How did Americans imagine law as they sought to establish their own independent sovereignty? This book is about the forging of new conceptions of legalism between the beginning of the Seven Years’ War in 1756 and the period of the French Revolution in the 1790s. To tell this story properly means focusing on the intersection of criminal law, politics, and language. Criminal law – not the abstraction of constitutional principles – was often the locus of debates about justice. Its captivating tales from the underworld, its setting into stark relief fundamental issues of proper conduct, and its reliance upon the violence of punishment made it the most talked-about legalism in late-eighteenth-century America’s coffee houses and cobblestone streets. Politics was intertwined with law in Revolutionary America. Legal arguments and narratives provided a cultural network for galvanizing a population stretched out along the Atlantic seaboard and westward. The rituals of punishment, such as hanging in effigy, became the rituals of rebellion.

Popular law talk was at the heart of revolutionary law-making and at the heart of the American Revolution itself. It assumed many guises and served many purposes, including the legitimation of resistance against the British, establishing a link between street ritual and print culture, acting as an instrument of political mobilization, and mere entertainment. Historians have uncovered a burgeoning public sphere for political discourse in the end of the eighteenth century across the Atlantic world. This arena is often associated with meeting places such as taverns or new forms of conviviality. But law – an abstraction made tangible through mock executions or contestation over actual cases – was itself a public sphere.
Although the explosion of law talk in Revolutionary America had its origins in the folk rituals of rough justice from early modern England, the particular circumstances of its spread were grounded in the social milieu of a politicized America searching for a common language that would bridge differences in social status and geography. As we shall see, the centrality of legalism in American culture did not begin with the settled jurisprudence of courts. Ironically, however, law’s prominent cultural role led to the common designation by the early nineteenth century of America as a country dedicated to the rule of law – what John Adams famously called “a government of laws, not of men.” This predisposition is even more surprising when one remembers that this was a people located at the edge of an empire, facing a frontier filled with new immigrants raised in disparate traditions, and that just emerged from a revolution against lawful authority. In every sense of the word, the United States in the end of the eighteenth century was a new democracy. Nevertheless, Revolutionary America had chosen to replace the personal governance of monarchy with an ordered republic of legal norms. Tom Paine summed up this change with a pithy phrase: “In America the law is king.”

Most stories of how America became subject to the rule of law focus on framers and justices, on the serious-minded founders of a new nation. The received traditional narrative is quite straightforward. America’s Revolution, we have been told, distinguished itself from other political upheavals by elevating law to a dominant position. Rule of law ensures equal protection under a rational legal regime. Through Constitutional decision-making, moreover, it commands obedience to legal doctrine as a central means for resolving societal disputes. There are many different versions of the rule-of-law tradition. But the essential narrative remains much the same. After the American Revolution, popular sovereignty became inscribed in a written form of fundamental law, the Federal Constitution. Its enduring authority has often assured recourse to legal norms rather than factitious politics. In a famous passage, Tocqueville describes how legal language originates with judges and judicial proceedings, extends to lawyers who bring it to bear on public life, and descends to the common people so that “it so to speak infiltrates all society, it

descends into the lowest ranks, and the people as a whole in the end contract a part of the habits and tastes of the magistrate.\footnote{Alexis de Tocqueville, Democracy in America, eds. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), pp. 257–258.}

This book suggests a different sort of founding. The subject of this book is the outpouring of law talk in America between the conclusion of the Seven Years’ War in 1763 and the end of the eighteenth century. Criminal trials, as in our own time, best captured the public imagination, and many of these were the subject of discussion in taverns and coffee houses – which might span the gamut from raucous gossip to serious legal analysis. This expressive legalism was readily communicated across different levels of society and across different geographic regions. Its symbolic idiom ranged from imagined punishments as a form of political protest to hanging ballads to serious proposals for criminal law reform. During the Revolutionary period, Americans did not simply draw upon law as a language of politics and social criticism, but also learned to read law differently. While certainly they employed a panoply of techniques for interpreting legal expression during this period, one stands out – intertextuality. Cases were read against other criminal law cases, text was read against the narrative of its political context, and American legal doctrine was read comparatively against its English counterpart.

In a certain way, then, it is possible to speak of the criminals at the core of such stories as founders. These founders – who would have been surprised to be granted such a title – included petty thieves, over-the-hill housebreakers, and a motley array of blackguards. In their own, self-interested ways, late-eighteenth-century criminals were subversive. Nevertheless, they were reluctant founders of sorts because their stories, often artful-dodger sort of tales – and the debates about justice, public legal interpretation, and the role of English legal authority that constitute the connective tissue of American legal debates – depended upon their punishment. Such stories did not borrow from the “habits and tastes of the magistrate.” Often vulgar, they might be described as the late-eighteenth-century version of kitsch legalism.

Quite recently, the problem of law’s relationship to revolutionary upheaval has animated a way of thinking about contemporary law, “popular constitutionalism.” As identified by Gary D. Rowe and Larry Kramer, and presaged by an extensive examination of customary law by John Reid, this discussion has focused upon the constitutional authority
of late-eighteenth-century Americans. Kramer argues that ultimate constitutional authority was once vested in the people, though it increasingly became the purview of Federalist-controlled courts by the early nineteenth century. Seeing constitutional authority as belonging to the people themselves, of course, has important consequences for how we view the current power of the United States Supreme Court, especially judicial review.

Nonetheless, too much of popular constitutionalism has been concerned with the issue of who holds the reins of legal power – the courts or the people. By investing the “people themselves” with the role of judicial review, popular constitutionalism envisions a late-eighteenth-century constitution remarkably like our own, but with the power of courts and people differently calibrated. The very notion of an earlier, unformed common-law constitution would have been familiar to eighteenth-century Anglo-Americans. Imposing the legal category of constitutionalism as seen today, however, is an anachronistic enterprise, which is not terribly helpful for understanding this formative period. It presumes that settled constitutional principles were embodied at the popular level while providing less attention to the diffuse, contradictory, and often maddeningly imprecise ways that law was expressed in a period brimming over with all sorts of law talk.

In contrast, I have focused upon criminal law as language, not upon eighteenth-century debates about governance, because it was this form of law with all its high drama, sometimes vulgar and sometimes elevated, where so much of the creative legalism of the period resides. Occasionally, law at the popular level was articulated in constitutional terms. It was more often simply an intoxicating mix of gossip, politics, sensationalism, tales of murder, and astute attention to the procedural norms that make law matter. As contemporary lawyers periodically rediscover, law is ultimately about stories and language as much as it is about straightforward rules. My hope is that by returning to the well-spring of law talk – recovering how late-eighteenth-century Americans mixed criminal law and politics and used this intoxicating combination as a means to mobilize citizens, both elites and common people, within a revolutionary context – we can elucidate how Americans ultimately transformed the rule of law into a dominant cultural feature of the Early Republic.

Introduction

The social history of crime and punishment is also closely related to the themes in this book. Nearly a quarter of a century of historical investigation has uncovered much about the habits of ordinary criminals, the workings of courts, and the patterns of punishment in late-eighteenth-century America and England. Three excellent works on the subject by Daniel Cohen, Louis Masur, and Michael Meranze, for example, reflect the turn toward cultural history. Cohen describes the shifting of execution narratives from Puritan moralism to a genre of popular entertainment. Masur underscores the importance of hidden punishment for an increasingly refined American public culture. Meranze interrogates the ambivalence of liberal reformers to corporeal punishment even as they rely upon a broad array of disciplinary practices. All three books, with their different approaches to the role of literary genre, private and public spheres, and disciplining of the body, seek to chart the broad social transformation from colonial America through the early nineteenth century.

My subject, however, is not the sociological, but the legal. I am interested less in felons and more in law itself—as it is conceived, expressed, and interpreted through different forms of reading. Literary scholars have long drawn the connection between the fictive voice in early modern criminal narratives and the rise of the modern novel. However, hitherto the importance of criminal legal narrative for creating new forms of American law has been ignored. Law, I would contend, is as much about storytelling as it is about constitutionalism, statutes, and sociohistorical understandings of compliance with legal norms.


WHY CRIMINAL LAW?

When New York’s Assembly in 1773 sought to stem a recent rise in counterfeiting, it envisioned an unusual statute. New paper money would be engraved with forms that would be hard to imitate. Creating something of a triptych representing the execution of counterfeaters, the proposed currency shamelessly borrowed scaffold imagery: an eye in a cloud, an execution cart and coffin, three felons on a gallows, a weeping father and mother with several small children, and a burning pit with human figures being forced into it by fiends. A caption would read “Let the name of a money maker rot.” In Connecticut, a half-dozen years and a revolution later, a proposed 1779 bill suggested tattooing the figure of the gallows on the forehead of criminals guilty of robbery, burglary, and maiming. The gallows mark would be indelible.⁶

It is remarkable to think of everyday monetary transactions in New York being paid for with bills depicting the execution of counterfeaters or convicted Connecticut felons walking about with tattooed scaffolds on their foreheads like so many marks of Cain. Neither law was actually instituted. But these were serious proposals that reflected the abundance of execution iconography across the late-eighteenth-century cultural landscape. From the hanging of effigies to execution narratives and ballads hawked on street corners to the spectacle at the scaffold itself, early Americans encountered the predominant symbol of the criminal law: capital punishment.

Most legal actions involved the collection of debt; most criminal prosecutions were for misdemeanors. Nevertheless, popular legal imagination grasped at the symbolism of capital punishment. The nearly three decades from the close of the Seven Years’ War in 1763 through the mid-1790s emerged as the high-water mark in Anglo-American scaffold imagery. Why did Americans in the Revolutionary period repeatedly draw upon executions as a political idiom? It might be simple to dismiss this use as simply a matter of convenience. Sanctions, after all, neatly express a rage to punish. But mock executions remain only one small example of the proliferation of criminal legal language and images, debates, and controversies during the last quarter of the eighteenth century. What do these

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representations tell us about how the common people thought about law during this critical period when foundational legal norms were framed? And how did the complex, tangled relationship between punishment and politics change from the 1760s to the 1790s?

To answer these questions requires a different approach. Legal historians tend to confine their work to studies of codes, judicial decision making, and, perhaps, the mutual influence of law and society. But I became intrigued by what stood outside of official legal boundaries: imaginary punishments, mock executions, stillborn reform proposals, fabular criminal narratives, and the ways that both sophisticated critics and the common people envisioned criminal law. Such a path departs from the traditional conception of law as a hegemonic power of the state. I instead would like to suggest that law as envisioned, formulated, and represented as a cultural artifact by a wide range of historical actors, including the common people, enable its later reinscription in official statutes and institutions.

Take, for example, the 1765 mock execution of a Massachusetts Stamp distributor. After hanging the effigy on the gallows, other punishments were conjured up as well: never-ending incarceration in prison or the invention of a Sisyphean cell where the prisoner has to constantly pump out water or drown. What is striking here is that these species of punishment, confinement and labor, would become the touchstones of legal reform two decades later. This particular fragment, then, hints at what I am trying to suggest. Law is imagined before it is enacted.  

Imagining law is the subject of this book. By imagination, I mean something less passive than simply mentalité, inherited beliefs, or participation in legal culture. But it is also less ordered than ideology. What

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I discuss here is largely a nonprofessional discourse taking place in the public sphere as opposed to the bounded sphere of courts and codes. This definition is purposefully broad. It includes using punishment as a symbolic language in the context of politics out-of-doors, legal storytelling, transforming trials into political contests, mythopoetic renderings of the origins of legal systems, and – if that were not capacious enough – any imaginative political readings of law or cases where legal norms are seen as representing something more than simply a means of restraining criminality.

Three more points should be made at the outset about legal imagination. First, imagination, as Coleridge tells us, is generative. Not only does legal imagining create novel interpretations of doctrine, but it also enlarges the domain where one imaginative notion might elicit another. For this reason, I discuss at length the formation of a public sphere for talking about law as well as the ideas within that sphere. Imagining law, secondly, is syncretic. New interpretations often emerge through appropriating bits and pieces of official rules. The result may be considered simultaneously of official law and – since extraofficial historical actors lack the status to establish governing rules – beyond or transcending official law. I have tried to avoid overdrawn distinctions between high and low legal cultures. Thirdly, it is important to emphasize the political significance of legal imagination. By its very definition, legal imagination challenges state and professional monopolies over law. In certain historical moments where political authority is contested, such as Revolutionary America, interpreting doctrine, judging cases and controversies, and inflicting punishment must be seen as a radical assertion of sovereign powers.

Stephen Greenblatt makes a distinction between the imagination at play, as mere entertainment, and the imagination at work. The legal imagination described here worked very hard. It did more than simply invent fanciful tales about notorious felons or permit a voyeuristic gazing at fictive or actual executions. In this vein, literary critics see criminal narratives as precursors of the novel. Reading these as legal texts rather than as literary genre, however, uncovers aspirational visions of the law. During the second half of the eighteenth century, I will suggest, questions about legal possibilities became commonplace: What is the purpose of punishment? Who controls the right to judge? And might it be possible to create a legal order founded upon a less harsh regimen of sanctions?

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8 Greenblatt, Marvelous Possessions, p. 23.
But this was also an imagination at work because it needed to explain a great deal. A new understanding of criminal law emerged around the time of the American Revolution. Criminal justice was seen as a mirror that reflected truths about the surrounding political and social structure. Accustomed to Oliver Wendell Holmes's metaphor of law as mirror, we have forgotten how this might be a truly radical notion. It assigns a significant explanatory burden for a legal system. No longer were the outward guises of criminal law – penal codes, criminal procedure, modes of punishment, and the like – simply instruments for identifying and sanctioning offenders, they were also transformed into representational objects that inscribe and reinscribe a deeper political meaning about themselves.

REVELATION AND INTERTEXTUAL READINGS OF LAW

Revolutionary America was a seedtime for imagining the criminal law. This is not an accident. Revolutions are political moments when both critical and inventive faculties are unleashed. Part of the book’s purpose is to recapture the excitement of imagining criminal law in a revolutionary period. Americans during this period drew upon a familiar repertoire of punishment symbolism rooted in early modern English popular culture – such as rough justice and the hanging of effigies – in order to create a new legal culture. But there was also a heightened focus on intertextual readings. Intertextuality, a term coined by Julia Kristeva, identifies every text as “the absorption and transformation of another text.” For legal texts, this can occur in all sorts of ways: the borrowing or transformation of a prior text such as a statute; court cases can be read with deep referencing of each other; law can be read against politics; or texts can be subject to parody.

At a certain level, moreover, there was a macrointertextual reading of American law against the legal forms of other regimes. The chronological parameters of the book reflect the importance of such comparative interpretive practices. Two sharply defined watersheds in transatlantic political history form its rough boundaries, the American and French Revolutions. It begins in 1763, a year before the Stamp Act Crisis with mounting tension between England and its North American colonies. In the midst of their protest, Americans drew upon the repertoire of legal language as political agitation began to couple criminal justice with

popular politics. It concludes at the end of the 1790s when the French Revolutionary regime sentenced to death Louis XVI. Between these two great political upheavals lies the apotheosis of America’s making criminal law the lingua franca of popular politics.

Most important, this discourse about law took place outside the boundaries of formal legal structures. It was open to people at all levels of society. Legal language was made simpler and more accessible. Such broad-based discussions reflected the rise of popular politics in the 1760s. Seeking to mobilize the population, American radicals widened the public debate over legal issues and used what might be called vernacular legal culture, such as criminal narratives and mock executions, to garner support. Americans rallied behind a new idea of criminal law with legal transparency and participation of the common people at its core.

During the 1780s Americans launched a full-scale attack on English criminal justice. They chose to critique English law at its most vulnerable point: the capital-laden statutes of the criminal code. Rejection of English law was part of a discourse of legitimization and delegitimization that surrounded the American Revolution. English publicists, as David Brion Davis has shown, dismissed American claims for liberty as coming from slave holders. Americans, in turn, sought to delegitimize England by representing it as a country with Tyburn as its iconographic centerpiece. According to this argument, England’s reliance upon capital punishment suggests a social order badly in need of a repressive apparatus. Mid-century colonials praised English due process in contrast to minimal French protections. But now Americans compared England’s legal system unfavorably with an idealized version of their own.

The 1780s was a period of legal myth-making. Americans reinvented their own legal past by claiming that England imposed its harsh legal regime upon the colonies against their will. Capital punishment took on remarkably powerful tropes of brutality and repression. Imagining the meaning of punishment, Americans, not surprisingly, turned to recasting their actual criminal codes. Statutes mandated prison sentences, which both replaced sanguinary punishment and curbed judicial discretionary use of pardons. Penal reform created an outward representation of the new republic, playing much the same role as health care or literacy programs for twentieth-century revolutions. The political authority of the nascent republic turned in part upon its remaking of criminal law.

But this emphasis upon a nonsanguinary system of punishment reflects only one facet of revolutionary legal discourse. In fact imagining justice was Janus-faced. On one side, it critiqued the violence implicit
in existing legal regimes. Republican government implied mild sanctions. The other side called for public participation in the implementation of criminal justice. A tension, of course, existed between these two notions. During the early 1790s, criminal code reform crowded out radical notions of participatory justice. Two consequences of this reform stood in marked contrast to the earlier ways justice was imagined. First, prisons shunted aside execution rituals. Punishment was bounded by space. Interpretive power, secondly, became the sole purview of legislatures and courts.

The early 1790s witnessed the waning of vernacular legal culture, participatory justice, and the kinship of legal discourse with politics. Images of the guillotine from the French Revolution, moreover, underscored the dangers of involving the common people in questions of criminal justice. No longer were Americans comfortable with execution symbolism and popular politics sharing a common language. Fictive punishment might evolve into a form all too real. Not surprisingly, no attempt was made to revive the legal imagination of the Revolutionary period. In the hothouse atmosphere of the factional politics of the Early Republic, with domestic as well as transatlantic ideological differences expressed in legal language and taken to court, Americans stepped back from the mingling of law and politics.

An interpretive investigation – seeing law as both envisioned and represented, deciphered and inscribed – poses its own methodological difficulties. Scattered, fragmentary, sometimes half-formed texts must be united into a coherent reconstruction of the representation of criminal law. This is not an easy task. Not surprisingly, then, I have turned to a wide variety of sources: hanging ballads, bits and pieces of iconography, pardon petitions, diaries, contemporary accounts of punishment, mock executions and execution narratives, and descriptions of official execution rituals, as well as more traditional sources such as learned legal treatises and court documents. Revolutionary debates about law are scattered through newspapers and political pamphlets. If one looks carefully in eighteenth-century America, law is everywhere.

We know remarkably little about what ordinary people thought about law. In the course of this investigation, I have come to appreciate how difficult it is to reconstruct even the most basic aspects of the common people’s legal imagination. The unknown social origins of some anonymous sources, the interweaving of different discourses, compound the task. Because this book is a preliminary study with few precursors, I have focused upon how imagining justice was shaped by external events and
cross-cultural comparisons. Legal imagination in the Revolutionary period, however, was not monolithic. Regional differences abound. Admittedly, my close readings of legal texts overemphasize those places with the most robust print culture, New England and the middle colonies. More work also is needed on distinctions founded upon class, race or ethnicity, and gender.

Another caveat is in order. To be sure, all criminal law is local. But this study was designed to emphasize the coupling of broader legal and political narratives. It therefore counters the trend toward local studies in both legal and general early American studies through situating itself in a transatlantic context. Americans thought of law in comparative terms. Mid-century myths about Anglo-American common law, for example, were formed around comparison with France’s civil law regime. During the 1780s, American legal imagining turned to representations of London’s Tyburn. A few years later, debate shifted to focusing upon the popular justice of Parisian crowds. I argue that American criminal law at the very end of the eighteenth century was juxtaposed to these two imaginative constructions. Americans envisioned England’s legal regime as bound by the tyranny of custom shaped by counter-majoritarian judges, and revolutionary France’s legal regime as bound by the tyranny of unbridled immediacy shaped by an antinomian mob. Both rested upon executions. In contrast, America embraced a model of legislative codes and the repudiation of capital punishment.

The origin of American legalism, in short, was a transatlantic process. But how did communities read these broad themes into their local criminal process? How did particular cases and controversies become reimagined as criminal law became coupled with politics? After embarking upon this project, I found myself trying to balance these larger transatlantic issues and the detailed archival work that characterizes local studies. I chose a way of writing that was intended to draw together the insights from three fields – the social history of crime and punishment, the law
and literature movement, and the new cultural legal history. To recapture the immediacy of legal imagining, this study includes extended readings of three sets of cases. Each case has been read as a novella, much as critics might read a fictional work. As microhistorical stories, however, these tales were constructed out of more than one source. Competing authorial voices, their contradictions and rhetorical strategies, add a certain dynamism to the analysis.

The first of these stories takes place in Revolutionary Boston at the beginning of the 1770s. By reading a pair of cases in an intertextual fashion within a milieu awash with popular politics it is possible to see how late eighteenth-century Americans might turn official law upside down. Borrowing vernacular legal culture forms, hanging ballads as well as execution narratives, Bostonians transformed a political opponent into a petty criminal. At the same time, reading this case against the other, a common felon was recast as a victim of a repressive and sanguinary legal regime.

In the second set of stories, two post-Revolutionary Connecticut felons, a rapist and a murderer, drew upon contemporary political and intellectual themes to explain their crimes. The intertextual readings demanded searching for the points of connection between law and race, political economy, and republicanism. Local communities, however, turned these self-justifying narratives against their authors. Fellow citizens appropriated the first-person criminal accounts to create alternative readings of the crimes. The third extended tale tells about a reform statute that mandated postmortem dissection of executed felons. While the statute was silent about its purpose, contemporaries saw it as an instrument of punishment. Partly, this was due to the reading of the American dissection statute against an earlier English sanction that mandated dissection as a further sanction in cases of homicide. All three of these studies are about storytelling of sorts. Yet they prompt us to ask how the myriad of cases – the tales told by offenders, the tales told by authorities justifying the imposition of state violence as a sanction, and the tales told by contemporary observers trying to make sense of it all – fit within our own larger narrative of the origins of American law.
It would have been frightening to meet Isaac Frasier. At least that was the impression from the wanted notice printed after he broke out of a New Haven jail in the summer of 1768. He was of middling stature with black hair and a face pitted from smallpox. Dressed in a brown coat, check shirt, and a pair of homespun breeches, Frasier’s appearance showed signs of wear from a life on the run. Although only twenty-eight years old, his front teeth were already missing. What really made Frasier look so terrifying, however, were the markings imposed by others: both ears cropped and the branding two times on his forehead with the letter “B.”

These markings were part of an official iconography that made felons the bearer of their own criminal record. In Frasier’s case, they were inflicted after being caught for a series of crimes throughout Connecticut from breaking into stores, his specialty, to stealing linen. He was finally tried in New Haven and punished with whipping and the mutilated ears of a petty criminal. The “B” on his forehead stood for burglary. The next year, Connecticut would consider expanding its system of mnemonic tattoos by adding an “H” for horse stealing and, two years later, a “C” for counterfeiting. Both ears mutilated meant two convictions. Felons had little control over such signs other than to hide them.

Executed in 1773, John Wall Lovely kept his cropped ears hidden beneath a cap. A spectator at the hanging “had the curiosity to take off

his cap and saw … that he was cropped.” The scars discovered on the back of a felon whipped for theft in 1762 conveyed that this particular stranger had a history of recidivism. At a time when records were scanty and techniques of identification rudimentary, it was convenient to transform the body into a legal record. Frasier’s visage was a narrative of sorts. It told of his involvement with the colonial criminal justice system.3

Such a symbolic narrative was very much from the point of view of the legal system itself. Colonial law transformed the body into the locus of punishment and its recorded memory. But what about crimes where the guilty felon did not suffer retribution? Perhaps the felon never encountered the legal system, was found not guilty, or was simply warned out of town? Frasier’s bodily markings were many fewer than his crimes. More significantly, such markings failed to relate other details of the criminal biography. Why, for example, did Frasier turn to crime? What was his upbringing like? Did he have accomplices, and what other felonies were simply never discovered? Against the official narrative etched into his flesh, another, more inward, extraofficial one would have to be written that emerged from Frasier’s own memory. It was a first-person narrative quite simply because autobiography made the narrative more compelling – both as evidence and as a story.

This chapter is about how through such storytelling offenders created narrative strategies contradicting official legal determinations and, ultimately, how the realm of popular politics appropriated vernacular legal culture for its own purposes. The criminal process has often been seen as a boundary-tending device. But crucial to both individual offender and political uses of legal storytelling, however, is the idea that the law’s boundaries might ultimately be redrawn to encompass texts and contexts beyond the instant cases.

Narratives composed by condemned criminals were part of what might be called vernacular legal culture. Autobiographical execution narratives followed a set pattern. They began with early upbringing and parentage, detailing the temptations of petty thievery as a child, and often ended with the psychological changes undergone as the date of execution drew closer. Rachel Wall, executed in 1789 for highway robbery, describes the genre succinctly: “Without doubt the ever-curious public . . . will be anxious to know every particular circumstance of the life and character of a person in my unhappy situation, but in particular those relative to my birth and parentage.” The unifying thread of the narrative was the question of character. How can we explain the emergence of a criminal persona? How could someone begin life as an innocent child and end upon the gallows? Execution narratives and a related vernacular literature did not emerge from official courtroom sources, like court reporting or the judge’s addresses to grand juries, but from an extraofficial tradition of relating the crimes and punishment of felons to the public at large. Included among the ephemera of vernacular legal culture were various popular literary genres, such as hanging ballads, last words and dying confessions, and the biographical form of execution narratives, as well as mock executions and rough music – shaming by communities of those who violate their norms, and iconographic representations of retribution.

Such a variety of forms suggests three important points. First, it underscores the dialogic character of vernacular legal culture. Official legal codes spoke in authoritative, often univocal, fashion. While rules crafted by legislative and judicial elites depended upon sanctions, vernacular legal culture sometimes had to rely upon persuasion as much as compulsion and therefore employed a range of storytelling and ritual strategies. One fragment of vernacular legal culture, secondly, often addresses another. The hanging ballad might respond to an autobiographical execution narrative, which might speak to an execution sermon as well. But ultimately, all these forms “speak” to the public. This creates a web of intertextuality. Although at the core of this web often lies official legal culture, the understanding of its meaning varies. What must be stressed, then, is that

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4 Life, Last Words, and Dying Confession of Rachel Wall [Broadside, 1789]. On Rachel Wall, see Alan Rogers, Murder and the Death Penalty in Massachusetts (Boston: University of Massachusetts Press, 2008), pp. 5–52.
any piece of vernacular legal culture needs to be deciphered in relation to other pieces of legal culture, both official and vernacular.

Vernacular legal culture, thirdly, shifted the perceived definition of law from nomos – a body of rules and regulations – to narrative. Law becomes a social fact embedded in a context of racial and economic distinctions, local settings, and individual lives. By emphasizing the experiential rather than the normative, these narratives create their own terms for choosing and weighing evidence. Facts are considered accurate not because they meet some kind of legal evidentiary standard, but because they are convincing within social contexts. No other eighteenth-century documents, it will be suggested, better demonstrate the literary strategies of the common people. More importantly, no other text empowers this storytelling capacity, the molding, fabricating, and privileging of narrative like vernacular legal culture.\(^5\)

Narrative is a form of social transaction: It requires both authorship and readership, construction and deconstruction. Not surprisingly, then, vernacular legal culture almost by definition had political consequences. Official law was a bounded canon whose watchword for construction was exclusion. It might be made and unmade only by legislators and judges. Vernacular legal culture, on the other hand, was open to participation by a broad range of society. This openness created a unique accessible forum for discourse about legal process – a forum that, as will be seen at the end of the chapter, was available as a vehicle for popular political rhetoric as well.\(^6\)

Calling these cultural fragments vernacular rather than another term highlights the importance of the speech act itself rather than authorship. The classic distinction between elite and popular culture, such as E. P. Thompson’s rarified categories of patrician and plebe, suggests two separate spheres of cultural production or, at the very least, consumption predicated upon class. But vernacular legal culture bridged such divisions. It was produced and consumed by a variety of classes, dependent upon both oral and print cultural conventions. An execution narrative,


as shown in the next chapter, might be written by both an ex-slave and a future Yale law professor working in partnership, and read by a readership every bit as diverse. What makes vernacular legal culture vernacular or perhaps even “popular” is not its association with social position but its distinct production and consumption outside of the courtroom.  

Vernacular legal cultural artifacts are oral expressions, iconography, or texts about the legal process constructed through language other than that of official law, and meant for the consumption of the public at large. According to this definition, then, the execution sermon would be vernacular legal culture, though not, of course, vernacular religious culture, since these sermons were crafted by Protestant ministers acting within their official capacity. Although in London a chaplain was appointed to minister to condemned felons, this task fell upon local ministers in the colonies. As a result, the colonial execution sermon was more notably directed to the immediate social context. The execution sermon genre emerged remarkably early, with the oldest American example printed in 1674, the first year of publishing at Boston. Not surprisingly, Cotton Mather was a prolific contributor. Establishing the execution sermon as an independent literary genre, Puritan ministers crafted a language of Protestant penitence that strongly influenced vernacular legal discourse. Nevertheless, the colonial execution sermon as a vehicle for religious moralism was later adopted by Anglicans and Methodists as well. Some of the most prominent ministers in America delivered execution sermons, including Nathan Strong and Richard Dana. Listeners or readers of printed sermons were drawn from a broad cross-section of the population.

Execution sermons generally began with a proof text. “Deliver me from blood guiltiness, O God!,” quoted from David’s plea after the death of Uriah, was the choice for the last sermon to an African American found guilty of murder. One of Samuel Stillman’s sermons for Levi Ames in 1773 began with the passage “a foolish son is a grief to his father.” The life of the felon was intended to illustrate a biblical text, which in turn, illustrated some greater theological truth. But from the point of view of listeners intrigued by a felon’s biography, the life may have been the core narrative and the biblical proof text the illustration. These representations of criminal life nevertheless appropriated the moral religious language of Protestant penitence and, at times, even borrowed legal language.

For the most part, however, the centrality of selfhood in shaping its literary style was much more akin to contemporary fiction. After the first third of the eighteenth century, autobiographical and biographical narratives replaced execution sermons as the leading form of vernacular legal discourse. It seems likely that this genre was transmitted in part by the waves of felons transported to the colonies. The number of convicts rapidly increased in the 1730s just as the American execution narrative came into its own. What this indicates is a shift from a vernacular voice dominated by legal and nonlegal elites to an increasingly prominent role for the felon himself. By the end of the eighteenth century, I will show, increasingly autonomous felons will leave a firm imprint of authorial control upon the production of their biographies.  

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Little is known about the authorship of vernacular legal genres other than the execution sermon. Hanging ballads may have been scribbled by the colonial equivalent of Grub Street writers. Produced as a broadside on a single sheet, these verses were most likely distributed at the execution itself. Johnson Green, hanged for burglary in 1786, asked another prisoner at Worcester to write a poem to append to his confession. Execution narratives written as first-person autobiographies pose an even greater problem of authorship. For the few narratives that can be clearly attributed, authors include both well-educated local elites and petty criminals. The use of a first-person narrator, of course, bolstered claims for authenticity. Samuel Stoddard's 1762 narrative was said to be written in his own hand, whereas others reproduced the signature marks of felons. John Ryer's narrative, the printer claimed, “can be proved to have dropped from his own lips.” Nevertheless, ministers and jailers appear to have exerted a great deal of influence upon the production of narratives. Illiterate, Charles O'Donnell related his tale to a minister.

If claims to be popular literature cannot be based upon authorship, might the consumption of execution narratives be considered popular? But here, again, difficulties arise. From the available evidence it seems that all levels of society consumed execution narratives. Narratives were advertised in newspapers, meant largely for the established individuals,


10 The Life and Confession of Johnson Green (Worcester, 1786). Hanging ballads and execution verse was a common genre in England. For American examples of these broadsides, see A Poem, On the Execution of William Shaw (Hartford, 1771); A Solemn Farewell to Levi Ames (Boston, 1773); Robert Young, The Dying Criminal: Poem By Robert Young on His Own Execution (Worcester, 1779).

11 A Narrative of the Unhappy Life and Miserable End of Samuel Stoddard (Philadelphia, 1762); Narrative of the Life and Dying Speech of John Ryer, Who Was Executed at White-Plains,…October 2nd, 1793 (Danbury, 1793); The Life and Confession of Charles O'Donnell (Lancaster, 1798).
but others were apparently hawked as inexpensive broadsides in the streets. Frasier's minister appended a summary of the autobiographical narrative to his execution sermon, uniting a rather sophisticated religious and moral discourse with rather blunt descriptions of Frasier's crimes. Since some vernacular legal forms were reflected in both print and oral culture, such as execution sermons and hanging ballads, literacy was not a prerequisite for access to extraofficial legal knowledge.

Nevertheless, literacy rates in parts of early America were high enough to suggest the possibility that execution narratives penetrated all levels of society. In New England, male literacy rates were 85 percent by 1785. Suffolk and Middlesex counties in Massachusetts approached 90 percent male literacy in 1790. Female literacy lagged significantly behind that of males. In 1790, the female literacy rate in New England hovered around 50 percent. Nevertheless, it is possible that men read broadsides or narratives and shared them with wives and daughters. Much of the information contained in such narratives must have become the common currency of gossip and thus available to both men and women who themselves did not purchase a printed text. The price of a narrative was minimal. Valentine Ducket's 1774 narrative cost a mere six pence, for example, while that of Whiting Sweeting, executed at Albany in 1791 for murder, cost nine pence. Both of these were well within the reach of working-class individuals.

As a widely circulating commodity like any other, printed narratives made knowledge of the workings of the legal process broadly available. But linking such knowledge to the marketplace may have shaped the

voyeuristic style of the narratives. Other kinds of legal knowledge in
the late eighteenth century were made public as statutory obligations.
Connecticut, for example, mandated by law that town constables should
read aloud the statutes passed in the latest legislative assembly. Each
new law was also to be written in a designated book by each town. But
reading bills aloud was regulated by the state, while the marketplace –
influenced by individual choices, curiosity, and a desire for a compelling
tale – shaped the construction of execution narratives.\(^\text{13}\)

The shopworn dichotomy of elite and popular, then, does not seem
suitable for vernacular legal culture. Instead, the linguistic paradigm
may be more apt: Such texts were vernacular in precisely the way that
English as a vernacular language transformed the Anglo-American legal
process. Latin was, of course, the traditional stem language of English
law. Popular agitation during the English Civil War led to a 1650 act that
required legal procedures to be in English. Nevertheless, English language
legal discourse, often full of phrases derived from Latin, remained quite
opaque to the average reader. Even a work like *Conductor Generalis*,
meant to make legal procedure accessible to lay readership, was forced
to include a glossary of legal terms. Touching all levels of society, legal
process was inclusive in its reach. Anyone as debtor or creditor, victim or
felon, might find him- or herself in court. But the language of law was
exclusive: deferential toward authority, enigmatic for the uninitiated, and
distinguished by a formalist syntax and vocabulary that required either a
sophisticated education or a hired professional to decode it.\(^\text{14}\)

During the eighteenth century, a new political language emerged in the
press and writings of radical publicists like Tom Paine. It made politics
accessible in a way that earlier opposition writings did not. A similar kind
of process was taking place at the same time with legal texts. The rise of
vernacular legal culture, like the previous shift from Latin to English, was
a watershed in the making of a political challenge towards legal conven-
tions. Through both the widespread dissemination of criminal tales and

\(^{13}\) *Connecticut Courant*, 7 November 1791; *Acts and Laws of His Majesty’s Colony of
Connecticut in New England* (New London, 1715), 106; Cornelia Dayton Hughes,
“Women Before the Bar: Gender, Law, and Society in Connecticut 1710–1790,” (Ph.D.

and class in the colonies, see Rhys Isaac, “Books and the Social Authority of Learning: The
Case of Mid-Eighteenth-Century Virginia in William L. Joyce, David Hall, et. al. *Printing
228–249.
their transparent language, legal process was open in a way that it had never been previously. The implications were radical. Readers could now judge the quality of evidence, the character of the felon and nature of the crime, and indeed the very fairness of the criminal justice system itself. Most scholars have seen execution narratives as a means of “spreading official ideas about crime and punishment, and the whole nature of authority and disorder, down to the lower orders.” But were these official claims to authority truly communicated? Or were the common people themselves, both the felons who contributed to their authorship and readers, able to transform this literature to reflect their own notions about justice? As will be shown, the hegemony of elites has been much exaggerated. Vernacular legal culture may have arisen as an instrument of order or even as a vulgar bibliothèque bleu meant to titillate and amuse a curious public. But it increasingly evolved into a robust cultural vehicle for challenging official law.  

This chapter traces how late-eighteenth-century Americans reinscribed criminal narratives with personal and political meaning. Criminal narratives were appropriated in two ways. They were employed strategically

by felons who crafted narratives to accommodate their own purposes. Instead of transmitting subordination to official law, they often demonstrated a notable insistence upon their own autonomy. After the American Revolution, felons increasingly dominated the production and literary strategies of the execution narratives so as to contribute even more markedly to the decline of deference. It was, secondly, appropriated as part of popular politics. American patriots drew upon the idiom of the scaffold: effigies and mock execution rituals, scaffold iconography, and their own versions of politicized execution narratives and confessions.

The period from the 1760s through the 1790s is remarkable for the large-scale proliferation of fictive criminal narratives, street rituals such as mock executions, and scaffold iconography centering on the punishment of felons. Mock executions and execution narratives were legal forms of popular culture that readily lent themselves to use for mass communication. No late-eighteenth-century cluster of symbols played a more prominent role than that of punishment. Yet the evocation of legal imagery reflected more than simply a vehicle for expression. What will be suggested is that the appropriation of traditional forms of legal culture out-of-doors – criminal narratives and effigies – invested the common people with an extraordinary law-like power to judge and to create narratives about the process of judging.

**HIDDEN TRANSCRIPTS AND THE ART OF CRIMINAL SELF-INVENTION**

What literary strategies were employed to embed other messages within the traditional execution narrative? Return, for a moment, to Frasier’s storytelling. “I, Isaac Frasier,” began his execution narrative, “being condemned to die and expecting to soon leave this world, am desirous to inform my fellow men of my execrable wickedness in housebreaking and stealing, hoping my example and untimely end may be a means to deter others from the like heinous iniquities.” Frasier explains the purpose of the narrative: part confession, part means of discouraging others from following a criminal life.

Historians, too, have summarized these tales as simply an appeal to civil authority. But was that all? The narrative clearly had other purposes for both Frasier and readers. For Frasier, its functions were legal – the final act of witnessing and perhaps a species of pardon petition – and personal: a last testament and an opportunity to craft an autobiography of a self that was so often objectified by others. Beyond curiosity, for
readers, the narrative provided a glimpse of both a criminal life and a judicial process that might be otherwise hidden from view. The execution narrative, then, was simultaneously private and public. It was voyeuristic precisely because it broke down these conventional spheres.

Frasier began with his birth. Prompted by imminent death, execution narratives had the advantage of a neatly defined endpoint. Why not introduce a biography with an equally obvious beginning? But this commonplace decision was also fueled by the need to show how the criminal self was shaped by influences and especially parents. Frasier’s case is typical. His father died during the expedition to Louisburg when he was only five years old. “My mother, though poor … always had the character of an honest person among her neighbors, and she took pains to inculcate a principle of honesty to me.” When Frasier took some corn from a neighbor, she severely punished him. But at eight years, Frasier was bound to a shoemaker. As in so many execution narratives, this tale resurrects the classic image of the brutal master. Allotted little food, he was forced by hunger to satisfy his needs. Moreover, his master’s wife taught him to steal snuff for her and countenanced other petty thefts.  

Following a biographical literary tradition, Frasier’s tale showed movement away from his birthplace. But the shift toward distance reflected both actual and moral topography. Becoming increasingly independent, he abandoned his master for military service at the beginning of the Seven Years’ War and, finally, escaping after the remainder of his indenture had been sold to a privateer. He enlisted in the military again in 1760, but deserted. By the middle of the 1760s, Frasier was wandering through Connecticut supported by makeshift jobs and small thefts – including Newtown, New Canaan, Goshen, Sharon, Litchfield, and Fairfield. In New Canaan he formed a romantic attachment. But after being caught for stealing sheep in order to set up a household, the woman refused any further connection. As with the apprenticeship, Frasier’s loss of social connections (perhaps of a nurturing figure like his mother?) led to a series of crimes.

Frasier was caught in Litchfield and Fairfield, but escaped both times. At New Haven, he again turned to robbery. This time he was whipped, his ears cropped, and the letter “B” branded on his forehead. “Branded with the letter B,” went a rhyming broadside printed at the time of his

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16 Isaac Frasier, A Brief Account of the Life and Abominable Thefts of the Notorious Isaac Frasier, Who was Executed at Fairfield, September 7th 1768, Penned from his Own Mouth and Signed by Him, A Few Days Before his Execution (New Haven, 1768).
execution, “that everyone can plainly see.” Now Frasier was truly an outcast. Fleeing to Massachusetts, he continued his thefts and escapes, breaking out of the Cambridge and Worcester jails. As with Levi Ames, many of his thefts were opportunistic: linen, watches, pelts, stockings, and cheese. After having made off with a gun to use for robbing furs, he found it much too heavy to carry. He then stole a horse.

Returning to Connecticut in 1768, Frasier was again imprisoned. Desperate, he set fire to the Fairfield jail and was almost burnt to death. The newly constructed jail, built at great expense, was destroyed, while the courthouse and the jailer’s lodgings were badly damaged. Such behavior appears not to have helped his case. Two weeks later, Frasier was found guilty on two counts, burglary and arson, and sentenced to death. Frasier was remarkable for his escapes. As has been shown, the theme of flight in popular culture was highly evocative. It represented the ability to slip away from confining social structures such as rigid patronage networks or labor dependency. Frasier was a master of escape, a less celebrated American version of Britain’s Jack Sheppard. He had already broken out of at least four Connecticut and Massachusetts jails. Confirming his reputation as an escape artist, he would find a way to flee yet one more time. After the burning of the Fairfield prison, Frasier was remanded to New Haven. There, handed a knife and a small saw, he slipped out of jail and made his way to Massachusetts. The night after his escape he robbed three shops in Middletown. Within a month, Frasier traveled 500 miles and committed five or six more burglaries. Captured in Worcester, he was returned to New Haven and bound with heavy chains. A nightly guard was ordered. On September 7, Frasier was hanged.17

Frasier left behind an execution narrative that was said to be from his own mouth and signed with his hand. As with his cropped ears, branding, and the scars from lashes, these body parts – mouth and hand – were intended as a display of civil and religious authority and order. Indeed, at first glance, the narrative seems to be a conformist text with more than

its share of heavy-handed didacticism. It began with a confession and concluded with gratitude towards local authorities. “I acknowledge the lenity of my judges in allowing me so long a space after condemnation,” wrote a seemingly submissive Frasier, “and the kindness of the ministers.” But the remainder of the narrative suggests that Frasier the escape artist slipped through these formulaic clauses.

As a genre, the execution narrative promised full disclosure. Yet Frasier’s silence haunts this seemingly transparent text. He chose to remain silent about his accomplices. Who provided the saw and helped him break out of New Haven prison? They were, stated an evasive Frasier, “from a person whose name I am under solemn obligation to conceal.” He also refused to name the woman he married under an alias in 1767, most likely to spare her from abuse. It is significant, too, that his mother’s residence was not divulged. He may have sought to shield her as well. Perhaps he did not know whether she was living in Rhode Island or dead, or perhaps this was yet another example of Frasier’s disingenuousness.

The conventions of the execution narrative allow us to see where Frasier has departed from them. Like Levi Ames, he lists what had been stolen. But he also takes the opportunity to disavow certain crimes: Frasier claims not to be guilty of stealing £3 from a Newton man. His confession is marked by subordination, feigning ignorance, and accommodation. This is not surprising. No other status, besides slavery or conscription, made a late-eighteenth-century American so dependent upon the will of the local authorities. Frasier needed their help to obtain a pardon or simply an extension before the execution. At times this deference appears a bit hard to believe. “I found what I have never experienced before,” claimed Frasier referring to the half-dozen thefts that took place after breaking out of New Haven’s jail, “a guilty conscience.” He clearly wished to attribute some change to the ministers who counseled him.

But Frasier’s testament must also be read for its silences. Arthur, an African-American burglar who would be hanged the same year at Worcester for rape, confessed in his execution narrative to having committed a number of robberies with “the late celebrated Isaac Frasier” during his flight to Massachusetts. Based largely on the immediate needs of two prisoners on the run, their robberies had the quality of a shopping list. They stole a goose, then a kettle for boiling it. At Marlborough,
Frasier and Arthur robbed a shoemaker’s shop for shoes and a distillery for cider brandy. Other robberies included a barbershop, and various essential eighteenth-century commodities, including bread, meat, and rum. If Arthur’s narrative was accurate, and there is no reason to assume that it was not, Frasier could have mentioned these items. Such inclusion would have followed the conventions at the beginning of the narrative. But it would also have undercut his claims to pangs of conscience. Frasier, not surprisingly, chose silence. 19

Frasier also showed a less deferential side: his insistence upon pleading not guilty, resorting to arson against the prison, and the indifference with which – according to witnesses – he treated his sentence. Interestingly, none of these facts was found in his printed confession. Nor did Frasier include another critical detail. His last conviction contained a warning that the next offense would be punished with death. To understand the execution narrative as a public document, it is necessary to peel off the layered conventions and read what James Scott has called the hidden transcript, the use of language that often modifies and contradicts the behavior of subordinate classes in the face of public power. Perhaps, then, there is reason to be skeptical of Frasier’s seeming deference. 20

Like most eighteenth-century trials, Frasier’s lasted for only a few hours. In reality, however, another trial of sorts took place during the four months from sentencing to execution. This period was allotted for repentance and to petition for a pardon. Its paradoxical nature was exemplified by Thomas Goss, a Connecticut felon convicted of murder in 1778, who immediately after being found guilty arranged with a lawyer for a clemency appeal and a minister for an execution sermon – just in case the reprieve was not granted. 21 Ministers met frequently with the condemned. With Frasier’s minimal religious education, there was a great

19 *The Life, and Dying Speech of Arthur, a Negro Man, who was Executed at Worcester* [Broadside, 1768].

20 James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985) and *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1990) both distinguish between the deference of public discourse by subordinate classes and what is often embedded in it. I am not suggesting that execution narratives reflect a hidden transcript of social rebellion. Instead, what is significant is the way that the plasticity of vernacular legal culture allowed it to be used as a vehicle for a variety of messages, including the self-interest of felons, authoritative calls for social order, and, as will be seen later in this chapter, revolutionary politics. For another work on altered languages of deference, see Smadar Lavie, *The Poetics of Military Occupation: Mzeina Allegories of Bedouin Identity Under Israeli and Egyptian Rule* (Berkeley: University of California Press, 1990).

deal of work to do. The practice in England, where the hanging generally followed rather quickly after a conviction, was different from the practice in the colonies of providing an extended period for the spiritual welfare of felons.

During the period between conviction and the hanging, frayed bonds between the criminal and society were often repaired. The felon had a number of practical reasons for choosing deference, such as care while in prison or providing for a family after his or her death. “Now as a dying man,” stated a man convicted of raping and murdering a fourteen-year-old girl, “I recommend to the charity of my Christian neighbors my distressed wife … whom I leave with two small children destitute … and she big with child.” Moreover, since the criminal justice system was akin to a lottery, it was realistic to expect a pardon to come. This was an important period for a felon. If he or she could demonstrate sincere contrition or perhaps, like Frasier, attempt an escape, there was a fair chance of not facing the gallows. Not the crime itself, but the biographical narrative was most important for a pardon plea. The execution narrative included, though belatedly, the general public in this act of judging. Did Frasier deserve to go free? Was there the possibility of change or was he incorrigible? This meant judging the criminal justice system as well: Did the state unfairly put a person to death?

It would have been possible to miss the legal significance of Frasier’s biography without another document: his pardon petition. Frasier pleaded for a pardon on the grounds that he was the first person ever to be executed in Connecticut for a third offense of burglary. A 1735 statute for burglary created a hierarchy of punishments. For the first offense, the felon was flogged with fifteen stripes, branded with the letter “B,” and had “one of his ears nailed to the post and cut off.” The second offense meant the loss of the other ear and twenty-five stripes, and, finally, for the third offense the punishment was death. Frasier’s past history of two offenses, in a very real sense his criminal biography, led to a capital sentence. What Frasier understood was that he was not to be executed for the act of robbing a Fairfield store, but for being “the notorious Isaac Frasier.” At stake, then, was the question of identity: Who was Isaac Frasier?

Vernacular legal texts must be read against each other. The issue posed by Frasier’s pardon petition, the unusual capital conviction for a third burglary offense, was answered by the execution sermon delivered by Noah Hobart shortly before Frasier’s execution. It sought to legitimize

**The Last Words and Dying Speech of Edmund Fortis** (Exeter, 1795).
this judgment. Hobart admitted that only one crime, murder, clearly elicited capital punishment. Nevertheless, there was a type of person who through being “over-much wicked” deserved death. By doing wrong over time despite warnings and even when threatened with death, Frasier proved himself to be worthy of death as a reprobate. “His crimes have been frequently repeated and carried to an astonishing excess. He has persisted in them under warnings and reproofs … He has been a remarkable instance of impertinence.”

Yet the discourse about Frasier’s punishment could not be contained to a conventional forum such as the execution narrative, his pardon petition, or an execution sermon. As with Levi Ames, this capital conviction for a property crime evoked a public debate. An essay in New Haven’s newspaper published after the trial doubted whether a community has a right to punish theft with death. This time, however, the critique used in the Ames affair against the English was turned against the legal system of the colonies themselves.

While a murderer might be executed out of self-preservation, life in other cases is inalienable. This essay put the authorities on the defensive. Hobart’s sermon also must be seen as a response to such a critique of the criminal law. He believed that a right of self-preservation extended to society as a whole. If people “cannot rest safely in their beds, but must be in continual danger of having their houses broken open . . .,” Hobart preached, “the happiness of society is at an end” and it becomes a state of nature. “Human laws consider crimes in a political view.”

Hobart’s reference to politics was significant. As has been suggested, politicized notions of justice often depended upon instrumentalism. What Hobart was doing, of course, was shifting the question from the justice of assigning death to a particular crime to the need for social order. Both Frasier’s autobiography and Hobart’s sermon demonstrated that the sentence was open to debate. But were the terms of the debate the same? Frasier personalized his tale; Hobart placed it in a broader impersonal social context. The choice of voice, first person or third person, was

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critical. Vernacular legal culture was multivocal. Within it the voice of authority intermingled with the voice of the felon himself.  

LEGAL STORYTELLING AS SUBVERSIVE ACT

During the first half of the eighteenth century, execution narratives were written largely to bolster civil authority. Criminals were portrayed as repentant. Drawing upon the Protestant language of fall and redemption, these tales rarely strayed from formulaic tropes that showed the felon submitting to a just law. “I must take the sole blame to myself of the dreadful and distressful situation I am brought into,” wrote a burglar sentenced to death at Worcester in 1770, “I would be far from reflecting the least blame upon the court or jury.” Yet by the mid-1760s, criminal narratives increasingly expressed discontent with the judicial apparatus, sometimes even measured hostility. Perhaps this change emerged from the broader assault against authority that was part of resistance against England. If English law, as the Levi Ames affair showed, might be criticized, why not the American legal process as well? Felons like Frasier appropriated vernacular legal culture to shape narratives for their own purposes.  

Denial, dissimulation, feigning indifference, countertestimonies, shifting blame, and defiance were by the second half of the eighteenth century as common literary postures for execution narratives as submission. Sometimes the felon simply wanted to set the record straight. “The stories that have been propagated round the country that I confessed” to previously murdering a man, claimed a New Hampshire man found guilty of murder, “are devoid of foundation.” Moses Paul, an African American executed in New Haven for murder, said that despite rumors, he was innocent of killing another man, a sailor in the West Indies. “Having been questioned about a great robbery that was committed near Brunswick,” stated Valentine Duckett, who was executed in 1774, “as a dying man I declare that I had neither act nor part of it, nor even knew any of the men.”  

26 The Last Words, and Dying Speech of Elisha Thomas (Boston, 1788); A Short Account of the Life of Moses Paul (New Haven, 1772); The Life, Last Words, and Dying Speech of Valentine Duckett [Broadside, 1774].
Others fabricated excuses for their lives: cruel stepparents, the lack of a proper moral upbringing, unhappy marriages. A counterfeiter executed in 1770 explained his crime this way: “I gave myself over to an uneasy and restless mind, with an undue desire of gaining riches; which disposition pushed on by the enemy of my soul has been the means of my downfall.” Reversals of fortune led him to think of any way to become rich. “We might all live a gentleman’s life,” he told a confederate. Such a temptation may have been easily understood by contemporaries. Family economies were precarious in the eighteenth century and well-heeled leisure scarce. While appealing to common emotions, criminals sought to assert authorial control over their own life histories.27

Confessions were counternarratives. As an act of self-fabrication, they stood independent of official legal texts. Recognizing that the oral circulation of tales often comprised a narrative itself, some confessions were prompted as a counternarrative against gossip as much as any sort of official record. Felons tell of false accusations with a sense of injury. “I have lived a hard life by being obliged to keep to the woods, have suffered much hunger nakedness, cold and fears of being detected and brought to justice – have often been accused of stealing when I was not,” wrote Johnson Green, who was executed in 1786 for burglary. Green admitted to thefts but denied highway robbery, just as Levi Ames agreed to robbery while claiming he foreswore violence. In similar fashion, Herman Rosencrantz, hanged in 1770 at Philadelphia for counterfeiting, admitted to making false money but rejected the accusation of having aided horse thieves. “The command in my heart,” he claimed, “was always thou shalt not steal.” A man executed in 1776 at Newport for sedition denied robbery or theft.28

But the legal meaning embedded in the narratives should be stressed. This meaning might be broadly said to be in two forms: narrative as confession and narrative as pardon petition. John Langbein has shown that self-incrimination was at the heart of the eighteenth-century Anglo-American criminal trial. Such a system showed judicial economy. Trials were remarkably short and to the point. Instead of long, drawn-out battles over evidentiary questions or points of law, the felon was supposed to simply confess. Confession might take place in court with an oath or,

27 For examples of this, see the use of such appeals in the accounts of Joseph Mountain and John Young described at length in Chapters Four and Six.
28 The Life and Confession of Johnson Green [Broadside, 1786]; The Life and Confession of Hermann Rosencrantz (Philadelphia, 1770); The Last Speech and Dying Words of Thomas Hickey [Broadside, 1776].
in unusual circumstances, even through some thaumaturgic act, like the one that occurred in Bergen County in 1767. There, a murder suspect, an African American, was forced to touch the dead man’s face with his hands. He was charged when blood rushed out of the corpse’s nostrils. The centrality of confession to vernacular legal culture mirrored its central position in the criminal trial. Felons were supposed to engage in self-incrimination partly because in the early modern period there were limits to forensic evidence and partly because confession legitimized the punishment. Publishing a confessional execution narrative was a public means of justifying a capital conviction.59

Public confession made better known to all what was previously concealed. “Whatever you do in tone dark,” warned a counterfeiter sentenced to death in 1770, “shall be set on the house top in a short time.” About the 1790 murder in bed of a sea captain, it was said that “although the deed was done under the darkness of the night, yet it is now made public and manifest of day.” “There ought to be a public confession,” according to a 1792 execution sermon, “where the offence is of a public nature.” Often the felon appealed directly to the public. Batsheva Spooner, convicted in 1778 for planning the murder of her husband with hired accomplices, petitioned for a stay of execution on the grounds of pregnancy. A jury of matrons denied her petition twice. Spooner “at her own desire that the public might be satisfied” requested that her belly be opened after the hanging. She was found to be carrying a male child of five months. Claiming insanity, Thomas Goss appealed directly to the public. During the trial, Charles O’Donnell denied the facts surrounding the strangling of his own son to death. But he fully confessed through the medium of the execution narrative.30


30 The Last Speech, Confession, and Dying Words of John Smith (New Haven, 1773). Norwich Packet and Country Journal, 2 July 1790; Matthew Merriman, Sermons Preached to Joshua Abbot at York, September 3, 1792 (Newburyport, 1792); The Rev. Maccarthy’s Account of the Behavior of Mrs. Spooner after her Commitment and Condemnation for Being an Accessary in the Murder of Her Husband (1778); Massachusetts Spy, 8 December 1785; The Life and Confession of Charles O’Donnell Executed at Morgantown, June 19, 1797 for the Wilful Murder of his Son (Lancaster, 1798); Debrah Navas, Murdered By His Wife: The Absorbing Tale of Crime and Punishment in Late Eighteenth-Century Massachusetts (Amherst: University of Massachusetts Press, 1999).
In many cases, narratives also reflected hope for a pardon or reprieve. One purpose of this storytelling was to mobilize local elites. Often the minister would play a critical role in acquiring a pardon. Ezra Stiles, for example, wrote a petition to the Rhode Island legislature on behalf of a young African-American woman who murdered her illegitimate child. Unable to find any other mitigating circumstances, Stiles argued that her mental powers were weak, and clemency was granted. The significance of religious connections, of course, depended upon whether the clergymen themselves were well connected. A member of a Pennsylvania gang pretended to be a Quaker. But the Society of Friends soon discovered that he had no connection to the sect and that “his present pretensions … were with a view rather of being saved in this world than in the next.” Sometimes, however, a felon was able to convert in order to win the support of a minister. William Welch, for example, converted from Catholicism to Protestantism in his prison cell.  

There were advantages to being well connected. The coachman of Governor William Franklin of New Jersey was granted a reprieve at the gallows as he was about to be hanged for the rape of a fifteen-year-old girl. But even in such cases the storytelling craft served to recast details of the crime in a more favorable light. The coachman’s pardon was “upon the recommendation of the Chief Justice and sundry inhabitants of the city who were of the opinion that some circumstances appeared to be in his favor.” As defense counsel became more common toward the end of the century, lawyers joined in the creation of pardon tales. Richard Doane was sentenced to death for the death of a fellow artisan committed while intoxicated. Doane believed that he should have been tried for manslaughter, not murder. He was assigned a member of the Connecticut Assembly, Gideon Granger, Jr., as his counsel. Granger delivered an impassioned speech to his fellow representatives in a failed attempt to win a pardon.


33 Pennsylvania Gazette, 15 December 1763; Connecticut Archives, Crimes and Misdemeanors, 2nd series. IV: 78–84 (1797).
Asking for a pardon was an art. It was bad form for autobiographical execution narratives to hint too broadly that this was their purpose. Better to appear repentant, show willingness to die for the wrongs committed, and petition for a bit more time to put one’s spiritual house in order. Remaining alive meant still being able to tell your tale and, perhaps, continuing to lobby for a pardon. Born in Chester County of a respectable family, Elizabeth Wilson blamed her fall on the sin of fornication. She had three illegitimate children. According to her tale, Wilson asked the father for child support. Instead he forced her to strip the babies in a deserted field, leaving them to die. In 1785, Wilson was convicted of infanticide. Persisting in claiming her innocence, she gathered public support. The execution was prolonged out of hope for a last-minute pardon. Wilson’s brother raced back from Philadelphia bearing a stay of execution. But he arrived nearly half an hour too late.34

It is possible to untangle the excuses, apologies, and pretexts of legal storytelling in clemency petitions and execution narratives in order to understand what makes a good legal story. Sometimes pardons were based upon lingering doubts about evidence. A Pennsylvania woman was convicted of infanticide, for example, but there was no proof other than the fact that the child was illegitimate. Other pardon requests were based upon the suitability of the individual as an object of mercy. Sentenced to execution for bestiality, an eighty-four-year-old Litchfield, Connecticut, man petitioned that he had little time left to live anyway. By the end of the century, pardon petitions increasingly reflected broader political and social concerns. Barrach Martin, an African American, was sentenced to be hanged for the common slave crime of arson. His excuse is intriguing: “having been deprived by his birth in Africa of education or if educated was only taught perhaps that revenge was a virtue.”35

As an escape artist, Isaac Frasier still dreamed of flight. According to witnesses, he remained unconcerned about his death sentence as he hatched new plans for escape. How must the linguistic subordination of the execution narrative be seen against schemes or even attempts to escape? Take, for example, the 1773 case of John Wall Lovey. In exchange for favorable consideration, Lovey named his fellow counterfeiters. But hopes for a pardon never materialized. Lovey’s dying speech seems an

34 A Faithful Narrative of Elizabeth Wilson who was Executed at Chester, January 3d 1786 (Philadelphia, 1786).
35 Pennsylvania Colonial Records, VIII, 336 (24 May 1754); Connecticut Archives, Crimes and Misdemeanors, 2nd series II: 87–89 (1799); The Universal Asylum and Columbian Magazine (1790): 74.
exemplar of contrition: “I forgive ... my prosecutors and die in peace with all men, praying God to pardon my sin and be merciful to my soul. Amen.” Yet, in fact, his end was less than peaceful. Lovey was angry at what he considered the betrayal of the examining justices. Somehow breaking free from his irons and barring the cell, Lovey set fire to the Albany jail. He threatened to light a bottle filled with gunpowder if the sheriff came any closer.\textsuperscript{36}

When finally the sheriff launched an assault against him, Lovey lit a match to the bottle. It failed to catch fire. Lovey was clearly following simultaneously two strategies of escape – storytelling and flight. Through pardon petitions and a contrite execution narrative, he elaborated upon a deferential presentation of the self while he may have been planning a physical flight from his confinement. After his thwarted escape attempt, Lovey was brought to the gallows. He returned, oddly, to a subordinate posture. Lovey sung psalms and, according to one observer, “seemed to die penitent.” A critical question nevertheless remained: Who provided the gunpowder for Lovey? He apparently had confederates or friends still at large.\textsuperscript{37}

Another counterfeiter, Owen Sullivan, showed a similar mixture of cockiness, assent, petitioning, and dreams of flight. Sullivan had a way with words. When sentenced at Boston to have his ears cropped and branded for counterfeiting, Sullivan “being a man of good address found means to prejudice the population in his favor” so that the punishment was inflicted in such a way as to be barely visible. The cropping most likely entailed the removal of just a small part of the ear lobe and the brand of “C” placed near his hairline. After being punished in Massachusetts, Sullivan shifted the base of his counterfeiting operation to Rhode Island, where he was arrested. But Sullivan broke out of the Providence jail with some ease. The sheriff of Providence almost lost his job over the matter, and, according to Sullivan’s execution narrative, Sullivan quietly returned to the prison. He broke out of jail again. Caught, returned to jail, and confined with strong irons, he somehow escaped one more time. Finally, in New York he was captured and sentenced to death.\textsuperscript{38}

\textsuperscript{36} New-York Gazette or the Weekly Post-Boy, 12 April 1773; John Wall Lovey, The Last Speech, Confession, and Dying Words ... Executed the 2d of April, 1773 [Broadside, 1773].

\textsuperscript{37} New-York Gazette or Weekly Post-Boy, 12 April 1773; Massachusetts Gazette, 6 May 1773.

\textsuperscript{38} Connecticut Gazette, 25 March 1756; Boston Evening Post, 9 October 1752; A Short Account of the Life of John*****, Alias Owen Syllaven, Alias John Livingston, Alias
Sullivan’s autobiographical narrative follows the form dictated by convention. Yet one tale in the narrative is especially noteworthy. Conflict with his parents had reached the point where he was confined in a room with a diet of bread and water for a considerable time: “Then I seemed to humble myself till I again obtained my liberty, and after that I was ten times worse than I was before.” Not too long afterwards, he ran away from home. That psychological model of confinement, subordination, and flight sets the pattern that would emerge in his criminal prosecution. The dying confession suggested that Sullivan was conforming to his role in the traditional execution ritual. He admitted that he deserved the gallows, set himself as a warning to others, and said that his accomplices should “burn and destroy all the money, plates, and accoutrements that they have by them that they may not die on a tree as I do.”

Yet there were limits to his compliance. He shed doubt on capital punishment’s legitimacy by not naming his confederates because he did not want to “be guilty [as he termed it] of shedding their blood.” Nor would he identify the bills printed. “You must find that out,” he responded to questioning, “by your own learning.” It would be easy to parcel out these different representations of Sullivan among different genres of vernacular legal culture. The Sullivan seen through the autobiographical execution narrative was certainly more accommodating than the Sullivan portrayed by newspaper reports. But more to the point, it seems, is that Sullivan himself drew upon a repertoire of responses to the capital sentence. Sullivan sought mercy by admitting that his sentence was just. Nevertheless, he protected his confederates despite pressure from the authorities to reveal their names.

It appears that Sullivan was hoping his old confederates would come to his rescue. Unable to find a hangman, the execution had to be delayed. Members of his gang might very well have frightened away the executioner. The hanging was postponed yet another day because the gallows were cut down. Apparently still hoping to be rescued, Sullivan approached the gallows smirking. “I cannot help smiling,” he said, “‘tis the nature of the beast.” But Sullivan grew frightened as death approached, crying out, “Don’t pull the rope so tight.”


39 New-York Gazette or Weekly Post-Boy, 10 May 1756 and 17 May 1756; New York Mercury, 17 May 1756; A Short Account of the Life of Owen Sullivan.
Literary strategies of storytelling were one facet of an arsenal of strategies drawn upon by those caught in the web of the criminal judicial process. Owen Sullivan appealed simultaneously to the authorities and to old confederates still at liberty. Herman Rosencrantz, who was sentenced to death for counterfeiting in 1770, on the other hand, fully named his associates and relied solely upon the mercy of the state. What was striking about the last days of felons was how so often offenders moved to repair the patronage relationships that were frayed during their lives. These offenders, generally masterless men who had run away from parents or masters, led transient lives. Yet as condemned prisoners, they were forced to come to terms with local elites.

Pardons were only one possible reward for cooperation. Executions were frequently delayed at the request of ministers. Physical conditions, food, and warmth remained at the discretion of jailors. A 1738 execution sermon for a New London woman convicted of infanticide put this equation quite baldly: “If they [condemned felons] should prove stubborn and hard hearted, these good offices will indeed be done with so much less good will. But when they appear truly sensible of their faults and humble under them, we may minister to them with readiness and delight. We must feed them when they are hungry, clothe them when they are naked, see that they be not exposed to the cold, and not suffer them to want anything that is their convenience.” The minister closed by adding that “besides the public allowance there is room for private charities to be exercised.” Finally, treatment and support of those left behind, aging parents, children, and widows, often depended upon the generosity of the populace. “And now as a dying man, I recommend to the charity of Christian neighbors my distressed wife whom I leave with two small children destitute,” stated a man convicted of the rape and murder of a fourteen-year-old girl, “and she big with child.”

Not surprisingly, execution narratives raised traditional evidentiary questions. Women accused of infanticide claimed that their child was stillborn or pointed towards the father’s role in the death. Counterfeiters made distinctions between the reproduction and circulation of specie. Rapists raised the critical evidentiary question of the woman’s consent.

40 The Life and Confession of Herman Rosencrantz, Executed in the City of Philadelphia on the 5th Day of May, 1770 for Counterfeiting (Philadelphia, 1770); Edmund Fortis, The Last Words and Dying Speech of Edmund Fortis, A Negro Man who . . . was Executed . . . on the 25th Day of September 1794 for a Rape and Murder (Exeter, 1795); Eliphalet Adams, A Sermon Preached on the Occasion of the Execution of Katherine Garret . . . for the Murder of her Spurious Child on May 3rd 1738 (New London, 1738).
Bryan Sheehan, who was executed for rape in 1772, for example, claimed that the sexual relations were consensual. According to the victim, however, Sheehan’s repeated propositions were rejected. He came to her while she was in bed with two children, put his hand over her mouth, and raped her. The redactor of the execution narrative included both tales perhaps so the reader could make his or her own weighing of the evidence. Consent was often difficult to ascertain. But blood found on Sheehan’s hand supported the woman’s claim that she was assaulted against her will.  

Peculiar to infanticide was that the burden of proof rested upon the woman. The Stuart Bastard Neonaticide Act of 1624 determined that any woman concealing the death of an illegitimate child shall suffer death as in the case of murder. This was a woman’s crime, and women responded by arguing either that their child was a live birth or that the father of the child was responsible for its death. A twenty-seven-year-old woman hanged for infanticide at Boston stated that she did not believe at the time that the child was alive, “tho’ I confess it’s probable there was life.” Elizabeth Wilson said a man forced her at gunpoint to strip the twins she had left in a field to die. Alice Clifton, an African-American slave executed in 1787, took both tacks. She claimed the child was born dead. Although the child was not fully grown, however, its throat was found cut. In a remarkable example of the broad diffusion of eighteenth-century secular thought, Clifton blamed the father. Another black servant, he convinced her that “she had nothing to fear for there was no heaven or hell, no God or devil – that he knew better … [because he] had travelled in Europe.” The issue with murder was malice aforethought. It was denied, for example, in the case of a murder that followed a drinking bout aboard ship: “I solemnly declare that I had no enmity against Captain Drowne, nor do I know how it happened, unless it was done [in the midst of] the scuffle getting me out of doors.”


Who, then, is the “I” of the execution narrative? Does the reader believe the unqualified submission to a capital sentence, hidden transcripts, or words of defiance? The major problem facing this confessional genre was one of sincerity and authenticity. In a sense, as biography, the execution narrative was essentially fictive – fictive not simply when the facts were imagined, as in Ebenezer Richardson’s case, but even when they conformed more closely to reality. Narrative strategies shaped the life into a text. What makes for a captivating tale, a paradigmatic image repentance, or, as has been argued, the designs of the criminal as author, exercised an overwhelming influence over the biography. The problem, of course, was that the more compelling the narrative, the more artificial it appeared.

To counteract the image of artifice, the criminal narrative relies upon two literary techniques. The first is the careful presentation of facts in a seemingly objective narrative voice. Packing the narrative full of elaborate detail, some of it quite irrelevant, invested it with the texture of authenticity. Lists of crimes and full descriptions of the felon’s early upbringing served this function. Feelings about the crimes, secondly, were almost always linked to external change: rejection by parents, the bad influence of companions, capture and sentencing, or the awesome period experienced by a felon awaiting death. Eighteenth-century readers were expected to believe in sudden pangs of conscience but only if they took place in the appropriate context.  

The traditional role of the condemned felon was threefold: to warn others, to grant forgiveness, and to confess what crimes still remained hidden. But criminals turned these narrative conventions in unexpected directions. The usual warnings delivered before a hanging included such commonplace admonitions as not to break the Sabbath, to steal, or to become involved with lewd women. John Ryer, however, convicted for murdering a sheriff who came to arrest him for debt, chose a different warning. A sheriff, he warned, should not “crowd up” a person when taking him prisoner. If he should die in the attempt, Ryer added, there was no one to blame. Another murderer executed in Albany during the last decade of the eighteenth century believed that some of the testimony against him was false. His last warning was against perjury. “Let a dying man earnestly exhort all witnesses in the future not to forget the oaths

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they take.” Last warnings were appropriated to reflect the felon’s agenda. The burglar Thomas Mount warned of crooked fences.

What about the role of granting forgiveness? “God forbid my heart should retain malice,” said John Shearman, executed for burglary at Newport in 1764 as he was about to die. Nevertheless, he “cannot help expressing my desire that the man and wife by whose means I was apprehended in Boston may consider what a heinous nature their sins are.” “I forgive Daniel Lewis who swore falsely against me,” wrote a New York counterfeiter sentenced to death in 1773, “excepting what I did in the woods, also my prosecutors.” The capital sentence was meant as a form of conflict resolution: The victim, friends and family of the victim, and society itself were supposed to abandon anger and vengeance with the capital sentence. In turn, the felon needed to affirm the justice of the capital sentence. The execution narrative must be understood in an anthropological sense as a ritual of reconciliation. By the middle of the eighteenth century, convicted felons were increasingly unwilling to offer forgiveness without caveats. It was difficult to both settle scores and appear magnanimous. A felon executed in New Hampshire for murder added “the witnesses’ own conscience will best determine whether from prejudice they did not in some parts of their testimony injure me.”

There was, finally, the task of confessing crimes not included in the indictment. Sometimes these confessions were quite detailed. “As for the dollar that was swore against me was true,” declared John Smith, executed for counterfeiting in 1773. Not surprisingly, however, denial became increasingly common among late eighteenth-century felons. The execution narrative often included a kind of countertestimony meant to shed doubt on witnesses at the trial, or simply made disclaimers. Executed at Philadelphia for murder in 1765, Henry Halbert admitted to “all manner of vice – drinking, whoring, cursing, swearing, breaking the Sabbath, and keeping all manner of debauched company.” But he denied stealing money from his master and was angry at the court’s insistence that he repay it. Sentenced to death for robbery in 1789, Rachel Wall cleared the name of a crippled woman at the Boston Alms-House who suffered

44 Narrative of the Life and Dying Speech of John Ryer (Danbury, 1793); The Narrative of Whiting Sweeting (Exeter, 1791); The Confession of Thomas Mount (Newport, 1791); The Last Words and Dying Speech of John Shearman [Broadside, 1764]; The Last Speech, Confession and Dying Words of John Wall Lovey [Broadside, 1773]; The Last Words and Dying Speech of Elisha Thomas [Broadside, 1788]; Nicholas Tavuchis, Mea Culpa: A Sociology of Apology and Reconciliation (Stanford: Stanford University Press, 1991).
lashes for robbery. But, Wall insisted, she was not guilty of the theft for which she herself was sentenced to death.  

Some felons used the narrative as a vehicle to critique the very law that held them accountable. Executed for counterfeiting at Albany in 1773, John Parker distinguished between making and passing false currency: “I never considered that it was criminal for a mechanic to finish any piece of work that he is employed to execute, whatever mischievous purposes the instrument he makes is applied to, after the artist delivers it out of his hands.” Parker compared engraving the plates to a gunsmith. Is a gunsmith culpable if a musket he forges is used for murder? Owen Sullivan intimated that inflicting a capital sentence for a property crime was to be guilty of shedding blood. Sentenced to death for murder in 1791, Whiting Sweeting took the opportunity of his execution narrative to state his differences with God’s law. In his dying speech he critiqued at great length the doctrine of election.  

Strategies of legal storytelling underwent a marked transformation after the American Revolution. Felons increasingly exercised authorial control over autobiographical and biographical execution narratives. Formulaic language was pushed aside by a newfound sense of the contending voices that swirled around the criminal law. Compare for a moment two texts. Published in 1791, both works underscore the depth of this change. The first text is Thomas Mount’s *Confession* and the second a guidebook for ministers caring for felons awaiting death. Linking these two works is the fact that William Smith, the author of the guidebook and minister at Trinity Church in Newport, was also the editor of Mount’s narrative.

The beginning of Mount’s narrative follows closely the formulaic presentation of a life of crime. Although born in 1764 at Middletown, New Jersey, Mount was raised in New York. At the age of eleven he ran away from home. After serving briefly in the army, according to the narrative, he defected at Valley Forge from the American troops and joined the British. It was then that he began to steal. In order to avoid detection, he changed sides again – this time returning to the American troops. Mount includes a lengthy list of crimes. Tried for theft when informed upon by a receiver

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45 *The Last Speech, Confession, and Dying Words of John Smity* (Albany, 1773); *The Last Speech and Confession of Henry Halbert* (Philadelphia, 1765); *Life, Last Words, and Dying Confession of Rachel Wall* [Broadside, 1789].

46 *A Journal of the Life and Travels of Joseph-Bill Packer* (Albany, 1773); *Massachusetts Gazette*, 29 April 1773; *The Narrative of Whiting Sweeting who was Executed at Albany, the 26th of August, 1791* (Albany, 1791).
of stolen goods, he escaped from jail. Pretending to be a sailor, he committed crimes up the coast – New York, New Haven, Milford, Hartford, Norwich, Dedham – and down it: Baltimore, Annapolis, Wilmington, and Alexandria, Virginia. Mount remembers his crimes with surprising clarity. A protean protagonist, he changed from one eighteenth-century wandering figure to another. Soldier, sailor, and even fortune teller were among his guises. It is that shifting quality which hints at the criminal self. Any man can tell a thief, Mount claims: He asks too many questions, often steals glances behind his back, and shows signs of nervousness. The thief remains silent about himself.

Nevertheless, the best method to distinguish a thief from an honest man is through his complex relationship to language. Although Mount confesses to murdering a confederate who might inform upon his gang, Mount turned informer himself. He named thieves, receivers, and those who supplied the tools for breaking into houses and out of jails. Breaking the silence, Mount provides the reader with a linguistic entrée to the cultural milieu of late eighteenth-century criminals: “At my desire, the language and songs of the American Flash Company are published to inform the world at large of how wicked that company is and how necessary it is to root them up like so many thorns and briers.” The Confession includes a lexicon of the Flash gang’s vocabulary. Shoes are called crabs, a jacket is a jarvix. A prig is a thief, a gambler a sharb. Rum is called suck. Cat means a lewd woman. And the sun is rather poetically renamed Phoebus.

Execution narratives are, for the most part, about individual felons. But here it is the gang – with all its rituals, language, and songs – that becomes central. No longer simply an exemplar of penitence, Mount, like his minister, writes a guidebook. Taking us down a steep descent to the criminal underworld, Mount becomes an informer of sorts. But he demands that we follow him, not the other way around: learn his canting language, abandoning formulaic subordination for a glimpse of what was feared the most – an English-style gang of highwaymen. With Mount’s Confession, the criminal appropriation of the execution narrative had reached a new watershed. It invites us through language to join a fellowship of thieves.47

47 Confession of Thomas Mount, Who Was Executed at Little-Rest in the State of Rhode-Island on Friday the 27th of May 1791 for Burglary (Newport, 1791). Mount’s lexicon shares many commonalities with the language of contemporary English canting dictionaries. See, for example, Francis Grose, A Classical Dictionary of the Vulgar Tongue (London: S. Hooper, 1785).
Mount included a compendium of Flash gang company songs:

Who said I'll have your body hung
Before tomorrow night
I said, ye gallows rogue
Haul in your bridle reins
Or else a leaden bullet
Shall pierce your bloody brains

Mount and his fellow thieves used gallows imagery as a central element of their criminal subculture. But, as has been suggested, executions also exercised a powerful influence over the Protestant imagination. The hanging represented a liminal moment, suspended between earth and heaven. Few stand knowingly so close to death, so full of evil, and with such a clear opportunity to repent. William Smith notes with surprise at the beginning of his guide, *The Convict’s Visitor*, that there is not one devotional tract “professedly written for unfortunate victims of justice.” He rushed his own book from the press in order to present it to Thomas Mount and another prisoner before their executions.

Unlike Mount’s narrative, which Smith edited, his manual is a rather wooden affair. Much of it consists of responsive readings between the minister and the condemned:

**MINISTER:** O Lord, turn them from darkness to light.
**CONDEMNED:** And from the power of Satan unto God.
**MINISTER:** From the blindness of mind, hardness of heart, and contempt of thy word and commandments.
**CONDEMNED:** Good Lord deliver us.
**MINISTER:** Increase their faith in the divine promises – alarm their minds with a view of thy terrors – and help them to take their station at the foot of the savior’s cross that the blood of Jesus may save them from the angel of death.

After the formulaic confession comes a formulaic absolution. The minister recites part of the Lord’s Prayer and calls for mercy, and the felon – for his or her part – simply adds amen. No moment is left without set linguistic paces. Smith’s guide is stuffed full of prayers, exhortations, and meditations. Five private meditations were to be said shortly before the execution. A last confession to be delivered before the execution of a murderer included blank spaces where the name of the victim was to be inserted. Names of the murdered individual’s kin might also be added at the appropriate junctures.

Such a prescriptive text underscores the breakdown of traditional forms of execution rituals at a time when felons could no longer be
counted upon to adhere to convention. Undoubtedly, Smith was seeking to reassert a language of subordination that had been shunted aside by assertive felons. “God bless the United States of America with all their rulers, officers, judges, and counselors, and all their people” went a formulaic prayer for the day of execution, “and the Lord increase them a thousand fold.” Smith prescribed a dramatic enactment of submission that paralleled linguistic subordination. Convicts were instructed to kneel and prostrate themselves before a minister. Such transparent mechanical prose was meant to leave little room for the felon’s voice.  

Yet did it work? Mount was supposed to recite Smith’s formulae. But Smith, too, as the editor of Mount’s *Confession*, became the instrument through which Mount articulated his own imaginative readings of a criminal life. “I must complain to the public of the receivers of fences as well call them in the Flash Language,” wrote Mount, “They cheat us confoundedly.” “We never receive from them more than a tenth part of the value.” Mount’s complaint reflected the economic realities of petty crime rather than shopworn pieties. Receivers instigated fights among thieves while betraying them by sleeping with their whores. And fences often bargained while wielding the threat of informing. “In one word, a thief or a highway man is a pitiable criminal; he risks his life every adventure he engages in, and all the recompense he gets for his pains is the treachery of his whores and comrades.”

Such an earthy description is clearly a play for sympathy. But it is more. Mount justifies his own treachery by naming that of confederates. The *Confession* evoked a world of confidence men where one huckster is bested by another. It is a picaresque portrait of competing interests and ambitions. Perhaps this is what takes place within vernacular legal culture itself. One voice jostles with another: Criminal and victim, religious and civic moralism, legal language and vernacular forms become interwoven in provocative ways. Language and trickery, Mount reminds us, are never far apart.

**POLITICIZING VERNACULAR LEGAL CULTURE**

In the early eighteenth century, an intriguing law was passed in Massachusetts criminalizing the publication of a mock sermon or the

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imitation of preaching. Anyone convicted would be forced to stand in the pillory with a placard in capital letters affixed over his head that would detail the crime. To mock – or at least to mock clerical authority – was illegal in Massachusetts. But the punishment itself had a touch of mockery about it. No lashes would be delivered in the pillory. Instead, the public would be invited to mock the author of the parodies.  

Embedded in the notion of mock punishment were the two meanings of mockery: both imitation and derision. The authorities themselves linked mockery and punishment, especially through employing mock executions as a sanction. The most common form of official mock execution was sitting at the gallows with a rope around the neck. Often this punishment was inflicted for moral crimes, such as adultery in Vermont, sodomy in Rhode Island, or dueling in Massachusetts. In Massachusetts, a woman was sentenced to sit one hour upon the gallows with a rope around her neck for having an adulterous affair with an African American while her husband was in the army. Another Massachusetts court ordered the same punishment for a father found guilty of manslaughter for his daughter’s death.

Mock executions were intended to alter the behavior of the felon through a close brush with capital punishment. While a young burglar was granted a pardon by the Pennsylvania authorities, they waited until he was on the gallows to receive it in order “to leave a more lasting impression.” Partly, the mock execution served to embody one aspect of the punishment found in the public hanging: shame. It is not surprising, then, that a mock execution was sometimes followed by a mock execution narrative.

John and Anne Richardson, an especially notorious couple who confined their bastard child in a small room without food, were sentenced to the scaffold for one hour. A broadside expressed collective anger at their cruelty to the child. “Behold how well the pliant halter suits,” it rhymed, “these hardened monsters and unnatural brutes.” Sentenced to sit upon the gallows for bestiality in 1773, John Semet was most likely the object of public ridicule. Further mockery took place in a set of vernacular verses published at the same time: “See the knave exposed to public view/And for his wickedness receive his due/While all the crowd behold him with disdain/And laugh to see him thus expos’d to shame.”


The boundaries between mockery and official justice were not clearly drawn. Court-directed retribution included a role for popular participation. What made the pillory such a potent punishment was not the immobility, but shame and being subject to crowd anger. Three Massachusetts counterfeiters were sentenced to stand one hour in the pillory, to have one of their ears cropped, and to twenty lashes. Without the shaming, this seems a stiff enough sentence. Yet a hanging verse about the case shows how potent an additional weapon popular retribution could be:

What multitudes do them surround
Many as bad can be found
And to increase their sad disgrace
Throw rotten eggs into their face
And pelt them sore with dirt and stones
Nay, if they could, would break their bones
Their malice to such heights arise
Who knows by they’ll put out their eyes

Not all crowds, of course, were as threatening. Nevertheless, the fact is that punishment was a public affair. The differences between official and extraofficial retribution often became blurred. 51

Compare two cases from Connecticut, one official, the other extraofficial. Andrew Peters, a horse thief, was sentenced by a court to ride a wooden horse. The punishment was clearly aimed at the felon’s bottom. But Peters stuffed a blanket into his breeches. “As others may not have the same wise sagacity [as the sheriff who discovered Peters’ ruse],” read a report of the event, “it seems necessary to caution all sheriffs who may have the command of this new species of cavalry to observe the breeches of their recruits and see that they are of no more than legal size and thickness that … the law against horse-stealing may not be defeated.” What this satirist found humorous, of course, was the way an overtly legal

(1798); “An Act Against Dueling (1789); The Perpetual Laws of the Commonwealth of Massachusetts From the Commencement of the Constitution (Boston: Adams and Nourse, 1789); Pennsylvania Colonial Records, 4:224, 23 June 1737; Pennsylvania Mercury, 16 December 1785; [Boston] Independent Chronicle, 27 April 1786; Inhuman Cruelty: Or Villainy Detected, Being a True Relation of the Most Unheard-of, Cruel and Barbarous Intended Murder of a Bastard Child Belonging to John and Anne Richardson [Broadside, 1773]; A Dialogue Between Elizabeth Smith and John Sennet, Who were Convicted Before His Majesty’s Superior Court (Boston, 1773). For work of criminology arguing for the effectiveness of shame as a punishment, see John Braithwaite, Crime, Shame, and Reintegration (Cambridge: Cambridge University Press, 1989).

51 A Few Lines on Magnus Mode, Richard Hodges, and J. Newington Clark, Who are Sentenced to Stand One Hour in the Pillory (Boston, 1767).
implementation of the punishment marked by rules contrasted with its almost extralegal character. In 1768 at Lebanon, Connecticut, another horse-riding punishment was inflicted. This time the person involved was John Allen, who was accused of abusing his wife. Seventeen male citizens of the town forced him to ride a white horse because he had been “guilty of great miscarriages and abuses towards his own wife.” The punishment was carried out in the “streets where the offense was most notorious.”

Both Connecticut punishments were remarkably similar. But the horse thief experienced sanctions at the hands of the sheriff, while the extraofficial crowd who responded to domestic violence suffered a fine for breach of peace. Such official and extraofficial forms of rough justice were politicized during the street protests of the 1760s and early 1770s. In 1774 at Manchester, Virginia, for example, Lord North was tried in absentia before a court of the Sons of Liberty “on suspicion of his having betrayed his trust and endeavored to enslave his majesty’s subjects in America.” After what was declared an impartial trial, his effigy was sentenced to ride an ass through the streets led by a deformed African American whose body was tarred and feathered and his face painted. The African-American figure represented the dangers of slavery. But, as with the popular punishment of riding the stang for abusing a wife, North’s effigy was forced to ride through the streets in order to demonstrate another type of domestic violence inflicted by a mother country upon its daughter.

Emerging from popular traditions, other types of rough justice contained similarities to official justice. Alfred Young has convincingly argued that tarring and feathering owes a debt to official sanctions. Tarring and feathering had its origins in the practices of sailors. It was used, Young shows, not by crowds directed by patriot leaders, but by working-class mobs. Nevertheless, the iconographic depiction of tarring and feathering in the print “The Bostonians Paying the Excise Man” (1774) underscores the contribution of the execution ritual. The customs officer has a noose around his neck, while another noose, threatening the next possible punishment, hangs upon the branches of the tree behind him.

The skimmington, too, drew upon official forms. At Attleborough in the fall of 1764, a mob of some twenty to thirty men surrounded Jonathan Shepardson to punish him for poor treatment of his family.

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52 Pennsylvania Journal and Weekly Advertiser, 28 January 1786; Connecticut Archives (second series), 4:152 (May 1768). See also, for example, the case of Moses Parker, who was sentenced to sit on a wooden horse as a punishment for horse theft (Connecticut Journal, 5 January 1785).

53 Virginia Gazette, 25 August 1774.
Echoing official public punishments like the execution ritual and pillory, the skimmington, a kind of charivari, involved parading the victim through the town. Then, as with the official punishment of lashes, he would be stripped below the waist and his bottom flogged. In this instance, Shepardson resisted and stabbed to death one of his assailants. The notion of popular courts and popular punishment meant that rough justice replicated some kind of legal norms. A piece that may have been simply satiric assumed that even African Americans appropriated official legal culture. In New Hampshire, the article claimed, African Americans tried one of their own before a court, choosing a sheriff to inflict the punishment: thirteen stripes for each state, adding one for all African Americans.\(^5^4\)

As suggested previously, permeable boundaries between official and extraofficial punishment existed because court-directed sanctions included public participation. Eighteenth-century legal process was what literary critic Mikhail Bakhtin called dialogic. As much a part of the punishment as the stocks or scaffold, the crowd created its own discourse (sometimes supportive, sometimes censoring) about the official sanction. Not simply the crowd present, but the common people as a whole were critical in sustaining this dialogic imagination. Common people were the instruments through which vernacular legal culture was reproduced. Two types of cultural reproduction took place: oral reproduction – gossip, tale bearing, voyeuristic stories transmitting information about the executions as an event, and even debates about the justice of the sentence itself – and print culture. Print culture extended the reach of non-print legal ritual and oral tales far beyond the local community. But literary or iconographic representation of punishment was a form of punishment itself. It was inflicted as a shaming device. In some cases, it augmented; in others, it substituted for actual sanctions.

Take, for example, the 1762 case of counterfeiter Seth Hudson. “How do you do,” Seth Hudson was asked, “after your imaginary picture punishment?” This question referred to an engraving made by Nathaniel Hurd

that depicted Hudson on a pillory high above the surrounding crowd. Hudson, a counterfeiter with social pretensions and dreams of wealth, was mocked for achieving an “elevated station.” Lying upon the raised platform was a series of round objects, most likely eggs. A passing devil flying through the air exclaimed “this is the man for me.” It is striking that imagination and depiction might be considered instruments of punishment. But for a counterfeiter, such a sanction was fitting. As a counterfeiter, Hudson had forged names on treasury notes. Now an engraver would craft a counterfeit likeness. Moreover, his own confession and speech from the pillory were falsely attributed. Two counterfeit confessions and a satiric dialogue would be published about the case. Focusing upon the popular role in Hudson’s punishment, these artifacts of vernacular legal literature serve as a reminder of the ways that representation stood at the intersection of official and extraofficial punishment.

In the fall of 1761, Hudson was arrested with his confederate Joshua Howe for counterfeiting. Howe was convicted and sentenced to the pillory, twenty lashes, a fine of £20, and twenty years hard labor. Not anxious to face an equally stiff sentence, Hudson broke jail. Soon recaptured, Hudson’s trial was said to be the most well attended Boston had ever seen. It was relocated from the courthouse to a meetinghouse. In addition to two years imprisonment and a £100 fine, Hudson was sentenced to four hours in the pillory. This was the official punishment. Its extraofficial aspect – as Hudson’s fictive confession so nicely phrased it – was to be “tried by the mob.”

What was this punishment? Rotten eggs would be thrown at Hudson while at the pillory. “I wish all kinds of eggs were in the bottom of the sea! And all sellers and purchasers of eggs,” claimed Hudson in a fictive speech, “in the same place! I wish all hens were dead, all ducks barren, all turkeys impotent! I wish that every goose was bury’d, all eggs burnt, and all fowl beheaded.” Perhaps this fictive beheading reflected transference. Could this have been what Bostonians imagined was a just fate for counterfeiters themselves? New England had limited sanctions against counterfeiting, while mid-Atlantic colonies such as New York imposed death. Hudson’s speech was a fantasy about sanctions: castration, death, and beheading. But the desire to inflict punishment was displaced from felons to ducks in this satiric piece.

55 A Serious-Comical Dialogue Between the Famous Dr. Seth Hudson and the noted Joshua Howe, Who Were Lately Tried in Boston and Convicted of Counterfeiting (Boston, 1762); p. 25.
56 Boston Gazette and Country Journal, 12 October 1761, 8 February 1762, 1 March 1762. H-DS-N’s Speech from the Pillory [Broadside, 1762].
Not everyone felt that the mob should be so tough on Hudson. A mock verse confession included an admission of his crimes and a plea for mercy. It attacked those “whose marble hearts disdain to feel,” demanding that Bostonians first judge themselves rather than others. Why was Hudson the object of such antipathy? Perhaps the answer lies in the colonial debates about currency that were then at a fever pitch. After 1760, English success in the North American theater of the Seven Years’ War led to slowing of the flow of specie into the port cities. Capital grew short, and paper instruments of exchange became more common. Counterfeiters, of course, were not the main cause of colonial currency problems, but they made an easy target. Less willing to be vindictive, officials commuted Hudson’s prison sentence to a short stint in the navy. But Hudson’s “picture punishment” demonstrates the power of representation to crystallize crowd action and, in light of the currency crisis, perhaps contribute as well to a sense of political rage.57

During the 1760s, 1770s, and beyond, vernacular legal literary texts such as dying speeches and hanging ballads were marshaled for political purposes. The “picture punishment,” retribution by representation, reflected the inability to actually bring political opponents to justice. As in the case of Ebenezer Richardson, mock justice was modeled on official legal process. The proliferation of effigies in the 1760s and early 1770s is well known. Their origin has been traced to Boston’s Pope Day. Adapted from Guy Fawkes Day in England, commemorating the 1605 Gunpowder Plot of Catholics against the reigning Protestant monarchy, it took place as well on November 5. During the 1740s and 1750s, Pope’s Day assumed a set ritual pattern. Working men from the north and south ends of town paraded carts carrying effigies of the devil, the pope, and sometimes the Stuart pretender. The effigies were burnt at the conclusion of the day. By the mid-1760s political figures such as Grenville and Bute were added. Pope Day was appropriated for political purposes in much the same way as official legal process. In 1764 at Newport, for example, two large popes carried around the city were accompanied by effigies of Thomas Hutchinson and Lord North. That evening a fictive pamphlet by Lord Dartmouth in “justification of popery” was, along with the effigies, committed to the flames.58

58 Boston Gazette and Country Journal, 11 November 1765; Newport Mercury, 7 November 1774; Boston Gazette, 27 June 1774; Shaw, American Patriots and the Rituals of Revolution, pp. 5–25; Alfred Young, “Pope’s Day, Tar and Feathers, and Cornet Joyce,
Yet what must be stressed and what has often been less explored is the legal meaning of effigies. The power to judge and to impose capital sentences – even mock capital sentences – was a fundamental act of sovereignty. It is ironic that the rapid proliferation and politicization of effigies should have its origins in the Stamp Act Crisis of 1764–1766. Parliament required stamps to be affixed to all legal documents. While access to official justice meant submitting to the Stamp Act, mock executions created an extraofficial “court” out-of-doors, where stamps had a very different meaning: They were stamped upon as punishment. In the case of a 1765 effigy representing the anti-Christ from the Book of Revelation, the stamp was transformed into the mark of the beast. Instead of proof of legal documents, stamps became signs of criminal shame, like the tell-tale scars left by lashes or cropped ears on a common felon. Such shared political and legal iconography marked the boundaries of law’s cultural and political empire as surely as codes set the authority of official law. Mockery had its own jurisdiction.  

Late eighteenth-century criminal sanctions were often expressed as local justice. Highly participatory with effigies displaying their symbolic narratives, mock executions shared the immediacy of localism. Yet a common symbolic language was forged which suggested that colonial Americans as a whole appropriated the sovereign powers of political and legal judging. Real flesh-and-blood felons might be hanged only once, but mock executions repeatedly reproduced the same representational figures. Lord North and Bute might be condemned to death in a string of communities across the eastern seaboard. Appointed Connecticut’s stamp distributor, Jared Ingersoll was hanged in effigy in New London, Lebanon, Windham, and Norwich. What this means, of course, is that the ritual of politicized mock executions was local but at the same time bolstered the making of a new vernacular legal culture that extended across colonial America.


Boston Gazette, 19 August 1765; Ruth Bloch, Visionary Republic: Millennial Themes in American Thought, 1756–1800 (Cambridge: Cambridge University Press, 1985), pp. 54–56 discusses eschatological associations with the Beast of Revelation. I take issue here with Peter Shaw’s claim that “an orgy of symbolic destruction was necessary to the establishment of popular sovereignty.” What I am suggesting is that the appropriation of the right to levy capital punishment, the execution of the effigy itself, was an act with sovereign meaning. Peter Shaw, American Patriots and the Rituals of Revolution (Cambridge: Harvard University Press, 1981), p. 15.
Effigies were executed with vernacular due process. A 1765 description of the hanging of Ingersoll’s effigy, for example, emphasized the following of legal forms:

He made his appearance at the bar of the said court in the person of his virtual representative and was denied none of those just rights of Englishmen, being allowed the sacred privileges of a trial by his peers, etc. After a full hearing, he was sentenced to be taken from the tribunal of justice, placed in a cart, with a halter about his neck, carried in a procession through the streets of the town to expose him to just ignominy and contempt, and then to be drawn to the place of execution, and hanged by the neck till dead.

This mock trial and mock execution were notable in two ways. First was the implicit critique of English justice. Virtual representation signifying an effigy was, of course, a pun on Parliament’s claim to virtual representation. While jury trials were seen as threatened by English vice-admiralty courts, this right was ensured in the extraofficial justice launched by the Stamp Act protesters. Americans claimed the sovereign right to judge because, it was felt, they could judge with the utmost concern for law and due process.60

Secondly, due process of punishment paralleled the due process of courtroom trial. Trials had their forms: presence of the accused, trial by peers, and even the formulaic sentencing of “hanged by the neck till dead.” But so did the spectacle of executions themselves. Hangings frequently took place on the town gallows. An effigy of George Grenville, for example, was hanged at the gallows on the neck where pirates were executed. Effigies were carried on carts in processions much as real felons, hanged upon gallows remarkably similar to actual ones, and buried with a great deal of pomp. Often the common executioner was employed. In 1765, newspapers marked with stamps were burnt in Boston by the usual executioner to “show as much abhorrence as possible.” At Fairfield, Connecticut, in the same year protesters erected their own gallows but used the town hangman.61

In August 1765, Bostonians followed a familiar ritual after the mock execution of the effigy of Andrew Oliver, designated Massachusetts distributor of stamps. His figure was carted to a bonfire and burnt. Committing an effigy to the flames, of course, had its psychological and political purposes.

60 Pennsylvania Journal, 19 September 1765; Morgan, Stamp Act Crisis, pp. 280–300.
It was a ritualistic destruction. Spectators greeted the burning of the straw image with cheers. Not only was fire all-consuming, but it evoked popular images of the ultimate punishment, the flames of Hell.

Moreover, it often allowed two processions through town: the first to the gallows and the second to the bonfire. In this case, the hanging took place before Oliver’s house and the bonfire took place at the traditional place for burning effigies, Fort Hill. A legal tradition was also embedded in this particular form of disposing of the effigy. One crime in English law was punished with posthumous burning, petit treason, where the body of the convicted felon would first be hanged and then committed to the flames. Petit treason was defined as the murder of a husband by a wife, a master by a servant, or an ecclesiastical superior by an inferior. All these cases were thought analogous to high treason not simply because they overturned essential hierarchies, but also because they violated a relational bond. Almost all the victims were women who murdered their spouses. Here there was an inversion of sorts. The superior female, Britannia, sought to destroy her offspring, the colonies.62

In other ways, effigies were punished according to the dictates of Anglo-American legal traditions. Some figures, after being cut down by the populace, were dismembered. A 1765 pair of Boston effigies were torn apart limb by limb and thrown up in the air. Men were drawn and quartered for high treason while women were burned in the same fashion as for petit treason. An anecdote attributed to Boston’s Sons of Liberty suggests how readily punishment imagery for treason came to mind: “That as hanging, drawing, and quartering are the punishments inflicted by law in cases of high treason we are determined at each others’ houses to hang the tea kettles, draw the tea, and quarter the toast.” Imagining other kinds of crimes, such as theft, led to other kinds of punishment. The citizens of Charleston in 1770 sentenced the effigy of a woman violating the embargo on English goods to the pillory. In Talbott County, Maryland, an effigy was hanged in chains following the English tradition of punishment for a highway robber. Like executed highwaymen, the figure was to remain on display “in terrorem.” The effigy of George Mercer, named stamp distributor in Virginia, suffered whipping, pillorying, and cropping as well as hanging. These were, of course, common punishments for felons.63

62 Shaw, Rituals of Revolution, p. 11; Pennsylvania Journal, 29 August 1765.
63 23 Edward III (1352); Withington, Toward a More Perfect Union, pp. 144–184; Boston Gazette, 11 November 1765; London Chronicle, 31 March 1774; Virginia Gazette, 26 July 1770; Maryland Gazette, 12 September 1765.
Or examine, for example, the mock punishment meted out to the effigy of James Otis. According to the English Murder Act of 1752, executed murderers would also be sentenced to dissection as “some further terror and peculiar mark of infamy [added] ... to the punishment of death.” No American code mandated dissection as a punishment prior to a New York Act of 1789. Nevertheless, American opponents of Otis, called in a satiric piece “Hector Wildfire,” envisioned his dissection in just such a fashion. The surgeons found a distended belly filled with air, a gall bladder full of a liquid that immediately corroded the dissecting instrument, and lungs so full of tainted air that it is a wonder that the surgeons were not poisoned. Dissection presented a striking image. It exposed the inner workings of the authentic criminal self – and in that sense the surgeon and the author of criminal biographies were much alike. Through this mock description, Otis was transformed into a poisonous creature, a serpent of sorts. His tongue, not surprisingly, was forked. Portraying Otis as hardhearted and small-minded, the anatomists were said to have found only a tiny and very hard heart along with a skull of uncommon thickness whose contents could barely fill a teacup. What must be seen as remarkable here is that by imitating a purely English statute, this satire demonstrates its roots in a broad-based popular transatlantic legal imagination. Not only in the case of punitive dissection, but also Thomas Mount’s English-style canting language and the maritime punishment of tarring and feathering, demonstrated the way vernacular legal cultural forms crossed legal jurisdictions. 64

Effigies of Lord North, Thomas Hutchinson, British Solicitor General Alexander Wedderburn, and the devil suffered a mock execution at New York City at 1774. They were carried through the streets and burnt at the coffeehouse door. The mention of the coffeehouse tells us something about the way culture – and legal culture in particular – replicated itself in late-eighteenth-century America. In the Ebenezer Richardson case, as we have seen, American radicals transformed the coffeehouse into a courtroom. Here it served as the forum of public debate. Gossip was at the center of vernacular legal culture. It is possible to imagine the discussions

about the trial and execution of these figures that took place. Perhaps, like at many other patriot events, there were even toasts. As argued previously, spectacles of punishment and oral transmission were closely tied together.  

Straw-stuffed images, effigies were meant to be “virtual representatives.” Like Frasier, whose cropped ears recorded vital information about his life, effigies, too, signified the individuals they represented. When New Yorkers hanged a figure of Lieutenant Governor Caldwell Waller Colden, they broke into his carriage house and took his coach to use for carting the effigy through town. During a 1765 Stamp Act protest in Boston, two effigies hanged were dressed in “gentleman’s breeches.” As has been well noted, boots representing Lord Bute often accompanied the effigies. In Colden’s case, there was a boot and a drum “supposed to allude to some former circumstances of his life” when he was a drummer in the Pretender’s army. This Richardson-like symbolic narrative of earlier crimes, perhaps, would not have been decipherable without the aid of a paper affixed to his chest.  

Placards established a written text for the effigy ritual. The effigies “were decorated with suitable emblems, devices, and inscriptions.” The corpses of hanged effigies were not covered with a sheet, went a newspaper report from 1765, except the sheet of paper which bore the inscription. Placards were attached to felons suffering such official mock punishments as the stocks or sitting in the scaffold. These signs described the nature of the crime or included a simple confession. Pinned to the coat of one figure hanged in Boston, for example, was a bit of threatening gallows poetry: “My mother always thought me wild/The gallows is thy portion child ... But if some brethren I could name/Who shar’d the crime, should share the shame/This glorious tree tho’ big and tall/Indeed would never hold ‘em all.” The effigy of Andrew Oliver underscored the significance of print vernacular legal culture. Out of a boot representing Lord Bute peeped a devil. As a placard attached to the effigy explained: “The devil has me outwitted/And instead of stamping others, I’ve hang’d myself.” The devil, we are told, was the printer’s devil. In a sense, the press assumed an impish role, urging political action. Print culture made vernacular legal forms a commonplace of political ritual in

65 *Virginia Gazette*, 7 July 1774.
the 1760s and 1770s through mock hanging ballads, dying confessions, and execution narratives.  

Effigies would be lifeless, dumb objects without placards affixed or mock narratives. A dying confession was handed “to the criminals for their perusal just before the execution,” went one mock complaint about the silence of stuffed straw figures, “but they continuing silent, would not read a single word of it … as a punishment on their contemptuous taciturnity it was affixed before their faces to the gallows.” This, of course, was an echo of common law peine forte et dure where offenders who stood mute and refused to plead might face extra punishment, including solitary confinement and crushing the naked body to death. As has been seen, flesh-and-blood felons often appropriated vernacular legal culture for their own purposes. In the case of mock executions, however, when effigies remain mute it is a collective politicized authorial voice that dominates the criminal confession.

The effigy of the designated stamp distributor for Maryland, Zechariah Hood, for example, was said to have been taken to the whipping post and received lashes so well inflicted that “he was incapable of speaking anymore.” Such anthropomorphic imagery lies as the ironic heart of the mock execution. In some ways the question for the political patrons of the mock execution was precisely how well to fashion the criminal self. Should there be a narrative of birth and parentage? Should a confession describe its crimes in detail? And should the effigy truly repent its deeds? In Hood’s case, the effigy seemed visceral and somewhat inert. It was described as vomiting – losing straw – its “countenance never once changed until he was burning.” Perhaps this reflects the frustration of Hood having fled to New York and taken refuge in Fort George. Without Hood himself, Maryland citizens had nothing but a representational figure in his place. Not surprisingly, then, the silence of the stuffed figure was substituted with a political voice that claimed to have heard faint murmurings about penitence. If Hood became the classic petty criminal figure expressing a reluctant touch of regret, protesters assumed the role as the boisterous execution crowd. The Sons of Liberty would not hear of mercy. They cried, we are told, “hang him, burn him.”

67 Virginia Gazette, 7 July 1774; Boston Post-Boy and Advertiser, 26 July 1765; Boston Gazette and Country Journal, 19 August 1765.
68 New York Gazette, 21 November 1765; Virginia Gazette, 29 August 1771; Withington, Toward a More Perfect Union, pp. 172–180; Morgan, Stamp Act Crisis, p. 199.
The architects of Hood’s mock execution drew upon vernacular legal culture to fabricate a fictive past and confession similar to those of common felons:

I was indulged too much in my younger years by my tutors. I never was instructed in the true and virtuous principles of religion ... such as to fear my God and love my neighbors. Nor did I ever regard honor, honesty, or liberty, but I said ‘What’s my country to me, I’ll get money’. ...I once more acknowledge my villainy to my country. Nor have I any consolation in my last moments to afford myself, as having always when in my power, defrauded king, the proprietor, and my countrymen.

Many of the familiar tropes are there: a spoiled childhood, poor religious instruction, and greed. Yet what is the purpose of bringing them to bear in Hood’s case? Do they not in some way serve as pretexts or excuses? Perhaps the confession was simply meant to mirror as closely as possible the formulaic structure of the last confession. Or, perhaps, it is meant to shift the blame back to English political mentors. 69

Other politicized fictive confessions drew upon vernacular legal culture as its model. In The Last Speech, Confession, and Dying Words of Francis Bernard, the former governor of Massachusetts confessed at his mock execution to robbery. Ascending to the governorship through patronage, he found it a rich source of profits. Most striking is the way that the confession sets apart official law – with its rogues like Bernard – and the extraofficial legal structures represented by mock executions: “I found the trick, quibble, and demurs ... of the law exactly coincided with the baseness of my heart.” More than one kind of inversion is taking place here. A high government is turned topsy-turvy into a robber. But a verse broadside modeled on the genre of the hanging ballad, entitled “On the Departure of an Infamous B-R – T,” goes one step further. Returning to England after his failed governorship, Bernard was recast as a transported felon: “But like a robber, be exil’d from home/[find] what best become a thievish wretch/A Tyburn salutation from Ketch.” America turns the legal world upside down by transporting felons back to England, and to Tyburn, instead of the other way around. 70

Refusing to abide by the nonimportation agreement, Boston merchant Nathaniel Rogers fled to New York City. The Sons of Liberty continued

69 New-York Gazette, 21 November 1765.
70 Massachusetts Spy, 15 October 1772; On the Departure of an Infamous B-R – T [Broadside, 1769].
to harass him there. After a mock execution, the effigy of Rogers was committed to the flames. A letter warned him to leave town within twenty-four hours. Yet Rogers’s fictive dying speech extended the threat to include “people among yourselves as culpable as me.” “I acknowledge the justice of my sentence,” the confession concludes, “and sincerely wish that all that are guilty of the crime for which I suffer may be ninety-two degrees more severely punished than me.” As with the storytelling of flesh-and-blood felons, it is important to read between the lines. The dying speech followed the convention of describing the criminal’s parents. In this case, however, the kinship was meant to be humorous: “My father was one of Oliver Cromwell’s descendants and my mother was only forty-five generations removed from the witch of Endor” – or, perhaps, not so humorous. Both figures were implicated in acts of regicide.\(^\text{71}\)

Common formulae of vernacular legal culture, then, were appropriated for political purposes. The Protestant penitential theme was altered almost beyond recognition. Protestant Francis Bernard said in his dying speech that he died in the Catholic faith. In his 1775 mock confession, General Thomas Gage was seen in a dialogue with a friar. Gage is told that he will be made clean with a few dozen masses and small pains in purgatory. The confession is cut short when his confessor insists upon supper. Gage’s mock confession is especially interesting because it inscribes in legal imagery what had already been imagined in rhetoric. John Cleveland, minister at Ipswich, called Gage “a robber, a murderer, a usurper but a wicked rebel … who will be consigned to Hell.”\(^\text{72}\)

Despite their failings, Bernard and Gage were represented as penitent felons. Lord North’s mock confession, too, showed submission to the justice of the sentence. “The penitential appearance of this noble Lord,” we are told, “excited compassion in the minds of some of the spectators.” But a stampman effigy executed in Massachusetts was presented as the other, less deferential side of vernacular legal culture. This felon was too much the hardened rogue. Quoting English criminal cant, “even on the gallows … the dying speech would be, come one swing, for with a wry neck and a pissed pair of breaches and all will be over.”\(^\text{73}\) It is easy to understand

\(^{71}\) New-York Post-Boy, 14 May 1770; New York Mercury, 14 May 1770; Virginia Gazette, 7 June 1770; The Dying Speech of a Wretched Importer which was Exalted Upon a Gibbet and Afterwards Committed to the Flames at New York (New York, 1770).

\(^{72}\) General Gage’s Confession: Being the Substance of his Excellency’s Last Conference with his Ghostly Father, Friar Francis [Broadside, 1775]; Virginia Gazette, 25 August 1774; Boston Gazette and Country Journal, 30 December 1765; Essex Gazette, 13 July 1775.

\(^{73}\) Massachusetts Spy, 15 October 1772.
why American radicals would fabricate submissive mock confessions of political opponents. But why invent insubordinate ones? In some ways, part of mock punishment was self-mockery.

The sovereignty assumed through trials out-of-doors and mock capital punishment had an ironic side: For all its rich cultural detail, it lacked the power of state-directed law. Not surprisingly, then, even an effigy would be seen as willing to “deride and mock at this punishment even on the gallows.” If mock punishment was a kind of carnivalesque inversion where extraofficial law replaced official legal norms, then how else to greet the sudden appropriation of legal rights except with humor? Take, for example, the 1765 mock execution of George Grenville, English architect of the colonial customs policy. A report describes “a solemn procession” of the effigy from the courthouse through the North End to the town gallows on Boston’s neck. But what happened at the end of the hanging was hardly solemn. The figure was thrown again and again in the air. Grenville’s effigy wore a label, drawing upon the hanging ballad tradition: “Your servant, sirs do you like my figure/You’ve seen one rogue but here’s a bigger/Father of mischief how I soar!/Where many a rogue has gone before.” Not simply hanged, Grenville was tossed about as he was sent to the devil. “I die ... in the hope,” went the fictive confession of an importer, “that the spectators will demolish each other’s noses with my legs and arms after my dissolution.”

Such an overturning of official legal norms threatened other hierarchies as well. Effigies were gentlemen, sometimes even lords. They were dressed in the clothing of gentlemen. Often this has been seen as an example of plebeian hostility to social elites. But it may just as well suggest an evocative sign of equality under extraofficial law. A Charlestown woman who violated an anti-importation agreement had her effigy placed in the pillory. Although from one of the first families in town, the figure was treated with contempt because “we are not respecting of persons who had violated the resolutions of this province.” Not plebeian misrule, but the imposition of equal justice for all, suggested that social hierarchies might be inverted through punishment.

74 Boston Gazette and Country Journal, 30 December 1765; Boston Gazette, 4 November 1765; Dying Speech of a Wretched Importer.

75 Virginia Gazette, 26 July 1770. A number of scholars, including Alfred Young, “English Plebeian Culture,” pp. 185–212, and Paul Gilje, Road to Mobocracy, pp. 20–21, have identified mock executions with notions of plebeian misrule. Peter Shaw, American Patriots and the Rituals of Revolution, offers a psychoanalytic interpretation of Revolutionary symbolism. While arguing that the patriotic movement’s ideology was
Examine two mock confessions from the 1770s. Between 1766 and 1771, North Carolina was torn by a movement of west country farmers, the North Carolina Regulation, which sought to democratize local government and opposed the inequitable distribution of the tax burden. The Regulators engaged in civil disobedience and limited acts of violence. Declaring that insurrection had broken out in Orange County, Governor William Tryon mustered troops. At the Battle of the Alamance in 1771 nearly three-thousand poorly armed Regulators were defeated by a well-disciplined army of about half that size. Tryon followed his victory by executing a half-dozen Regulators under the Riot Act. American radicals in the northern seaport cities, not surprisingly, saw Tryon’s use of the Riot Act as an act of repression masked by law. Isaiah Thomas, patriot printer of the Massachusetts Spy, in 1771 accused Tryon in the style of fictive criminal narratives of being a murderer, horse thief, and plunderer. Defenders of Tryon from the coastal town of New Bern, North Carolina, turned the tables. Hanging Thomas in effigy, they included a mock “Last Speech and Dying Words of Isaiah Thomas.” Here Thomas becomes the criminal who was “moved and seduced by the devil, who is properly the father of lies, bitter invectives, and scurrilous epithets [issued] against a distinguished gentleman of the most exalted character.”

But the story does not end here. Tryon left America and returned with the invading British Army during the American Revolution. He is a kind of counterfigure of the transported felon. In his mock confession, Tryon admits to responsibility for the death of the “innocent, the fatherless, and widows.” Like transported felons who faced a death sentence if they returned after their capital crime was commuted to transportation, Tryon could now suffer mock execution: “had I but tarried in my native country when there last, I might, for a little while longer, have escaped this ignominious death.” But Tryon was persuaded to return by other members of broadly progressive, he suggests, however, that the mirroring of traditional forms of punishment “could be embarrassingly regressive” (p. 21). Depicting English execution ritual, Thomas Laqueur has portrayed the atmosphere as carnivalesque with few political consequences. “Crowds, Carnival, and the State in English Executions 1604–1868” in The First Modern Society: Essays in English History in Honor of Lawrence Stone, eds. A. C. Beier, David Cannadine, and James M. Rosenheim (Cambridge: Cambridge University Press, 1989), pp. 305–356. I have tended to see a greater expression of legal norms than Young, Gilje, or Shaw, and more political meaning than Laqueur.

his gang, Bute, and the devil. The dying speech concludes with a warning to the English generals – Gage, Burgoyne, Howe, and Clinton – “to quit the steps you are now treading, and let my shameful end be the means of turning you from following the damnable advice of North and his cursed ministry.”

“We have a hereditary, indefeasible right to a halter,” were the words posted on an effigy in 1765. This is a remarkable statement of how emphatically revolutionary Americans asserted the right to judge. Oppressors were labeled “sons of the scaffold” – perhaps a counterpoint to the Sons of Liberty – and as effigies often forced to leave life in precisely such a fashion. Most strikingly, perhaps the most prominent symbol of American opposition to England, the Liberty Tree or Pole, was inscribed with a double meaning as a gallows. Hanged effigies are often referred to as its fruit. Not everyone was comfortable with this double meaning. An opponent of the New York Sons of Liberty criticized the movement for having the Liberty Pole, their “rendezvous made a gallows green.” But both Tories and patriots agreed about the iconographic identification of the Liberty Tree with the gallows. In a ballad from 1768, the Liberty Tree was compared to England’s Tyburn: “the tree which the wisdom of justice hath rear’d” should not be spared.

What this centrality of scaffold symbolism suggests, of course, is the claim to an American sovereign legal authority over capital punishment. Executions were “the power of the government displayed in its most awful form.” But more than that was established. Having inherited a robust vernacular legal culture, common people – both felons and everyday citizens – turned these rituals and narratives into the stuff with which to make their own claims about the law. Vernacular forms of law were invested with a newfound political meaning that could not be ignored.

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78 Boston Evening-Post, 2 September 1765; Right Hon. William Pitt, Earl of Chatham to the Virtuous and Patriotic Citizens of New York. [Broadside, 1770]; Massachusetts Spy, 30 January 1772; Paul Revere’s well-known “View of the Year 1765” depicts an effigy of Andrew Oliver hanging from a tree labeled the “Liberty Tree”; Liberty, Property, and No Excise: A Poem Compos’d on Occasion of the Sight Seen of the Great Trees (So Called) in Boston … On the 14th of August 1765 [Broadside, 1765]; Boston Gazette, 19 February 1770; “A Parody upon a well-known Liberty Song” (1768) in Frank Moore, Songs and Ballads of the American Revolution (New York: D. Appleton, 1856), pp. 41–43.