Homicide in American Fiction, 1798–1860

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Chapter I

BACKGROUND

A SENSE of urgency pervaded the writings of moral philosophers who were confronted in the late eighteenth and early nineteenth centuries by the dual necessity of shaping a psychology consistent with empirical method and of justifying the basic assumptions of religion and law. Such a division of allegiance between science and traditional values contributed to an obscurity and complexity of thought concerning human nature. As moral philosophers questioned the authority of dogmatic theology, legal theorists sought new sanction for guilt and punishment, while some reformers came gradually to doubt the responsibility of criminals.

Although a thorough analysis of theology and moral philosophy is beyond the province of this study, we cannot understand American attitudes toward homicide unless we recognize their historical and philosophical context. It is obvious that whatever men believe concerning the source of evil and the extent of human freedom will deeply influence the practice of law, religion, and education. In briefly
sketching the development of certain religious and philosophical ideas, we shall here confine the discussion to two questions especially relevant to the subject of crime: the source of human evil, and man's freedom to choose virtue. In the next chapter we shall turn to the imaginative treatment of the same questions in American literature from 1798 to 1860.

II

New England theology, though it represents only a small part of American religious history, provides a significant record of changing attitudes toward human evil and freedom. The Westminster Confession, which defined for American Calvinists the major theological issues from the late seventeenth to the early nineteenth century, stated that “man, in his state of innocency, had freedom and power to will and to do that which is good and well-pleasing to God.” This meant that even original man was in no way liberated from a strict chain of causality determined by God, but possessed merely a qualitative capacity for good if he happened to be steered in the right direction. By Adam’s fall, of course, man lost even his qualitative capacity for good actions, and, like a broken phonograph needle, his movement could produce only a grating sound in the ears of the Lord. Even when the elect were regenerated by divine grace and regained the capacity for harmonic performance, it was God who determined the standards of harmony.

Inasmuch as man was universally sinful, utterly lacking in power to redeem himself, and incapable of measuring his own guilt, it might be supposed that criminal acts would be excused as the natural fruits of man’s nature, especially if the command in Romans 2:1 were taken literally: “Therefore thou art inexcusable, O man, whosoever thou art that judgest: for wherein thou judgest another, thou
condemnest thyself, for thou that judgest doest the same things.” But if the doctrine of total depravity was intended to make man both humble before God and conscious of his own shortcomings, it did not thereby increase his tolerance for those who were manifestly alienated from God’s favor. Theologians who, like John Calvin, emphasized man’s depravity were also more inclined to justify rigorous civil punishment, since in no other way could the sinful will of man be thwarted.

Just as Christianity was never quite successful in eradicating Manichaean doctrines, so a primitive notion of evil persisted as long as men believed in the devil. Even when theologians argued that a criminal’s guilt arose primarily from his disobedience to the will of God, he was punished not as an unruly child but as an embodiment of positive and infectious evil, as a loathsome monster whose human faculties had been made diseased by Satan. Hence, even in the early nineteenth century, indictments for murder in the United States included the ancient compromise between Christian and primitive morality: “Not having the fear of God before his eyes, but being moved and seduced by the instigations of the devil . . .”

American Calvinists in the late eighteenth century found it difficult to defend total depravity and predestination, especially after they had absorbed from pietism the belief that universal benevolence is the source of virtue. Man’s sin, according to Samuel Hopkins, glorified the perfections of God, “which could not have been made to such advantage, and in so great a degree, in any other way, had not sin existed in every instance.” Yet Hopkins’ disciple, Nathaniel Emmons, made it clear that God did not “desire” the pain or punishment of any human being, since He sincerely wished that all men might be saved. But the

1 Samuel Hopkins, The Works of Samuel Hopkins . . . (Boston, 1854), III, 728.
more God desired the good of sinners, "the more he hates their totally corrupt hearts and selfish conduct. . . . The more he loves the happiness of sinners, the more he must hate them for destroying it." 2 Thus it was that supreme hatred flowed from universal benevolence. Those who loved the goodness of God should approve and imitate his conduct toward those "guilty and miserable objects," even though the morally depraved were unaware of their sin and of their inevitable punishment: "Being alienated from the life of God, and opposed to all true benevolence, their minds are totally involved in moral darkness." In an effort to control man's religious aspirations and secular desires, Calvin had justified both election and moral responsibility by the fiat of an arbitrary God, but in so doing he had sacrificed the God of benevolence and love. When such latter-day Calvinists as Emmons stressed the fact that God desired the happiness and salvation of all sinners, they reinforced the belief in man's responsibility but at the same time undermined the doctrines of predestination and total depravity.

By 1800 it would have been impossible to have applied Emmons' ideas with consistency in courts of law. If evil, predestined to glorify God, was to be hated and punished to show our approval of God's benevolence, no distinctions could be drawn among various types of homicide, since it would not matter whether a man had killed by premeditation, from insanity, or had merely contemplated a murder. In each instance God's command would have been disobeyed. Each act of disobedience would emphasize the contrast between God's virtue and man's iniquity and thus require God-fearing men to punish the transgressor in order to demonstrate their own respect for goodness. Whereas the primitive savage executed or banished a

criminal as an alien from his tribe, with the hope that such purging of evil would preserve him from similar alienation, the consistent Calvinist was required to punish the man who was alienated from God's world, trusting that an expression of such righteous hatred would secure his own position in the world to come. In both cases evil was a mysterious and infectious power, and it mattered not whether a criminal was alienated by willful choice or by physical causes.

By the time of Timothy Dwight's triumph over infidelity at Yale, provincial Calvinism had been exposed to the influence and criticism of British Unitarians, American Universalists, rationalists, and deists. The followers of Jonathan Edwards struggled against doctrines which seemed to reduce God's power or to magnify man's original goodness, but in defending this ancient moral dualism, they placed greater stress on man's natural freedom while losing sight of Adamic guilt. When an angry and vengeful God was removed from Edwards' theology, the psychology that remained seemed to suggest that a criminal was not the detestable embodiment of a mysterious and imputative guilt, whose punishment, even at the hands of sinful men, would bring an approving smile from the lips of God. On the contrary, human evil might be overcome by religious training. Hopkins and Emmons had gone considerably further than Edwards in abandoning the terror and maliciousness of the Puritan God; and, in fact, Emmons' conception of a deity who sincerely desires the good of all sinners was not so far from Hosea Ballou's Universalist God who actually saves all sinners. When the followers of Edwards denied the imputation of Adamic sin and insisted upon the supreme benevolence of God, they had, according to their Unitarian opponents, admitted that man was both free and good.

Although Timothy Dwight was a spiritual as well as an
actual descendant of Jonathan Edwards, he nevertheless succeeded in changing his grandfather's conception of sin. The final proof of man's depravity, he wrote, was the necessity of legally forbidding murder. But if murder and war were evidence of man's inherent sinfulness, the origins of evil might also be traced to social conditions which might be altered by human effort: "Murder in the proper sense, is begun in unkindness: and . . . unkindness is begun in the early and unrestrained indulgence of human passions. This indulgence, therefore, Parents, and all other Guardians of children, are bound faithfully to restrain, from the beginning." 3 The essence of sin lay not so much in a man's lacking "a disposition to love Being in general" (as Edwards had defined it) as in an individual's discontent and ambition. Dwight did not consciously revise his Calvinist heritage, but his argument against human perfection emphasized social evil and minimized supernatural sin, just as his plea for religion placed greater stress on individual effort.

Dwight was still a long way from considering criminals as accidental and pathological deviants from a basically free and benevolent human nature. He sternly warned that those who observed the law and only wished that an enemy would die would be condemned as actual criminals at the final judgment. Without the grace of God men were universally selfish, aggressive, and murderous. Yet we may classify Dwight as a transitional figure who modified the conception of metaphysical evil by stressing the social effects of sin, as well as the benefits of education and moral training.

When Horace Bushnell's theology attracted attention in the 1840's, a generation had passed since the death of Timothy Dwight. Edwards' disciples had become insignifi-

3 Timothy Dwight, Theology Explained and Defended, in a Series of Sermons, 12th ed. (New York, 1846), III, 356.
cant in number compared with the millennial sects, the circuit-riding evangelists, and the urban Catholics. The impact of Kant, Herder, Jacobi, and Schleiermacher was beginning to crumble the foundations of even New England theology. For Bushnell, whose early pledges of allegiance to the principle of total depravity failed to quiet the suspicions of New England orthodoxy, salvation was not an instantaneous response to God’s grace on the part of an isolated, individual man, but rather a process of a social organism whereby the natural and supernatural realms were joined in an intimate growth. Like many of his contemporaries, Bushnell loved botanical metaphors, and his descriptions of the religious experience are filled with such terms as sap, trunk, limb, matrix, and rudimental type. The Christian family was likened to a kind of greenhouse, in which children were nurtured by their parents’ faith, by glowing love, and by genial methods, “silent and imperceptible.” Although Bushnell stopped considerably short of Wordsworth in his celebration of a child’s innocence, he identified morality with the cultivation of nonintellectual faculties which contained within themselves the seeds of divine salvation. He warned parents that they should not by dull drill enforce religious lessons upon their children, since not intellectual instruction but love and a beneficent environment brought about a soul’s regeneration. In 1847 Bushnell was not willing to expand the implications of Christian nurture, but it was clear to him that sin, crime, and damnation might be more the result of parental neglect and faulty emotional growth than of inherent depravity or a conscious choice of evil.

Theodore Parker, whose sympathy for the deluded and the underprivileged had once extended even to Jonathan

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4 Horace Bushnell, Discourses on Christian Nurture (Boston, 1847), pp. 26–28.
Edwards, was, in 1847, ready to examine the problem of those who had been denied Christian nurture. In transcendentalism, where human freedom and virtue were glorified and where traditional Christian doctrines were dismissed as "transient," there was a tendency to accept even the worst criminal as a misguided brother. For Parker there were only two kinds of criminals: the victims of society and that smaller group of men who "are born with a depraved organization, an excess of animal passions, or a deficiency of other powers to balance them." ⁵ Men of both groups suffered from "defective organization." Inasmuch as inheritance, poverty, or faulty education had prevented a criminal's reason, will, and emotions from developing a normal balance, "I would not kill them more than madmen." They should, in fact, be treated as patients, not punished as agencies of evil.

Parker expanded his view of crime into a theory of social progress. Each individual duplicated the history of society, climbing from animal to savage stage, and finally, progressing through a barbarous period to youth and manhood. Circumstances might stop this development in any particular man or race. A boy who matured in city slums, for instance, might live all his life on the savage level, "a Freebooter, a Privateer against society, having universal letters of Marque and Reprisal—a perpetual Arab, his rule to get what he can . . . to keep what he gets." ⁶ In the rapid march of civilization people were intolerant of a "Bad Boy, a black sheep in the flock, an Ishmael," and most especially intolerant of criminals, "who do not keep up with the moral advance of the mass, stragglers from the march, whom Society treats as Abraham his base-born boy . . . sending them off as Cain

went—with a bad name and a mark on their foreheads!" 7 According to Parker, human nature was the same in all men and races except for the extent to which its capacities had been developed. Yet criminals and backward races were commonly treated as alien beasts, devoid of all human rights.

It was a grave mistake to judge these “loiterers from the march” by the standards of a more highly developed civilization, because the rules of human behavior, like religious doctrines, depended upon the stage of social progress. In barbarous ages, pirates and murderers were looked upon as leaders and heroes. Yet, Parker conceded, a terrible question confronted parents, society, and the civilized world. What was to be done with the alienated—with bad boys, with murderers, and with backward races? The transcendentalist urged society and the world to follow the example of an enlightened parent, rejecting the use of force and punishment and removing the real causes of evil. Thus the stragglers would be helped to rejoin “the troop.”

Theodore Parker’s desire to redeem the worst criminals and to eradicate the social causes of crime was an expression of the final movement from God to man-centered morality. His theory held that evil resulted from uneven development in the history of a man or of a people, especially when the divine or transcendental will had been stifled within the soul at an early age. In so far as this will had been permitted to develop beyond the stage of barbarism, it was free to chose the right, which was revealed within the soul and was not dependent upon sensory experience. In a practical sense, God was therefore only the goodness of man as revealed in man’s own development of moral, as opposed to intellectual, capacities. The hardened murderer, the self-righteous judge who condemned

7 Ibid., p. 9.
him, and the crowd which gloated at the hanging, were all examples of deformed and sickly souls, each one lacking the grace of God. It was an irony that Theodore Parker, like the Calvinist, denied any distinction between moral and physical alienation; but whereas Nathaniel Emmons condemned all but God's elect, Parker urged the reformation of "the dangerous classes in society."

III

If popular philosophy in the present age is dominated by the cult of peaceful minds and positive thinking, a theme indicating widespread fear of worry, unhappiness, and futility, American thought of the early and middle nineteenth century was obsessed in a similar way with the quest for moral certainty. American editions of Hutcheson, Paley, and Stewart multiplied through these decades; moral philosophy became the keystone of a college education; Thomas C. Upham, Laurens P. Hickok, Francis Wayland, and Joseph Haven proved that Americans could also write textbooks on the subject; innumerable "Guides," "Duties," and "Letters" addressed to girls and bachelors appealed to a popular audience; and phrenologists proclaimed triumphantly that the secret of morality had at last been discovered. Such concern over the foundation of human morality would have been inexplicable to a seventeenth-century Puritan, or, for that matter, to a devout Catholic at any age. Throughout the textbooks, the moral guides, and the popular tracts, there was a strange tenseness, a fervent appeal not so much for moral action as for an undoubting acceptance of some particular system. Since the most contradictory schools were united in their support of virtue, which, although difficult to define, was generally assumed to exclude murder, it is important to ask why moral philosophy became such a
center of controversy. What did people fear and why did they seek reassurance?

Thomas Upham doubtless gave a popular explanation when he declared that “this subject is immensely important to the citizens of this country” because a representative government cannot exist “without purity in the public moral sentiment.” In a land where anything was capable of being changed, the only permanent law, as Jefferson had said, must be found in the virtue and intelligence of the citizens. For a Thomas Hobbes or Calvin such a view would have been absurd, since, lacking the imposition of an absolute and unchanging law, “natural man” would simply exterminate himself through mass murder. Yet even for the most optimistic exponent of man’s goodness, the conditions of American society in the early nineteenth century were disturbing. A mobile and dispersed population, the presence of slaves within the country and of savages inside and beyond the frontiers, the opportunities for successful crime and fraud all contributed to the uncertainty of moral values. It was as successful rebels slightly frightened by their own freedom that Americans turned to Europe to seek positive moral laws.

The source of this interest in ethics as a positive science may be found in the eighteenth century, when such diverse Americans as Jonathan Edwards and Thomas Jefferson accepted John Locke as the philosopher of the human mind. As Merle Curti has pointed out, Locke’s enormous popularity in America rested upon the actual conditions of colonial life, which tended to confirm an empirical philosophy, a belief that mind was shaped by experience,

8 Thomas C. Upham, Elements of Mental Philosophy, Embracing the Two Departments of the Intellect and the Sensibilities, 3rd ed. (Portland, Me., 1839), II, 326.
and a conviction that natural rights were a felicitous expression of God's wisdom and justice. Locke's influence extended beyond the phrasing of revolutionary documents. Early American writers of fiction assumed a Lockian psychology, as did lawyers and judges who turned to William Blackstone for the authoritative interpretation of common law. But Locke, as Jonathan Edwards discovered, was not always clear when he discussed the problems of human sin and freedom. It is significant that two of Edwards' important works were attempts to reaffirm the spiritual slavery and sinfulness of natural man without sacrificing the framework of Lockian psychology.

Locke agreed with Thomas Hobbes that man's history of murder, rape, and warfare disproved the existence of an inborn sense of the right. If moral principles were innate and did not require rational proof, why were armies praised for sacking towns, and why did duelists kill without remorse? But Locke did not use this evidence, as Calvinists did, to point toward man's hopeless depravity and dependence on God. Moral truth, Locke argued, while not inherent in the human mind or senses, could be perfectly known and deduced by reason, so that even a monkey, if he possessed reason, could foresee the consequences of his acts and thus be subject to law. Despite man's history of treachery and bloodshed, it was the law of nature for rational creatures to pursue happiness by suspending desire, by comparing the consequences of proposed actions, and by choosing the greatest good.

In an attempt to give a naturalistic account of moral choice without sacrificing the concepts of guilt and responsibility, Locke divided human action into a number

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of temporal stages. Whenever some particular action was expected to bring happiness or prevent pain, an individual experienced a “state of uneasiness” or desire. But if desire was an automatic response, the will was the power of the mind to direct or suspend desire before an actual choice was made. By use of his will, man could sublimate impatient and unruly passions and channel desire toward the most worthy ends. Yet in most cases man was not free to control *volition*, which meant that an individual must postpone choice until “he has examined, whether it be really of a Nature in its self and Consequences to make him happy or no. For when he has once chosen it, and thereby it is become a Part of his Happiness, it raises Desire ... which determines his Will, and sets him at Work in Pursuit of his Choice on all Occasions that offer.” 11

The assumption that morality rests on a cessation of emotion and a rational examination of the nature and consequences of a possible act, was to become, as we shall see, an important element in Anglo-American criminal law. Yet Locke was not altogether clear about this power of a calm, clear judgment, which seemed to him self-evident in human experience but which was obviously not applied universally. Locke never doubted that a man with normal intellect should be held accountable for his crimes, which resulted from a refusal to suspend desire and examine rationally the consequences of the intended action. On the other hand, Locke thought of liberty as conformity to the dictates of reason and concluded that any liberation from “that Restraint of Examination and Judgment, which keeps us from Chusing or Doing the Worse,” could be only the freedom of a madman. This was almost saying that no rational (and therefore responsible) man could choose evil. In fact, Locke very

nearly identified evil with irresponsible error which should be eliminated by education, self-discipline, and punishment, all aiding the reason to formulate "complex ideas" of morality.

As soon as philosophers made the revolutionary shift from God-centered to man-centered morality, depriving virtue of arbitrary and unchangeable sanction, there followed a disturbing ambiguity about the relativity of sin and the degree of individual responsibility. The Utilitarians, though often accused of condoning selfishness, were not attempting to subvert prevailing standards of morality, but on the contrary were seeking moral security in a world disrupted by philosophical skepticism. William Paley thought that expediency was a safer principle for moral philosophy than were reason or instinct, either of which might be used as justification for local prejudices and habits. But recognizing the dangers implicit in any utilitarian theory, he stressed the supreme importance of proper training and self-discipline. Evil arose not so much from man's depravity or pride as from unregulated passions, which prevented the mind from choosing the proper and expedient course: "The criminal commerce of the sexes corrupts and depraves the mind and moral character more than any single species of vice whatsoever."

If man acted, as Jeremy Bentham said, on the principle of achieving the greatest pleasure and avoiding pain, it seemed necessary that human law should maintain the precise balance of nature by counteracting those selfish pleasures which were either inconvenient or harmful to society. Crime was essentially a social problem, not a metaphysical contest between good and evil. Circumstances, intentions, consciousness, and motives were all

essential in determining the degree of the crime and the nature of the punishment, for man was an intricate mechanism which could be corrected, disciplined, and trained by a scientific analysis of pleasures and pains.\textsuperscript{13}

Paley was widely read in America before 1850, largely because he combined “expediency” in morals with a system of natural theology, but the franker forms of hedonism and materialism made little headway. It was evident to many people that, despite Bentham’s confidence in his system of punishments, fundamental assumptions concerning responsibility would be undermined by pure hedonism. If man acted on no higher principle than his own pleasure, if the will was not free to choose between universal right and wrong, and if sin was not something to be punished for its own sake, who could say that a criminal was guilty or that government had a transcendent right to kill a murderer? In Europe the sensational psychology had resulted in agnosticism and skepticism, and for those Americans who looked upon the French Revolution as a kind of mass murder implicit in materialistic theory, it was essential that a different morality be defended. But though Americans generally shunned hedonism and materialism, they were to discover that, once crime was conceived as a social and psychological problem, no ethical theory was immune from the searching question: are men equally responsible for their actions?

IV

A general American acceptance of Lockian psychology, instead of, let us say, Cartesian rationalism, did not mean that American thinkers were willing to extend the influence of environment to the origins of moral knowledge.

\textsuperscript{13} Jeremy Bentham, \textit{An Introduction to the Principles of Morals and Legislation} (London, 1879), pp. 70–121.
If the understanding was a blank tablet where sensations traced intricate patterns of ideas and associations, there were at least bastions within the human soul which could not be stormed by scientific logic. Ideas might not be innate, yet there were innate principles and senses which provided a foundation for absolute morality. A theory which found the source of virtue in the senses, as opposed to the understanding, would also provide a new explanation for human error and evil. A man dominated by the understanding, by the mechanical laws of association, would, as the materialist claimed, be subject to the winds of circumstance. But this really meant that his well of intuition, faith, and moral certainty had gone dry, that he was living and acting in a world of surface appearances, of dusty words and fleeting sensations. A man could only truly be a man, that is, a moral being, if he could break through the mechanism of perception and emotionally “feel” an object or event. The understanding, with its ideas, associations, and word symbols, was merely a kind of convenient instrument attached to the soul, an instrument capable of being perfected by science, but not a substitute for the transcendental or instinctual capacities of the soul itself.

This point of view originated, in modern times, with Lord Shaftesbury and Francis Hutcheson, who sympathized with Locke’s attempt to free ethics from rationalism and supernaturalism, but who doubted the wisdom of deducing moral truth from experience. Since all men seemed to feel in their hearts something recommending virtue, Hutcheson argued that moral truth depended on an instinctual love of goodness for its own sake.14 Conscience was an expansive emotion which, if undistracted

by faulty logic or blind passion, would unfailingly arrive at virtue.\textsuperscript{15}

There was a troubling paradox, however, in the development of the moral-sense theory. Locke had prepared the way for a rigorously naturalistic and environmental theory of ethics by rejecting the belief in intuitive knowledge of good and evil. Hutcheson and the later Scottish philosophers feared that this sensational psychology would ultimately destroy the foundations of morality and responsibility, and their theory of an immutable and universal moral sense was a defense of absolute ethical standards. All men were assumed to possess benevolent impulses (Hutcheson) or an intuitive sense of right (Thomas Reid), which was the locus of obligation and responsibility. But when philosophers made moral obligation depend on the testimony of an inner faculty and not on the synthesis of simple ideas derived from experience, it was impossible for them to furnish the kind of exact proof of responsibility desired by Locke, Blackstone, and Bentham. According to Thomas Reid:

The man who does not, by the light of his own mind, perceive some things in conduct to be right, and others to be wrong, is as incapable of reasoning about morals as a blind man is about colours. Such a man, if any such man ever was, would be no moral agent, nor capable of any moral obligation.\textsuperscript{16}

Reid also said that a criminal act might be excused if it resulted from a diseased or disordered understanding. But he went beyond this conventional theory when he ruled that a man who lacked an innate moral sense was


\textsuperscript{16} Thomas Reid, \textit{Essays on the Powers of the Human Mind} (Edinburgh, 1809), II. 457.
not capable of moral obligation. The total absence of moral perception would thus be an example of physical alienation, for the subject would be removed by physical causes from sympathetic unity with his fellow men. Moral blame could be assigned only to those individuals who willfully disregarded their innate sense of right and wrong. If a man lacked such a sense, he was “morally blind” and was not responsible. Although the Scottish philosophers sought to re-establish an absolute morality and assumed that human nature was blessed with benevolent affections and an immutable sense of right, their philosophy implied that the limits of responsibility were considerably narrower than those recognized by law. But this implication would not be fully developed until the nineteenth century had modified the concept of uniformity, enabling men to question the origin and development of the moral sense.

In 1829 James Marsh, president of the University of Vermont, wrote to Coleridge that the Scottish philosophy had replaced Locke in American colleges. Two years previously, Thomas Upham had written the first serious American textbook in psychology. This work, especially in its revised editions, was a significant link between the Scottish doctrine of moral sense and the concept of transcendental reason. That there was a strong affinity between moral sense and transcendental reason (as opposed to the understanding), is a fact demonstrated by the insistence of Dugald Stewart, Pierre Laromiguière, and Maine de Biran that moral feelings were immutable and absolute. If Kant, the author of modern transcendentalism, generally mistrusted sense and feelings, it was clear in the fideism of F. H. Jacobi that pure reason could be identified with pure feeling. Those who reacted against Locke and Hume tended to seek moral certainty in the nonintellectual faculties; unintentionally, perhaps, they identified conscience with desires and emotions. Thus
American acceptance of the Scottish philosophy contributed to a growing conviction, especially after 1830, that man's uniqueness, his virtue, and his freedom, lay not in the intellect, but in “reason” or “higher feelings.”

American moral philosophers, such as Thomas Upham, wanted to recognize a free will, a universal moral sense, and a clear distinction between good and bad men; but the constant dread of materialism, which they associated with sensational psychology, forced them to identify morality with emotion. It was difficult, however, to measure emotions, affections, or senses; and although the Scottish philosophers expressed faith that a knowledge of right existed within the soul of every man, this basis for responsibility was entirely subjective and incapable of proof. Locke had implied that a man was free to choose, and therefore responsible, if he had the intellectual capacity to judge the nature and consequences of his acts. But when moral choice was made to depend upon an emotional sense of rightness, it was obvious that responsibility could not be determined by so simple a test. A man might, for instance, be incapable of sensing in an emotional way that a certain act was wrong, even though his intellect knew that the act was unlawful and generally disapproved. To preserve the idea of universal responsibility, of course, it was possible to deny the disturbing belief that some men lacked sensibilities and finer emotions. The intellect might be subject to heredity and experience, to education and disease, but the moral sense was nearly inviolate, as was the autonomous will.

For simplification we may imagine two diverging lines of thought among those who accepted the supremacy of a moral sense over intellect. On the one hand, such writers as Asa Mahan and Laurens P. Hickok combined the doctrine of moral feelings with the absolutism of a Kantian will, so that within itself human nature contained law,
judge, and executioner. If the will was autonomous, man had the power to resist even his strongest motives and inclinations, a hypothesis which justified an assumption of uniform responsibility, despite the subordination of intellect to moral sense. It is significant that the same writers who attacked Locke as an unintentional materialist charged Jonathan Edwards with having reduced the will to a mere function of the affections. On the other hand, there were thinkers whose celebration of moral feelings, combined with an intense desire for reform and progress, resulted in an assault upon traditional assumptions of responsibility.

In the 1840's and 50's there was a growing conviction that crime was a disease of the finer sensibilities, to be prevented by improved education and social reform. Cyrus Peirce, author of the prize essay for the American Institute of Instruction in 1854, argued that cultivation of the intellect was no security against evil. In Prussia, he pointed out, where every child was required to attend school, there was fifteen times the amount of crime there was in France where the people were three-fifths illiterate. If America was to reduce its increasing rate of crime, it would be necessary, Peirce felt, to encourage rigorous moral exercise, regular occupations, industrious habits, and above all, agrarian simplicity. The flood of books and pamphlets dealing with "moral culture" emphasized a single theme: it was not the intellect nor even will which served as man's shield against temptation and crime; only the proper nurture of instincts and feelings would bring eventual peace and social harmony.

19 Social harmony was supposed to depend primarily on the moral culture of women, since it was in the family that the feelings and affections
One the most interesting phenomena in the history of American thought was the rapid and widespread acceptance of phrenology. Phrenology solved every problem in psychology and ethics which had preoccupied Western man from the time of Plato, and it was immensely satisfying for people who worried about moral certainty. The fact that phrenology was a kind of materialism did not seem to bother its proponents, largely, one may suspect, because it retained the familiar faculty psychology, including the moral feelings. For those who associated religion with ethics and ethics with benevolent affections, it was comforting to know that morality was based on the physiology of the brain. At one stroke the disturbing gap between science and moral philosophy had been closed. God's design and purpose could be traced in the intricate brain of His highest creation.

When a phrenologist turned to the subject of human aggression, his conclusion was remarkably similar to the Freudian concept of a sado-masochistic drive. Franz Joseph Gall had identified an innate faculty of murder, which his disciple, Johann Spurzheim, changed to "destructiveness." This analogue to Freud's "death-wish" was described by M. B. Sampson:

The tendency to destroy is one of the blind propensities of man's nature, absolutely necessary to adapt him to his relation to the external world; and, when acting harmoniously with the intellect and moral sentiments, it produces only the most beneficial results; but, when roused to unbalanced action, it exhibits itself in maniacal fury, and, overpowering the reason and the feelings (which it must do before its possessor can commit murder), imparts oftentimes as strong an impulse towards the destruction of its possessor as towards the destruction of any other individual. It gives, in its morbid state, an inordinate

were trained. For a single example of this vast literature, see Edwin H. Chapin, Duties of Young Women (Boston, 1848), pp. 58–61.
tendency to violent action, a wild desire to overpower restraint of every kind, and to break down and destroy all that comes within its reach.  

E. W. Farnham, of the Female Prison at Mt. Pleasant, New York, concluded that phrenology would revolutionize criminal jurisprudence, since it abolished the belief in moral responsibility. Throughout history, society had falsely judged all persons equally capable, and had consequently erected one standard, which none may fail to reach, however they may be incapacitated, without being judged guilty, not only of the offenses they have committed, but of the infinitely greater one of having acted in defiance of the decisions of higher powers, powers which they never possessed; of having willfully and perversely outraged all those purer and better sentiments, and defied all that reason which saved their more fortunate brethren from the same degradation.

Those who took refuge in the doctrine of free will could find little comfort in phrenology, which made clear “that the will is not a moral faculty, that it has no inherent tendency either to vice or virtue, but may be enlisted to sustain either, and that in most criminals it is unenlightened.” Laws, according to Sampson, had been created on the assumption that merely because most men were endowed with reason, all men enjoy an equal and perfect state of mental health. Yet the feelings and passions alone furnished motives for the intellect and will. This meant that a man whose coronal region was imperfect (depriving him of a moral sense), or whose posterior brain had been overdeveloped (giving him abnormal

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21 E. W. Farnham, introd. to Sampson, Rationale, p. xix.
22 Ibid., p. xviii.
animal propensities), would be completely incapable of
conforming to the laws of average men. It was a great
mistake to suppose that a criminal was normal just be­
cause he suffered from no hallucinations and could dis­
tinguish intellectually between right and wrong. The
absurd injustice of criminal law was especially evident in
the presumption that an inveterate offender was more
guilty than a man who had committed his first crime:
“Thus, that which constitutes the surest evidence of the
criminal’s need of remedial treatment, separates him
farthest from it.” 23 To say, as moralists did, that a criminal
made his own career by selecting bad companions, in­
dulging in drink, or evading responsibility, was equally
fallacious, since these were only manifestations of a brain
originally perverted. Those who condemned criminals
were actually finding outlets for their own destructive
tendencies. But they should remember that, given a similar
brain at birth, they, too, would join the rank of social
enemies.

Phrenology clarified the ancient problem of respon­
sibility simply by eliminating it. According to traditional
jurisprudence, a man who killed without motive might
be considered insane, while a man who murdered for
money had no chance of pleading insanity. Phrenology
showed, however, that the destructive impulse might act
either by itself or in combination with the “acquisitive
tendency.” Whether a man murdered for money or for
no apparent purpose was relatively unimportant, since
all crime resulted from impaired health or deficient de­
velopment of one or more faculties.24

But if science “proved” that the Creator had made some
men moral and others irresponsible, the safety of society
obviously required that criminals and those likely to be­
come criminals be given proper treatment. People with

peaked heads or with bumps behind their ears should not be placed in positions of responsibility or temptation. The most extreme cases should be carefully isolated in special hospitals, where improvement under the guidance of trained phrenologists was certain to secure the public safety.25

These views, while obviously unacceptable to most Americans, represented the final resolution of the moral-sense theory. Locke had said that a criminal was guilty because in refusing to be rational he violated natural law. All men were created equal, but some, by perversity, could morally alienate their natural rights and become outcasts from society. According to Sampson, however, all men were not created equal. Essentially, there were only the elect, who possessed a moral sense and a harmonious development of passions, and the nonelect, who were alienated from society by physical causes. Instead of castigating their less fortunate brothers, it was the duty of responsible men to prevent the depraved from committing the crimes they could not otherwise avoid, to sympathize with deformed affections as they might with deformed bodies, and to show patience and benevolence in curing moral and physical diseases. In basing the moral sense theory in man's material nature, the more consistent phrenologists had arrived at a position approximating that of Theodore Parker. If individual differences accounted for crime, these differences seemed to dissolve in man's common dependence on his mental organ or in the brotherhood of transcendental will.

Both Theodore Parker and M. B. Sampson looked upon crime as a social problem, and in so doing tended to obscure the question of private morality. The standards of normal men were not to be used to judge the responsibility of defectives, but such a distinction between normal

25 Ibid., pp. 53–66.
and abnormal implied that the behavior of the majority was an expression of proper cerebral balance, or of the transcendental mind. Yet the phrenologist, after arguing that some men lack the physiological basis for conformity, found it difficult to define concepts like "normal" and "proper." Theodore Parker could not always be certain that civilization advanced in the right direction. Might not the "loiterers from the march" have a surer perception of values, especially when the marchers crossed the Rio Grande or condoned slavery? In the last analysis, morality was both subjective and relative when criminals were denied the capacity for guilt. If the moral sense was not uniform among men, if some individuals were impelled by their nature to be savages, then who could be certain of knowing universal goodness and justice? This problem, implicit in the moral-sense theory, was something that writers of fiction could not ignore.