty-six cases (51%) involved a property crime, thirteen (14%) a personal crime and four (4%) the crime of poisoning. This means that when those numbers are combined that personal crimes were the cause for execution in sixty-one cases (18%) and poisoning in thirty cases (9%); property crimes or a combination of property and personal crime made up seventy-one executions (21.4%). As in Charleston, women were prominent in executions for poisoning and arson, although in about a third of the cases (13) the condemned's gender is unknown. Thirty slaves were executed for poisoning and ten for arson: women were involved in at least fourteen cases (35%).

Executions in South Carolina, especially those of slaves, were high at moments of crisis, whether real or imagined. The relatively low number of whites who were executed suggests a fear of undermining the racial solidarity essential to the slave system. The particularities of slavery, especially the dual sovereignty of the master and the colony/ state over a slave's life, set certain limits on the use of the death penalty. Because slaves were their master's property, slave owners saw execution as a financial loss, despite monetary reimbursement by the state for executed slaves. Nevertheless, South Carolina's planters and authorities relied heavily on capital punishment – legal or extra-legal – to maintain order among their slaves and to counter their resistance. While the above statistical analysis addresses legal executions of slaves, the extra-legal death penalty sheds additional light on the terror and violence of slavery. In the early 1780s, Hector St. John de Crèvecoeur was on his way to a dinner party on a plantation near Charleston when he passed “a negro, suspended in a cage, and left there to expire.” Crèvecoeur continued his letter as following:

I shudder when I recollect that the birds had already picked out his eyes, his cheek bones were bare; his arms had been attacked in several places, and his body

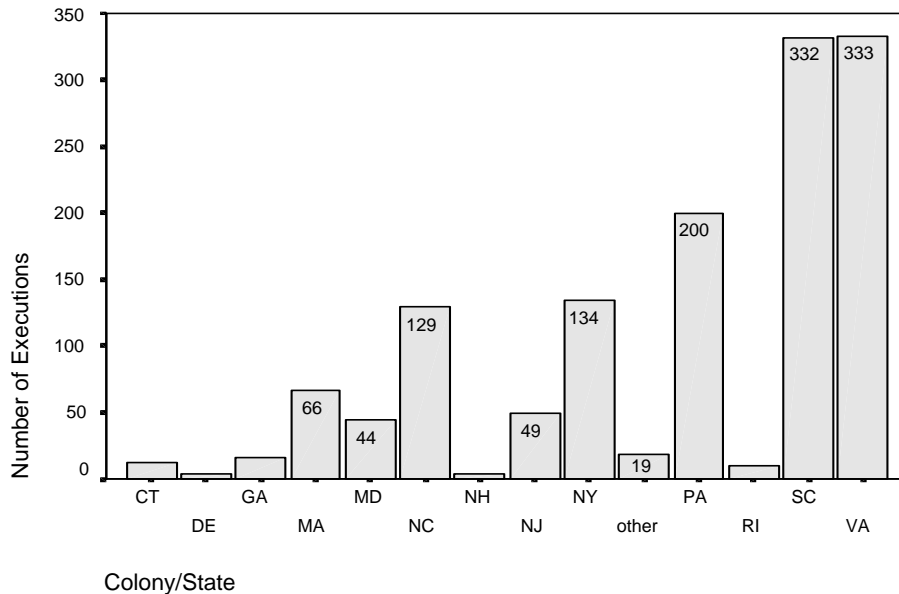
seemed covered with a multitude of wounds. From the edges of the hollow sockets and from the lacerations with which he was disfigured, the blood slowly dropped, and tinged the ground beneath. ...The living spectre, though deprived of his eyes, could still distinctively hear, and begged me to give him some water to allay his thirst.

After Crèvecoeur reached the plantation, the owner explained to him that “the laws of self-preservation rendered such executions necessary.”<sup>301</sup> How many slaves fell victim to such extra-legal capital punishment in the name of “self-preservation” will never be known.

### The Thirteen Colonies and States

At least 1352 people were executed in the thirteen North American colonies and their subsequent states from 1750-1800. This database is far from complete and any conclusions based on the analysis of it should be treated with caution. The following numbers should be treated as the best available until more research adds to our knowledge.

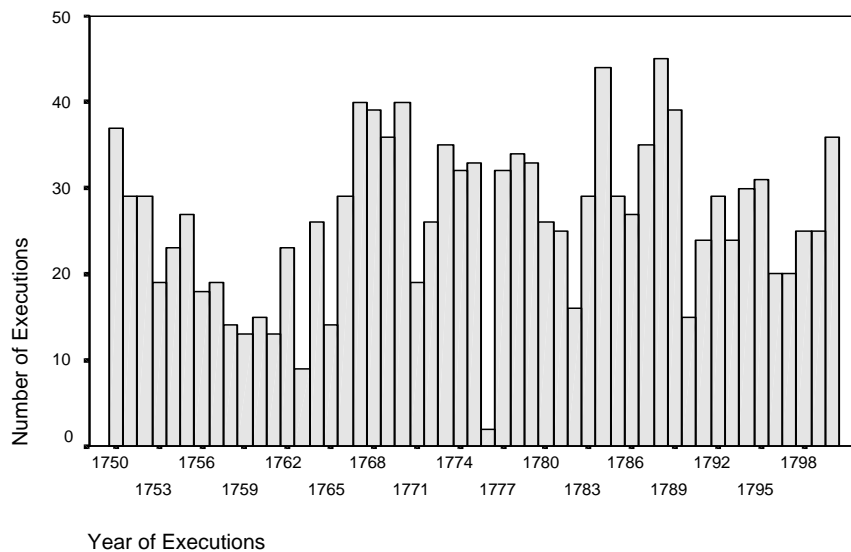
**Table 16: Executions by Colony/State, 1750-1800**



<sup>301</sup> J. Hector St. John de Crèvecoeur, *Letters from an American Farmer* (New York: E.P Dutton, 1957). p. 167-168.

The number of executions varied from region to region but generally increased the further south one looks. The New England states of Massachusetts, Connecticut, Rhode Island and New Hampshire had the lowest number with total of eighty-two executions. A considerably higher number of executions occurred in the mid-Atlantic states such as New York, New Jersey, and Pennsylvania where there were at least 383 executions. Not surprisingly, the highest number occurred in the southern states of Virginia, North Carolina, South Carolina and Georgia where 681 people were executed. During the colonial period (1750-1775), 657 executions took place, constituting an execution rate of 25.6 executions per year. The revolutionary period saw a slight decline of the usage of the death penalty with 24.9 executions per year (199 executions), although those eight years pose an especially difficult challenge in regard to sources, as many government institutions stopped functioning and authority was highly contested. The highest rate of executions with 29.3 executions per year occurred during the early republic with peaks in 1784 and 1788/1789.

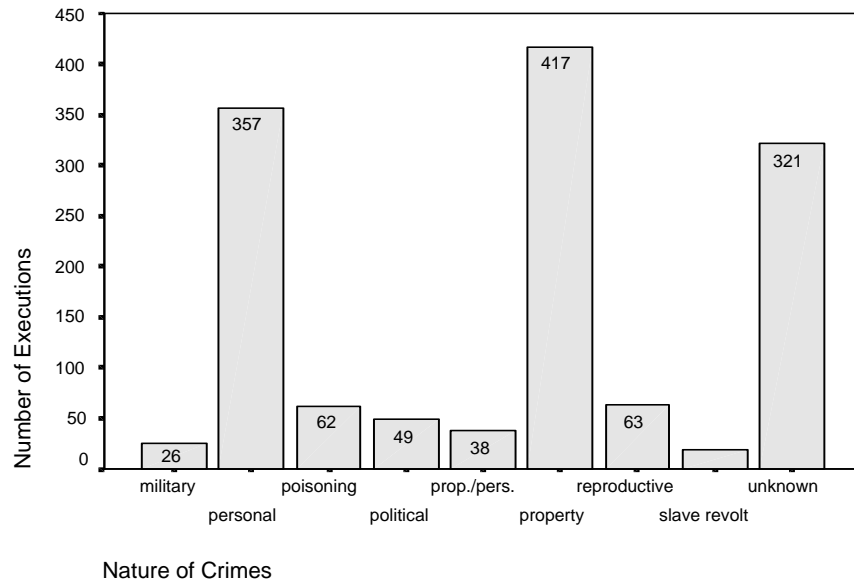
**Table 17: Executions by Year, 1750-1800**





The social profile of the condemned in the thirteen colonies and subsequent states is difficult to determine. Not surprisingly, just over half (51%) were slaves; another three percent are described either as black or mulatto. Altogether, 560 of the condemned (41%) were white. Only thirteen executions of Native Americans are documented. Most of the condemned were male; only six percent were women. The largest group of those who were executed (34%) in the second half of the eighteenth century in the thirteen North American colonies and subsequent states were condemned for property crimes, closely followed by personal crimes (26%). Crimes such as poisoning and revolt, which are closely related to slavery, made up six percent of executions. 726 (54%) of the condemned were black, including 694 slaves.

**Table 18: Executions by Nature of Crime, 1750-1800**



### Conclusion

Quantitative analysis demonstrates that the cities of Boston, Philadelphia, and Charleston shared certain commonalities in the application of capital punishment despite their significantly

different social, economic and political histories. In all three cities, the protection of property was one of the major agendas of criminal prosecutions, which is also reflected in the analysis of executions in the thirteen colonies and subsequent states. The cities' condemned also share certain common characteristics, as the majority of them in all three cities were young, male, and poor; many also had extensively traveled throughout the Atlantic. Another commonality is the relatively high number of executions in all three cities during the 1780s. At a moment when some celebrated the founding of a new nation, others met their fate at the gallows. The years surrounding the passing of the Constitution (1788/1789) saw the pinnacle of executions not only in Charleston and Philadelphia but also in the United States overall. There were, however, some important differences when the three cities are compared. Bostonians, for example, witnessed no executions during the revolutionary period (1776-1783), which points to a significantly different and less divided experience during the Revolution as compared to Philadelphia. The role of race also differs among the three cities. Not surprisingly, race was a defining characteristic in the application of capital punishment in Charleston where the death penalty was essential to the racial order of slavery. How many people were executed in the second half of the eighteenth century might never be exactly known, but the above analysis nevertheless gives an insight into the nature of capital punishment in a region of the Atlantic that underwent rapid changes from being part of the British empire to becoming its own nation. Despite those changes, the application of the death penalty remained largely stable, geared to protecting property and maintaining social order.

## **5.0 CAPITAL PUNISHMENT IN THE LATE-COLONIAL PERIOD, 1750-1800**

This chapter focuses on executions during the late colonial period (1750-1775). The brewing conflict with the British beginning with the Stamp Act controversy in 1765 influenced the application of the death penalty in all three cities. Unlike other chapters, this one moves from Charleston north to Philadelphia and then Boston because Boston's pre-revolutionary experience, in which the gallows played an important role, is somewhat different than in the other two cities. In Charleston, slaves demonstrated that they understood the growing resistance against British policies and its rhetoric of liberty and freedom. Activities of slaves caused increasing anxiety among whites which was reflected in a rise in slave executions. In all three cities, especially Boston, the gallows became an important symbol and tool in protests against perceived injustices of British and local officials. This analysis of executions in the late colonial period in the three cities provides the basis to evaluate change and continuity during the revolutionary period and the early republic, which will be the topic in Chapter 4.

### **Charleston**

No fewer than thirty-eight people were executed in Charleston during the late colonial period. Not surprisingly, the majority of the condemned (27) were slaves; one was a Native American, and eleven were white. Executions were clustered in the early 1750s and then again in the late 1760s and early 1770s. Those spikes in executions were closely linked to larger events in South Carolina society: the fear of poisoning by slaves in the 1750s and the growing protest

movement against British policies beginning the mid-1760s. More than in the other two cities, the application of the death penalty in Charleston was influenced by a contradiction between the property interests of slave masters and the need to control their slaves. At times this conflict actually mitigated slaves' punishment. The slave code of 1740, for example, provided that, "if several slaves shall receive sentence at one time," the justices and freeholders could "mitigate and alter the sentence of any slave" except in the case of a white person's murder. One or more slaves, however, "shall be executed for example, to deter others from offending in the like kind."<sup>302</sup> The fact that Charleston was part of a slave society also mitigated the punishment of whites, as social control and the upholding of slavery depended to a large extent on the solidarity among the white population. Therefore, the number of executions of whites remained relatively low throughout the second half of the eighteenth century.

Another "mitigating" circumstance that influenced the punishment of slaves was the fear of slave unrest. In Charleston, where slaves made up about fifty percent of the population, the punishment of slaves, if perceived as too harsh, could lead to resistance or open revolt among the slave population. Nevertheless, the punishment of slaves – from whipping to execution – was also considered essential by slave owners in upholding the system of slavery. Part of the anxiety among whites about slaves in the city came from the nature of urban slavery which, as we have seen, gave slaves more autonomy, even freedom, than they would have had on a plantation. Some observers believed that hired-out slaves were prone to crime and immoral behavior.<sup>303</sup>

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<sup>302</sup> "Slave Code of 1740," in *First Laws of the State of South Carolina*, p. 167.

<sup>303</sup> Olwell, *Masters, Slaves, and Subjects*, p. 161-162 and Duncan, *Servitude and Slavery*, p. 518-519. "Slave Code of 1740," p. 171. *South Carolina Gazette*, September 24, 1772. See also Morgan, *Slave Counterpoint*, p. 250-252. For examples, see *Journal of the Commons House of Assembly*, May 21, 1741, p. 16; "Slave Code of 1740," p. 170, 172; *South Carolina and American General Gazette*, January 29, 1768; and *Columbian Herald*, October 21, 1785 and October 16, 1786.

Slaves even gained a certain degree of independence from their masters by selling goods and products in the city's market places. The power of those markets was substantial and frequently perceived as a threat by whites, as slaves controlled the city's food supply and easily mingled with slaves from the countryside. Any legislation to limit slaves' dominance of the markets was unsuccessful.

Charleston authorities made certain to punish slaves in the very places where bondsmen and women exercised some freedom, independence, and community. State power would be displayed in the markets where slaves were whipped, put in stocks, and hanged. In 1770, for example, the city's commissioners ordered stocks to be built near the fish market, which was "principally carried on by negroes" who were "apt to be riotous and disorderly." Magistrates were to detain any "riotous, disorderly, or drunken Negroes" who were "buying, selling, or being in and about the said market in the stocks...for the space not more [than] two hours."<sup>304</sup> The lower market especially became a place of punishment. A rare transcript of a slave court session demonstrates that those doing business at the lower market would witness a steady stream of slaves being whipped.<sup>305</sup> Officials attempted to establish and maintain their authority by displaying in markets the ultimate state power – the taking of a human life.

The early 1750s witnessed a panic as many whites feared poisonings by slaves. Eleven of the twenty executions for poisoning during the 1750s in South Carolina took place between 1751 and 1753; another wave occurred in 1755 and 1756. This spike in executions might have been related to a rapid increase of slave importation beginning in 1750. Poisons were well known and

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<sup>304</sup> *South Carolina Gazette*, November 15, 1770.

<sup>305</sup> For examples, see *State vs. Neol*, September 24, 1794; *State vs. Silvan*, September 24, 1794; and *State vs. Mingo and Tim*, October 3, 1794, all in "Account of Abraham Seixces for Cash Paid the Constables," *Charleston Cash Book*, April 19-30, 1798, State Treasurer – Lower Division, Box 10, South Carolina Department of Archives and History, Columbia.

used in West African belief systems.<sup>306</sup> There is also evidence that slaves learned much from Native Americans about local plants and medicinal cures.<sup>307</sup> Four executions for poisoning took place in Charleston – one in 1750, one in 1752, and two in 1769. In January 1751, the Commons House of Assembly received the petition of Thomas Miles for reimbursement for his slaves Venus and Kitt who “where tryed for Poisoning and condemned to be executed pursuant to the directions of the ‘Act for the better ordering and governing of Negroes and other Slaves in this Province.’” Kitt was executed but Venus was “pardoned, and was afterwards sent off the Province.”<sup>308</sup> In 1752, Jenny, slave of Hugh Anderson, was executed for “the poisoning of a Negro Girl, the property of Mr. Matheringham.”<sup>309</sup> The last two slaves to be executed for poisoning in Charleston in the second half of the eighteenth century were Dolly and Liverpoole. On July 28, 1769, Dolly, belonging to James Sands, and Liverpoole, a slave doctor belonging to William Price, were burned alive on the green in front of the workhouse. Dolly had been convicted of poisoning her master and his child, while Liverpoole was convicted of providing the poison. Dick, a former slave who had been freed, was “accused as instigator of these horrid

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<sup>306</sup> Philip J. Schwartz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (New Orleans: Louisiana State University Press, 1988), p. 99-100. For the role of poison and witchcraft in African societies, see E. E. Evans-Pritchard, *Witchcraft, Oracles and Magic among the Azande* (Oxford: Clarendon Press, 1976); Patrick R. McNaughton, *The Mande Blacksmiths: Knowledge, Power, and Art in West Africa* (Bloomington: Indiana University Press, 1993); and Douglas B. Chambers, *Murder at Montpelier: Igbo Africans in Virginia* (Jackson: University Press of Mississippi, 2005). For importation numbers of slaves, see Duncan, *Servitude and Slavery*, p. 105.

<sup>307</sup> J. Leitch Wright, Jr., *The Only Land They Knew: The Tragic Story of the American Indians in the Old South* (New York: The Free Press, 1981), p. 265-266.

<sup>308</sup> Petition of Thomas Miles, January 29, 1751, *Journal of the Commons House of Assembly* (Columbia: South Carolina Department of History and Archives, 1962), p. 211 (no. 39).

<sup>309</sup> There were questions about the evidence against Jenny. The mistress of the slave girl who had died apparently intimidated the daughter of Jenny into testifying against her mother. Nevertheless, Jenny was executed and the Commons House of Assembly awarded fifty pounds to Hugh Anderson and thirty pounds to John Matheringham “for a Negro Woman condemned and executed for poisoning.” Duncan, *Servitude and Slavery*, p. 720.

crimes.” Dick initially escaped but was eventually retaken and given “twenty-five Lashes...at four different Corners and the same Number last Tuesday, in all 100 each Day, and to lose his Right Ear.”<sup>310</sup> Most likely, Dick escaped the gallows because of the provision in the 1740 slave code that if several slaves were convicted of committing an offense together, not all slaves had to be executed. Although executions for poisoning declined sharply by the mid-1750s, individual cases appeared over the remainder of the century.<sup>311</sup>

Altogether at least fourteen slaves were executed in Charleston during the early 1750s. Although only two slaves were condemned for poisoning, it is likely that the fear of poisonings increased anxieties and led to harsher punishments of slaves in general. Five of the slaves were burned alive for crimes that caused as much fear among whites as did poisoning. In June 1754 two female slaves of Childermas Croft were executed just outside Charleston for setting fire to their master’s dwelling house and the outbuildings, all of which were destroyed.<sup>312</sup> A year later, two more slaves were burned for allegedly killing their master John Cadman. Both apparently believed that their master’s will provided for their freedom in case of his death. A third slave, belonging to William Chicken, was hanged for his role in the plot.<sup>313</sup> The crimes of the remaining seven condemned slaves are unknown. Executions appeared to slow by the mid-1750s and stayed at a relatively low level until the late 1760s when another significant cluster of executions took place in Charleston, which again paralleled a colony-wide rise of condemnations.

By the late 1750s, and then especially throughout the 1760s and early 1770s, more organized collective resistance by slaves seems to have increased and resulted in a rising number

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<sup>310</sup> *South Carolina Gazette*, August 1 and 7, 1769 and August 11, 1769.

<sup>311</sup> For another execution of slave for poisoning, see *Morning Post*, March 28, 1786.

<sup>312</sup> *South Carolina Gazette*, June 11-20, 1754.

<sup>313</sup> M. Newton and J.A. Newton, *Racial and Religious Violence*, p. 42.

of executions. Seventy-four slaves were executed in South Carolina between 1765 and the outbreak of the Revolution: forty-eight of those were in the late 1760s (1765-1769) and another wave of eighteen executions occurred between 1773 and 1775. By the mid-1760s, complaints of “numerous gangs of villains” and “Banditti, consisting of Mulattoes, Free Negroes, & notorious Harbourers of run-away Slaves” were frequently heard.<sup>314</sup> While not all of the executions in these years are directly related to the activities of maroons and gangs of runaway slaves, a heightened sense of insecurity undoubtedly contributed to these two spikes in executions. Many believed that the number of runaway slaves was constantly rising, bringing new members to maroon communities in the swamps of South Carolina, which “otherwise useless,” afforded “inaccessible shelter for deserting slaves.”<sup>315</sup> By 1765, at least one maroon community of about 40 slaves reached the level of a more permanent settlement near the Savannah River. An expedition to root out this maroon village found it set up in “a square consisting of four Houses 17 feet long and 14 feet wide” but “totally deserted.” The members of the expedition destroyed

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<sup>314</sup> *South Carolina and American General Gazette*, December 12, 1766 and *South Carolina Gazette*, July 25, 1766. In part, such anxiety can be attributed to the outbreak of Tacky’s revolt in Jamaica in 1760. Shortly after the revolt began, the *South Carolina Gazette* announced to its readers that “[g]ood reasons have been suggested to us, for not inserting in this Paper any Accounts of Insurrections, especially at this Time.” *South Carolina Gazette*, May 24-31, 1760. For Tacky’s revolt, see Linebaugh and Rediker, *The Many-Headed Hydra*, p. 221-223.

<sup>315</sup> For maroon communities in the 1730s and 1740s, see Duncan, *Servitude and Slavery*, p. 590-591, 597 (quote). Herbert Aptheker, “Maroons within the Present Limits of the United States,” *Journal of Negro History*, 24 (April 1939), p. 169. In 1750, advertisements for 50 runaway slaves were published in the *South Carolina Gazette*. By 1760, this number increased to more than a hundred runaways a year with 103 in 1761 and 111 in 1762. Although these numbers do not reflect the actual number of runaways and there might have been increasing advertisement by slave owners rather than an increase in the number of runaways, it is nevertheless true that contemporaries believed that runaway slaves were considered a serious and pressing problem. The numbers of advertisements per year is based on the published volume of runaway advertisements for South Carolina: Lathan A. Windley (ed.) *Runaway Slave Advertisements: A Documentary History from the 1730s to 1790*, vol. 3: South Carolina (Westport: Greenwood Press, 1983).



the village by setting fire to the houses, weapons, and food supplies.<sup>316</sup> Yet worries about runaway slaves and maroons remained. The state's newspapers reported repeatedly about the "audacious robberies and murders by the gangs of villains who have for some years past infested" rural areas, allegedly numbering between "200 and 300."<sup>317</sup>

In Charleston, fears of slave unrest and conspiracies were accelerated in the wake of white protests against the Stamp Act in October 1765. In one street action, the effigy of a stamp distributor was hung with a poster with the slogan "Liberty and no Stamp Act" around his neck. A few days later, a group of sailors demonstrated against the Stamp Act by assembling in front of the house of Charleston merchant Henry Laurens. According to rumors in the city, Laurens had stored the stamps in his house and the sailors had come to demand the stamps and then to destroy them. According to Laurens, the sailors "menaced very loudly," chanting "Liberty, Liberty, & Stamp'd Paper" and "handled me [Laurens] pretty uncouthly."<sup>318</sup> Slaves observed those protests and heard the language of liberty. A few months, in mid-January 1766, slaves assembled and cried for liberty, which Henry Laurens considered this a "thoughtless imitation" but also "a peculiar incident, revealing in what dread the citizens lived among the black savages with whom they were surrounding themselves." As a result of the slaves' protest, the city "was thrown under arms for a week and for 10 or 14 days messengers were sent posting through the province in the most bitterly cold weather." Insecurity and fear increased even more when over a

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<sup>316</sup> Quoted in Morgan, *Slave Counterpoint*, p. 450.

<sup>317</sup> *South Carolina and American General Gazette*, August 7, 1767. For other examples, see *South Carolina and American General Gazette*, December 12, 1766, *South Carolina Gazette*, July 25, 1768, August 15, 1768 and October 24, 1768.

<sup>318</sup> Henry Laurens to J.B., October 26, 1765, Laurens to John Lewis Gervais, January 29, 1766, and Laurens to James Grant, January 31, 1766, *Papers of Henry Laurens*, vol. 5, p. 38-40, 53-54, 60.

hundred slaves left their plantation outside of Charleston and “joined a large number of runaways in Colleton County.”<sup>319</sup>

In the early 1770s, five slaves were executed for a combination of maroonage and robbery. In 1773 the *South Carolina and American General Gazette* reported on “one of the most daring Gangs of Fellows that ever infested the Province.” Seven slaves, including their leader Caesar, were apprehended and tried for raiding the plantation of John Drayton on the Ashley River, stealing “Candles, Sugar, Rum, Bacon, Soap, Wine, a Bale of Cloth, and sundry other Articles to a very great Amount.”<sup>320</sup> Caesar was “brought to Ashley Ferry” where he was “tried, convicted, and executed” on May 10, 1773. Four other slaves were also hanged. One turned into the main prosecution witness and therefore escaped punishment. Mingo, a slave of John Drayton, was pardoned by Lieutenant Governor William Bull.<sup>321</sup> An eighth slave, Andrew, remained “yet out in the Woods” and was suspected of having joined another group of maroons at a camp called Black Swamp.<sup>322</sup>

In Charleston, a significant number of executions took place between 1769 and 1774. Most of the crimes for which slaves were executed during those years are unknown but at least two of the executions likely reminded those living in Charleston of the maroons outside of the city. Two slaves were condemned for a series of robberies and burglaries. The *South Carolina Gazette* announced that the “two Negroes mentioned in our last, [destroyed] being concerned in several of the Burglaries and Robberies...so frequent of late in this Town” were hanged

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<sup>319</sup> Quoted in Nash, *The Unknown American Revolution*, p. 61. See also Peter Wood, “‘Liberty Is Sweet:’ African-American Freedom Struggles in the Years before White Independence,” in Young (ed.), *Beyond the American Revolution*, p. 157-159; Linebaugh and Rediker, *The Many-Headed Hydra*, p. 211-212.

<sup>320</sup> *South Carolina and American General Gazette*, May 13, 1774.

<sup>321</sup> Duncan, *Servitude and Slavery*, p. 599.

<sup>322</sup> *South Carolina and American General Gazette*, May 13, 1774.

“pursuant to their Sentence.” Their white accomplices – John Thompson, George Virgent, and Richard Thompson – were sentenced to stand in the pillory twice, be whipped twice, and to pay various fines.<sup>323</sup> Another slave was executed for one of the most feared crimes – the killing of his master. In July 1772, a slave was burned alive for allegedly shooting his master, Capt. Lazarus Brown.

The early 1770s in Charleston also saw the largest number of executions of whites who had been convicted of crimes connected with slavery. On March 1, 1771, Edmund James and Joseph Jordan were hanged for “aiding runaway slaves.” Jones, the master of the schooner *Two Josephs*, and Jordan, a sailor, allegedly had stolen the schooner, taking with them several slaves. Thomas Dannails, a third condemned defendant, was pardoned after he was “recommended to Mercy by the Jury.” Several slaves, likely some of those who had run away on the *Two Josephs*, were hanged together with Jordan and Jones.<sup>324</sup> A little over a year later, Dempsey Griffin was hanged for “stealing a Negro, the Property of Mr. Brisbane.”<sup>325</sup> The following year, on November 26, 1773, Williamson Willis was also hanged for “stealing a Negro.” His accomplice, Levi Sparkman, received a respite and probably was pardoned.<sup>326</sup> It is not surprising that whites became the target of the law, especially when their alleged crimes were directly related to slavery. Maroons were suspected of harboring whites or other free people who were accused of crimes. Those living in the Black Swamp camp, for example, were believed to harbor “the noted Tilly, a Horse Thief.”<sup>327</sup> Caesar, who had been the leader of the Black Swamp Camp, testified

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<sup>323</sup> *South Carolina Gazette*, February 21 and 28, 1774, and March 7, 1774.

<sup>324</sup> *South Carolina Gazette*, January 31, February 28, and March 7, 1771. See also *South Carolina and American General Gazette*, February 27-March 5, 1771.

<sup>325</sup> *South Carolina Gazette*, November 19 and December 3, 1772.

<sup>326</sup> *South Carolina Gazette*, November 1, 15, and 29, 1773.

<sup>327</sup> *South Carolina and American General Gazette*, May 13, 1774.

that “one of the half-breed People named Josiah Reed, alias Scott” had forged his master’s name on “a Ticket to pass any where unmolested.”<sup>328</sup>

Inhabitants in and around Charleston did not fear slaves alone but also sailors, soldiers, poor whites, vagrants, and others who were suspected of making up “gangs of villains,” “pests of society,” banditti,” and groups of “nefarious wretches.” In June 1754, for example, “Mr. Peter Sanders was stopp’d on the Highway” just outside of town “by a Soldier and a Sailor, who knock’d him off his Horse, and turn’d his Pockets out, but finding no Booty there, beat him unmercifully.”<sup>329</sup> In 1759, the *South Carolina Gazette* remarked that “notwithstanding the Vigilance of the Militia of this Town ...Robberies continue to frequent, and the Thieves undiscovered.”<sup>330</sup> Complaints about crimes continued. A correspondent of the *South Carolina Gazette* declared in 1773:

Scarce a night has passed, for some Weeks, but Burglaries have been either committed or attempted, in this Town – and *Shop-Lifting* is become so common, that no less than two Men employed in that Business, were last Week committed to Jail. – It therefore becomes the Inhabitants, to be guarded against these Pests of Society – as against the Ravages of Fire, now to be apprehended from foul Chimnies and careless Negroes.

A few months later, the *South Carolina Gazette* reported the discovery of “a most infamous and dangerous Set of Villains, of whom the Public had entertained very little Suspicion.” When two slaves were arrested as “Principals” in “several of the Burglaries and Robberies, which had been so frequent of late,” authorities also arrested “John Thomson, an Umbrella-maker and Shop-keeper, Richard Thomson, who kept a Livery Stable, and George Vargent, a Coachman.” The

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<sup>328</sup> Although it is not clear if Josiah Reed was a slave, it was rare for slaves to carry a first and last name. Most likely Reed was a free mulatto or possibly half Native American. See Duncan, *Servitude and Slavery*, p. 600.

<sup>329</sup> *South Carolina Gazette*, June 27-July 4, 1754.

<sup>330</sup> *South Carolina Gazette*, December 22-29, 1759.

former two were convicted “without the Jurors leaving the Court” as “Instigators to the Robberies” and, together with Vargent, for receiving stolen goods. All three of them were sentenced to sit twice in the pillory where they were “most severely pelted,” given a whipping of thirty-nine lashes each, and fine from 25 to 500 pounds. The two slaves received a death sentence and were hanged a few days later.<sup>331</sup>

More than in the other two cities during the late-colonial period, executions in Charleston were closely linked to specific events and developments within the city and South Carolina more broadly. This explains why executions were less evenly distributed over the years than, for example, in Philadelphia. Executions were clustered around moments when South Carolina’s slaveholding society experienced paranoia and fear. The first example is the wave of executions for poisoning that led to an increase of executions overall. The fact that executions also steadily increased beginning in the mid-1760s illustrates the growing unease of the white population with slaves and their potential to organize resistance on a large scale. Clearly, white Charlestonians understood the implications of a revolutionary movement had with its rhetoric of liberty and freedom in a slave society.

### **Philadelphia**

There were thirty-six executions in Philadelphia in the late colonial period. Executions took place on a regular basis, ranging from one to two a year with the exception of a few years when there were a few more hangings or none at all. Property crimes made up seventy-two percent of the executions, which makes Philadelphia stand out as the city with the highest percentage of executions for property crimes among the three cities. In part, this trend might be explained by the way crimes were committed. It appears that “gang activities” were more

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<sup>331</sup> *South Carolina Gazette*, February 21 and 28, 1774 and March 7 and 14, 1774.

common in Philadelphia than the other two cities during this period. This does not mean, however, that Philadelphia had a large number of what some would call professional criminals. Some who committed burglaries or robberies in groups of three, four or more, also worked in their trades, “supplementing” their income during economic downturns with petty crimes and rarely with crimes that would bring a large booty.<sup>332</sup>

One case that exemplifies Philadelphia executions in the late colonial period was the hanging of Francis McCoy, John Morrison, and Elizabeth Robinson for burglary in 1751. Many residents apparently believed that they were members of a gang as the city had been “alarmed by an unusual Frequency of *Robberies, Thefts and Burglaries*” since the beginning of the winter. Furthermore, it was reported that gang members had been sworn to silence by “an Oath on a Book to keep every Thing in secret.” Each member seemed to fulfill certain tasks according to their abilities. Betty Robinson – somewhat unusually a woman – apparently was an important part of the gang’s operations as she was “able to go up and down a Chimney very dexterously.”<sup>333</sup> The suspected gang was discovered when the master of servant John Crow informed the Chief Justice that Crow, an alleged member of the gang, “had some Goods which he pretended to have bought, but at such low Rates as render’d it very suspicious.”<sup>334</sup> Crow’s capture and examination triggered the arrests of five more persons. At last, Joseph Cooper, also a servant, turned “Evidence for the King,” leading to the arrest of two more people, including John Morrison who, according to authorities, was the leader of the group. In the end, four of the accused were sentenced to death and three were executed, John Stinson “was burnt in the Hand”

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<sup>332</sup> Smith, *The Lower Sort*, p. 165-166. John K. Alexander, *Render Them Submissive: Responses to Poverty in Philadelphia, 1760-1800* (Amherst: University of Massachusetts Press, 1980), p. 78-79, 180-181.

<sup>333</sup> *An Account of the Robberies Committed by John Morrison, and his Accomplices*, p. 7.

<sup>334</sup> *An Account of the Robberies Committed by John Morrison, and his Accomplices, in and near Philadelphia, 1750* (Philadelphia, 1750-51).

for “being an Accessory to Morris after the Fact,” and Mary McCoy was acquitted, “being supposed to act by the Coertion of her Husband.”<sup>335</sup> According to the *Pennsylvania Gazette*, three more suspects had been arrested in Chester.<sup>336</sup>

The pamphlet that accompanied the execution of Morrison, McCoy, and Robinson was written in the hope that “all Young People take Warning by their dreadful Example, and beware of the first Beginnings of Dishonesty.”<sup>337</sup> The four condemned were typical of those who walked to the gallows in Philadelphia and all across the North American colonies. John Morrison had come from Ireland to Philadelphia as a servant at the age of fourteen. Allegedly, Morrison “was very early given to Lying and Pilfering, and was so bad a Boy” that his master “sold [him] into the Country.” Morrison, however, returned to Philadelphia and “took up the Trade of selling Limes and Onions from House to House, which gave him the Opportunity of observing how the Windows and Doors were fastened.” Elizabeth Robinson was born in England and “came a Convict into Maryland,<sup>338</sup> where she repeated her Crimes.” According to the pamphlet, Robinson “had been prosecuted in this City, and whipt for Shoplifting and Stealing...&c. but would not take Warning.” John Crow was also from Ireland; so were Francis McCoy, a tavern owner, and his wife Mary. The McCoy, however, had “lived long in this City, and having several Children;

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<sup>335</sup> *Pennsylvania Gazette*, February 5, 1751.

<sup>336</sup> *Pennsylvania Gazette*, February 19, 1751.

<sup>337</sup> *An Account of the Robberies Committed by John Morrison, and his Accomplices, and his Accomplices*, p. 11. A second part of the pamphlet – *The Lamentation and Confession of the Poor Condemn'd Criminals in the Dungeon* – was even more geared towards deterring others from committing crimes. The first part of the pamphlet is a narrative based on the alleged confessions of the accused.

<sup>338</sup> Robinson most likely came in September 1723 on the ship *Alexander*, after being sentenced to be transported in May. Another Elizabeth Robinson landed in the colonies in 1744 but the exact location is unknown. Peter Wilson Coldham, *The Complete Book of Emigrants in Bondage, 1614-1775* (Baltimore: Genealogical Publishing Co., 1988), p. 681.

supporting themselves and Family, chiefly by Pilfering and stealing for many Years.”<sup>339</sup> The three who were executed – an indentured servant, a transported convict, and a tavern owner – symbolized for many Philadelphians the unrest, crime, and lawlessness, all of which were seen as characteristics of the city’s “underworld.”

While describing the crimes of the accused, the author of the pamphlet told, probably unintentionally, another story of Philadelphia’s “underground” where stolen goods were exchanged. At least two of the accused knew each other before they came to Philadelphia. Joseph Cooper, who turned “state’s evidence” during the trial and who had met Betty Robinson in Maryland, followed her to Philadelphia when he heard that she was imprisoned. To be able to “pay the Costs of Prosecution which had been against her in this City,” Cooper “bound himself a Servant.” Once Robinson was freed, she introduced Cooper to Francis and Mary McCoy, John Morrison, and John Crow. They suggested that Cooper should “join them, in the Expectation of thereby getting Money enough very soon to buy his Time, and make himself free again.”<sup>340</sup> In this instance, “crime” was linked to the prospect of freedom.

The pamphlet also revealed a network for distributing goods within the underground economy in Philadelphia and beyond. The group appropriated two kinds of goods – food and valuable goods such as silver and kitchen utensils, clothes, and jewelry. As McCoy and his wife ran a tavern, much of the stolen food such as “Fowls, Turkies and Ducks” and “Bread, Butter, Cheese and Meat” ended up in the tavern’s kitchen. McCoy’s tavern was not the only place frequented by Morrison, Robinson, Cooper, and Crow. Morrison routinely stayed at the tavern of John Stinson, who was also arrested in connection with the burglaries. Authorities, grand juries, and elites always suspected taverns, especially if unlicensed, as “nurseries [of] vice and

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<sup>339</sup> *An Account of the Robberies Committed by John Morrison, and his Accomplices*, p. 10-11.

<sup>340</sup> *An Account of the Robberies Committed by John Morrison, and his Accomplices*, p. 4-5.



debauchery.”<sup>341</sup> Many of those burglaries apparently did not amount to more than petty crimes, as the author of the pamphlet remarked “for what Trifles did this poor Wretch [Morrison] continually hazard his Life!” At times, the group hid “the Goods first under the Court-House.” They later returned to transport them to McCoy’s and from there to John Crow who “promised to hide and secure them in the Hay Loft” of his master. It is not entirely clear how the group sold its booty but they did at times leave Philadelphia for Lancaster, taking some of the goods with them.<sup>342</sup> All but the McCoys seemed to have planned to leave Philadelphia after the last burglary “where they might expect to get a great Booty” but which in the end proved fatal to them.

Two cases –in 1760 and in 1765 – stand out as bizarre, as the condemned allegedly committed murders so that they would themselves lose their lives. John Bruelman and Henry Halbert were thought to have been “tired of life” but not quite willing to commit suicide.<sup>343</sup> On August 27, 1760, Bruelman walked into Centre Square Tavern and “without the least Provocation, levelled a loaded Gun he had with him, and shot Mr. Scull through the Body.”<sup>344</sup> He had never met Robert Scull, who died a few days later from his wounds. Bruelman declared after the shooting that “he was weary of life, and had committed the crime to escape from the toils and troubles of the world.”<sup>345</sup> The authorities accommodated his wish, hanging the jeweler

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<sup>341</sup> Despite such critiques, taverns were immensely popular among Philadelphia’s population as places to socialize and to organize politically. Peter Thompson, *Rum, Punch, and Revolution: Taverngoing and Public Life in Eighteenth-Century Philadelphia* (Philadelphia: University of Pennsylvania Press, 1999), p. 42 (quote).

<sup>342</sup> *An Account of the Robberies Committed by John Morrison, and his Accomplices*, p.4-5, 7-9.

<sup>343</sup> Negley K. Teeters, “...Hang by the Neck...”: *The Legal Use of Scaffold and Noose, Gibbet, Stake, and Firing Squad from Colonial Times to the Present* (Springfield: Charles C. Thomas, 1967), p. 258-259.

<sup>344</sup> *Pennsylvania Gazette*, September 4, 1760.

<sup>345</sup> *Pennsylvania Dispatch*, June 17, 1866. The author of the article further declared that “in later years such evidence of insanity would have ensured his acquittal; but in 1760 people were not eager to sympathize with crime.”

and officer in the Royal American Regiment on October 8, 1760.<sup>346</sup> Almost exactly five years later, on October 19, 1765, Henry Halbert, alias Heinrich Albers, a thirty-year-old German immigrant from Lüneburg, was hanged at Centre Square for the murder of Jacob Woolman's son. According to Rev. Henry Melchior Muhlenberg, a Lutheran minister who visited Halbert in prison, Halbert confessed that "he purposely cut the throat of this twelve-year-old boy in order that he might lose his own life."<sup>347</sup> Halbert had led a life of "drinking, whoring, cursing, swearing, breaking the Sabbath, and keeping all manner of debauched company," all of which contributed to his untimely death. Following the request of Halbert, the "Lutheran School Boys in the city [sang] Hymns in the German language" before Halbert addressed the crowd:

Attend good people, see my final end;  
Take Warning by your Dying Friend,  
I am condemned to die, and die I must,  
I die for Murder, and my Fate is just;  
I beg that God my sins may now Forgive,  
And die in Peace with all good Men that live.<sup>348</sup>

Halbert also apparently wrote a letter to Jacob Woolman, the father of the killed boy, entitled "A letter from the criminal to the father of his murdered son," praying that Mr. and Mrs. Woolman "will forgive me as it lies so heavy on my Conscience, and send me Word as soon as possible."<sup>349</sup> The emphasis in the publications and reports accompanying Halbert's execution was on deterrence, the justice of sentence, and repentance.

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<sup>346</sup> *Pennsylvania Gazette*, October 9, 1760.

<sup>347</sup> Theodore G. Tappert and John W. Doberstein (ed.), *The Journals of Henry Melchior Muhlenberg* (Camden: Picton Press, 1942), vol. 2, p. 275.

<sup>348</sup> [Henry Halbert], *Last Speech and Confession of Henry Halbert, who was Executed at Philadelphia, October 19, 1765, for the Inhuman Murder of the Son of Jacob Woolman* (Philadelphia: Printed by Anthony Armbruster, n.d.), Library Company of Philadelphia, Philadelphia.

<sup>349</sup> [Halbert], *Last Speech and Confession*, last page. For the case of Henry Halbert, see *Pennsylvania Gazette*, October 3 and 24, 1765; Minutes of the Provincial Council, *Colonial*

Like the other port cities, the Quaker city was subject to the ebbs and flows of the Atlantic economy, which in turn were influenced by warfare. Some executions were directly connected to war. During the French and Indian War (1754-1763), for example, William Conner and Samuel Bailey were accompanied by their own First Battalion of Royal Americans to the place of execution where they were hanged for desertion.<sup>350</sup> Furthermore, after the War of Jenkin's Era (1739-1748) and the French and Indian War Philadelphia saw an economic downturn that led to an increase of executions. The number of executions rose slightly in the early 1750s with four executions in 1750, three in 1751, and two in 1752. Two of those hangings were for murder; the other seven were for property crimes such as burglary, which included the execution of the group around Morrison discussed above. Beginning in late 1749, business in Philadelphia had begun to decline, pushing a relatively large number of merchants into bankruptcy. The lower sort was not hit as hard, mainly because shipbuilding and house construction continued to boom through the early 1750s. During the final two years of the French and Indian War, wages began to decline and did not recover until the mid-1760s. Philadelphians witnessed only two more executions in that decade after 1765 (both in 1766), having seen six during decade's first five years.

Like the Bostonians who resisted British policies in the decade leading up to the Revolution, their counterparts in Philadelphia also employed effigies in their popular protests, although to a lesser extent. The most famous event was a popular protest following the discovery of Benedict Arnold's treason. Although this incident took place outside the time frame of this

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*Records*, v. 9, p. 285-286. Tappert and Doberstein (eds.), *Journals of Muhlenberg*, v. 2, p. 275; Teeters, *Hang by the Neck*, p. 259; Thomas McDade, *The Annals of Murder: A Bibliography of Books and Pamphlets on American Murders from Colonial Times to 1900* (Norman: University of Oklahoma Press, 1961), p. 126.

<sup>350</sup> *Pennsylvania Gazette*, April 7, 1757.

chapter, it reveals the ritual of protest in the late colonial period. On September 30, 1780, Philadelphians paraded a puppet of Benedict Arnold through the city's street. It wore a red coat representing loyalty to the British and had two faces, symbolizing his betrayal of the revolutionary cause. Standing behind Arnold's puppet was a puppet of the devil with a purse of money in his hands. After the parade, the crowd hanged the effigy of Arnold from the gallows before burning both puppets in a large bonfire.<sup>351</sup> The cart with Arnold and the devil also carried a sign on which a gallows with two noose were portrayed. The depictions of the parade in Philadelphia echoed the descriptions of the Pope's Day parades in Boston. The two woodcuts (see below) that resulted from the event are quite similar in portraying a cart drawn by horses with the two puppets and the depiction of the gallows, the accompanying armed guard and crowd, and the bonfire in which the puppets were eventually burned. All these elements, with the exception of the bonfire, were the essential ingredients of the parade of death displayed at the execution day.<sup>352</sup>

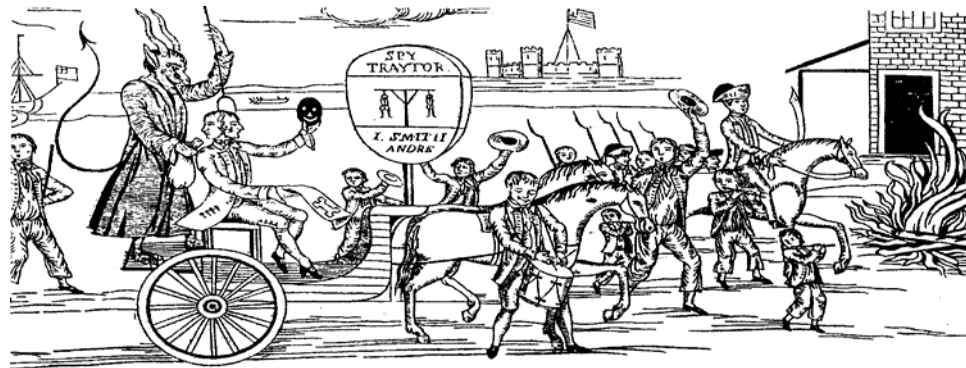


Figure 7: A Representation of the Figures Exhibited and Paraded through the Streets  
Historical Society of Pennsylvania

<sup>351</sup> Gary B. Nash, *First City: Philadelphia and the Forging of Historical Memory* (Philadelphia: University of Philadelphia Press, 2002), p. 100.

<sup>352</sup> It is difficult to explain why Philadelphians did not utilize effigies as frequently as their counterparts in Boston. Part of the explanation might be, however, that the conflict with the British was not as heated and emotionally charged as it was in Boston during the pre-revolutionary period and rather controversial and divisive during the Revolution.

Compared to Boston and Charleston, Philadelphia stands out for its high percentage of hangings for property crimes. Because Philadelphia was a bigger and more commercial city, more deeply involved in the Atlantic and backcountry economies, the city's courts appear to have been concerned much earlier with the protection of private property than in the other two cities, making it a primary concern by the middle of the eighteenth century. Executions in late-colonial Philadelphia therefore foreshadowed trends that intensified during and especially after the Revolution in all three cities.

### **Boston**

Of the three cities, Boston had lowest number of executions – twenty-three for the entire period 1750-1800. Only six of those executions took place in the late colonial period – one for poisoning in 1751, two for murder in 1754, one for burglary in 1773, and two for desertion in 1774. One of the most intriguing and interesting cases in Boston is that of Phillis, a sixteen-year-old slave who worked in her master's apothecary. She was hanged on May 16, 1754 for the alleged poisoning of her master's child by putting "Arsenick or Ratsbane" into the infant's milk. Phillis allegedly admitted to the killing and further confessed to having poisoned another 15-month-old child of the same family.<sup>353</sup> It is important to note that this execution – together with the hanging of two more slaves for poisoning in Cambridge in 1755<sup>354</sup> – took place at a time

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<sup>353</sup> *Boston Gazette*, January 22, March 5, April 9 and 16, and May 21, 1751. *David's Prayer and Plea for Pardon from Blood-Guiltiness* (Boston, 1751)

<sup>354</sup> *A Few lines on occasion of the untimely end of Mark and Phillis, who were executed at Cambridge, September 18<sup>th</sup> for poisoning their master, Capt. John Codman of Charlestown* (Boston, 1755).

when slaveholders in South Carolina were panicked about slaves poisoning their masters, for which many slaves were executed between 1750 and 1755.<sup>355</sup>

After nineteen years without an execution, twenty-one-year old Levi Ames was hanged for burglary in Boston on October 21, 1773. Between September and December thirteen publications – ten broadsides, including a dying speech, and three execution sermons – commented Ames’s execution, making him probably the most publicized condemned person in early America. According to the *Boston Gazette*, Ames confessed to robbing “the House of Mr. Martin Bicker” and was also suspected of breaking in the house of Rev. Clark’s House in Lexington with his accomplice Joseph Atwood.<sup>356</sup> Bicker arrested Atwood in Portsmouth and brought him to Boston.<sup>357</sup> At the September session of the Superior Court of Judicature, the “Jury brought in their Verdict, *Guilty in Part*; – Guilty of Theft, but not of Burglary” for Atwood. Levi Ames was tried the next day. After the jury brought in a verdict of guilty, the judge sentenced him to death a few days later. According to one broadside, Ames committed several burglaries throughout Massachusetts, Rhode Island, and Connecticut before hooking up with Joseph Atwood and breaking into Mr. Bicker’s house.<sup>358</sup> Atwood, who testified against Ames, most likely in return for a lighter sentence, was sentenced “to receive 20 Stripes at the

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<sup>355</sup> Considering the extensive economic contact of New England with the West Indies, the possibility that some of the fears and paranoia characteristic to a slave society at the time could have been transferred to slave owners in New England.

<sup>356</sup> *Boston Gazette*, August 30, 1773.

<sup>357</sup> *Massachusetts Gazette*, September 2, 1773.

<sup>358</sup> Although the records of the Superior Court of the Judicature do not confirm the claim that Ames lived a life of crime, he might have been prosecuted in lower courts or other jurisdictions. [Levi Ames], *The Last Words and Dying Speech of Levi Ames* (Boston, 1773). [Levi Ames], *The Speech of Death to Levi Ames* (Boston, 1773).

Public Whipping Post, to pay Costs and treble Damages.” But because “he had nothing to discharge that Sum, he was ordered to be at Mr. Bicker’s Disposal for ten Years.”<sup>359</sup>

Why did Ames’s hanging attract so much attention? One, two, or even three publications about an execution were not unusual in the second half of the eighteenth century, especially in New England, but thirteen was an exceptional number. The reasons are several, not least because no one had been hanged in Boston since 1754, when William Wieer had been executed for the murder of William Chism.<sup>360</sup> Another reason for the attention might have been Ames himself, his youthful descent into a life of sin. In his alleged *Last Words and Dying Speech*, Ames claimed that he “ran away from my master, which opened a wide door to temptation & helped on my ruin.”<sup>361</sup>

Another reason for the attention lavished on Ames’s execution was its timing. The revolutionary struggle was heating up in Boston. Questions about the role of the lower sort in the struggle with Great Britain and how to control their actions had emerged as an important issue after the Stamp Act protests of 1765. Revolutionary leaders such as Samuel Adams and influential newspapers such as the *Boston Gazette* appealed to the people to contain direct action by publicizing the motto “NO MOBS – NO CONFUSIONS – NO TUMULTS.” At times those leaders attempted to control or prevent crowd actions altogether. In 1768, for example, three members of the so-called Loyal Nine – a group of established tradesmen – discovered the effigies of two

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<sup>359</sup> *Boston Post-Boy*, September 13, 1773. For court records on Ames and Atwood, see *King vs. Joseph Atwood and King vs. Levi Ames*, August 31, 1773, *Massachusetts Superior Court of the Judicature*, Suffolk County, Massachusetts State Archives, Boston, p. 118-119.

<sup>360</sup> *A Warning to Young and Old: The Execution of William Wieer, at Boston, the 21<sup>st</sup> of November, 1754, for the Murder of William Chism* (Boston, 1754); *Domini Rex vs. William Wieer*, August 21, 1754, *Massachusetts Superior Court of the Judicature*, Suffolk County, p. 185.

<sup>361</sup> *The Last Words and Dying Speech of Levi Ames* (Boston, 1773). *The Speech of Death to Levi Ames* (Boston, 1773).

British officials hanging from the Liberty Tree in the South End and cut them down to prevent the assembling of a crowd. In another incident, revolutionary leaders dispersed a crowd who protested the seizure of John Hancock's boat *Liberty* by destroying the property of custom officials.<sup>362</sup> While those who led the struggle against the British looked – if often anxiously – for support from the crowd, they were able to unite Bostonians against an external enemy and therefore divert attention from possible class hostility and lower-class demands for economic and political equality.<sup>363</sup> Ames' execution, however, was a reminder for the lower classes that the upper classes were still willing to enforce and protect the social status quo.

While most of the broadsides published before and after Ames's execution contained the traditional messages,<sup>364</sup> others revealingly expressed fear of uncontrollable lower-class individuals and crowds. The author of *A Solemn Warning to Levi Ames*, which was published days before the hanging, worried about the behavior of the lower sort before the execution:

See! round the Prison how the Throng  
From every Quarter pour;  
Some mourn with sympathising Tongue,  
The ruder Rabble roar.

This fear of the crowd was reiterated in a woodcut displaying a tumultuous execution scene in the broadside *An Exhortation to Young and Old*:

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<sup>362</sup> Gary Nash, *The Urban Crucible*, p. 352.

<sup>363</sup> Nash, *The Urban Crucible*, p. 360.

<sup>364</sup> *An Exhortation to young and old to be cautious of small Crimes* (Boston, 1773), Historical Society of Pennsylvania, Philadelphia; *The Speech of Death to Levi Ames* (Boston, 1773); and *A Solemn Farewell to Levi Ames* (Boston, 1773). For a detailed analysis of broadsides, see Chapter 1.





Figure 8: *An Exhortation to young and old to be cautious of small Crimes* (1773)  
Historical Society of Pennsylvania

Although it is impossible to tell if the above woodcut is an accurate portrayal of Ames' execution, its symbolism may be more revealing than its authenticity. The crowd is watched over on both sides by mounted guards, one of whom has his sword drawn. In the middle of the woodcut stands a man swinging a whip. Another man is tied to one of the gallows's posts – probably a reference to the whipping of Atwood<sup>365</sup> – but the figure disappears in the crowd while the whip does not. It is worth noting that this woodcut is almost a mockery of the execution scene, emphasizing a carnivalesque atmosphere. The condemned is sitting on the top of the gallows with a rope around his neck, his legs dangling above the crowd and out of reach from authorities.<sup>366</sup> The scene teeters on the edge of riot.

The anonymous author of a broadside, however, openly criticized Ames's execution. In *THEFT and MURDER*, the author explicitly questioned its justness:

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<sup>365</sup> It is not clear when Atwood actually received his sentence of twenty stripes. What is clear, however, is that he was not whipped at the gallows but at the public whipping post and that it was not on the same day on which Ames was hanged. *Boston Post-Boy*, September 13, 1773.

<sup>366</sup> This depiction differs greatly from woodcuts in other execution broadsides.

My tender fainting heart grows cold,  
 And I am fill'd with sore dismay.  
 Behold, a Man condemn'd to die,  
 For stealing of his Neighbour's goods:  
 But Murder doth for Vengeance cry,  
 But where's th' Avenger of the blood?  
 'Tis a great Crime to steal from Men,  
 And Punishment deserves indeed;  
 But Murd'ers have released been;  
 ...  
 The Life of Man is more than gold,  
 Or any other earthly good:  
 But Thieves are hang'd, while Murderers bold,  
 Are freed, who shed our precious blood.  
 Look back to **FIFTH of MARCH**, and see  
 The scarlet Murderers! bloody stains!  
 What peace, think you, now can there be  
 In such a Land where Guilt remains.  
 The crimes of Thieves, are great, I own;  
 But let me ask one question further,  
 Will this Thief's blood, think you atone  
 For that inhuman, barb'rous Murder!  
 Must Thieves who take men's goods away  
 Be put to death? While fierce blood hounds,  
 Who do their fellow creatures slay,  
 Are sav'd from death? ...<sup>367</sup>

In the poem, the author not only criticized Ames' hanging for theft but also indirectly questioned the value of capital punishment, at least for property crimes, by stating that "the Life of Man is more than gold/Or any other earthly good." The author goes on to use the contemporary political tensions and past events in Boston to cast doubt on the justness of Ames' death by accusing authorities and officials of sinking to the same level as "that inhumane, barb'rous Murder" – meaning the Boston Massacre – with "this Thief's blood." Clearly, Bostonians had not forgotten the Boston Massacre three years earlier, when British soldiers were acquitted of murder after gunning down and killing five laborers in a justice-seeking crowd. The author's radicalism is

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<sup>367</sup> Emphasis added.

underlined by his use of the term “fellow creatures” – a phrase of Quakers and other radicals in the English Revolution and after.

The execution of Levi Ames and the publicity surrounding it demonstrates the importance of capital punishment and its symbolism despite the absence of a large number of actual executions. The gallows in Boston achieved a symbolic status unequaled by those in the other two cities as part of the Puritan religious culture lasting into the eighteenth century, a place for the punishment of lesser crimes, and as a symbol of protest. The absence of regular executions in Boston might have contributed to the symbolism of the gallows, as in Boston, and most likely in New England as a whole, the ritual of punishment was the most elaborate and refined. Executions were more carefully and consciously staged than in the other two cities.

The execution sermon had a long tradition in Boston, Massachusetts and throughout New England. Many of the themes in execution sermons remained the same from the first publication in 1674 until the last in 1825.<sup>368</sup> For the most part, ministers warned the larger community against smaller sins such as drunkenness, Sabbath breaking, and disobedience, which they saw as contributing to the condemned’s larger crime and hence death. They also turned their attention directly to the condemned, urging him or her to repent and pray for salvation. At times ministers went beyond their usual lessons of morality, repentance, and deterrence to address the utility and necessity of capital punishment in general.<sup>369</sup> If an offender was not properly punished, they

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<sup>368</sup> Ministers in New England most likely gave execution sermons from the early seventeenth century onwards but the first publication available is Samuel Danforth’s *The Cry of Sodom Enquired Into* (1674). The last sermon printed was Jonathan Going’s *A Discourse Delivered at Worcester* (1825). Cohen, *Pillars of Salt, Monuments of Grace*, p. 4.

<sup>369</sup> In the seventeenth century, religious authorities frequently justified the use of the gallows, illustrating the power of ministers at the time and the intersection of religious and civil authority in Puritan society. Cohen, *Pillars of Salt, Monuments of Grace*, p. 7-10, 101-103 and Ronald A. Bosco, “Lectures at the Pillory: The Early American Execution Sermon,” *American Quarterly*,

reasoned, God's wrath would come down on the community as a whole. Samuel Danforth, for example, announced in one of his execution sermons that "if we will not pronounce such a Villain Accursed, we must be content to bear the Curse ourselves." He continued that "the Land cannot be cleansed, untill it hath spued out this Unclean Beast."<sup>370</sup>

Ministers' role as representatives of secular power and supporters of the death penalty was well known among the people and therefore they found themselves under attack in cases of controversy surrounding an execution. At times ministers were openly criticized for their role in the theater of death:

Rouse ye, good clergymen, servants of God;  
Stand by my side while I fight for your fun;  
Hanging preserves us from shedding blood;  
Remedy like it there never was one.  
Rally your forces, thump your pulpits and be  
Clerical guards of the good gallows-tree;  
What if your Saviour denounces the law?  
You go for hanging – for hanging! Hurrah!<sup>371</sup>

The author accused ministers of eagerly awaiting executions and even having fun during them. Like the poem about Levi Ames' execution, the criticism of capital punishment in this poem remains implicit, especially when the author asked "What if your Saviour denounces the law?" The author doubted whether God supports capital punishment.

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vol. 30 (Summer 1978), p. 162-164. See also Gabriele Gottlieb, "Stretched by a Halter!': Capital Punishment in Seventeenth-Century Massachusetts and Plymouth" (unpublished article).

<sup>370</sup> Samuel Danforth, *Cry of Sodom Enquired Into; Upon Occasion of the Arraignment and Condemnation of Benjamin Goad, for his Prodigious Villany* (Cambridge: Printed by Marmaduke Johnson, 1674), p. 9.

<sup>371</sup> The poem was written by Dr. Thomas Dunn English, a physician, lawyer, and editor of *The Aurora*. Although published in 1844, the poem is a good illustration of attitudes towards ministers and their role on the execution day. It was published in the New York Tribune on March 2, 1844. Mackey, *Hanging in Balance*, p. 185 and Cohen, *Pillars of Salt, Monuments of Grace*, p. 101.

The gallows in Boston, and in Massachusetts as a whole, played a significant role in the administering of lesser punishments than death. In comparison to the other two colonies, courts in Massachusetts handed down a wider variety of penalties. For example, they regularly sentenced defendants to years of servitude, mainly to repay double or triple damages for alleged property crimes. Defendants were bound to serve the accusing party for a time ranging from a few months up to twenty years.<sup>372</sup> Authorities therefore turned crime into labor. Between 1750-1795, 173 of 531 Boston defendants (33%) who were convicted of a crime in the Superior Court received a penalty of servitude, mostly in combination with another punishment such as whipping or branding. In fact, the single most common penalty handed down by the court was a combination of whipping and servitude (84 cases or 15.8%).<sup>373</sup> Although the variety of penalties alone does not explain the low number of executions in Boston, it is nevertheless important to consider it, as judges, juries, and authorities had an alternative to the gallows that the other colonies did utilize. At a time when long-term imprisonment was not yet considered a severe penalty enough, servitude did one thing that other punishments of the time such as whipping, branding, and the pillory did not – it put a convicted person for a long period of time under the supervision of somebody who would be considered a social superior. Persons who were otherwise considered “masterless” and dangerously independent were placed into a structured relationship of authority.

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<sup>372</sup> After the Revolution, the penalty of service became less common and was replaced by a punishment of imprisonment at hard labor.

<sup>373</sup> It is impossible to determine how many defendants entered service because they were not able to pay the damages the court awarded the accuser but, as the vast majority were from the lower sort, it is likely that most of them ended up serving the time determined by the court. The data is based on a compilation of cases that were tried and ended in a conviction in the Superior Court between 1750 and 1795. The records of the Massachusetts Superior Court of the Judicature, Suffolk County, are available in the Massachusetts State Archives in Boston.

Another penalty unknown in the other two cities or colonies was sitting on the gallows with a rope around one's neck for a specified amount of time. This form of punishment was part of the verdict in twenty-seven percent of all convictions in Boston between 1750 and 1795. In twenty-three percent of the cases, the penalty consisted also of whipping and either servitude or, by the 1780s, imprisonment. Elizabeth Smith, convicted of thievery, and John Sennet, convicted of bestiality, were sentenced to "set upon the Gallows for the space of one Hour, with a Rope round their Necks." Smith was also sentenced to receive twenty-nine lashes, Sennet thirty-nine.<sup>374</sup> In 1760, David Smith had to sit "upon the Gallows for the space of one hour, with a rope about his neck, and one End thereof cast over the Gallows" for burglary and arson.<sup>375</sup> In March 1769, Abel Badger, Michael Carmichael and Bryan Donnelly were convicted for attempting to escape from the jail by setting it on fire. They also were sentenced to sit on the gallows with a rope around their necks and to be whipped under the gallows with twenty lashes each.<sup>376</sup> The courts handed down this kind of punishment at least until the end of the eighteenth century.

Boston's gallows served not only in the day-to-day functioning of the criminal judicial system but also as an essential part of protest against British policies and at times local officials. On August 14, 1765, "a Great Number of people assembled at Deacon Elliotts Corner...to see the Stamp Officer hung in Effigy, with a Libel on the Breast, on Deacon Elliot's tree & along

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<sup>374</sup> *A Dialogue between Elizabeth Smith and John Sennet* (Boston, 1772) See also *Providence Gazette*, May 23, 1772 and *Boston Evening Post*, May 18, 1772

<sup>375</sup> *King vs. David Smith*, February 19, 1760, *Massachusetts Superior Court of the Judicature*, Suffolk County, p. 20.

<sup>376</sup> *King vs. Abel Badger, Michael Carmichael and Bryan Donnelly*, March 15, 1769, *Massachusetts Superior Court of the Judicature*, Suffolk County, p. 39.

side him a Boot stuffed with representation, which represented the Devil coming out of Burk.”<sup>377</sup>

Pinned to the effigy was the following poem:

Fair freedom’s glorious cause I’ve meanly quitted  
For the sake of pelf;  
But ah! The Devil has me outwitted,  
And instead of stamping others, I’ve hang’d myself.<sup>378</sup>

When Chief Justice Thomas Hutchinson ordered the sheriff to take down the effigies, a crowd prevented him from doing so. Once it was dark, they cut down the effigies and paraded them through town like a malefactor on execution day, stopping to level Oliver’s office on the way.<sup>379</sup>

Other parts of the execution ritual were also incorporated in pre-revolutionary protest in Boston. Groups of young boys were responsible for several protests against merchants who violated the non-importation agreement. In February 1770, a large crowd of school-boys assembled in front of the house of Theophilus Lillie to protest his violation of non-importation with an effigy on a post. At times, tarring and feathering was combined with a “visit” to Boston’s gallows. On January 25, 1774, John Malcom was put “into a Cart, Tarr’d & feathered him – carrying thro’ the principal Streets of this Town with a halter about him, from thence to the Gallows & Returned thro’ the Main Street making Great Noise & Huzzaing.”<sup>380</sup> The whole procession resembled that of the execution day and of other punishments – the offender in a cart driven through town, a rope around his neck, and a stop of the parade at the gallows.

Boston was the most unusual of the three cities in its staging of capital punishment. The absence of actual executions seems to have intensified the symbolism of the gallows to an extent

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<sup>377</sup> Anne Rowe Cunningham (ed.), *Letters and Diary of John Rowe* (New York: New York Times and Arno Press, 1969), p. 88.

<sup>378</sup> Quoted in William Pencak, “Play as Prelude to Revolution: Boston, 1765-1776,” in William Pencak, Matthew Dennis, and Simon P. Newman (eds.), *Riot and Revelry in Early America* (University Park: Pennsylvania State University Press, 2002), p. 132.

<sup>379</sup> Nash, *Urban Crucible*, p. 292-294.

<sup>380</sup> Cunningham (ed.), *Diary of John Rowe*, p. 261.

unknown in the other two cities. On the one hand, the gallows became a place of punishment short of execution, as offenders had to sit on them with a rope around their necks or as they were whipped while being tied to the gallows. On the other hand, the hanging of effigies took on a prominent role in popular protest leading up to the Revolution. At the same time, Bostonians witnessed many years without any execution. Authorities might have believed that the threat of the gallows was as effective as actually hanging one of their own.

### **Conclusion**

While executions in Boston, Philadelphia, and Charleston during the late colonial period were less frequent than during the remainder of the century, they nevertheless played an important role in each city's life. It is not surprising that executions of slaves were prevalent in Charleston where slave masters were constantly concerned about their slaves' behavior and actions. Nevertheless, because of the inherent contradiction between the slave as the master's property and the slave as a human being capable of committing offenses, executions of slaves were random but closely linked to instances of fear and anxiety among the white population. After all, an execution of a slave always also meant a loss of property and labor power, which clearly was not in the interest of the individual slave owner but at times was in the interest of the slave-owing class. In Philadelphia, executions during the late-colonial period foreshadowed trends that would appear in all three cities after the Revolution. The prevalence of property crimes as a cause for execution was the defining characteristic of capital punishment, putting Philadelphia in the vanguard in the protection of private property. In Boston, the gallows achieved a symbolic power unknown in the other two cities despite the small number of actual executions. The threat of the



gallows – during actual punishments as well as during the staged hangings of effigies – appears to have been deemed efficient enough by contemporaries to work as a deterrent.

## 6.0 CAPITAL PUNISHMENT AND THE AGE OF REVOLUTION

On Easter Sunday in 1760, slaves rose up in Saint Mary's Parish in Jamaica. Motivated by the possibility of freedom and inspired by the Akan religion, the so-called Tacky's Revolt spread quickly and lasted for several months. Tacky, the slaves' leader, was executed after his capture and his head put on a pole in Spanish Town. The death toll was high: sixty whites killed; three to four hundred slaves killed in fighting or died by suicide; and a hundred slaves executed.<sup>381</sup> Tacky's Revolt was just the beginning of the Age of Revolution but it nevertheless sent an immediate ripple effect through the Atlantic world. The *South Carolina Gazette*, for example, announced that "good reasons have been suggested to us, for not inserting in this Paper any Accounts of Insurrections, especially at this Time."<sup>382</sup> Unquestionably, the "good reasons" were fears of provoking similar revolts in South Carolina by chronicling the resistance of Jamaica's slaves. Over the next few decades, other revolts, uprisings, and revolutions broke out around the Atlantic, among them the American, French, Haitian Revolutions, and the Irish Rebellion. The Age of Revolution also brought a wave of social reform movements such as the abolitionist movement, a penal reform movement, and an opposition to the death penalty.

The following chapter concerns with the Age of Revolution beginning with the outbreak of the American Revolution and ending roughly with the turn of the nineteenth century. It follows a different strategy than previous chapters, offering not a detailed and balanced

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<sup>381</sup> Linebaugh and Rediker, *The Many-Headed Hydra*, p. 221-222.

<sup>382</sup> *South Carolina Gazette*, May 24-30, 1760.

comparison between the three cities but rather a survey of the differential impact of the Age of Revolution on capital punishment in each of the three cities. As a result, discussion of each city varies in length and depth from section to section, depending on the effects of the Age of Revolution.

### **The American Revolution**

The experience of the American Revolution in the three cities differed greatly from one to another. To some extent this revolutionary experience was influenced by the development of the struggle with Great Britain before 1776 and local conditions that then impacted the course of the Revolution in the respective cities. As discussed in the previous chapter, the inhabitants of Boston, whose city had been a place of major confrontation with British authorities and a main target of punitive legislation against the colonies after 1765, appear to have been the most united. Furthermore, the majority of inhabitants left the city during British occupation. In Philadelphia, ruling elites – Quakers on the one side and proprietors on the other side – had long engaged in a struggle for power in Pennsylvania. By the outbreak of the Revolution, Quakers were losing the battle and because of their self-declared neutrality in the conflict with Great Britain soon became the target of suspicion. Those living in Charleston faced entirely different challenges. Slave unrest had already increased in the early 1770s and with the outbreak of the Revolution anxiety over possible slave insurrections soared, especially because many believed that the British military would actively stir up and then assist such revolts. Therefore, in South Carolina slaves – in addition to patriots and loyalists – were major players acting to advance their interests in the hope of gaining freedom and ending slavery.<sup>383</sup>

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<sup>383</sup> Only more recently have historians of the Revolution in the South identified slaves as major independent players in the conflict. See Frey, *Water from the Rock* and Olwell, *Masters, Slaves, and Subjects*.

As the revolutionary struggles played out on the local level in the three cities, military hostilities and the Declaration of Independence especially brought nationwide questions to the forefront that then directly impacted the application of the death penalty in the three cities. With the outbreak of war, issues of loyalty and the question of what would constitute treason in the colonies immediately arose. During the colonial period, treason laws were not surprisingly modeled after those in England, containing only few new characteristics.<sup>384</sup> Before the Declaration of Independence loyalty and disloyalty were sensitive subjects, as it was difficult to define what one should be loyal to if not the king. After the Declaration of Independence, however, new definitions of treason and disloyalty developed largely out of the early military experience. Revolutionary leaders such as George Washington believed the provision against treason in the initial articles of war were inadequate and called for a strengthening of the treason law as early as October 1775, which caused Congress to add the death penalty as punishment for treason. Less than a year later, on June 24, 1776, members of Congress passed an additional resolve which defined treason as levying war against any of the states and as aiding the enemy in any way. Subsequently, the individual states passed provisions similar to federal law.<sup>385</sup> The position of neutrality was generally rejected by lawmakers in all the states. In Pennsylvania, the issue of neutrality became urgent when the majority of Quakers refused to support the patriot cause and declared their neutrality.<sup>386</sup>

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<sup>384</sup> Bradley Chaplin, "Colonial and Revolutionary Origins of the American Law of Treason," *William and Mary Quarterly*, 3<sup>rd</sup> ser., vol. 17 (January 1960), p. 7.

<sup>385</sup> Chapin, "American Law of Treason," p. 8-9. David James Kiracofe, "Dr. Benjamin Church and the Dilemma of Treason in Revolutionary Massachusetts," *New England Quarterly*, vol. 70 (Sept. 1997), p. 444-446; Anne M. Ousterhout, *A State Divided: Opposition in Pennsylvania to the American Revolution* (New York: Greenwood Press, 1987), p. 147-148.

<sup>386</sup> Chapin, "American Law of Treason," p. 11, 13-14. Quakers had also been reluctant to participate in actions of resistance prior to the Declaration of Independence when leading Quaker

## Boston

As discussed in the last chapter, those living in Boston experienced great social turbulence during the late-colonial period, beginning in 1765 with the Stamp Act protests, which united the city's population in opposition against the British and suppressed internal class antagonism. The back-and-forth battle between British officials and Boston's inhabitants created serious consequences for the city. After a large crowd of several hundred seized a ship in the Boston harbor and dumped its load of tea on December 16, 1773, the British Parliament passed the Coercive Acts or Intolerable Acts, which closed the city's harbor, prevented the trial of British officials in local courts, and abolished the annual town meeting to elect local officials. At this point, local struggles against British authorities intensified and spread across the colonies. The first Continental Congress met in Philadelphia in September 1774.<sup>387</sup> In Boston, however, the aftermath of the Tea Party, the Coercive Acts, and the subsequent military occupation introduced tensions among the population. One conservative observer noted that "the people of property...feel the tyranny of the [radical] leaders, and foresee[ing] the consequences of their proceedings, would gladly extricate themselves from the difficulties and distress they are involved in by making their peace with Great Britain, and speedily submitting to the conditions and penalties required." By the mid-1770s, therefore, many of prominent Boston's merchants abandoned their alliance with artisans and moved into the loyalist camp. Smaller merchants, however, remained faithful to the revolutionary cause.<sup>388</sup>

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merchants withdrew from Philadelphia's merchants' committee. Ousterhout, *A State Divided*, p. 30-32.

<sup>387</sup> Nash, *Unknown American Revolution*, p. 89-90. See also Alfred F. Young, *The Shoemaker and the Tea Party* (Boston: Beacon Press, 1999), p. 42-45.

<sup>388</sup> Nash, *Urban Crucible*, p. 358 (quote), 359-362.

Despite the increasing internal tension among different classes in Boston, no executions took place in the city during the revolutionary period (1776-1783), which is in stark contrast to the other two cities, especially Philadelphia. Although there is no direct evidence such as primary sources to explain the absence of capital punishment, the general circumstances leading up to the outbreak of the War of Independence and events in Boston during the early war years help to shed light on it. With the closure of Boston's harbor and subsequent occupation by the British, the vast majority of the inhabitants fled the city, leaving a population of fewer than three thousand. When the occupation ended after ten months, inhabitants only slowly returned. By 1780, the city's population had only increased to about 10 000 people. Furthermore, the relative homogeneity of Boston's population also helps to explain the low number during the late colonial period that continued into the early 1780s. In the last two decades, the composition of inhabitants changed dramatically with a greater influx of migrants from other states and immigrants from abroad.<sup>389</sup> This diversification in turn contributed to a significant increase in executions.

### **Philadelphia**

As we saw in Chapter 4, executions in Philadelphia increased sharply during the Revolution compared to the late colonial period (1750-1775), as the rate rose from 1.4 executions a year in the late colonial period to 5.1 executions a year between 1776 and 1783. Of the forty-one hangings during the revolutionary period, twenty-five (43%) were for property crimes, eleven cases (27%) were for crimes such as desertion or treason and therefore resulted directly from the Revolution, and five executions (12%) were for personal crimes. Some of the executions for property crimes, however, can also be linked to the revolutionary struggle. On

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<sup>389</sup> Carr, "Boston's Demographics, 1780-1800," p. 584, 589.

December 5, 1778, for example, Abijah Wright was hanged for burglary. Wright was convicted of entering the mansion of Colonel Andrew Knox during the fall session of the Court of Oyer and Terminer. During the same session, Wright was also indicted for treason but there is no record that Wright went on trial for that charge.<sup>390</sup> Similarly, on February 15, 1783, for example, Lot Subzey, Samuel J. Freeman, and Kemble Stackhouse were all hanged for burglary. A letter of John Laurens, son of South Carolina planter Henry Laurens, reveals that all three of them were known as “traitors” and “royal refugees” and that at least one of “the prisoners has held correspondence with the enemy.”<sup>391</sup>

The most famous and most controversial executions in revolutionary Philadelphia were those of two Quaker artisans – John Roberts and Abraham Carlisle – in November 1778 shortly after the British occupation ended. According to a report by the Meeting for Suffering, Carlisle, a carpenter, accepted “an office to grant permits or persons to pass in and out” of Philadelphia while the city was occupied by the British. Various Friends expressed “uneasiness to him” and were concerned about dangerous consequences but Carlisle took the position anyway.<sup>392</sup>

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<sup>390</sup> *Respublica vs. Abijah Wright*, September 29, 1778 (treason) and *Respublica vs. Abijah Wright*, November 18, 1778 (burglary), Courts of Oyer and Terminer and General Goal Delivery, Dockets 1778-1786, *Records of the Supreme Court of Pennsylvania*, Pennsylvania State Archives, Harrisburg; *Pa. Packet*, December 1, 8 and 12, 1778; *Pa. Gazette*, May 17, 1780; *Colonial Records*, v. 11, p. 631, 635. It appears that both charges and indictments resulted from the same crime. Nevertheless, Wright was hanged officially for burglary, not treason.

<sup>391</sup> John Laurens to Henry Laurens, February 17, 1778, in John Laurens, *The Army Correspondence of Colonel Laurens in the Years 1777-8* (New York: New York Times & Arno Press, 1969), p. 128-129.

<sup>392</sup> Report to the Meeting for Sufferings, August 4, 1779, reprinted in Isaac Sharpless, *A Quaker Experiment in Government: History of Quaker Government in Pennsylvania, 1682-1783* (Philadelphia: Ferris and Leach, 1902), p. 195. The report did not appear in the minutes of the Meeting for Sufferings until 1785. For concern among fellow Quakers, see John Pemberton, *Diary 1777-1781*, Pemberton Papers (Box 1), HSP. See also “Minutes of the Supreme Executive Council, October 23, 1778, *Colonial Records*, vol. 11, p. 600-606; “The Memorial of Ann Carlisle,” (no date), Audit Office (Great Britain), *Records of the American Loyalist Claims Commission, 1776-1831* (AO 12, 12/43/1); and “Memorial &c. to the Commissioners from the

Roberts's story is a bit more complicated. John Roberts, a miller from Merion outside of Philadelphia, was "well respected for his hospitality, benevolent disposition and readiness to serve his neighbors and friends." When in September 1777 several prominent Quakers were arrested and sent into exile in Virginia,<sup>393</sup> According to the Meeting of Suffering, Roberts was "much moved by this arbitrary violation of civil and religious liberty" and he "hastened away...to give intelligence thereof to the General of the British Army...in the hope to frustrate the intention of sending them into exile." Moreover, in the following weeks, Roberts was "seen in company with the English Army, or parties of them, in some of their marches or enterprizes not far distant from the city." Although Roberts insisted throughout his trial that "this was against his will,...these parts of his conduct furnished occasion for the prosecution against him."<sup>394</sup>

The executions of Roberts and Carlisle presented a violent culmination of hostility toward Quakers during the revolutionary war. Quakers and their official position of neutrality quickly drew suspicion and distrust from those who supported independence. Quakers did not hide their views and repeatedly published declarations of neutrality in the war with Great Britain. In September 1777, for example, James Pemberton, one of Philadelphia's most prominent

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Widow & Son of Abm. Carlisle," Audit Office (Great Britain), *Papers of the American Loyalist Claims Commission, 1780-1835* (AO 13, 13/70B(II)/183-205).

<sup>393</sup> For banishment of Quakers, see "A Testimony given forth from our Yearly Meeting, held at Philadelphia," September 29-October 4, 1777 (broadside), Library Company of Philadelphia; "To the Inhabitants of Pennsylvania," (broadside), LCP; and Joseph S. Ellington, "Biographical Sketch of James Pemberton, from Original Sources," Quaker Collection, Haverford College, p. 23-29.

<sup>394</sup> Report to the Meeting for Suffering, in Sharpless, *Quaker Experiment*, p. 195-196. See also J. Smith Futley and Gilbert Cope, *The History of Chester County, Pennsylvania* (Philadelphia: Louis H. Everts, 1881), p. 115. "Memorial and Petition of Jane Roberts," Audit Office (Great Britain), *Records of the American Loyalist Claims Commission, 1776-1831* (AO12, 12/43/73); and "Memorial of Jane Roberts," and "Memorial of Thomas Roberts," Audit Office (Great Britain), *Papers of American Loyalist Claims Commission* (AO13, 13/71B/243-247, 260-266 and 13/71B/267-272).



Quakers, advised the city's population "to demean themselves as peaceable subjects, and to discountenance and avoid every measure tending to excite disaffection to the king." Reminding readers of "our past experience of the clemency of the king and his royal ancestors," Pemberton believed that "decent and respectful addresses from those who are vested with legal authority...would avail towards obtaining relief, ascertaining and establishing the just rights of the people and restoring the public tranquility." He further warned against "every usurpation of power and authority, in opposition to the laws and government, and against all combinations, insurrections, conspiracies, and illegal assemblies."<sup>395</sup> Although Quakers did not deny that the colonies had experienced some injustices at the hands of the British, their position of neutrality could be, and often was, taken as one of support for Great Britain as they called for obedience to and respect of British authority.<sup>396</sup> Quickly, Quakers became known as "contrivers and authors of seditious publications."<sup>397</sup>

Quaker behavior came under even greater scrutiny with the passing of the so-called test acts. Immediately after Pennsylvania's radical constitution was passed in 1776, its opponents pressured for a new convention to revise it. At the same time the British army was moving south through New Jersey towards Pennsylvania. The combination of internal and external threat led to the test acts, which were designed to enforce unity among the state's inhabitants. The test acts obliged all white male inhabitants to renounce their allegiance to Great Britain and to swear that

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<sup>395</sup> *Pennsylvania Evening Post*, September 9, 1777.

<sup>396</sup> Quaker opposition to the revolutionary struggle went beyond resistance against the war and actual participation in it. Quakers also refused to pay war taxes, to take oaths of allegiance, and to provide provision to the military unless it was to relieve suffering rather than support the war effort. Going back to the English Revolution, however, Quakers differed from other revolutionary groups in that they always emphasized that they would never conspire against the king. Therefore, they rather would suffer under an unjust law than overthrow an existing government. Sharpless, *A Quaker Experiment in Government*, p. 174-175. Hill, *World Turned Upside Down*, p. 236-237.

<sup>397</sup> *Pennsylvania Evening Post*, September 4, 1777.

they would not undermine the revolutionary effort under any circumstances. They also required every-body to report any and all treasonous activities to authorities.<sup>398</sup> One observer immediately expressed his concern for those “whom strict and necessary justice in punishing idleness, neutrality and disaffection in the present controversy will render miserable.”<sup>399</sup> Besides punishing individual Quakers with fines and imprisonment, the test acts seriously affected Quaker schools, as all teachers had to take an oath of loyalty. In a petition to the General Assembly, John Drinker expressed his concern about school closures, especially because “their liberality hath been extended to poor children of other religious denominations” who would now be left without education. Nevertheless, Drinker confirmed that “when laws have been made to enforce our compliance contrary to the conviction of our consciences, we have thought it our duty to patiently suffer though we have often been grievously oppressed.”<sup>400</sup>

While Quakers tried desperately to convince Philadelphians and the revolutionary government that “no government can have just occasion for entertaining fears or jealousies of disturbances or danger from us,”<sup>401</sup> they nonetheless became the target of angry crowds during the revolutionary period, when Quakers refused to take part in “public feasting and rejoicing” by putting candles into windows.<sup>402</sup> According to Elizabeth Drinker, “a mob assembled” in mid-

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<sup>398</sup> Peter C. Messer, “‘A Species of Treason & Not the Least Dangerous Kind’: The Treason Trials of Abraham Carlisle and John Roberts,” *Pennsylvania Magazine of History and Biography*, vol. 73 (Oct. 1999), p. 310-312.

<sup>399</sup> *Pennsylvania Packet*, May 13, 1777.

<sup>400</sup> “To the General Assembly of Pennsylvania,” November 3, 1779, reprinted in Sharpless, *Quaker Experiment in Government*, p. 185.

<sup>401</sup> “To the General Assembly of Pennsylvania,” November 3, 1779, reprinted in Sharpless, *Quaker Experiment in Government*, p. 186. For examples of written attacks on Quakers, see *Constitutional Gazette*, February 10, 1776; *Providence Gazette*, June 14, 1777; *Independent Ledger*, September 14, 1778; *Pennsylvania Evening Post*, September 4, 1777.

<sup>402</sup> Sharpless, *Quaker Experiment in Government*, p. 188.

October of 1778 to insult “those whose Houses were not illuminated.”<sup>403</sup> Damage could be rather severe, as Anna Rawle in her diary that her house had been surrounded by a mob who “broke the shutters and the glass of the windows.” Apparently, two men – friends of the family – “fixed lights up at the windows, which pacified the mob, and after three huzzas they moved off.”<sup>404</sup> At least early in the Revolution authorities attempted to prevent those actions. In 1776, for example, the Committee of the City and Liberties of Philadelphia announced that it “hold *liberty of conscience* to be sacred, and that any difference in opinion, which are not injurious to the community, ought to be indulged.” The committee further recommended that “all inhabitants of this City and Liberties to forbear from any kind of insult to the said people,” primarily meaning Quakers.<sup>405</sup>

Despite the widespread hostility towards Quakers during the Revolution, the conviction and death sentence of Roberts and Carlisle stirred the emotions of many Philadelphians. Thousands – Quakers and non-Quakers – signed petitions in favor of the condemned. Among the petitioners were the chief justice and his associate justices who had denied Roberts’s and Carlisle’s appeals, twelve members of the grand jury who had indicted the two artisans, Roberts’s entire petit jury, and ten members of Carlisle’s petit jury.<sup>406</sup> Petitioners hoped that the

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<sup>403</sup> “Diary of Elizabeth Drinker,” *Pennsylvania Magazine*, vol. 16, p. 106.

<sup>404</sup> “Diary of Anna Rawle,” quoted in “The Life of Margaret Shippen, Wife of Benedict Arnold,” *Pennsylvania Magazine*, vol. 25 (1901), p. 26.

<sup>405</sup> *Pennsylvania Evening Post*, May 16, 1776.

<sup>406</sup> It is not entirely clear why the jurors who convicted the two Quakers would then petition for a pardon rather than acquit or convict of a lesser non-capital charge to begin with. For petitions, see *Pennsylvania Archives*, 1<sup>st</sup> ser., vol. 7, p. 24-58 (hereafter *Pa. Arch.*). The petitions themselves were not without controversy, mainly because of demands that the question of pardons should be referred to the legislative body rather the Supreme Council. See *Pennsylvania Packet*, October 31, 1778.

“characteristick of the True Americans shall be Humanity, mercy, charity & forgiveness.”<sup>407</sup> In the case of Roberts, some stressed his generous actions towards prisoners while he held office under the British.<sup>408</sup> Many had high hopes for pardons for both men. Elizabeth Drinker noted in her diary that “it is hop’d by many that he [Carlisle] will not suffer what some others fear he will” and a few days later she again commented that “tis hop’d and believed that their Lives will be spard, it would be terriable indeed should it happen otherwise.”<sup>409</sup> John Pemberton, who actively pushed for pardons, drew a different picture after visiting with George Bryan and with “Jo.s Heart a leading member in the Council from which visits there was little, or no reason, to expect mercy.”<sup>410</sup>

On November 4, 1778 Roberts and Carlisle were hanged for high treason.<sup>411</sup> After the executions emotions ran deep among Philadelphians. Elizabeth Drinker wrote in disbelief: “they have actually put to Death; Hang’d on the Commons, John Robarts and Am. Carlisle this morning or about noon – an awful Solemn day it has been.”<sup>412</sup> After the execution, John Pemberton noted in his diary that he “found my fr[iend]ds in the City Sorrowfully attested with the melancholy Scene acted on W.day by the 2 frds J.R. & A.C. being put to death.” He continued that “the Execution of these men alarmed & affected the Inhabitants, as neither had

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<sup>407</sup> “Petition of Wm. Young, &c. in Favor of John Roberts, 1778, *Pa. Arch.*, 1<sup>st</sup> ser., vol. 7, p. 39 (hereafter *Pa. Arch.*). For similar argument, see “John Carmichael to President Bryan, 1778,” *Pa. Arch.*, 1<sup>st</sup> ser., vol. 7, p. 43; “Memorial of Jurors and Judges in Favor of Ara’m Carlisle, 1778, *Pa. Arch.*, 1<sup>st</sup> ser., vol. 7, p. 52-53.

<sup>408</sup> “Memorial of Beneficiaries of John Roberts, 1778,” *Pa. Arch.*, 1<sup>st</sup> ser., vol. 7, p. 36; “Petition of Wm. Young, &c. in Favor of John Roberts, 1778, *Pa. Arch.*, 1<sup>st</sup> ser., vol. 7, p. 38-39; “The Petition of John George, &c., 1778, *Pa. Arch.*, 1<sup>st</sup> ser., vol. 7, p. 40-41.

<sup>409</sup> Elaine Forman Crane (ed.), *The Diary of Elizabeth Drinker*, vol. 1 (Boston: Northeastern University Press, 1991), p. 328, 333.

<sup>410</sup> Pemberton, *Diary*, p. 124.

<sup>411</sup> *Pennsylvania Packet*, November 5, 1778.

<sup>412</sup> Crane (ed.), *Diary of Elizabeth Drinker*, p. 333.

Committed Crimes worthy of such severe treatment.”<sup>413</sup> Under the pseudonym “Fidelia,” Quaker Hannah Griffitts wrote the following lines:

And you, the guiltless victims of the day  
(Who to a Timid City’s late reproach  
And blush of its Inhabitants,) have fallen,  
A Prey to Laws; Disgraceful to the man  
Fallen, on the Cruel shores, that gave you birth  
Fallen, on th’ ungrateful shores, your father’s plan’d  
“On the firm Basis of true Liberty,”  
“The Laws of Justice; & the rights of man”;  
Long, shall your names, survive the brutal deed;  
And fair, Transmitted down to better times  
Stand the Reproach of our’s; when Lawless power  
And wealth, by Rapine gain’d; shall shroud its head  
In Infamous oblivion, or be held  
The warning, not example of mankind.<sup>414</sup>

Griffitts was not mistaken about the impact of the Quakers’ hangings. Executions in Philadelphia continued despite the controversy surrounding the Quaker hanging but only two executions of the thirty-two that would follow were for treason.<sup>415</sup> Of the thirty others, twenty-five were for property crimes such as robbery, burglary, and piracy, and five more were for murder. None of those executions reached the level of emotion and controversy caused by the hanging of Roberts and Carlisle. Indeed, the memory of these executions, together with the many others during the

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<sup>413</sup> Pemberton, *Diary*, p. 125.

<sup>414</sup> Fidelia, “On the Death of John Roberts and Abraham Carlisle Novr. 4, 1778,” reprinted in Catherine La Courreye Blecky and Karin A Wulf (eds.), *Milcah Martha Moore’s Book: A Commonplace Book from Revolutionary America* (University Park: Pennsylvania State University Press, 1997), p. 317-318 (Appen-dix); for information on Hannah Griffitts, see p. xvii.

<sup>415</sup> David Dawson was hanged on November 25, 1780 after having been convicted of treason for joining the British army. *Pennsylvania Gazette*, November, 29, 1780; “Minutes of the Supreme Executive Council, *Colonial Records*, v. 12, p. 354, 390, 536 and 552; and Great Britain Audit Office, *Papers of the American Loyalist Claims Commission* (AO12/95/13 and AO 13/96/134-138). The second person hanged for treason was John Moody who allegedly had come from New York to Philadelphia to spy. *Pennsylvania Gazette*, November 14, 1781.

revolutionary period, would eventually trigger a strong penal reform movement, including an opposition to capital punishment, in the aftermath of the Revolution.

### Charleston

The conflict between the colonists and Great Britain provoked serious anxieties among the slave owners in Charleston, South Carolina.<sup>416</sup> Masters knew very well that news and conversations among planters were not beyond the slaves' ears, as one plantation owner commented that "negroes have a wonderfull art of communicating Intelligence among them" and information could travel "several hundreds of miles in a week or a fortnight."<sup>417</sup> Those living in Charleston had witnessed early on in the revolutionary struggle an incident that illustrated that slaves were very much capable understanding and interpreting events on their own and applying them to their own situation. A few months after sailors had protested against the Stamp Act in Charleston another mob, this time consisting of slaves, marched through the city's streets, demanding liberty and instilling fear into the white population. Despite constant patrols, the unrest continued and soon sailors from the many ships in the city's harbor joined in once again.<sup>418</sup> Almost ten years later the fear that slaves would exploit the coming upheaval gripped Charleston and South Carolina when the revolutionary war broke out in spring 1775.

On August 18, 1775 a free black named Thomas "Jerry" Jeremiah fell victim to the fear and suspicion in Charleston when he was hanged and then burned for "plotting an Insurrection"

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<sup>416</sup>Julius S. Scott, "The Common Wind: Currents of Afro-American Communication in the Era of the Haitian Revolution" (Ph.D. Thesis, Duke University, 1986), p. 118-120; Sylvia R. Frey, *Water from the Rock: Black Resistance in a Revolutionary Age* (Princeton: Princeton University Press, 1991), p. 56-57, 60-61, 67-68; Sidney Kaplan, "The 'Domestic Insurrections' of the Declaration of Independence," *Journal of Negro History*, vol. 61 (July 1976), p. 243-255.

<sup>417</sup> Quoted in Olwell, *Masters, Slaves, and Subjects*, p. 229-230. See also Scott, "The Common Wind," p. 118-121.

<sup>418</sup> look up Laurens Oct 26, 1765; Jan. 29 and 31, 1766. See also Linebaugh and Rediker, *The Many-Headed Hydra*, p. 211.

together with several slaves. A man of considerable property which included several slaves, Jerry worked as pilot, fisherman, and firefighter in Charleston. His freedom made him dangerously independent but perhaps also more vulnerable to false accusations. Most of all, his skill as a pilot made him indispensable to a city like Charleston but, in a time of crisis, a pilot's knowledge was as valuable to the British and potential runaway slaves as it was to the colonists.<sup>419</sup> Jerry's execution, and possibly that of another slave for the same crime,<sup>420</sup> was therefore the direct result of another wave of fear and suspicion about a possible slave uprising in and around Charleston.

Anxiety reached new heights in May 1775 when a black preacher had "dropped some unguarded Expressions" such as that "'God would send Deliverance to the Negroes, from the power of their Masters, as He freed the Children of Israel from Egyptian Bondage.'"<sup>421</sup> As a result, shoemaker Patrick Hinds was charged with "entertaining and admitting Negro Preachers into his House and on his Grounds, where they deliver Doctrines to large Numbers of Negroes, dangerous and Subversive of the Peace, Safety and Tranquility of this Province."<sup>422</sup> Slave owners began to limit ministers' access to slaves because their preaching appeared to have

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<sup>419</sup> Jerry was not the only pilot who was executed. Similar fears among slave owners about the role of pilots were also present in Virginia. For examples, see Morgan, *Slave Counterpoint*, p. 342.

<sup>420</sup> There is no conclusive record of the slave's execution but his death is very likely as he recanted his testimony after he had accused Jerry of instigating an insurrection among slaves.

<sup>421</sup> Quoted in Duncan, *Servitude and Slavery*, p. 827. A similar incidents happened near Charleston in St. Bartholomew Parish a few months later. As in Charleston, John Burnet, a white man, was implicated in the case. George, a slave preacher, predicted that England's king would "alter the World & set the Negroes Free." George was executed and several other slaves were whipped as the "Principal leaders of their Infernal designs." See Thomas Hutchinson to Council of Safety, July 5, 1775, in Papers of Henry Laurens, p. 206-208. See also Olwell, *Masters, Subjects, and Slaves*, p. 233; and Duncan, *Servitude and Slavery*, p. 834-836.

<sup>422</sup> Quoted in Duncan, *Servitude and Slavery*, p. 828. The outcome of the charges against Hinds is unknown, but David, the preacher in question, apparently made his way to Savannah and eventually boarded a ship to England "after the Gentlemen of this Town [Savannah] are so possessed with an opinion that his designs are bad, that they are determined to pursue and hang him." Quoted in Duncan, *Servitude and Slavery*, p. 828-829. See also Morgan, *Slave Counterpoint*, p. 424-425.

become motivation and justification for slave unrest. In several instances ministers had been at the forefront of suspected revolts. According to one ex-slave, once “the war was coming on...Ministers were not allowed to come amongst us lest they should furnish us with too much knowledge.”<sup>423</sup> Increasing fear can also be seen in official communication between parishes. The Charleston General Committee of Safety impressed on the committee of St. David’s Parish “to ride often and diligently, as we have intelligence of exciting the slaves to revolt has been laid before Administration.” Charleston merchant Josiah Smith declared in a letter that “our militia...are brought to perform duty every night, principally to guard against any hostile attempts that may be made by our domesticks, who of late have been taught, (by some designing Wretches) to believe that they will be sett free on the arrival of our New Governor.”<sup>424</sup>

In the midst of this tense atmosphere the Charleston slave court convened in June 1775 to conduct the “Trials of Several Negroes Suspected & charged of plotting an Insurrection,” among them free black harbor pilot and fisherman Jerry.<sup>425</sup> According to the testimony of a slave named Sambo, Jerry had asked him at the waterfront if he knew “anything of the war that is coming.” When Sambo denied any knowledge, Jerry allegedly replied that the “war was come to help the poor negroes,” echoing the rumors that already instilled much fear into most Charleston’s white inhabitants. Another slave – Jerry’s brother-in-law – testified against Jerry in return of a pardon. He declared that Jerry had “asked him to take a few Guns” to a runaway slave “to be placed into Negroes hands to fight against the Inhabitants of this Province.”<sup>426</sup> Despite Jerry’s arrest and

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<sup>423</sup> Quoted in Olwell, *Masters, Slaves, and Subjects*, p. 232.

<sup>424</sup> Quoted in Duncan, *Servitude and Slavery*, p. 832.

<sup>425</sup> Henry Laurens to John Laurens, June 18, 1775, *Papers of Henry Laurens*, vol. 10, p. 184.

<sup>426</sup> Quoted in Peter Wood, “‘Taking Care of Business’ in Revolutionary South Carolina: Republicanism and the Slave Society,” in Crow and Tise (eds.), *Southern Experience*, p. 284. See also “Mr. Milligen’s Report of the state of South Carolina,” Sept. 15, 1775, in *Transcripts of*



trial, anxiety remained high in Charleston and the low country. In July, the *South Carolina Gazette and Country Journal* tried to calm fears by declaring that “the Militia Companies continue to patrol the Town and Neighbourhoods every Night” and that “the nightly Meetings and Riots of the Negroes are entirely suppressed, and these Depredations and Robberies with which we had used to be so frequently alarmed, are no more.”<sup>427</sup> In August 1775, newly arrived governor William Campbell confirmed the anxiety among whites in Charleston, especially rumors of possible British actions in regard to the slaves. According to Campbell, a “leading Man in this place” received a letter “from a M<sup>r</sup> Lee in London” in which he “boldly asserts the Ministry had in agitation not only to bring down the Indians on the Inhabitants of this Province, but also to instigate, and encourage an insurrection amongst the Slaves.”<sup>428</sup> As a consequence, the Charleston militia was again ordered “to do Patrole Duty and to Mount Guard every night.”<sup>429</sup>

Although the trial of Jerry and his subsequent execution was a direct result of those mounting fears, the case was not without its critics. According to Milligen’s report on South Carolina, the justices “had not, even in their own jaundiced opinions, proof sufficient to condemn him [Jerry] for this great crime.” Jerry was returned “to the Workhouse till further proof could be got against him.” Despite the lack of a confession by Jerry and “further proof,” Jerry “was found guilty and condemned to be hanged and the dead body to be burned.”<sup>430</sup> To

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*Records in the PBRO: America and West Indies*, vol. 35, South Carolina Department of Archives and History, p. 233.

<sup>427</sup> *South Carolina Gazette and Country Journal*, June 13, 1775.

<sup>428</sup> Letter from William Campbell to “My Lord”, August 31, 1775, *South Carolina Public Records*, vol. 35, p. 192. Similar charges were apparently also launched against John Stuart, the British Superintendent of Indian Affairs for the Southern Department. See Duncan, *Servitude and Slavery*, p. 830-831.

<sup>429</sup> Duncan, p. 833.

<sup>430</sup> “Milligen’s Report,” p. 233-234.

Milligen, Jerry “fell sacrifice to the groundless Fears of some and the wicked Policy of others for from the best information I could get, his real crime was his being a good Pilot, and his inclination to be of use to His Majesty’s ships.” Milligen also doubted the trial’s legality because Jerry was a free Christian who owned substantial property and therefore should not have been convicted on testimony by witnesses who “were slaves and not Christians.”<sup>431</sup>

Governor William Campbell shared some of Milligen’s concerns. To him, it was unimaginable that Jerry could have been involved in “so a wild scheme as to instigate an insurrection” because Jerry owned substantial property and several slaves. A few days after the verdict, Campbell contacted one of the justices “to attend me, with the proceedings against this poor man, and the whole of the evidence.” Outraged about the evidence, Campbell decided to express “to the Justice in the strongest terms my sense of the weakness of the evidence” and to try to convince him to “get a Petition signed by them.”<sup>432</sup> When Campbell’s intervention became public, it “raised such a clamor amongst the People...and they openly and loudly declared, if I granted the man a pardon they would hang him [Jerry] at my door.” Furthermore, “a man of first Property” wrote Campbell a letter, “representing in the strongest terms the dreadful consequences that would attend my pardoning him, concluding...that it would raise a flame all the water in Cooper River would not extinguish.”<sup>433</sup> On August 18<sup>th</sup>, Jerry was therefore hanged

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<sup>431</sup> “Milligen’s Report,” p. 234.

<sup>432</sup> According to Campbell, the only way for a slave or free black to be pardoned was through a petition by the justices. Campbell also approached the colony’s Attorney General, Chief Justice and his justices. Although both the Attorney General and the Chief Justice concluded that the evidence against Jerry was very weak but that the costs to the governor, “they therefore submitted whither in this situation it would be proper for me to insist on it.”

<sup>433</sup> Despite these threats, Campbell unsuccessfully continued his efforts to save Jerry’s life. All quotes and information in this paragraph are taken from “William Campbell to My Lord,” August 31, 1775, in *Transcripts of Records in the PBPR: America and West Indies*, vol. 35, South Carolina Department of Archives and History, p. 196-209. For the threat to hang Jerry in front of Campbell’s residence, see also “Milligen’s Report,” p. 235.

and his body burned. To Campbell, the execution of Jerry was only one of the signs that colonists were out of control as “another Act of Barbarity” had been committed a few days earlier when “the Gunner of Fort Johnson, who for expressing his Loyalty was tarr’d, & feather’d 10 or 12 times, in different parts of the Town, & otherwise treated with great cruelty, stopping him at the doors of those Crown Officers who were most obnoxious.”<sup>434</sup>

The case of Jerry set the stage for roughly the next year. The number of legal executions of slaves seemed to have been very low,<sup>435</sup> but extra-legal violence was on the rise as the fear of slave unrest did not decline and runaway slaves increasingly became the focus of anxiety. Some slave owners directly confronted the disciplinary problem among their slaves. Henry Laurens, for example, assembled his brother’s slaves and “admonished them to behave with great circumspection in this dangerous times.” He “set before them the great risque of exposing themselves to the treachery of pretended friends & false witnesses if they associated with any Negroes out of your family or mine.” Laurens believed that “they were sensibly affected” and reported to his brother that they “with many thanks promised to follow my advice & to accept the offer of my Protection.”<sup>436</sup> Laurens might have been successful in convincing his brother’s slaves to remain in the Charleston residence, but other masters encountered open defiance by their slaves. In November 1775, a slave named Limus confronted his master Joshua Eden, directly challenging the master’s authority and power. According to Eden, Limus told him that “though

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<sup>434</sup> Ibid, p. 354.

<sup>435</sup> In part the decline of legal slave executions can be explained with a lack of sources but, as government institutions ceased to function it is also likely that individual masters took the punishment of their slaves into their own hands and therefore evidence of legal executions is scarce.

<sup>436</sup> Henry Laurens to James Laurens, June 7, 1775, *Papers of Henry Laurens*, vol. 10, p. 162-163.

he is my Property...he will be free, that he will serve no Man, and that he will be conquered or governed by no Man.” Afterwards Limus ran away.<sup>437</sup>

As the authority of masters waned amid the revolutionary chaos, individual acts of resistance, especially running away, became more frequent. These individual acts aggregated into widespread resistance that in turn provoked concerted action by the ruling elite. This was true especially after Lord Dunmore’s proclamation in November 1775 that promised freedom to those slaves who joined the British in the fight against the rebellious colonists. Sullivan’s Island in the Charleston harbor and Tybee Island in the mouth of the Savannah River were in reach of the guns on British ships and therefore became places of refuge for runaway slaves. According to contemporaries, runaway slaves flocked to these islands in their hundreds. William Moultrie estimated that about five hundred slaves had found refuge on Sullivan’s Island and Stephen Bull wrote to Henry Laurens that about two hundred slaves had settled on Tybee Island. A black man was indicted before the slave court in Christ Church Parish just across from Sullivan’s Island for “enticing other slaves to desert on board the man of war.”<sup>438</sup>

Authorities increasingly focused on evidence that the black population – free and enslaved – in and around Charleston cooperated directly with the British. Scipio Handley, a free black fisherman, was brought before the slave court in Charleston and accused of carrying messages to and from the governor who was living on a British man of war in the city’s harbor. Handley was sentenced to death for “acting against the Congress” but was able to escape when a friend smuggled a file into prison. After fighting for the British in Virginia, Handley went to London and filed compensation of lost property before a board of loyalist commissioners. Furthermore, the president of the South Carolina Council of Safety, Henry Laurens, wrote to the

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<sup>437</sup> *South Carolina Gazette*, November 7, 1775.

<sup>438</sup> Quoted in Olwell, *Masters, Slaves, and Subjects*, p. 239.

captain of the British ship *Tamar* that the Council had “daily complaints from the inhabitants of the sea-coast, of robberies and depredations committed on them by white and black armed men, from on board some of the ships under your command.”<sup>439</sup> According to Laurens, those slaves who had found refuge on Sullivan’s Island were especially involved in these robberies, as he wrote in one of his letters that William Campbell had gone great lengths in “harboring & protecting Negroes on Sullivants Island from whence those Villains made their nightly Sallies and committed robberies & depredations.”<sup>440</sup> The worst fears of many white inhabitants in South Carolina seemed to be coming true as the black population sided with the British and actively engaged in missions against the state’s white population.<sup>441</sup>

Authorities soon decided to take action against the “settlements” of runaway slaves on both Sullivan’s Island and Tybee Island. For low-country ruling elites, rooting out the runaway camps on the two islands was a “safe” alternative to confronting the British directly over their cooperation with the black population. According to Laurens, the “alarming evil” of slaves running away and committing robberies needed an exemplary action “to humble our Negroes in general.”<sup>442</sup> Such action had come on December 18 when “the Company of Foot Rangers...made a descent on that Island [Sullivan’s] burnt the House in which the Banditti were often lodged brought off four Negroes killed three or four & also took White prisoners four Men three Women & three Children destroyed many things which had been useful to those wretches.”<sup>443</sup> Governor

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<sup>439</sup> Quoted in Olwell, *Masters, Slaves, and Subjects*, p. 240.

<sup>440</sup> Council of Safety to Richard Richardson, December 19, 1775, *Papers of Henry Laurens*, vol. 10, p. 576.

<sup>441</sup> For more examples and complaints, see Henry Laurens to John Laurens, August 14, 1776, *Papers of Henry Laurens*, vol. 11, p. 224.

<sup>442</sup> Council of Safety to Richard Richardson, December 19, 1775, *Papers of Henry Laurens*, vol. 10, p. 576.

<sup>443</sup> Several of those living on the island were able to flee to the Man of War *Cherokee* but some of the whites captured in the raid were actually from the ship’s crew, once more confirming local

Campbell and the small British fleet left the harbor of Charleston early in 1776, taking with them “no inconsiderable number” of slaves.<sup>444</sup> By March authorities decided to raid Tybee Island and destroy that camp as they had done on Sullivan’s Island. In a letter to Henry Laurens, Stephen Bull declared that “it is far better for the Public” that “the deserted Negroes on Tybee Island be shot” rather than be allowed to escape. Once more, authorities hoped that a violent raid on the camp would serve as an example for low-country slaves and might prevent them from running away in the first place. Both agreed that killing the “fugitive & Rebellious Slaves” was necessary in that “it perhaps may deter other Negroes from deserting.”<sup>445</sup>

Formal legal executions of slaves during the revolutionary period (1776-1783) were, according to surviving records, very low. There is only one documented slave execution in Charleston. On March 19, 1779, a slave “was burnt on the Commons near this town for setting fire to his master’s stable a few weeks since.”<sup>446</sup> Yet it is highly likely that more slaves were burnt, hanged or otherwise executed during the revolutionary period, especially during the initial phase from early 1775 through early 1776 when confrontations between masters and slaves were frequent. In part the absence of documented executions can be explained by incomplete sources. There are, however, two other possible explanations that contributed to the small recorded number of slave executions during the Revolution. Slave masters were probably more likely to

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suspicion about the cooperation between runaway slaves and the British. Council of Safety to Richard Richardson, December 19, 1775, *Papers of Henry Laurens*, vol. 10, p. 576. See also *South Carolina General Gazette*, December 22, 1775.

<sup>444</sup> Henry Laurens to Stephen Bull, January 6 and 20, 1776, *Papers of Henry Laurens*, vol. 11, p. 1-2, 49-50.

<sup>445</sup> Stephen Bull to Henry Laurens, March 17, 1776, *Papers of Henry Laurens*, vol. 11, p. 172; and Stephen Bull to Henry Laurens, March 14, 1776, *Papers of Henry Laurens*, vol. 11, p. 163-164.

<sup>446</sup> *South Carolina and American General Gazette*, March 26, 1779. The name of the slave’s master is illegible.

take matters into their own hands at a time when government institutions increasingly failed to function.

Compared to the late colonial period, the rate of executions of whites per year almost doubled during the Revolution (0.4 executions/year from 1750-1775 and 0.8/year from 1776-1783). All but one of the executions of white offenders were directly related to the Revolution: two soldiers – John McNamara and Thomas Malcolm – were shot for desertion; the others – Andrew Groundwater, William Tweed, and Isaac Hayne – were hanged for treason.<sup>447</sup> The remaining execution was that of John Jacobs for counterfeiting, which also might have been connected to the Revolution as those who were accused of spying for the British were also often accused of handing out counterfeit money.<sup>448</sup> Both Groundwater and Tweed, a Scottish shipwright who had refused to take the oath of fidelity, were arrested for carrying a message from a British prisoner of war to Colonel Archibald Campbell. According to Charles Pinckney, “some interest was made for Groundwater,” as “he had been [the] captain of a small vessel, and

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<sup>447</sup> For Thomas Malcolm, see Lt. Col. James Mayson, *Order Book: S.C. Third Regiment*, David Library of the American Revolution and *South Carolina and American General Gazette*, March 26, 1778. For John McNamara, see “An Order Book of the 1<sup>st</sup> Regiment, S.C. Line, Continental Establishment,” reprinted in *South Carolina History and Genealogical Magazine*, v. 8 (April 1907), p. 73, 78 and *South Carolina and American General Gazette*, July 30, 1778. For Andrew Groundwater and William Tweed, see *South Carolina and American General Gazette*, March 11 and 18, 1779; *Providence Gazette*, May 15, 1779; and Col. Charles Pinckney to Brig. Gen. William Moultrie, Charleston, March 9, 1779, reprinted in William Moultrie, *Memoirs of the American Revolution* (New York: New York Times and Arno Press, 1969), p. 331. For Isaac Hayne, see *Royal Gazette*, Aug. 4-8, 1781 and *Boston Gazette*, October 1, 1781.

<sup>448</sup> One of the most notorious gang of highway robbers and loyalists who originated in Bucks County outside of Philadelphia but whose activities reached as far south as South Carolina was frequently involved in distributing counterfeit money to hurt the patriot cause. There is no evidence that John Jacobs was connected to the Doane gang but it is a possibility. While the activities of the gang in the Philadelphia area have received some attention by scholars, their actions in other states have not yet been investigated in any manner. *An Account of the Lives and Behaviour of Abraham and Levi Doan*, fragment of a broadside (1788), reprinted in *The New Doane Book: Bucks County's Bandittories of the Revolution* (Doylestown: Bucks County Historical Society, 1952).

had been of service in the bringing in to us stores and many necessary articles which we were in want of.” He was also, however, “strongly suspected of being concerned with Tweed in setting fire to the town on Trott’s point” and therefore “the inhabitants were so incensed against him, that he suffered, to appease the people.”<sup>449</sup>

The most famous execution during the Revolution was that of Isaac Hayne, which caused calls of revenge from Americans and major debates in the British House of Lords in London.<sup>450</sup> Hayne was a well-known plantation owner in Colleton County who had also amassed property in Charleston and Beaufort by the time of the Revolution. The events leading up to Hayne’s arrest are not entirely clear but it appears that he had declared his allegiance to the King as long as long as “he shd. receive Protection.”<sup>451</sup> When British military efforts failed in South Carolina and the British were pushed back into Charleston by the summer of 1781, Hayne believed that his obligation to the oath of allegiance had ceased and he became a colonel in South Carolina’s militia. The British army soon sent out troops to capture Hayne.<sup>452</sup> Subsequently, Hayne was convicted before a court of inquiry in Charleston and sentenced to be hanged for “having been found under arms raising a regiment to oppose the British government.”<sup>453</sup> On August 4, 1781, “the streets were crowded with thousands of anxious spectators” as Hayne, accompanied by “a party of soldiers,” made his way to the gallows just outside the city.<sup>454</sup>

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<sup>449</sup> Col. Charles Pinckney to Brig. Gen. William Moultrie, Charleston, March 9, 1779, William Moultrie, *Memoirs of the American Revolution*, vol. 1, p. 330, 331.

<sup>450</sup> For a detailed discussion for Isaac Hayne’s executions, its background, and its consequences, see David K. Bowden, *The Execution of Isaac Hayne* (Lexington: Sandlapper Store, 1977).

<sup>451</sup> Apparently, protection was not forthcoming, as Hayne’s plantation was raided by British troops several times. Quoted in Bowden, *Execution of Hayne*, p. 20 (quote), 57.

<sup>452</sup> Quoted in Bowden, *Execution of Hayne*, p. 29.

<sup>453</sup> For quotes see McCrady, *The History of South Carolina in the Revolution, 1780-1783*, p. 388 and Bowden, *Execution of Hayne*, p. 32. See also Moultrie, *Memoirs*, p. 240-242.

<sup>454</sup> Quoted in Bowden, *Execution of Hayne*, p. 34.



The aftermath of Hayne's execution included a debate about retaliation on the American side and a heated debate in the House of Lords in London. For the British, the hanging appeared to have been a success, at least initially, in disheartening South Carolina patriots as they "again submitted themselves, to the British Government & Mercy."<sup>455</sup> Soon, however, the patriot cause seemed to gain because of the execution, which was increasingly interpreted as arbitrary and unjust. According to Governor Rutledge, militia troops displayed "spirited Determination, in Consequence of Hayne's Death."<sup>456</sup> Despite popular calls for revenge and retaliation, official action on the American side was slow. Military leaders, including General Nathanael Greene who was the commander of the American forces in the South, and commander-in-chief George Washington, hesitated to seek revenge.<sup>457</sup> Washington, for example, cautioned against retaliation because he was "convinced that of all Laws it is the most difficult to execute, where you have not the transgressor himself in your possession." He further argued that "humanity will ever interfere and plead strongly against the sacrifice of an innocent person for the guilt of another."<sup>458</sup> In London, Hayne's execution triggered a controversy in the House of Lords when the Duke of Richmond demanded a denunciation of the hanging.<sup>459</sup>

Capital punishment therefore played a differing role in each of the cities during the Revolution. Executions were absent in Boston, as the population almost completely abandoned

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<sup>455</sup> John Rutledge to South Carolina delegates in Congress, September 18, 1781, *John Rutledge Letters*, Charleston Library Society, Charleston.

<sup>456</sup> John Rutledge to South Carolina Delegates in Congress, September 18, 1781, John Rutledge Letters, Charleston Library Society, Charleston.

<sup>457</sup> The fear on both sides was that in the case of retaliation, all restraint would be lost. Lord Cornwallis warned General Greene that retaliation "may be very fatal to many innocent individuals on both sides," unless Greene would take time to investigate "with coolness and temper." Fears of retaliation were not without reason as the exchange of prisoners had stopped and both sides were holding prisoners hostage. Bowden, *Execution of Hayne*, p. 52-53.

<sup>458</sup> George Washington to Nathanael Greene, December 15, 1781, in John Fitzpatrick (ed.), *The Writings of George Washington*, vol. 23, p. 391.

<sup>459</sup> Bowden, *Execution of Hayne*, p. 57.

the city. In Charleston, the early years of the conflict saw the high-profile execution of Jerry and his alleged co-conspirator. After that executions declined dramatically, as the institutional framework of the legal system fell apart. The death penalty was most prominent in Philadelphia where authorities used the gallows to enforce political allegiance and military discipline, and to prevent treasonous activity.

### **The Early Republic**

Once the colonies had won their independence from Great Britain, the struggle over the nature and promises of the revolution and its promises began. The cities of Boston, Philadelphia, and Charleston all experienced rather tumultuous years during the mid- to late 1780s. After the war, all thirteen new states experienced economic turmoil due to post-war depression with high levels of unemployment and poverty. Although it is difficult to determine if there was in fact an increase in crime during the mid- to late 1780s, anxiety about crime was high among members of the elites and the middle class. Newspapers in all three cities reported daily about “lurking sons of rapine,” “nests of footpads,” “gangs of villains,” “pests of society,” and groups of “nefarious wretches” and “banditti.” Contemporaries therefore believed that they encountered an unprecedented wave of gang activities, robberies, and burglaries.

Despite the fact that the three cities shared certain characteristics such as a sharp rise of executions and a peak in executions in the late 1780s,<sup>460</sup> local conditions and specific concerns about social order shaped the application of the death penalty. Bostonians saw the biggest increase with eleven executions between 1784 and 1789 and six more hangings in the 1790s, after having witnessed only six executions in the late colonial period and none at all during the Revolution. Of the twenty-two executions in Philadelphia, nineteen hangings took place between

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<sup>460</sup> For details, see Chapter 3.

1784 and 1789, none in the 1790s, and three in 1800. Executions in Charleston reveal a somewhat different pattern: forty-six percent of whites executed in Charleston (1750-1800) were hanged in the years 1787 and 1788 while the executions of slaves were relatively low in the 1780s but spiked after 1791.<sup>461</sup> Both in Philadelphia and in Charleston, the anxiety about crime led to mass executions of five or more people at a time. In Philadelphia, five men were hanged in 1789 after escaping from prison, burglarizing a house, and fatally assaulting a tenant.<sup>462</sup> In 1788 in Charleston, five men and one woman were executed for the robbery and murder of Nicholas John Wightman. All of them were suspected to “live by plunder and robbery” and had “too long committed their depredations in and about this city.”<sup>463</sup>

The heightened fear of crime in the 1780s alone, however, does not explain the increase in executions in Boston, Philadelphia, and Charleston. The years between 1783 and 1789 were a time of intense internal social and political struggle in the United States. By the mid-1780s, farmers in western Massachusetts, many of them veterans of the revolutionary war, rebelled against the demands for debt payment by eastern merchants, as many of them found themselves imprisoned or losing their land. A similar movement, the so-called Regulators, was active in the Carolinas. In 1785, a correspondent of the *Columbian Herald* in South Carolina commented on “the enormous and alarming height to which the evil has arisen.” As a result, “contagion has spread through the whole state of South Carolina, where such a degree of anarchy prevails as to excite horror!”<sup>464</sup>

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<sup>461</sup> For the impact of the Haitian Revolution on slave executions in Charleston, see next section – “The Age of Revolution” – in this chapter.

<sup>462</sup> *Pa. Packet*, October 12 and 13, 1789.

<sup>463</sup> *City Gazette*, March 14 and June 9, 1788.

<sup>464</sup> *Columbian Herald*, October 26, 1785.

The fear of crime combined with the fear of domestic uprisings created an atmosphere of insecurity and anxiety about the future of the newly founded nation. Ruling elites such as James Madison and Thomas Jefferson feared the “levelling spirit” unleashed by the Revolution.<sup>465</sup> The fact that seventy-eight percent of all executions in the three cities between 1784 and 1789 involved property crimes connects capital punishment and the protection of property to the founding of the United States.<sup>466</sup> The highest number of executions in the second half of the eighteenth century took place in the years surrounding the ratification of the Constitution – 1788 and 1789.

### **Boston**

After only six hangings during the late colonial period and none during the Revolution, Boston’s inhabitants witnessed a dramatic rise of executions in the 1780s and 1790s. Seventeen of the twenty-three hangings in Boston between 1750 and 1800 took place after 1784: eleven occurred between 1784 and 1789 and six between 1790 and 1800. Of those executions, thirteen (76%) were for a property crime, three (17%) involved a combination of a property crime and a personal crime, and one was for murder. Many Bostonians felt that they were living through an unprecedented rise in crime in and around Boston. This anxiety, combined with fear of social unrest triggered by events such as Shays’ Rebellion,<sup>467</sup> is reflected in the increase in prosecutions

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<sup>465</sup> Linebaugh and Rediker, *The Many-Headed Hydra*, p. 236, 239-240.

<sup>466</sup> Boston and Philadelphia: 77%; Charleston: 81%.

<sup>467</sup> With the exception of Boston’s elites who raised their own army to battle the rebellion, the majority of those living in Boston were not directly involved in Shays’ Rebellion. Nevertheless, the unrest in western Massachusetts heightened the overall anxiety about social unrest and disorder in the city. For Shays’ Rebellion, see David P. Szatmary, *Shays’ Rebellion: The Making of an Agrarian Insurrection* (Amherst: University of Massachusetts Press, 1980); Leonard L. Richards, *Shays’s Rebellion: The American Revolution’s Final Battle* (Philadelphia: University of Pennsylvania Press, 2002).

in the Superior Court and the dramatic rise of executions during the 1780s. Almost ninety-five percent of hangings involved a property crime.

Accounts of foot-pads, banditti, and villains filled the regional newspapers during the 1780s. In 1783 the *Massachusetts Spy* reported that a “gang of villains” in Boston had committed several robberies and burglaries in the city. After their arrest, at least six made their escape.<sup>468</sup> Another gang of “upwards to twenty villains” was apprehended outside of Boston for counterfeiting and forgery in 1785.<sup>469</sup> When a man and two women were arrested for possessing stolen goods in Boston, they were suspected of belonging “to a gang of twelve.” Two more were arrested in Charlestown and another three in Boston.<sup>470</sup> More often, however, robberies and burglaries were committed in smaller groups of two or three people.<sup>471</sup> Many robberies took place at the Boston Neck. After one such robbery, the correspondent of the *Connecticut Gazette* suggested that settling the area or at least providing a nightwatch for the security of those traveling might discourage criminal activity.<sup>472</sup>

Frequent accounts of criminal escapes heightened the fears of the inhabitants in Boston. In May 1786, the *Boston Gazette* reported that several prisoners who had escaped from Castle Island had “since been apprehended, sent back, and decently flagellated.”<sup>473</sup> Probably the most serious attempt to escape the prison in Boston’s harbor occurred in 1786 when “several prisoners confined at the Castle Island...made a daring attempt to possess themselves of that fortress.” A

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<sup>468</sup> *Massachusetts Spy*, October 30, 1783.

<sup>469</sup> *Connecticut Journal*, May 18, 1785.

<sup>470</sup> *Connecticut Journal*, August 20, 1789.

<sup>471</sup> For examples, see *Connecticut Gazette*, April 16, 1784; *Boston Gazette*, May 24, 1784; *Connecticut Gazette*, March 18, 1785; *Massachusetts Spy*, May 20, 1785; *Boston Gazette*, January 15, 1787; *Boston Gazette*, December 24, 1787; *Worcester Magazine*, March 19, 1789; *Worcester Magazine*, October 10, 1789.

<sup>472</sup> *Connecticut Gazette*, July 30, 1784. For other examples, see *Boston Gazette*, March 10, 1788 and *Connecticut Gazette*, August 21, 1789.

<sup>473</sup> *Boston Gazette*, May 1, 1786.

group of prisoners was able to secure “one of the centinels” and take “possession of the guard room.” In the end, however, apparently none of the prisoners escaped.<sup>474</sup> A few months later a man received a severe whipping “for conveying implements to the publick jail, for the purpose of effecting the escape of prisoners.”<sup>475</sup> At other times, inmates were more successful. In December 1787, the *Boston Gazette* reported a fire at the city’s jail, suspecting that “it was probably set on fire by some of the prisoners, in order to make their escape.”<sup>476</sup> In 1789, at least five of fifty-four inmates managed to escape from Boston’s goal. The “banditti” were suspected to have broken into a store immediately after they had made their escape.<sup>477</sup>

Anxiety about social unrest drove up the number of executions during the 1780s, especially after 1783. Of the eleven executions between 1784 and 1789, ten were for property crimes such as robbery, burglary, and highway robbery. The rise in executions was paralleled by a dramatic rise of prosecutions in the Superior Court of Suffolk County (Boston). Between 1750 and 1794, 715 cases went to trial in the Superior Court, of which 466 cases (65%) occurred between 1784 and 1794.<sup>478</sup> More importantly, between 1784 and 1789 the supremacy of the protection of property also is confirmed, as ninety-two percent of the cases that went to trial in the Superior Court involved a property crime (compared to fifty-three percent during the earlier period). By the 1790s, the percentage of property crimes among the prosecutions dropped

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<sup>474</sup> *Providence Gazette*, August 5, 1786.

<sup>475</sup> *Boston Gazette*, November 13, 1786.

<sup>476</sup> *Boston Gazette*, December 24, 1787.

<sup>477</sup> *Connecticut Gazette*, August 21, 1789.

<sup>478</sup> Of the 528 property crimes that went to trial between 1750 and 1794, 386 (73%) occurred after 1784 and of those 258 (67%) took place in the 1780s (1784-1789).

somewhat to eighty-one percent, which is still substantially higher than in the late-colonial and revolutionary periods.<sup>479</sup>

Among the condemned of Boston was one of the most colorful figures to walk to the gallows in the late-eighteenth century. Rachel Wall, who was executed for highway robbery on October 8, 1789, was well known in Boston and remained notorious after her death. According to the broadside *Life, Last Words, and Dying Confession of Rachel Wall*, she was born in Carlisle, Pennsylvania in 1760 but ran away from her parents when she was relatively young. She married one George Wall, with whom she traveled around the country, visiting Philadelphia and New York before coming to Boston. When her husband left her, she “went to service and lived very contented.” Her husband eventually returned and “enticed [her] to leave [her] service and take to bad company, from which I may date my ruin.”<sup>480</sup> Popular legend, however, tells the story somewhat differently. George Wall, a fisherman from Boston, brought Rachel to New England where she worked as a maid. Falling on bad times, George decided to turn pirate and take Rachel with him. Rachel proved valuable as they developed a strategy to attract ships and then to rob them. Pretending to be a ship in distress, Rachel would stand on the deck and wave for help. When a ship approached and took her shipmates on board, the crew would reveal themselves as pirates and plunder the ship. Eventually, George was killed in a storm and Rachel gave up

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<sup>479</sup> At all times, theft – a non-capital crime – made up the largest single category of crime. While between 1750 and 1783 and between 1790 and 1794, theft constituted for well over fifty percent of the indictments that went to trial, the percentage of that crime decreased to forty-six percent between 1784 and 1789. This means that in the crucial years after the Revolution a higher number of people were indicted for capital property crimes rather than the lesser charge of theft. The prominence of theft during the other periods might point to a mitigating influence of the grand juries, as they were more likely to indict for theft than for burglary, robbery, or other property crimes.

<sup>480</sup> [Rachel Wall], *Life, Last Words, and Dying Confession of Rachel Wall, Who, with William Smith and William Dungeon, were Executed at Boston, on Thursday, October 8, 1789 for Highway Robbery* (Boston, 1789).

piracy. She remained in Boston and engaged in petty theft and larceny, of which she was repeatedly convicted. According to the legend, Rachel complained in court that she had been indicted for highway robbery when she really should have been charged with piracy. Today, Rachel Wall is known as the only female pirate in New England.<sup>481</sup>

### **Philadelphia**

The 1780s in Philadelphia were characterized by high anxiety about crime and social order among the city's inhabitants. Between 1784 and 1789 nineteen people were hanged: fourteen for property crimes,<sup>482</sup> two for murder, two for outlawry, and one for rape. Contrary to the other two cities, which experienced similar anxieties, Philadelphia's executions triggered a movement for penal reform and against capital punishment by the mid-1780s. The movement did not abolish the death penalty but it did significantly reduce the number of capital crimes in Pennsylvania's law book by 1794 and helped to initiate a major shift in penal policies from public punishments to imprisonment. The first phase of the penal reform – an experimentation with public labor – heightened the era of social upheaval, but it did not lead to more executions. On the contrary, after frequent executions in the 1780s, Philadelphia stopped hangings during the 1790s, partly under the influence of the penal reform movement. The informal ten-year moratorium ended with the execution of three pirates in May 1800.

The penal reform movement in Pennsylvania originated in the revolutionary experience and the radical constitution of 1776. In addition to guaranteeing certain defendant's rights, the constitution also demanded a reform of the state's colonial criminal law, rejecting the

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<sup>481</sup> For the life of Rachel Wall, see *Salem Gazette*, August 3, 1784 and September 22, 1785; *Boston Gazette*, September 14 and October 12, 1789; *Massachusetts Centinel*, September 12 and October 10, 1789. For a popular account of Rachel Wall's life, see Nancy Roberts, *Blackbeard and Other Pirates of the Atlantic Coast* (Winston-Salem: John F. Blair, 2002), p. 183-197.

<sup>482</sup> Several of those executions involved a property crime and a personal crime, mostly murder. Defendants were usually prosecuted for both offenses.



dependence of colonial authorities on executions, whippings, and other physical punishments. Section 38 called for penal reform based on Enlightenment principles, making punishments “less sanguinary, and in general more proportionate to the crimes.” Section 39 recommended hard labor as an alternative to the death penalty.<sup>483</sup> Almost parallel to the constitutional emphasis on penal reform, the first activist organization – the Philadelphia Society for Assisting Distressed Prisoners – was founded in February 1776 to help prisoners in need, but soon dissolved when Philadelphia was occupied by the British.<sup>484</sup> While formal efforts of penal reform were postponed during the Revolution, supporting sentiments grew after 1776 when the number of executions rose sharply. The hanging of John Roberts and Abraham Carlisle, as we have seen, stirred the emotions of many Philadelphians. As many as 7000 inhabitants petitioned the Supreme Executive Council for a pardon of the two condemned.<sup>485</sup>

Once the revolutionary struggle had ended in 1783, the question of penal reform became the subject of a broader debate about penal ideology, public punishments, and the death penalty throughout the mid- to late-1780s. As early as 1784, for example, Philadelphians petitioned the General Assembly to “enact such laws as may tend to the good purpose” of Sections 38 and 39 of the 1776 Constitution.<sup>486</sup> Less than a year later, in July 1785, the Grand Jury of the Court of Oyer and Terminer, with support of the justices and, in October 1785, the Grand Jury of the

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<sup>483</sup> Pennsylvania Constitution of 1776, reprinted in Louis M. Waddell (ed.), *Unity from Diversity: Extracts from Selected Pennsylvania Colonial Documents, 1681 to 1780* (Harrisburg: Pennsylvania Historical and Museums Commission, 1982), p. 83-84.

<sup>484</sup> William Webb, “Reminiscences of Old Walnut Street Prison,” in *Philadelphia Sunday Dispatch*, October 16, 1859-February 5, 1860. Teeters, *They were in Prison*, p. 14-16.

<sup>485</sup> “Petition of Wm. Young, &c. in Favor of John Roberts, 1778,” *Pennsylvania Archives*, 1<sup>st</sup> ser., vol. 7, p. 39. At least thirty-three of the petitioners were later members – including six charter members – of the Philadelphia Society for Alleviating Public Prisons. For an analysis of the signers’ political background, see Messer, “‘A Species of Treason’,” p. 303-332.

<sup>486</sup> Quoted in Meranze, *Laboratories of Virtue*, p. 65

Court of Quarter Sessions in Philadelphia, also called for penal reform and the institution of public labor as an alternative to capital punishment.<sup>487</sup>

Such calls for reform were reinforced by several controversial capital cases in the 1780s, which were remnants of the revolutionary period. The Court of Oyer and Terminer in Bucks County, Pennsylvania, had outlawed Abraham and Levi Doan – two brothers and members of the so-called Doan gang – as notorious highway robbers and loyalists in October 1782. Aaron Doan, a third brother, had earlier been declared an outlaw. The popular controversy over the Doan brothers' prosecution revolved around the concept of outlawry and its legality under Pennsylvania law. Some believed that the Doan family had been pushed into a life of crime in the early 1780s after they had been declared outlaws which left them without any other way of subsistence.<sup>488</sup> After the three men were captured, Aaron was eventually pardoned but Abraham and Levi Doan were executed on March 21, 1788 without ever receiving a trial.<sup>489</sup> This proved

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<sup>487</sup> *Pa. Packet*, July 18, Sept. 14, and October 10, 1785.

<sup>488</sup> The Doan family had expressed openly their pro-British feelings during the Revolution. Members of the gang distributed counterfeit money for the British and repeatedly attacked state and local tax collectors and those loyal to the American cause. By the end of the war, the Doan gang roamed freely in Bucks County and as far west as Pittsburgh as well as throughout the neighboring states and down to South Carolina. For outlawry proceedings, see “Court Minutes, October 1782, Bucks County,” in Courts of Oyer and Terminer, “Dockets, 1778-1786,” *Records of the Supreme Court*, p. 141-147. For activities of the Doan gang, see *An Account of the Lives and Behaviour of Abraham and Levi Doan* (1788), fragment of a broadside, reprinted in *The New Doane Book*, p. 115; “Notes of George Bryan,” October 5, 1782, April 1 and 4, 1784,” George Bryan Papers (Box 1:8, 12), Historical Society of Pennsylvania (hereafter HSP); “Thomas McKean to Sally McKean,” October 29, 1783, McKean Papers, v. 6, p. 32, HSP; “Thomas McKean to William Moore, Esq.,” September 18, 1782, Hampton L. Carson Collection, HSP; *Pa. Archives*, v. 9, p. 614-617, 759; *Pa. Archives*, v. 10, p. 110-114, 152-153, 348, 565-566, 581-583, 596-598; *Colonial Records*, v. 13, p. 516, 616, 630-631, 687-691; and Rowe, *Thomas McKean*, p. 202-209.

<sup>489</sup> The legal controversy initially focused on the case of Aaron Doan. In his case, the debate led to a pardon in 1784 but the same issues were not enough to save his brothers' lives four years later. See “Thomas McKean and George Bryan to John Dickinson,” February 10, 1783, Gratz Manuscripts, HSP; “John Dickinson to Supreme Court,” November 22, 1784, Logan Papers (Box 12, folder 37), HSP; “Thomas McKean, George Bryan and Jacob Rush to John Dickinson,”

controversial, and, together with the hanging of the two Quaker artisans ten years earlier and the petitions by Philadelphia citizens and jurors, important issues of state power and judicial discretion were raised. These soon broadened into a debate on penal ideology in general and the death penalty in particular.

The petitions and grand jury presentments reflect one of the most important foundations for the penal reform movement in the late eighteenth century – the Enlightenment. In their presentments, grand jurors followed arguments of progressive European thinkers that certainty of punishment, not its severity or the frequency pardons, defined the effectiveness of the criminal law: if “the culprit knows his punishment is certain,” he “will be more careful not to offend than if he had the chance of obtaining remission.”<sup>490</sup> Cesare Beccaria, who wrote *On Crimes and Punishments* (1764), was probably the most influential Enlightenment writer on American penal ideology. Beccaria suggested three guidelines for the administration of criminal law: promptness and certainty of punishment; just proportion between crime and penalty; and the application of the most moderate punishment possible. According to Beccaria, deterrence and not terror should be the central goal of punishment.<sup>491</sup> The other writer who influenced the penal reform in Pennsylvania was Montesquieu. Virtue, certainty of punishment, and the belief that a society’s

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January 15, 1785, Logan Papers (Box 12, folder 38), HSP; Rowe, *Thomas McKean*, p. 215-225; and Scharf and Westcott, *History of Philadelphia*, p. 453.

<sup>490</sup> *Pa. Packet*, September 14, 1785.

<sup>491</sup> Cesare Beccaria, *On Crimes and Punishments*, translated by Henry Paolucci (Indianapolis: Bobbs-Merrill Company, 1963), p. 10-13, 42-43, 55-58, 62-64. Beccaria’s work appeared in translation in North America in 1777 and then was reprinted in 1778 and 1793. For the dissemination of Enlightenment writers in North America, see David Lundberg and Henry F. May, “The Enlightened Reader in America,” *American Quarterly*, vol. 28 (Summer 1976), p. 262-293; and Henry F. May, *The Enlightenment in America* (New York: Oxford University Press, 1976), p. 118.

law should be the expression of the “genius of the people” – all of which became essential aspects of American penology – were the bases of Montesquieu’s vision of criminal justice.<sup>492</sup>

Penal reform in Pennsylvania differed significantly in certain respects from those of European Enlightenment writers. The grand jurors of the Court of Oyer and Terminer argued that the reformation of an offender was a “principal views of society.”<sup>493</sup> To achieve such reformation, Philadelphia’s leaders and many citizens agreed that public labor in the city’s streets and on the state’s highways was a suitable alternative to whipping, the pillory, and hanging. Against Beccaria who argued that deterrence and not terror was the main goal, Philadelphians believed that the public spectacle of men in shackles working in the streets – like the spectacle of the gallows and the whipping post – would sufficiently terrorize offenders as well as spectators and, at the same time, teach convicts the necessary work ethic and virtue essential for the survival of the republic.

In September 1786, the General Assembly responded to the demands for penal reform and passed the *Act Amending the Penal Laws of this State*. The Assembly acknowledged that traditional penalties had proven insufficient in curbing crime. But rather than call for harsher punishments, they saw the solution in a moderate penal code that would be more effective through stricter enforcement. The act eliminated capital and corporal punishment for robbery, burglary, buggery, sodomy, horse theft and larceny. Furthermore, it established maximum sentences for those to be punished with public labor: robbery, burglary, and buggery now carried a sentence of up to ten years; horse theft up to seven years; simple larceny (more than twenty

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<sup>492</sup> Montesquieu, *The Spirit of Laws* (Cambridge: Cambridge University Press, 1989), chapter 6.

<sup>493</sup> *Pa. Packet*, September 14, 1785.

shillings) up to three years; and petit larceny up to one year.<sup>494</sup> The law provided that convicted men would work in public, while women were to be confined in the city's workhouse, thereby imposing a clear, previously unknown gender division in the penal system.<sup>495</sup>

While much of the debate about penal reform took place in newspapers and journals, some citizens went a step further and founded an organization that survives to this day, the Pennsylvania Prison Society. On May 8, 1787, "a number of gentlemen assembled and agreed to associate themselves in a society to be entitled 'The Philadelphia society for alleviating the Miseries of Public prisons.'"<sup>496</sup> The society included physicians, merchants, ministers, lawyers, and artisans. In the first year, the membership grew to ninety-four.<sup>497</sup> The objects of the society

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<sup>494</sup> Convicts were to be employed in building, cleaning, and repairing public streets and highways and in mines and fortifications around the state. Those who refused to work or who were "absent...without good cause" would have two days added to their term for each missed day. Although all political factions agreed that a reform of the state's penal laws was necessary and that certainty of punishment had to be the basis of it, there were two points of disagreement: how to achieve certainty, and what to do about discretionary power. Constitutionalist insisted that the judges should be invested with a discretionary power to reduce the sentences provided by the law in cases where such a reduction was warranted. Their opponents argued – at the end unsuccessfully – that no such power should be granted to the judges, as it would undermine the certainty of punishment, and more importantly, encourage judicial abuse. Such discretionary power would therefore endanger the very survival of the republic, as "the law would become a tool of political despotism." Despite their differences, at the end, lawmakers believed that the so-called "wheelbarrow-law" ensured not only moderation and proportionality but also combined them with the benefits of the public display of punishments. For a critique of the Constitutionalist position, see *Pa. Packet*, Sept. 1, 1786 and Francis Hopkinson, *The Miscellaneous Essays and Occasional Writings of Francis Hopkins* (Philadelphia: T. Dobson, 1792), vol. 2, p. 93-110. See also Meranze, *Laboratories of Virtue*, p. 80-81 and Robert L. Brunhouse, *The Counter-Revolution in Pennsylvania, 1776-1790* (New York: Octagon Books, 1971), p. 184, 219-220.

<sup>495</sup> Meranze, *Laboratories of Virtue*, p. 89-91. While men and women faced the same punishments in early America, female convicts went to the gallows at a far lower rate. For a discussion of crime by and punishment of women in early America, see Hull, *Female Felons*. On changing gender relations in an urban area, see Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (Urbana: University of Illinois Press, 1987).

<sup>496</sup> *Ind. Gazetteer*, May 19, 1787.

<sup>497</sup> The thirty-seven original charter members consisted of fifteen merchants, five artisans, four ministers, and two lawyers. The occupation of the remaining six is unknown. For detailed

were “to dive into the depth of the dungeons; to survey the mansions of sorrow and pain; to take the gage and dimensions of misery, depression, and contempt; to remember the forgotten, to attend the neglected, and to visit the forsaken.” Not only was it the society’s goal to provide mental and emotional help to the inmates but also “to have it in their power to discover abuses” and therefore keeping a check on state power.<sup>498</sup> The picture below, however, demonstrates that their attitudes towards inmates were rather ambivalent and so were those of inmates towards reformers. On the one side of the picture Bishop White and William Rogers are portrayed as preaching to the inmates. Not only are they standing above the inmates but they are also protected by a cannon. On the picture’s other side, the inmates are assembled. Some of them are kneeling down but others have their heads turned away from the preachers and look less than attentive and even resentful. The portrayal of this prison scene exemplifies the indecisive and hesitant relationship between reformers and inmates. The struggle over the penal reform law of 1786 demonstrated that what reformers believed to be beneficial and necessary for the inmates’ reformation met with open resentment and resistance from those punished with public labor.

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information about the membership of the Philadelphia Society, see Negley K. Teeters, *They Were in Prison*, p. 89-99. For biographical sketches of the members between 1787 and 1830, see Peter P. and Elizabeth Jonitis, “Members of the Prison Society: Biographical Vignettes of the Managers of the Philadelphia Society for Assisting Distressed Prisoners and the Members of the Philadelphia Society for Alleviating the Miseries of Public Prisons, 1787-1830” (unpublished manuscript, 1982), Quaker Collection, Haverford College.

<sup>498</sup> Section VII of the society’s constitution provided that its members should visit prisons and other places of confinement at least once a week to monitor the health of the inmates and the overall conditions of incarceration. “Constitution of the Philadelphia Society,” reprinted in *Ind. Gazetteer*, May 19, 1787. For the activities of the society, see Pennsylvania Prison Society, *Minutes of the Society, 1787-1809*, v. 1 (1946), HSP; “Report of the Board of Inspectors of the Prison of the City and County of Philadelphia in the Year 1791,” reprinted in William Roscoe, *Observations on Penal Jurisprudence, and the Reformation of Criminals* (London: T. Cadell and W. Davies, 1819), p. 1-2 (appendix).



Figure 9: Dr. Wm. Rogers and Bishop White conduct a service in Walnut Street Jail reprinted in Teeters, *They Were in Prison*

Opposition and outright resistance to the law, especially among convicts, appeared quickly. Some apparently preferred to leave the city rather than be subjected to the punishment under the new law. Charles Blade, who had been arrested in Philadelphia for several robberies, “got [his] liberty by petitioning to the governor and Counsel.” After Blade was released, he “left Philadelphia and never [has] been there since,” because “this was the time that the new law took place and I was afraid that I should have my head shaved.”<sup>499</sup> During a transitional period between the law’s passage and its full enforcement, offenders convicted of capital crimes were allowed to petition for public labor instead of a death sentence. At least one convict, however, refused to choose public labor over the gallows and another expressed extreme reservations

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<sup>499</sup> Charles Blade, “Memoirs of a Thief written in Boston Gaol about 1800,” p. 64-65, Massachusetts Historical Society.

before accepting a sentence to penal labor.<sup>500</sup> While these reactions can be partly explained by the fact that a death sentence always carried the hope for a pardon,<sup>501</sup> they foreshadowed a deep resistance among convicts against the new penal system. Authorities and reformers saw the reluctance among convicts to accept penal labor as a clear indication that non-capital punishments, if certain and sure, were “more terrifying to the idle vagabonds than all the horrors of an ignominious death.”<sup>502</sup>

Contemporaries at times commented on the day-to-day implementation of the wheelbarrow-law. One observer wrote that the wheelbarrow-men “weighted down were employed at sweeping and scraping” and that “after they swept around them as far as the ball and chain would permit, the manacled prisoners would pick up their balls and carry them to a fresh spot.”<sup>503</sup> The most detailed description comes from Ann Warder, who noted in her diary:

They have an iron collar around their neck and waist to which a long chain is fastened and at the end a heavy ball. As they proceed with their work this is taken up and thrown before them. Their clothing is a mixture of dark blue and brown stuff; their heads shaved; they wear parti colored woolen caps, so that an attempt to escape would early be discovered. A guard accompanies each gang.<sup>504</sup>

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<sup>500</sup> *Independent Gazetteer*, January 25, 1787 (hereafter *Ind. Gazetteer*); *Pa. Packet*, October 19, 1786. See also “Extracts from the Diary of Ann Warder,” reprinted in *Pennsylvania Magazine of History and Biography*, vol. 18, p. 61.

<sup>501</sup> A person capitally convicted had about a forty-five percent chance of getting a pardon in the second half of the eighteenth century, which was considerably higher than in London, for example, where less than one in three condemned was actually executed. For London, see Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* (New York: MacMillan Company, 1948), vol. 1, p. 151-152, 163-164. See also Douglas Hay, “Property, Authority and the Criminal Law,” in Douglas Hay, et. al. (eds.), *Albion’s Fatal Tree: Crime and Society in Eighteenth-Century England* (New York: Pantheon Books, 1975), p. 22-23.

<sup>502</sup> *Pa. Packet*, October 19, 1786.

<sup>503</sup> Quoted in Teeters, *They were in Prison*, p. 22.

<sup>504</sup> “Extracts from the Diary of Mrs. Ann Warder,” March 30, 1787, reprinted in *Pennsylvania Magazine of History and Biography*, vol. 18, p. 61.



The wheelbarrow men were therefore highly visible; not surprisingly, this attracted a crowd wherever they went. Although reformers hoped that such assemblies would enhance deterrence, the spectators who crowded around soon evoked almost as much concern as the convicts themselves.

The law's implementation encountered opposition not only among convicts but also among the general, especially the working-class, population in Philadelphia. Ann Warder expressed her concern believing that "two things...need regulating, suffering people to talk to them, and to prevent their receiving money."<sup>505</sup> Others agreed with Warder. A correspondent of the *Independent Gazetteer* voiced his surprise that "so great a number of inhabitants should assemble round the criminals" and that "a number of well disposed persons (from mistaken humanity) furnish them with money, by which they are able to procure liquor." This access to alcohol was "sure to render them refractory and disobedient." In one incident, "one of the villains...had the audacity to threaten the keeper with death, by knocking him down with a pickaxe – he had been previously heated with liquor."<sup>506</sup> The interaction with spectators, however, was not always friendly, as one observer complained that "the more malicious of [the prisoners] would often throw the balls in such manner as to injure passers-by."<sup>507</sup>

Problems with convicts were not confined to the streets. The tumult outside the prison was paralleled by riots and unrest within the prison. Although there is no conclusive evidence to link the resistance outside the prison with that inside, wheelbarrow-men were without question frequently involved in both.<sup>508</sup> Escapes – successful or unsuccessful – were common. In early

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<sup>505</sup> "Extracts from the Diary of Mrs. Ann Warder," March 30, 1787, p. 61.

<sup>506</sup> *Ind. Gazetteer*, March 31, 1787.

<sup>507</sup> Scharf and Westcott, *History of Philadelphia*, vol. 1, p. 444.

<sup>508</sup> Between the passage of the penal reform law in September 1786 and its annulment in October 1789, 161 people were convicted in the Court of Oyer and Terminer in Philadelphia County.

March 1787, eighteen prisoners escaped by “breaking through the walls of the apartments in which they were confined, and getting over the prison walls.”<sup>509</sup> Only two weeks later, the *Pennsylvania Evening Herald* reported a “design of general massacre or an escape.” Guards had uncovered the plan after one inmate was found free of his irons. When the blacksmith attempted to replace the irons, a riot broke out, which had to be put down with “armed force.” Two inmates were severely wounded, one of whom “is since dead and dissected.”<sup>510</sup> Some blamed the “relaxed attention of our Judicial Department,” arguing that as long as inmates were allowed to live “in the exercise and gratification of those very dispositions of which they are designed to be reclaimed – it would be absurd to expect advantages from the present system.”<sup>511</sup> According to this author, therefore, the new penal system did not succeed in breaking up and changing the old habits of inmates by allowing them to assemble and communicate freely inside and outside the prison.

The episodes of riot and escape highlighted the problems of the reformed penal system, which seemed unable to control its objects. The apparent failures of discipline and the mounting anxiety among the general public were heightened by growing fear about gang activities and

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Slightly over seventy percent of them were punished with public labor. Therefore the vast majority of prisoners in the Walnut Street Prison were wheelbarrow-men.

<sup>509</sup> *Pa. Eve. Herald*, March 7, 1787. See also *Pa. Packet*, March 6, 1787; *Pa. Gazette*, March 7, 1787; *Freeman’s Journal*, March 7, 1787; and *Ind. Gazetteer*, March 7, 1787.

<sup>510</sup> *Pa. Eve. Herald*, March 21, 1787. For other examples of escapes, see *Pa. Packet*, May 22, 1787; *Pa. Gazette*, May 23, 1787; and *Pa. Packet*, Sept. 17, 1787.

<sup>511</sup> *Pa. Packet*, May 22, 1787. For other examples of disciplinary problems among the convicts inside and outside the prison, see *Ind. Gazetteer*, March 31 and May 21, 1787; *Pa. Packet*, May 19, May 28, and Sept. 17, 1787. The widespread resistance had consequences not only for Philadelphia but was felt throughout the mid-Atlantic states. Newspapers reported escaped convicts in New Jersey, Maryland, and New York. Several former wheelbarrow men were hanged in New York, which led the *Maryland Gazette* to proclaim that it hoped that the executions “will deter the villains who have through the lenity of the laws in some other states been suffered to escape the hands of justice, from emigrating into the state of New-York, where they seldom are suffered to escape the gallows.” *Maryland Gazette*, November 6, 1787 (quote); *Pa. Gazette*, August 29, 1787; *Pa. Packet*, August 25, 1787; *Pa. Gazette*, August 20, 1788.

uncontrolled crime. The wheelbarrow-law seemed to fail in its effort to deter crime in and around Philadelphia, as newspapers continually carried reports about robberies, crimes, and acts of violence.<sup>512</sup> To many Philadelphians, these reports were especially alarming because robberies often appeared to be committed by organized gangs rather than individuals.<sup>513</sup> A few months after the passage of the wheelbarrow-law, the *Pennsylvania Evening Herald* warned its readers of “the lurking sons of rapine” within the city. Similarly, the *Freeman’s Journal* reported about a “nest of footpads” in the city’s outskirts where they “attacked and robbed several people on the highway.”<sup>514</sup>

The system of penal labor quickly became the target of harsh critique in the newspapers, whose writers accused authorities of negligence and corruption, questioned the usefulness of penal labor as a punishment, and called for new strategies in fighting crime. Many critics blamed the failure of the wheelbarrow-law on weaknesses within the organization of the law itself that led to unrestricted communication and contact among inmates, which in turn facilitated collective resistance. The *Pennsylvania Gazette* suggested that it would be more effective if convicted persons would “confined to hard labour in separate apartments, and none be permitted to speak to them but persons of good character, than to employ them in cleaning the streets,” which “affords them the opportunities for further corrupting each one another, and entering into

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<sup>512</sup> William Bradford remarked in his essay *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania* “that about three-fourths of the convictions of robbery and burglary...took place in Philadelphia.” Bradford, *An Enquiry*, p. 20, 22, 73-74.

<sup>513</sup> While it is difficult to determine whether there was an increase in gang activity in the 1780s in and around Philadelphia, the court records reveal that robberies and burglaries were mostly committed in groups of three or more persons. These gangs, however, seemed to be only loosely organized, as the same people appear in different combinations again and again. Rarely was the same group of people prosecuted more than once.

<sup>514</sup> *Freeman’s Journal*, June 20, 1787. For other examples, see *Ind. Gazetteer*, June 22, 1787 and *Pa. Mercury*, November 1, 1788.

combinations to do mischief.”<sup>515</sup> According to these critics, the public nature of the wheelbarrow-law spread vice and immorality not only among the convicts themselves but also among the larger community due to the frequent contact between spectators and convicts. Many believed that an “apprenticeship” among criminals – inside and outside the prison – existed through which the “trade” was handed down to young men and women.<sup>516</sup> The terror of punishment was undermined by the opportunity for inmates to converse and mingle, as “they laugh, sing and swear in their chains.”<sup>517</sup>

The debate therefore evolved around two kinds of social interactions: among convicts themselves and between convicts working in the streets and the larger public. Reformers, like supporters of public executions, still believed in the power of the public spectacle as a deterrent. The interaction between convicts and spectators was seen as crucial to the success of the punishment. The sight of convicts at hard labor would discourage others from committing crimes, as the public would be able to observe intimately the consequences of a crime. Critics of the wheelbarrow-law, however, pointed out that it did not work out this way in practice: the exchange of food and liquor together with the communication between the public and the convicts undermined the intended social message of the punishment.<sup>518</sup> One writer went so far as to blame the spectators for the failure of public labor:

The ill-judged charity of inconsiderable spectators contributes to the licentiousness of the culprit, and enables him, even while he rattles his chains, to forget the infamy of his situation. It is more common to see these wretches staggering with intoxication, than with the weight of their burthens; and so little are they

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<sup>515</sup> *Pa. Packet*, June 26, 1787.

<sup>516</sup> *Pa. Packet*, May 14, 1787.

<sup>517</sup> *Pa. Eve. Herald*, April 28, 1787.

<sup>518</sup> *Pa. Eve. Herald*, April 28, 1787 and July 14, 1787; *Pa. Packet*, May 21, 1787; *Ind. Gazetteer*, March 31, 1787.

restrained, even in articles of luxury, that our correspondent has actually seen one of them produce his watch, to inform the keeper how the time has passed.<sup>519</sup>

While the communication among convicts seemed to reinforce their bad habits, the interaction with the crowd endangered the success of punishment. Therefore, “all hope for reformation or example, the great objects of penal laws, is done away; for he who has conquered shame, can only be corrected by severity; and he who is inclined to vice, can only be warned by fate which he dreads to suffer.”<sup>520</sup>

Benjamin Rush became one of the most outspoken opponents of the reform law after encountering a group of wheelbarrow-men in front of his house. Rush observed one inmate take a large dog into his arms, playing “with him in the most affectionate manner.” This scene convinced Rush that humanity and love was left in those who were “however much reduced in distress, debased by crimes or degraded by punishments of a prison, of ignominy, or of pain.”<sup>521</sup> After witnessing kindness where he had expected none, Rush came to believe that the wheelbarrow-law, and in fact all public punishments, were inhumane and contradictory to the ideals put forth by European Enlightenment, reason, and Christianity.<sup>522</sup> The encounter with the wheelbarrow-men convinced him that “a heart is not wholly corrupted and offers at least one string by which it might be led back to virtue.”<sup>523</sup> Over and against other critics who pushed for more order, Rush criticized the penal law for not putting enough emphasis on inmates’ reformation. Rush voiced his opposition to the wheelbarrow-law in his essay *An Enquiry into the*

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<sup>519</sup> *Pa. Packet*, May 21, 1787.

<sup>520</sup> *Pa. Packet*, May 21, 1787.

<sup>521</sup> Benjamin Rush to Julia Rush (wife), August 22, 1787, in L.H. Butterfield (ed.), *Letters of Benjamin Rush*, vol. 1 (American Philosophical Society: Princeton University Press, 1951), p. 436-437.

<sup>522</sup> David F. Hawke, *Benjamin Rush: Revolutionary Gadfly* (Indianapolis: Bobbs-Merrill Company, 1971), p. 363-364.

<sup>523</sup> Benjamin Rush to Julia Rush (wife), August 22, 1787, in Butterfield, *Letters*, p. 437.

*Effects of Public Punishments upon Criminals, and upon Society* (1787).<sup>524</sup> Here he argued that public punishments were of “such short duration, as to produce none of those changes in body or mind, which are absolutely necessary to reform obstinate habits of vice.” They provoked in the convict “a spirit of revenge against the whole community, whose laws have inflicted his punishment.”<sup>525</sup> Rush further argued that public punishments had a negative effect on spectators and that their pity for those punished caused them to “secretly condemn the law which inflicts the punishment – hence arises a want for respect for the laws in general, and a more feeble union of the great ties of government.”<sup>526</sup>

As an alternative, Rush proposed the establishment of a large facility “in a remote part of the state,” whose accessibility “would be rendered difficult and gloomy by the mountains or morasses.”<sup>527</sup> A prison in such a location would prevent the mind of criminals and spectators alike “from accustoming itself to the view of these punishments, so as to destroy its terror by habit.” While Rush opposed the public terror displayed at the whipping post, the pillory, and the gallows, he still believed that terror – in this case the terror of imagination – was a necessary element of effective punishment.<sup>528</sup> Although the duration of punishment was to be limited, “this limitation should be unknown,” as “the imagination, when agitated with uncertainty, will seldom

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<sup>524</sup> It is difficult to determine how widely read Rush’s pamphlet was but he presented different versions of the paper at several occasions in political clubs and other organizations, which were popular places for artisans and other members of the middling sort. Foner, *Paine*, p. 56-63.

<sup>525</sup> Benjamin Rush, *An Enquiry into the Effects of Public Punishments upon Criminals and upon Society*, reprinted in Negley K. Teeters (ed.), *Two Essays: A Plan for Punishment of Crime by Benjamin Rush, M.D., 1746-1813* (Philadelphia: Pennsylvania Prison Society, 1991), p. 5.

<sup>526</sup> Rush, *An Enquiry*, p. 7.

<sup>527</sup> Rush, *An Enquiry*, p. 10.

<sup>528</sup> Rush was not the only one who believed that terror was a necessary aspect of punishment. Thomas McKean, Pennsylvania’s chief justice, announced in a charge to a grand jury that “proper degrees of terror and punishment” were necessary to “restrain the unruly wills and passions of men.” Thomas McKean, “Notes on Charges to Grand Juries,” *McKean Papers*, HSP, p. 2.

fail of connecting the longest duration of punishment with the smallest crime.”<sup>529</sup> One of the most surprising aspects of Rush’s vision is the secrecy of the punishment’s duration. This feature is unusual for someone committed to republican principals because it introduced a considerable amount of arbitrariness and discretion the judicial process.<sup>530</sup>

The critique of public punishments led logically and substantively to a more specific attack on capital punishment. One of the first published denunciations of the death penalty in Pennsylvania was an article in the *Freeman’s Journal* on September 7, 1785. The author, who signed his article DOM, argued that countries with severe punishments such as Japan and Turkey had no less crime than those countries with lesser penalties. He further maintained that good manners, besides wise police and proper punishments, are the source of public order, “as manners and police will always secure obedience from the far greater part of the citizens.”<sup>531</sup>

Capital punishment, therefore, had several disadvantages:

The preventing of crime, or the correcting of the offender, seems the only end of punishments. Capital punishment is inconsistent with one of these: and hath not always much effect promoting the other. The higher the punishment, the greater is the difficulty in bringing criminals to justice.<sup>532</sup>

Therefore, severe punishments were not only disproportionate but also obstructed justice altogether. It was the role of the legislator to find the appropriate punishments for a given society

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<sup>529</sup> Rush, *An Enquiry*, p. 11.

<sup>530</sup> Arbitrariness and discretion had been a major point in the discussion of penal reform. Rush himself closely associated arbitrariness and randomness of power with monarchical rule. Meranze, *Laboratories of Virtue*, p. 81-83; Masur, *Rites of Execution*, p. 65.

<sup>531</sup> “Essay on Capital Punishment,” *Freeman’s Journal*, September 7, 1785.

<sup>532</sup> “Essay on Capital Punishment,” *Freeman’s Journal*, September 7, 1785.

and not to rely on punishment as the “only means known for preserving public order.” According to DOM, “to hit the due point is the perfection of Political Wisdom.”<sup>533</sup>

Similarly, a correspondent of the *Pennsylvania Packet* argued that men “are continually deceiving themselves with vain hopes of advantages from the terror of example, by putting their fellow creatures to death for crimes.” As proof for his opinion, the author referred to Robert Elliott, who had been executed in Pennsylvania, and his brothers. Elliott’s older brother “was hanged in Ireland for robbery, on which his father with his two remaining sons fled to this country.” His other brother, Flemming, was hanged at Chester for murder.<sup>534</sup> The author further asserted:

We should suppose that these examples were brought as close home to the feelings of Robert, as example as possibly be pressed, and its utmost force on the hear of man fully and fairly tried; yet so feeble is the effect of this ever-failing experiment, that the execution of two brothers was insufficient to preserve from the same fate, the third to the twenty-seventh year of his age!<sup>535</sup>

The example of the Elliott brothers clearly demonstrated the inefficiency and uselessness of capital punishment as a deterrent to crime. The author also questioned “whether the idea of efficacy of repentance between the sentence of death and the time of execution, often held out in our public papers, does not really encourage crimes punishable with death.”<sup>536</sup>

The most comprehensive and detailed critique of capital punishment came from Benjamin Rush and William Bradford. Rush’s pamphlet *Considerations on the Injustice and Impolicy of Punishing Murder by Death* was first published in the journal *American Museum* in

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<sup>533</sup> “Essay on Capital Punishment,” *Freeman’s Journal*, September 7, 1785.

<sup>534</sup> *Pa. Packet*, May 19, 1787. The same article also appeared in the *Ind. Gazetteer* on May 21, 1787.

<sup>535</sup> *Pa. Packet*, May 19, 1787.

<sup>536</sup> *Pa. Packet*, May 19, 1787.



1788.<sup>537</sup> Opposition to capital punishment was most likely not unusual in Rush's family, going back at least to the early eighteenth century and possibly as far back as the English Revolution in the seventeenth century.<sup>538</sup> During the English Civil War, Rush's great-great-grandfather John Rush led a horse troop of Cromwell's army. After the war, he converted to Quakerism and came to Pennsylvania in 1683. In 1691, the Rush family split from Pennsylvania orthodox Quakers and joined a separatist Quaker movement led by George Keith, an outspoken critic of Quaker policy in Pennsylvania. Keith criticized Pennsylvania's use of the death penalty:

Is not a Gallows, or Gibbet, on which the Quaker-Judges in Pennsylvania (some of which were Preachers also) caused some to be hanged for suspected Murther a Carnal Weapon as really as a Sword Gun or Spear?<sup>539</sup>

Benjamin Rush valued the radical traditions of his family. John Rush's sword hung in his bedroom and he referred to his great-great-grandfather as the source of his "republican temper

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<sup>537</sup> Writings about the death penalty and criminal law were frequent in the Atlantic world at the end of the eighteenth and the early nineteenth century. For examples, see Camilo Ciamarelli, *Traité Philosophique et Politique de la Peine de Morte* (Mantoue, 1789); Paolo Vergani, *Della Pena di Morte* (Milano: Guiseppe R. Malatesta, 1779); Christian Gottlieb Gmelin, *Grundsätze der Gesetzgebung über Verbrechen und Strafe* (Tübingen: Johann George Cotta, 1785); Ernst Christian Westphal, *Criminalrecht* (Leipzig, 1786); Theodor Gottlieb von Hippel, *Nachricht die v. K-sche Untersuchung Betreffend: Ein Beytrag über Verbrechen und Strafen* (1792); Gallus Aloys Kleinschrod, *Systematische Entwicklung der Grundbegriffe und Grundwahr-heiten des Peinlichen Rechts*, Teil 3 (Erlangen: Johann Jakob Palm, 1805); Basil Montagu, Esq. (ed.), *The Opinions of Different Authors upon the Punishment of Death* (London: Printed for Longman, Hurst, Rees, and Orme, 1809).

<sup>538</sup> The countless hangings especially for property crimes in seventeenth England met increasingly with opposition among revolutionary groups during the English Revolution. In 1652, Samuel Chidley among others voiced his opposition to the death penalty in his pamphlet *A Cry Against a Crying Sin*, printed in red ink. Christopher Hill, *The World Turned Upside Down: Radical Ideas During the English Revolution* (New York: Penguin Books, 1975), p. 134-136; Linebaugh and Rediker, *The Many-Headed Hydra*, p. 101, 105, 118-119; Robert Zaller, "The Debate on Capital Punishment during the English Revolution," *American Journal of Legal History*, vol. 31 (April 1987), p. 126-144.

<sup>539</sup> Quoted in Hermann Wellenreuther, *Glaube und Politik in Pennsylvania, 1681-1776: Die Wandlungen der Obrigkeitsdoktrin und des Peace Testimony der Quäker* (Köln: Böhlau Verlag, 1972), p. 93.

and principles.” Rush, however, was not a Quaker, as his family abandoned Quakerism and joined first the Baptist and then the Presbyterians. In the late eighteenth century, Rush became Episcopalian.<sup>540</sup>

In his pamphlet, Rush insisted that capital punishment was based on a misinterpretation of the bible, especially the Mosaic code. Not only was the punishment of death against reason but also against the will of God, since God’s will was never contrary to reason. Capital punishment also contradicted a fundamental tenet of Christianity: “a religion which commands us to forgive, and even to do good to our enemies, can never authorize the punishment of murder by death.”<sup>541</sup> Most importantly, however, while “every man possesses an absolute power over his own liberty and property,” this was not true for his or her life, including when “he becomes a member of political society” and “commits the disposal of his liberty and property to his fellow citizens.”<sup>542</sup>

Rush’s initial article in the *American Museum* was immediately challenged by an “enquiry into the justice and police of punishing murder by death.” Robert Annan, a Scots Presbyterian pastor who wrote under the pseudonym “Philochoras,” argued that the death penalty and public punishments were demanded by the bible and therefore just.<sup>543</sup> Rush responded to Philochoras with a second article in the *American Museum*, countering accusations of false information about penal reform in Europe and religious arguments in favor of public

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<sup>540</sup> Benjamin Rush to Thomas Jefferson, Oct. 6, 1800, in Butterfield, *Letters*, v. 2, p. 825-826. Hawke, *Benjamin Rush*, p. 6-7. Hawke, *Benjamin Rush*, p. 10-11, 259-260. See also Donald J. D’Ella, “Benjamin Rush: Philosopher of the American Revolution,” *Transactions of the American Philosophical Society*, vol. 64 (Philadelphia, 1974), p. 9, 32, 58.

<sup>541</sup> Benjamin Rush, *Considerations on the Injustice and Impolicy of Punishing Murder by Death* (Philadelphia: Mathew Carey, 1794), p. 4.

<sup>542</sup> Rush, *Considerations*, p. 1-2.

<sup>543</sup> For Annan’s article, see *American Museum*, December 1788.

punishments and the death penalty.<sup>544</sup> According to Rush, the “secret and unacknowledged influence of christianity upon the hearts of men” has caused the world to undergo “a material change for the better within the last two hundred years,” especially in regard to the protection of civilians during times of war, the extirpation of slavery, and criminal punishments.<sup>545</sup> In his concluding paragraph, Rush reminded his readers that “capital punishments are the natural offspring of monarchical governments,” as kings “believe that they possess their crowns by a divine right” and therefore “assume the divine power of taking away human life.” Contrary to monarchies, republican governments “appreciate human life, and increase public and private obligations to preserve it”:

An execution in a republic is like a human sacrifice in religion. It is an offering to monarchy, and to that malignant being, who has been stiled a murderer from the beginning, and who delights equally in murder, whether it be perpetrated by the cold, but vindictive arm of the law, or by the angry hand of private revenge.<sup>546</sup>

Rush, therefore, combined liberal religious reasoning with republican ideology to convince readers that capital punishment was not only against God’s will but also the values of the new republic. The abolition of the death penalty in the United States was necessary to break with the colonial legacy of monarchical power.<sup>547</sup>

Like Rush, William Bradford – conservative attorney general of Pennsylvania and then Washington’s attorney general – condemned the death penalty. Bradford wrote a pamphlet “to examine how far the maxims of philosophy abide the test of experiment,” as he believed that too

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<sup>544</sup> Rush’s information about penal reform in Europe was based on contemporary reports, the accounts from foreign travelers, and the information related by seamen.

<sup>545</sup> Rush, *Considerations*, p. 17.

<sup>546</sup> Rush, *Considerations*, p. 19.

<sup>547</sup> Masur, *Rites of Execution*, p. 64-65, 66-70.

many writers paid attention only to the theory of punishment but not to its actual practice.<sup>548</sup> Citing Montesquieu and Beccaria, Bradford started out from the premises “*that the prevention of crimes is the sole end of punishment*” and “*that every punishment which is not absolutely necessary for that purpose is a cruel and tyrannical act.*” According to Bradford, both provisions were part of “the *fundamental* laws of every free country” because they “serve to protect the rights of humanity and to prevent the abuses of government.”<sup>549</sup> The United States was a perfect place for penal reform because it was a young and uncorrupted country. European countries, on the other hand, had “old and corrupted governments,” which made “a sudden relaxation of punishment, in those countries, a dangerous experiment.”<sup>550</sup> Bradford acknowledged that Pennsylvania’s legislators had already taken up penal reform but sanguinary punishments continued “when the progress of freedom, science, and morals renders them unnecessary and mischievous: and laws, the offspring of a corrupted monarchy, are fostered in the bosom of a youthful republic.” He hoped that legislators would further “review the crimes which are still capital in Pennsylvania, – and to examine, whether the punishment of death be, in any case, necessary.”<sup>551</sup>

Bradford argued that the only objective is “merely to prevent the offender from repeating the crime, and to deter others from its commission, by the terror of the punishment.” A sentence of death, according to Bradford, is not unavoidably necessary, as the two objectives of prevention and deterrence might also be achieved by punishments such as “perpetual

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<sup>548</sup> William Bradford, *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania* (Philadelphia: T. Dobson, 1793), Advertisement, p. 4.

<sup>549</sup> Bradford, *An Enquiry*, p. 3-4.

<sup>550</sup> Bradford, *An Enquiry*, p. 12-13.

<sup>551</sup> Bradford, *An Enquiry*, p. 5-6.

imprisonment.” Compared to the death penalty, imprisonment as a punishment presented advantages:

It is not only as effectual as death, but is attended with these advantages, that reparation may sometimes be made to the party injured – that punishment may follow quick upon the heels of the offence, without violating the sentiments of humanity or religion, - and if, in a course of years, the offender becomes humble and reformed, society, instead of losing, gains a citizen.<sup>552</sup>

Bradford argued for “solitary confinement, hard labor, or stripes” to achieve the reformation of offenders. He believed that capital punishment was not terror enough, because “the dread of death is natural...that all can comprehend and estimate” and therefore was insufficient as a deterrent to commit crimes. The terror of death was further weakened by the “hopes of impunity” such as the “prospect of escaping detection and the hopes of an acquittal or pardon.”<sup>553</sup>

Against Rush, who came to oppose any kind of public punishment, Bradford thought that the punishment of public labor was acceptable but flawed as practiced in Philadelphia because of the uncertainty of punishments and the frequency of pardons. While most of the inmates in the Philadelphia prison had been “sentenced to undergo an imprisonment of five, seven or ten years” under the new penal code, “pardons...were granted with a profusion as unaccountable as it was mischievous” and escapes “multiplied to an alarming degree.” Therefore, the reformed penal code was unable to achieve either deterrence or reformation, especially because “reformation, though not impossible, must be the work of time.”<sup>554</sup> Unlike Rush, Bradford did not blame the public nature of penal labor for its failure, although he admitted that working in public opened up “opportunities for intoxication, and hardened them [the prisoners] against shame.” According to

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<sup>552</sup> Bradford, *An Enquiry*, p. 7.

<sup>553</sup> Bradford, *An Enquiry*, p. 8.

<sup>554</sup> Bradford, *An Enquiry*, p. 22-23.

Bradford, crime declined in the early 1790s after the wheelbarrow-law's repeal, which he partially attributed to the shift from public labor to solitary confinement.<sup>555</sup>

In the end, Rush and other reformers did not succeed in abolishing capital punishment in Pennsylvania. Nevertheless, the debate resulted in an additional reduction of capital crimes when the legislature passed a law in 1794, making first-degree murder the only crime punishable by death in the Commonwealth. A more immediate and practical impact of the controversy, however, was on the functioning of the judicial system, as no death sentences were imposed for ten years after the hanging of the five wheelbarrow-men in 1789.<sup>556</sup> By 1800 new fears of social unrest – to many more threatening than the perceived crime wave of the late 1780s and early 1790s – contributed to the renewed application of the death penalty in Philadelphia.

### Charleston

By the mid-1780s, Charleston, like Boston and Philadelphia, experienced the effects of the post-war depression, which led to skyrocketing anxiety and fear among the middling sort, elites and authorities about burglaries, robberies, and property crimes. A bad harvest caused by a drought and followed by heavy rains deepened the economic depression in South Carolina. The poor were especially hard hit by the downturn. The South Carolina legislature granted financial aid to the city of Charleston to assist the poor in 1784, but as the economy worsened, “the poor

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<sup>555</sup> Bradford, *An Enquiry*, p. 24-25.

<sup>556</sup> Jury modification of harsh laws was not an unusual phenomenon in eighteenth-century North America and Britain. It was unusual, however, for juries to nullify completely the application of the death penalty. Between October 1789 and May 1800, juries in Philadelphia refused to convict offenders of capital but generally convicted them for lesser, non-capital crimes. For examples of jury nullification, see Docket of Oyer and Terminer, January and September Sessions of 1790; January Session of 1792; and August Session of 1794, in Court of Oyer and Terminer and General Goal Delivery, “Dockets, 1787-1828,” *Records of the Supreme Court of Pennsylvania*, Pennsylvania State Archives.

were left to their fate.”<sup>557</sup> In 1785, a correspondent of the *Columbian Herald* commented on the state’s declining condition, blaming it on an “injurious balance of trade, which has so severely pinched the inhabitants of the whole continent,” lasting destruction from the war of independence, and indebtedness for the “disordered state of affairs.”<sup>558</sup>

Crime reports were everywhere.<sup>559</sup> In June 1785, for example, three horses were stolen from the Common in Charleston. The owner “pursued the thieves” and “found his horses in the possession of a man and two women.” He attempted “to have brought the thieves to this city” but he encountered “a party of country people” who rescued the alleged thieves.<sup>560</sup> In January 1786, four sailors allegedly “attacked a gentleman on the Bay, supposed with the intent to rob him.” The victim retreated to his store, “where he not only...defended himself, but...at length beat them off.”<sup>561</sup> According to newspapers, burglars and robbers seemed to get more daring. In July 1786, “a set of villains...robbed several houses in King-street.” From one house, “they cleared of every portable thing, taking even the bed-cloaths from the owner as he slept in bed.”<sup>562</sup> By early 1787, the *Columbian Herald* called for drastic measures to prevent burglaries and robberies:

The danger which threatens the inhabitants from a gang of villains who now actually invest this city [Charleston], calls loudly for an extraordinary exertion of the police, but also of the inhabitants themselves. – It were to be wished that voluntary associations might be entered into to patrol the streets, guard the property of citizens, detect the villains, and bring them to condign punishment.<sup>563</sup>

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<sup>557</sup> Fraser, *Charleston! Charleston!*, p. 173-176, quote on p. 174.

<sup>558</sup> *Columbian Herald*, October 26, 1785.

<sup>559</sup> Contemporaries believed that they encountered an unprecedented wave in gang activities, robberies, and burglaries.

<sup>560</sup> *Columbian Herald*, June 8, 1785.

<sup>561</sup> *Columbian Herald*, January 19, 1786. See also *Columbian Herald*, February 16 and 20, 1786; and March 2, 1786

<sup>562</sup> *Columbian Herald*, July 17, 1786.

<sup>563</sup> *Columbian Herald*, January 22, 1787.

By 1788, business owners took extra precautions to protect their shops, stores, and warehouses: they put shutters and chains on the windows, bolted the doors, and hired armed watchmen. The city's guard also stepped up their patrols, checking on businesses repeatedly during the night.<sup>564</sup>

Fears were heightened by the frequent jailbreaks of those who were arrested and awaited trial. In May 1786, when a "Mr. Bond, went to examine the criminals confined in the gaol of this city, he found that most of them got their irons off." Bond and another person were "knocked down with an iron bolt...and the prisoners forced their way out, but are all since taken."<sup>565</sup> Another attempt to escape, which was "prevented by the vigilance of...the goaler," was reported in December.<sup>566</sup> In April 1787, eight inmates "broke out of prison," but five were quickly retaken. A few days later, the *Morning Post* reported that one of the escapees was arrested once again but not before he allegedly committed another robbery, "imitating in this the celebrated Jack Turpin, who lived several years in the most elegant style by plundering the public."<sup>567</sup> By June, authorities ordered "a guard to watch the prison every night," as the repeated escapes were "exceedingly alarming to the lives and properties of the citizens."<sup>568</sup>

Despite these efforts to ensure public safety, thieves seemed to become more daring in their offenses, using disguises and lacking fear of detection. In early December 1787, "a genteel dressed woman went into a store in King-street, apparently much intoxicated, and desired leave to sit down for a few moments." After a short while she "reeled towards the door, but in too great

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<sup>564</sup> John A. Hall, "'Nefarious Wretches, Insidious Villains, and Evil-Minded Persons': Urban Crime Reported in Charleston's *City Gazette* in 1788," *South Carolina Historical and Genealogical Magazine*, p. 158.

<sup>565</sup> *Charleston Morning Post*, May 8, 1786.

<sup>566</sup> *Charleston Morning Post*, December 29, 1786.

<sup>567</sup> *Charleston Morning Post*, April 30, 1787 and May 4, 1787. For the legacy of Dick Turpin, who was hanged in London in 1736, see Linebaugh, *The London Hanged*, p. 203-205 and J. A. Sharpe, *Dick Turpin: The Myth of the English Highwayman* (London: Profile Books, 2004).

<sup>568</sup> *Charleston Morning Post*, June 2, 1787.



a forwardness to counterfeit inebriety, she made a false step, and let fall a piece of muslin which she had secreted under her cloak.”<sup>569</sup> A few moments later, a man, “genteely drest, particularly with a laced waistcoat, was detected stealing cheese.”<sup>570</sup> In April 1788, “a negro fellow stole into the house No. 2, St. Michael’s alley, and, while the family were at supper, began to pack up every thing that was portable.”<sup>571</sup> A few days later, a clockmaker’s shop was cleared out while he was in “a back room to be shaved.”<sup>572</sup> Punishment did not deter those who were caught. A certain O’Neal, “who was whipped a few days ago, for petty larceny, stole two hams” and while an official interviewed two witnesses, he “went into the Post-Office, took up a watch...and jumped out of the window.”<sup>573</sup>

The concerns about crime among Charleston’s inhabitants were even more heightened by the use of arson to distract from burglaries. Those who lived in wooden Charleston always feared the accidental or deliberate outbreak of a fire. During a fire in Thomas Jervey’s counting house someone allegedly stole bonds to the value of more than two thousand pounds. A fire that broke out in a house in Friend Street “occasioned considerable alarm” but was quickly put out. Nevertheless, Robert Quann claimed a pair of silver buckles had been stolen from him.<sup>574</sup> After helping to put out the fire, Peter Deverneys reported that he had lost, or somebody stole, “sundry loose receipts and a number of valuable papers.”<sup>575</sup> In November 1786, a fire broke out near the lower market “purposely occasioned by some prowling villain.” The same night the store of Mr.

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<sup>569</sup> *City Gazette*, December 13, 1787.

<sup>570</sup> *City Gazette*, March 19, 1788.

<sup>571</sup> *City Gazette*, April 3, 1788.

<sup>572</sup> *City Gazette*, April 5, 1788.

<sup>573</sup> *City Gazette*, June 16, 1788.

<sup>574</sup> Hall, “Nefarious Wretches, Insidious Villains,” p. 155-157.

<sup>575</sup> *City Gazette*, February 12, 1788.

Bradford was broken open and several goods were stolen.<sup>576</sup> A series of arsons “of the most alarming nature” occurred in 1786, resulting in a call for harsher punishments by a correspondent of the *Charleston Morning Post*. The writer proposed that it “may perhaps have a good effect to inform these persons, that the punishment which the law inflicts upon men found guilty of such offence [arson] is DEATH.” He further suggested that the “Executive power in this government is remarkably lenient, preferring rather to spare than destroy” but that “for such a crime as this, any palliation of the laws would be highly unwise and injudicious.”<sup>577</sup>

The inhabitants of Charleston at times took the punishment of alleged offenders into their own hands. On January 1, 1788, a man “was paraded through the streets, covered with feathers, stuck in a coat of tar, as a spectacle for the execration of others more honest than himself.” The man had apparently gone “on board of a vessel, where he saw some goods so bewitching as to induce him to break at least one of the commandments, which says ‘Thou shalt not steal.’”<sup>578</sup> Similarly, in July 1788, O’Neal – the same person who had been whipped for petit larceny two months early only to be retaken a few days later for stealing two hams – “was conducted to the wharf,” after he allegedly “picked a person’s pocket in the middle of a crowd.” At the wharf, he was tarred and feathered. O’Neal was then escorted to “the draw gate, where they took their leave, advising him in a solemn manner, to turn honest, giving him a few smart blows with a whip.”<sup>579</sup> At the end of the next court session, Judge Burke referred directly to incidents like these reminding those convicted “that their depredations had so soured the citizens that the lenient temper so often experienced and ungratefully played upon was nearly done away.”

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<sup>576</sup> *Charleston Morning Post*, November 27, 1786.

<sup>577</sup> *Charleston Morning Post*, June 29, 1786.

<sup>578</sup> *City Gazette*, January 2, 1788.

<sup>579</sup> *City Gazette*, August 1, 1788.

Therefore, “any future perpetrations of villainy would probably meet with summary punishment,” which “was exemplified on Tuesday last in the case of O’Neal.”<sup>580</sup>

Such extra-legal “justice” might to have entertained the crowd and might have tolerated by the authorities but it did lead occasionally to death. In May 1786, a certain Bryan went on board a schooner in Charleston’s harbor. After being detected allegedly stealing by the master of the vessel, the captain “threw a noose around his [Bryan’s] neck, and fastened him to the mast until he went for the guard.” By the time Captain Wallace brought back the guard, Bryan had died. Wallace was arrested and a jury of inquest “brought in a verdict – willful murder by Captain Wallace.” A few days later, Wallace escaped from prison but was later recaptured.<sup>581</sup> The outcome of his case is unknown.

Capital punishment in late colonial and revolutionary Charleston had been focused on slaves and, to a considerably lesser extent, on poor whites. This changed dramatically, however, in the 1780s when poor whites, mainly those who were considered vagrants but also sailors and soldiers, were increasingly blamed for social disorder and crime.<sup>582</sup> It is therefore not surprising that almost half the white people (16 or 46%) condemned in Charleston in the second half of the eighteenth century were executed in the late 1780s. Thirteen were hanged in 1788 alone and eleven of those over a period of five days. On June 11, 1788, five men and one woman – Robert Stacy, Josiah Jordan, John George, Edward Hatcher, Thomas Smith, and Ann Connely – were hanged for the robbery and murder of Nicholas John Wightman. Five days later, on June 16, five

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<sup>580</sup> *City Gazette*, August 1, 1788.

<sup>581</sup> *Charleston Morning Post*, May 1, 1786; May 3, 1786; May 8, 1786; and May 25, 1786.

<sup>582</sup> The lower number of slave executions might be due to the lack of records. Nevertheless, newspapers which in the past expressed major concerns about slave behavior did so to a lesser extent in the 1780s.

men – William Rogers, William Cain, John Masters, William Pendergrass, and Richard Williams – were executed for piracy and murder on board the schooner *Two Friends*.

An unusual amount is known about the trial of nine defendants for the robbery and murder of Nicholas Wightman because the *City Gazette* printed summaries of the court proceedings. According to the newspaper, eight of the defendants – five of whom were actually executed<sup>583</sup> – had not been present at the scene of the crime at all. Edward Hatcher, one of the condemned, testified in collaboration with other witnesses that Robert Stacy, who had been drinking with friends, “followed the said person [Wightman] with a brass barreled pistol” and shot Wightman after a short conversation. Returning to his friends, Ann Connolly “delivered out to the said Stacy powder and ball, and directed him to go out and rob again.”<sup>584</sup> When the city guard tracked down Stacy, they arrested the entire gang. When authorities searched one of their hide-outs, they found a letter by one of the current inmates in the city’s jail, requesting “a gimblet and sharp chissel” to aid his escape.<sup>585</sup> Furthermore, it appears from newspaper reports that the gang involved several other members who had committed crimes mainly with Josiah Jordan and John George.<sup>586</sup> When announcing the death sentence of the six defendants, the judge expressed his hope that “the spirit of association” that “had arisen to such a height” would be curbed by “a few examples” and “put a stop to such barbarities as had of late been perpetrated.”<sup>587</sup> The fact that five of the six defendants had not been present at the scene of crime

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<sup>583</sup> The charges against the three other defendants were dismissed because of lack of evidence, although it is not clear what the evidence against the other five defendants consisted of except for the fact that they were acquaintances of Robert Stacy.

<sup>584</sup> *City Gazette*, March 14 and June 9, 1788.

<sup>585</sup> *City Gazette*, June 9, 1788.

<sup>586</sup> *City Gazette*, January 8, 1788. According to the *City Gazette*, two of them – William Irons and John Lynch – had already been convicted of a capital property offense and had been sentenced to death. *City Gazette*, February 27, 1788.

<sup>587</sup> *City Gazette*, June 9, 1788.

that led to the capital conviction – and subsequent execution of all six – illustrates that they were convicted for their alleged life of “plunder and robbery,” offenses ranging from stealing slaves to robberies and burglaries.

In Charleston, as in the other two cities, executions decreased after 1789, especially for white people. Slave executions, however, soon began to increase with the outbreak of the Haitian Revolution. Of the twenty-five executions that took place between 1790 and 1800, nineteen were slaves and only four condemned were white; the race of two is unknown. In 1791, Thomas Walsh was hanged for counterfeiting.<sup>588</sup> John Feller was executed for passing counterfeit money.<sup>589</sup> Three years later, in 1795, two people, whose race is unknown but who were most likely white, were hanged for “stealing negroes.”<sup>590</sup> In October of the same year, Sally Ardner was hanged for the murder of her husband.<sup>591</sup>

The post-revolutionary years were turbulent in all three cities. The nation as a whole experienced an economic depression, high unemployment, widespread poverty and domestic unrest. On a local level, fear of organized crime – real or perceived – gripped the attention of elites, the middling sort, and authorities. As a result, executions sharply rose in all three cities between 1784 and 1789. Boston saw an almost three-fold increase of executions in those years compared to the late-colonial and revolutionary years. Philadelphia stands out in that the high number of executions both during the Revolution and the 1780s led to an intense debate about the effectiveness of the penal system in general and capital punishment in particular. In Charleston, the post-war years marked a pinnacle in executions of white people, signaling a

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<sup>588</sup> *City Gazette*, February 25 and March 1, 13, and 24, 1791. *Pennsylvania Gazette*, May 14, 1791.

<sup>589</sup> *City Gazette*, June 26, 1792 and *South Carolina Gazette*, July 10, 1792.

<sup>590</sup> *Connecticut Courant*, June 29, 1795.

<sup>591</sup> *City Gazette*, October 20, 1789.

temporary shift of concern from slaves' behavior to that of poor whites.<sup>592</sup> The most significant development of those post-war years and one that all three cities shared is the fact that the vast majority of executions were for property crimes. By the 1790, the internal situation in the United States had stabilized, as the economy began to revive, domestic insurrections had been successfully oppressed, and the Constitution had been ratified.

### **The Revolutionary 1790s**

Tranquility, however, was short-lived as another cycle of rebellions and revolutions ripped through the Atlantic, triggered new fears, and influenced the application of the death penalty in Boston, Philadelphia, and Charleston. The influence of the Age of Revolution on executions is least visible in Boston. Nevertheless, the hangings of two black men in the 1790s and the broadsides which accompanied those executions were linked in revealing ways to the abolitionist movement. Four other executions – an Irish, a French, an Italian, and a Portuguese – reflected an atmosphere of xenophobia during the 1790s. Although Philadelphians witnessed no executions during the 1790s and capital offenses were reduced to first-degree murder only in 1794, a domestic insurrection just outside of the city and fears of the French Revolution led to the reactivation of the death penalty. The relationship between executions in the United States and revolutions abroad becomes even more evident in the case of Charleston. With the outbreak of the Haitian Revolution, the specter of slave unrest once more loomed large among the slave owners of Charleston and South Carolina.

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<sup>592</sup> Even if the low number of slave executions could be explained just as the result of missing sources, the rise of executions of whites remains significant. In a slave society where the social system depends on race solidarity, the execution of a white person always reflects friction among whites.

## Boston

The impact of the Atlantic-wide revolutions on Boston appears to be only distant and indirect. Two black men were executed in the city during the 1790s – one in 1790 and the other in 1797. The literature surrounding both executions contains subtle links to the Age of Revolution. In 1790, John Bailey, a black man who had been born free in New York, was hanged for burglary. The broadside that accompanied Bailey's death was in many respects not unusual. Towards the end, however, the author referred to what had become a radical phrase in the revolutionary Atlantic, declaring that with God "there is no respecter of persons."<sup>593</sup> By 1790 that phrase had long been connected to radicalism and challenge to authority throughout the Atlantic.<sup>594</sup> The other execution took place in 1797 when a black man named Stephen Smith was hanged for burglary and arson. According to the broadside *Life, Last Words, and Dying Speech of Stephen Smith*, Smith was born in Virginia, belonging to a William Allen. When his master caught him stealing, he sent Smith to the West Indies to be sold. Smith "concealed [himself] and returned to Virginia, in the same Vessel." After being injured during a burglary, he was transported back to his master who then gave Smith to his son who sent him again to the West Indies. Smith was once more able to escape and he went to Nova-Scotia and eventually to Boston where he was condemned for burglary and arson.<sup>595</sup> The link between the two pamphlets surrounding Bailey's and Smith's executions and the rising abolitionist movement lay, in Bailey's case, in the use of a well-known phrase and, in Smith's case, in the detailed discussion of a life of slave labor and its corruption. By the late 1780s, abolitionism had become an increasingly powerful force in the public life of the United States, especially in New England, in

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<sup>593</sup> [John Bailey], *Life, Last Words, and Dying Confession of John Bailey* (Boston, 1790).

<sup>594</sup> For a detailed discussion of the phrase "no respecter of persons," see Linebaugh and Rediker, *The Many-Headed Hydra*.

<sup>595</sup> *Life, Last Words, and Dying Speech of Stephen Smith* (Boston, 1797).

some cases using traditional forms of publication such as pamphlets and broadsides to draw attention to the conditions of slavery.<sup>596</sup> The link between the execution of blacks and the abolitionist movement is far more apparent in a pamphlet published in 1797 in Philadelphia, when the execution of Abraham Johnstone, a former slave, in New Jersey was followed by an indictment of slavery in the condemned's voice.<sup>597</sup>

The remaining four executions in Boston were all of foreigners. Although there is no apparent link between those executions and events abroad, fear of radicalism and the influence of foreigners increased in the United States, especially after the Reign of Terror had begun in France in 1793. Eventually those fears led to the passage of the Alien and Sedition Acts, which were designed to control alien enemies, regulate naturalization and alien friends, and curb domestic opposition. Hostility ran especially high against the Irish.<sup>598</sup> In 1794, John Baptist Collins of France, August Palacha of Italy, and Emanuel Furtado of Portugal were all hanged for murder and piracy. Collins was born in France in 1762 but his parents signed him up for servitude in the Netherlands. His master sold him to the East India Company as a sailor. During his travels, he met Palacha and Furtado, both of whom were also sailors. Together they "entered on board the Brigantine *Betsey*...on a Voyage to Boston," during which Collins "committed the shocking and barbarous MURDER."<sup>599</sup> Three years later, in 1797, John Stewart, a native of

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<sup>596</sup> Towards the end of the 1780s, the abolitionist movement gained force in the Atlantic and sparked new fears of slave unrest, especially in the West Indies. In England, petition drives against the slave trade were underway and reports about the slave trade debates in the Parliament quickly circled around slave societies in the Atlantic. Scott, "Common Wind," p. 124-133.

<sup>597</sup> For more detail on Johnstone's case and the pamphlet, see Chapter 1.

<sup>598</sup> For a detailed history of the Alien and Sedition acts and their historical background, see James Morton Smith, *Freedom's Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell University Press, 1956).

<sup>599</sup> *Dying Confession [of the] Pirates, viz. Collins, Furtado and Palacha, who were [Executed] at Boston, this Day, being the Thirteenth of July, 1794, for the Murder of Mr. Enoch Wood* (Boston, 1794).



Ireland, was condemned and executed for robbery. Stewart lived in Ireland until about the age of twenty-one when he boarded a ship to Philadelphia. Leaving Philadelphia during the yellow fever epidemic in 1793, he went first to New York and then to Boston where he was repeatedly arrested for theft. In March 1797, Stewart and two others broke into a captain's house, where he was caught, and subsequently sentenced to death.<sup>600</sup>

### **Philadelphia**

The connections between Philadelphia and the radical 1790s are far more obvious and influential than in Boston. The penal reform movement which began in the 1780s relied heavily on revolutionary language to further their cause. Furthermore, reformers were part of an Atlantic community, exchanging ideas and philosophies about the nature of punishment and future penal policies with their colleagues in Great Britain and continental Europe. While the Age of Revolution propelled the penal reform movement forward in late eighteenth-century Philadelphia, more radical influences of the same age put an end to it when an insurrection erupted just outside the city.

By the 1790s, the penal reform movement had experienced both success and defeat. On the one hand, capital crimes were reduced to first-degree murder only in 1794 and corporal punishment had almost completely disappeared, at least in public. On the other hand, the reformers failed to abolish capital punishment. As discussed above, their greatest impact was on the judicial system, as no death sentences were imposed for ten years after the hanging of the five wheelbarrow-men in 1789. By 1800 new fears of social unrest – to many, more threatening than the perceived crime wave of the late 1780s and early 1790s – renewed the application of the death penalty in Philadelphia. American elites, especially Federalists, not only feared external

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<sup>600</sup> *The Confession, Last Words, and Dying Speech of John Stewart, A Native of Ireland* (Boston, 1797).

threats from the French Revolution, the Irish Rebellion, and the Haitian Revolution, but also worried about internal unrest that began with Shays' Rebellion in Massachusetts. Pennsylvania witnessed its own domestic insurrections, as the Whiskey Rebellion of 1794 in western Pennsylvania and then the Fries Rebellion of 1799 in the southeastern parts of the state, which hit closer to home and focused the anxieties among the elites and the middling sort.

The Fries Rebellion is especially important in explaining the reinstatement of capital punishment in Philadelphia.<sup>601</sup> In early 1799, the citizens of Bucks County, just north of Philadelphia, greeted the tax assessor with the cry "We will have liberty!" in German and broken English. They had assembled to resist a new Direct Tax on land and property, wearing liberty caps and red, white and blue French cockades.<sup>602</sup> Similar scenes took place in other German-dominated areas of southeastern Pennsylvania. The so-called Fries Rebellion took place against the background of state and federal economic policies that benefited large-scale creditors and put increasing burdens on the common people.<sup>603</sup> The people of southeastern Pennsylvania saw the new federal tax as another threat to their property and as an oppressive government action that resembled British policies before the Revolution. Afraid of increasing tax resistance and a major popular insurrection, authorities arrested several rebels, who were temporarily confined in a

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<sup>601</sup> For accounts of the Fries Rebellion, see Boyd Hamilton, "The Insurrection of John Fries in Pennsylvania" (1839), *Society Collection*, HSP and Paul Douglas Newman, *Fries's Rebellion: The Enduring Struggle for the American Revolution* (Philadelphia: University of Pennsylvania Press, 2004).

<sup>602</sup> The Direct Tax was enacted to finance military built-up and a possible war against revolutionary France. See Simon Newman, "The World Turned Upside Down: Revolutionary Politics, Fries' and Gabriel's Rebellions, and the Fears of the Federalists," *Pennsylvania History*, vol. 67 (Winter 2000), p. 7 and Paul Douglas Newman, "The Federalists' Cold War: The Fries Rebellion, National Security, and the State, 1787 –1800," *Pennsylvania History*, vol. 67 (Winter 2000), p. 67.

<sup>603</sup> The policies consisted mainly out of a withdrawal of paper currency, which ordinary citizens used to pay their debts, and heavy taxes to pay the Revolutionary war debt. People in southeastern Pennsylvania were forced to sell land and property at sheriffs' auctions.

tavern in Bethlehem. John Fries organized a group of militiamen to free the prisoners; federal authorities deployed troops to the area as a response.<sup>604</sup> After the rebellion was suppressed, forty-five persons were charged with treason. Twenty-two were eventually prosecuted and, at the end, only five, including John Fries, were tried for treason in Philadelphia, resulting in three death sentences. The two others were found not guilty by juries, who refused to convict the defendants for the capital crime of treason. The refusal to convict caused the government to withdraw treason charges against the other defendants, who then were indicted under lesser charges under the Alien and Sedition Acts.<sup>605</sup> After Fries was convicted and sentenced to death after his first trial, Secretary of State Timothy Pickering remarked in his report to President John Adams, that “an example or examples of conviction and punishment of such high-handed offenders were essential, to ensure future obedience to the laws, or the exertions of our best citizens to suppress future insurrections.” Fries’ conviction, however, was overturned because a juror had openly expressed his prejudice against him. He was again sentenced to death after a second, even more controversial trial in April 1800.<sup>606</sup>

Historians have tended to dismiss the Fries Rebellion as the “product of German parochialism, ignorance, illiteracy, or unfamiliarity of the English language.” More recently, scholars have looked deeper into the political and social background of the rebellion, locating it

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<sup>604</sup> There was no bloodshed during the rebellion, as the prisoners were quickly released by the marshal in charge.

<sup>605</sup> Whitman H. Ridgway, “Fries in the Federalist Imagination: A Crisis of Republican Society,” in *Pennsylvania History: A Journal of Mid-Atlantic Studies*, vol. 67 (Winter 2000), p. 141, 144-145.

<sup>606</sup> Ridgway, “Fries in the Federalist Imagination,” p. 150-151. While John Adams did believe that the executions of the three insurrectionists was unnecessary, he found it necessary to address the insurrection in one of his proclamations. See “Proclamation by the President of the United States,” in House of Representatives, *Messages for the President of the United States, Transmitting Certain Documents on the Subjects of the Insurrection in Pennsylvania; the Renewal of Commerce with St. Domingo; and the Mission to France* (1799), p. 15.

in the midst of the age of revolution.<sup>607</sup> The end of the eighteenth century and the beginning of the nineteenth century produced other major insurrections and uprisings of “slaves, industrial workers, sailors and dockworkers” around the Atlantic world.<sup>608</sup> Elites believed that their republic was seriously in danger of being undermined and eventually destroyed by the radical, democratic ideology of the French Revolution. They designed a comprehensive agenda to strengthen internal and external security by creating new military institutions such as the Naval Department and the Marine Corps, enacting anti-Jacobin legislation such as the Alien and Sedition Acts, and imposed the first national tax to finance the military mobilization for a possible war with France.<sup>609</sup>

The attempt to collect that new tax in southeastern Pennsylvania led directly to the Fries Rebellion and consequently to a fracture of the Federalist party whose members disagreed about the severity of punishment necessary to cope with the rebellion. The main controversy was whether Fries’ actions actually qualified as treason – waging war against the United States – or if they were nothing more than rioting. Adams eventually decided that “their crime did not amount to treason” but that “they had been guilty of high-handed riot and rescue, attended with circumstances hot, rash, violent, and dangerous” and should have been charged accordingly.<sup>610</sup> Adams was not alone in his opinion that those who had taken part in the rebellion had been

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<sup>607</sup> Paul Douglas Newman, *The Fries Rebellion of 1799: Pennsylvania Germans, the Federalist Party, and American Political Culture* (Ph.D. Thesis, University of Kentucky, 1996), p.6-9 (quote, p. 7).

<sup>608</sup> Black soldiers mutinied in Dominica, slaves conspired in Tobago, and sailors of the British navy mutinied in ports as well as on the open sea. Linebaugh and Rediker, *The Many-Headed Hydra*, p. 274-279. Newman, “The World Turned Upside Down,” p. 5-6 and Newman, “The Federalists’ Cold War,” p. 63-74.

<sup>609</sup> Newman, “The Federalists’ Cold War,” p. 66.

<sup>610</sup> Adams quoted in Ridgway, “Fries in the Federalist Imagination,” p. 152.

overcharged. He pardoned Fries and the other two alleged leaders who had been sentenced to death.

Three pirates, however, were executed on May 9, 1800, only a few days before the scheduled hanging of Fries and the other.<sup>611</sup> The execution of the pirates, like the intended hanging of the Fries rebels, has to be seen in the context of the uncertain and revolutionary times of the 1790s. The three mutineers – Joseph Boulanger (alias Baker), Joseph Berrouse and Peter Lacroix, all of French and French-Canadian background<sup>612</sup> – had justified their capture of the schooner *Eliza* as a rightful act of war, as the United States was on the verge of war with France and had already engaged in an undeclared naval war since 1798. During their first court appearance, they boldly declared themselves “French prisoners, and in the service of the French Republic.”<sup>613</sup> The publications surrounding the pirates’ hanging repeatedly referred to their French, and therefore revolutionary, background.<sup>614</sup> More importantly, all three pirates were foreigners and therefore had few ties to the Philadelphia community.<sup>615</sup>

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<sup>611</sup> *The Execution of La Coix, Berouse & Baker, for Piracy. The Last Words and Dying Confession of the Three Pirates Who Were Executed This Day (May 9<sup>th</sup>, 1800)* (Philadelphia: Folwell’s Press, 1800), broadside.

<sup>612</sup> The information about the national background of the three men is contradictory in the sources. While some sources portray them all as French, others maintain that at least one of them was Dutch and one French Canadian.

<sup>613</sup> Captain Wheeland, *A Narrative of the Horrid Murder & Piracy Committed on Board the Schooner Eliza, of Philadelphia, on the High Seas, by Three Foreigners, Who Were Tried before the Circuit Court of the United States, on Monday, the 21<sup>st</sup> April, 1800* (Philadelphia: Folwell’s Press, 1800, p. 14-15).

<sup>614</sup> *The Execution of La Croix, Berouse & Baker*, p. 3, 6.

<sup>615</sup> For the rise of xenophobia and nativism during the 1790s in the United States, see James Morton Smith, *Freedom’s Fetters: The Alien and Sedition Laws and American Civil Liberties* (Ithaca: Cornell University Press, 1956) and William Appleman Williams, *America Confronts a Revolutionary World: 1776-1976* (New York: William Morrow and Company, 1976), p. 44-58.

## Charleston

In Charleston, the revolutionary 1790s, through the example of Haiti, had an even bigger influence on the application of the death penalty than the French Revolution had in Philadelphia. When the slave revolt broke out in Haiti in 1791, the fears of South Carolina slaveholders soared, especially after French refugees, including slave owners who brought at least some of their slaves, flooded into Charleston. Slaves used every opportunity to collect information about the revolt in Haiti. In Charleston, for example, slaves working at the office of the *City Gazette* took more than two hundred copies of the daily newspaper, which had been printed to report about the revolt.<sup>616</sup> Both in the city and across South Carolina, executions of slaves increased dramatically in the early 1790s immediately after the outbreak of the Haitian Revolution and then fluctuated throughout the decade with a peak towards the end of the century. In Charleston, hangings of slaves – at least sixteen in all during the 1790s – rose and fell with the emotions and fears of white inhabitants. Rumors of planned revolts and uprisings wracked the city for most of the decade.

Not all executions of slaves during the 1790s in Charleston were directly caused by the Haitian Revolution but several featured crimes such as attacks on masters and arson long associated with potential slave unrest. In 1793, the murder of slaveholder Stephen Saint John's sent shockwaves through the slave owners' community. Titus, one of Saint John's slaves, was executed in Charleston for being an accessory to that murder.<sup>617</sup> Such a crime at any time would have raised the concerns among slave owners about their safety but in 1793 a slave revolt

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<sup>616</sup> Frey, *Water from the Rock*, p. 228.

<sup>617</sup> *City Gazette*, July 9, 1793; "Petition of Susanna St. John," November 28, 1797, General Assembly Petitions, 1783-1800, South Carolina Department of Archives and History; and "Contingent Account of Cotton M. Stevens," no. 32, State Treasury – Lower Division, Charleston Day Book, 1796, South Carolina Department of Archives and History.

seemed to be imminent to many, as a New York newspaper, for example, reported the following from the city:

They write from Charleston (S.C.) that the NEGROES have become very insolent, in so much that the citizens are alarmed, and the militia keep a constant guard. It is said that the St. Domingo negroes have sown these seeds of revolt, and that a magazine has been attempted to be broken open.<sup>618</sup>

In September 1793, authorities searched the house of a free black named Peter Mathews. Nothing but “an old pistol without a flint, a broken sword, and an old cutlass” were found.<sup>619</sup> Fears in Charleston grew when the ship *Maria*, bearing refugees from Haiti, docked in the city’s harbor.<sup>620</sup> A week later, Governor Moultrie issued a proclamation, ordering “all free foreign blacks who had arrived in the state less than a year before to leave the state,” as there are “many characters amongst them, which are dangerous to welfare and peace of the state.”<sup>621</sup> Tension rose even more when two separate incidents of arson occurred in Charleston in mid-October.<sup>622</sup>

Fears peaked by the middle of the decade. In April 1796, William Read wrote his brother that an “attempt however was made on our part of the city last Sunday night” after a deliberately set fire.<sup>623</sup> Later that year, a young slave named Molly was executed for arson, after being convicted of “robbing her master, and setting fire to capt. Vesey’s house at the Grove.” In her confession, Molly apparently not only admitted to “being guilty of these crimes, and also that she was the person who set fire to her master’s house at Belvedere.” Molly added to the terror by declaring that “she was persuaded to the commission of these atrocious acts by a Frenchman,

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<sup>618</sup> Quoted in Aptheker, *Negro Slave Revolts*, p. 96.

<sup>619</sup> *City Gazette*, September 7, 1793.

<sup>620</sup> *City Gazette*, October 3, 1793.

<sup>621</sup> For Moultrie’s proclamation, see *City Gazette*, October 17, 1793.

<sup>622</sup> *City Gazette*, October 19, 1793.

<sup>623</sup> William Read to Jacob Read, April 17, 1796, *Read Family Papers*, South Caroliniana Library (Manu-script Division), University of South Carolina.

named Renaud, her master's gardener, formerly a servant to Mr. Michaud...belonging to the French Republic."<sup>624</sup>

Fears remained high and in 1797 rumors surfaced of another slave revolt. Three blacks – one free and two slaves – were charged and condemned as ringleaders of a conspiracy “to set fire to the city as they had formerly done in St. Domingo.”<sup>625</sup> On December 21, 1797, Figaro and Jean Louis were “led to the place of execution at the bottom of Tradd Street facing the Lower Market” in Charleston. Between “the Hours of Twelve and One o’Clock” they were “hanged by the Neck” for treason and conspiracy. A few days later, a free black was hanged as an accomplice at the same place. By the end of the decade, authorities had decided against the landing of more refugees. In 1798, Savannah’s Commissioners of Pilotage were informed of the attempted landing of a vessel in Charleston “with a number of dangerous characters on board.” They instructed their own pilots to watch out for that vessel and any other ship “that may have persons of colour on board.”<sup>626</sup>

### Conclusion

The Age of Revolution brought major upheaval to the North American continent, which in turn had a significant impact on the application of the death penalty in the cities of Boston, Philadelphia, and Charleston. Despite the crisis of the American Revolution and the impact of the French and Haitian Revolutions, the rise and decline in the numbers of executions were very much shaped by specific local reactions to those crises. Despite the fact that all three cities

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<sup>624</sup> *City Gazette*, September 7, 1796.

<sup>625</sup> For quotes, see Petition of John Desbeaux, December 4, 1798 (trial transcript), *General Assembly Petitions, 1783-1800*, South Carolina State Archives and *Boston Gazette*, December 18, 1797. For Mcredi, the free black, see transcript of the Court of Justices and Freeholders, Charleston, November 27, 1797, in James Lowndes, *Legal Documents*, South Caroliniana Library, University of South Carolina.

<sup>626</sup> Commissioners of Pilotage (Savannah), *Minute Book*, June 8, 1798, Book 1, p. 184.



experienced British occupation during the American Revolution, levels of executions varied according to local circumstances. In Boston, the pre-revolutionary resistance to British policies suggests a more unified community at the outset of the Revolution than in Philadelphia and Charleston. Moreover, the vast majority of the city's population left Boston during parts of the revolutionary period. In contrast to Boston, divisions and conflicts among the population in both Philadelphia and Charleston contributed to an increase in executions. In Philadelphia, for example, the neutral stand of Quakers raised suspicions among patriots, leading to the highly controversial executions of two Quaker artisans. Slaves in Charleston and South Carolina played a vital role during the American Revolution. The first year after the first shots were fired in the conflict brought high anxiety about slaves' and free blacks' behavior. The absence of a high number of slave executions can be explained partly by a breakdown in masters' authority over their slaves. Severe punishment of slaves might have created more resistance among slaves and could have led to major unrest. On the other hand, however, the lack of evidence for that time period makes conclusions about slave executions tentative.

The first few years of the early republic, especially between 1784 and 1789, were years of great fear of social unrest and near collapse of the social order. Convulsed by high unemployment and economic insecurity, all three cities experienced their highest level of executions with a peak in the years 1788/89. The priority of protecting property is also reflected in the overall prosecution patterns in the cities' higher courts. Those living in Charleston witnessed an unusually high number of hangings of whites but a relatively low number of slave executions. Boston went from no executions during the revolutionary period to eleven within five years. Executions in Philadelphia were higher than in the other two cities but, at the same time, the city also became a center of penal reform and opposition to capital punishment. The

most important aspect of the 1780s, however, is the high number of executions for property crimes in all three cities, which closely linked the protection of private property to the founding of the new nation.

No sooner had the domestic situation in the United States calmed down and stabilized than the outbreak of the French Revolution and a few years later the Haitian Revolution created new anxieties and fears. Boston seemed to be least touched by the revolutions abroad although executions remained at a higher level than during the late-colonial and revolutionary periods. During the 1790s Philadelphia saw an informal moratorium on executions. While the resistance of the wheelbarrow-men had contributed to the moratorium, another form of resistance from below led to the reinstatement of capital punishment. Anxiety was highest in Charleston. When the city was rocked with rumors of slave revolts, slave executions rose sharply. As important Atlantic ports, both Philadelphia and Charleston were vulnerable because of the influx of people and, with them, information from abroad. The fear of the radical influences of revolutions in other parts of the Atlantic led to an increased use of state terror to control the cities' lower classes. In Philadelphia, however, authorities resorted to the hanging of three outsiders rather than executing the leader of the Fries Rebellion, which might have caused more unrest. In Charleston, state terror hit much more directly the section of the population that was feared most.

The post-revolutionary years (1784-1800) were a tumultuous period characterized by social anxieties created by internal developments and international events. It was also a period that showed the different phases of the Age of Revolution. On the one hand, the Age of Revolution also brought a struggle over capital punishment, as many opposed the death penalty in Philadelphia and pushed for major penal reforms. At the end, the reform movement failed to abolish capital punishment in Pennsylvania and executions continue until this day. On the other

hand, the hopes and promises of freedom and liberty came true for some but were lost for others. Capital punishment was a major tool in establishing order after the Revolution. Most importantly, executions were used to firmly ascertain the primacy of property and its protection in the newly founded nation.

## 7.0 CONCLUSION

As this country approaches its 1000<sup>th</sup> executions since 1976, the death penalty remains as controversial as ever. In recent years, a growing abolitionist movement and the frequent releases of death row inmates who were able to prove their innocence have once again raised serious questions about capital punishment. Critics point to the racism, discrimination against the poor, and the danger of executing the innocent as compelling reasons to abolish the death penalty. Its proponents believe that the most severe punishment is justified for some offenders and necessary to deter crime. Not much has changed since the late eighteenth century and the early nineteenth century when opponents and supporters of the death penalty used similar arguments to make their case. Little has been known, however, about the history of the death penalty to explain this consistency in arguments for and against capital punishment. This dissertation has uncovered certain patterns that, combined with future research, might shed light on the functioning of the death penalty and reasons for its persistent use – and denunciation – in the United States.

First and foremost, capital punishment was a tool of social control in early urban America. Authorities applied the death penalty primarily to control the behavior and actions of the working poor, whether they were enslaved or free. The level of forced labor in each city had a significant impact on the application of the death penalty: the higher the level of forced labor, the higher was the rate of execution. Charleston, the city with the highest percentage, witnessed the highest rate of execution (one execution per 128 inhabitants). Boston, the city with the lowest

percentage of forced labor, experienced the lowest rate of execution (one per 696). Philadelphia, which had more indentured servants than Boston and fewer slaves than Charleston, fell into the middle (one per 347). The distinct class nature of capital punishment in early urban America is further illustrated by the high number of executions for property crimes. Especially after the Revolution, the death penalty became a major instrument to protect the property of the well-off and wealthy.

Another aspect that illuminates the role of capital punishment as a tool of social control is the ritual of execution itself. Designed to convey lessons of morality and social order, the day reflected a kind of morality play in which each person or group of people was assigned a particular role: civil and religious officials as representatives of state power and enforcement of social order and popular morality; the condemned as a penitent sinner; and the spectators as passive, remorseful, learning observers whose “participation” in the ritual ratified the social order. The meaning of an execution, however, was beyond the control of authorities. On the execution day itself, the condemned and the spectators did not always fulfill their proper roles in the theater of death. The condemned at times mocked authorities or declared their innocence under the gallows. Spectators sometimes questioned the justness of the sentence and behaved in an unruly manner. Furthermore, the gallows were often a crime scene of their own: reports about pick-pocketing committed during an execution were quite frequent. The theater of death thereby became a counter-theater, in which the world was turned upside down. The actions of those who were most frequently victims of the gallows also altered penal policy. When Philadelphia’s authorities experimented with public labor as a substitute for hanging in the 1780s, the resistance of the so-called wheelbarrow men was instrumental in pushing the penal reform movement from public labor in the streets to imprisonment at hard labor. All classes in early American

understood – and used – the symbolism of power displayed during the theater of death. While the state literally exercised its ultimate authority to take a life, the popular classes, by hanging local officials in effigy during protest, employed the same ritual to threaten but not actually kill members of the elites.

My research demonstrates a pattern death-penalty punishment that raises an important question about how sentences were determined in court. In all three cities, the number of executions was highest at times of crisis. The particular crisis could take place on a local, regional, national, or international level but in each case the reaction was similar – an increase in executions. The question therefore is whether the mindset of a jury at the time of the trial is not at least as important, if not more so, in determining the penalty than the crime of the accused. Although this point is difficult to prove as evidence on the makeup of juries is scarce, there is one instance in late-eighteenth-century Philadelphia where evidence clearly suggests that the mindset of jurors had a direct impact on the application of the death penalty. In the late 1780s and 1790s, as we have seen, Philadelphia became a center of an Atlantic-wide penal reform movement, which included an opposition to the death penalty. A cross-list of jurors and members of the penal reform movement demonstrates that there is a substantial overlap between the two. It appears therefore that juries in Philadelphia engaged in something akin “jury nullification” as jurors apparently did not hand down a single death sentence during the 1790s despite numerous capital indictments.

Several questions arise from my research that remain largely unanswered but certainly deserve more scholarly attention in the future. First, women were punished significantly differently than men, especially for capital crimes. From court records, it is evident that women were not necessarily engaged in lesser crimes than men but that grand juries frequently charged

them with lesser crimes, turning, for example, an indictment for burglary or robbery into one for receiving stolen goods. The societal image of women therefore seems to have fundamentally influenced decisions by juries about how to treat women in court. There were, however, moments when being a woman ceased to protect a woman from a severe sentence. In Charleston, the reason was most obvious, as slave women had a higher rate of execution than women in the other two cities. Race therefore negated or at least reduced the mitigating power of gender. The question remains, however, at what moments women do receive the ultimate punishment and why.

Secondly, the comparison between urban and rural capital punishment deserves more attention. In early urban America, property crimes caused more than sixty percent executions. In rural areas, defendants were most frequently executed for personal crimes. This suggests to a fundamental difference in the functioning of these societies, their belief systems, and notions of what was unacceptable behavior. Of course there were greater opportunities for property crimes in the cities with their mansions, warehouses, stores, and shops. Another explanation might be differing economic developments, making the protection of property a primary agenda in the cities but not in rural areas by the late eighteenth century.

Thirdly, slaves were not only executed by the state but also were at times killed by their masters, overseers, or other whites usually with few or no legal repercussions for the murderer. I believe that this is an important and almost entirely unstudied aspect of capital punishment in the United States. This extra-legal death penalty turned into lynching after the Civil War and continues today with all-too-common killing of poor people by police. It raises the serious question whether killing by the state then gives license to murder by those in authority and

power, or at least to murder with their unspoken consent. Only further research can determine the relation between legal and extra-legal executions.



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