

Of the Thief on the Cross: The Problem of Pain in Punishment

Trisha Olson

In the middle ages, there existed across western Europe a wide range of capital and afflictive punishments. Beginning in the mid eighteenth century, these blood sanctions began to be replaced by imprisonment. Punishment became a private matter that occurred behind the walls of the penitentiary and involved minimal physical pain. This paper explores the reasons why pain was once an intelligible and integral part of punishment and in what way those reasons slowly but surely lost their resonance. To that end, this paper asks: What was the tradition of thought that assumed such a central role for pain and suffering in punishment? Why and how did that tradition lose legitimacy? And finally, what was the mode of thought which replaced that tradition?

Legal and social historians assume that once a state structure became involved in the punishment of crimes, the aim of punishment was obviously deterrence. The spectacle of hanging or of broken bodies hoisted on the wheel served that end. Eventually, however, enlightenment dawned and the humanitarian impulse led to the dismantling of the theater of death and to the more humane punishment of the penitentiary. This thesis has met with challenge. Most famously, Michel Foucault, sees the history of punishment as the movement from the personal violence of the king who inscribes, and thereby confirms, his power upon the body of the offender to a more refined and nuanced stratagem of power whereby the surveillance and discipline of the institution replaces the gallows. Rather than a signal of a more enlightened polity, the penitentiary merely indicates a more efficient and exacting power matrix which by increasing its knowledge of that which it seeks to master generates its own discourse which in

turn increases power's domain by opening up ever new possibilities for dominating the criminal (and more importantly aberrant) element within a society.

Yet, as Karl Shoemaker points out, neither of these accounts of the movement from bloody corporeal punishment to the imprisonment of the body tell us upon what grounds bodily pain was once an integral and intelligible part of punishment. We are given motives for pain's abandonment, but not reasons for its prior appearance and acceptance. Neither the story of the "humanitarian impulse" or of the "stratagem of power" speaks to why bloody and brutal treatment of the body was once morally and emotionally tolerable. This paper argues, that the movement from sanguinary corporeal punishments to incarceration was intimately bound up with the way different epochs conceived of, and experienced, pain. Indeed, pain only became a "problem," that is to say a troubling aspect of punishment, in the early modern period. Prior to the age of enlightenment, however, the bodily pain inflicted upon the condemned was but a representation of the spiritual reality of divine grace which offered the offender both the means to reintegration with his community and a way home to his Creator. What is at stake then in this story from blood sanction to the penitentiary, is variant modes of thought.

The place to begin is with the rituals and images that attended the spectacle of bodily pain at the scaffold, the wheel or the chopping block. Representative is the promise of salvation extended to the robber Lis Tullian, executed in Dresden in 1751, in an engraving made for the title page of his biography. Tullian appears in the engraving as a prisoner chained in irons awaiting his execution. Above him are clouds that reveal God the Father with outstretched arms and below him an allegorical figure of Justice stands next to Tullian reaching out her hand to the condemned man and holding a sword in the other. In the background is a gallows and a wheel.

The caption below reads:

Here the worldling now all bound in fetters lie

starts to fear his God, his tears flow from his eyes.

Justice comes along, with gallows , wheel and sword:

God tells the pious man to enter Heaven doors.

Similarly, in a sixteenth century woodcut designed for the municipal law code of Mainz there is depicted a judicial procession out of the prison. Attached to the woodcut is a banner which reads, “If you bear your pain patiently, It shall be useful to you, Therefore give yourself to it willingly.” What these sources reveal is a sensibility that understood the condemned’s suffering not as a lesson in the majesty and inviolability of the king but as a complex drama of Christian repentance and salvation. The implication is that pain is not to be avoided, but rather it is to be unabashedly embraced as a positive and purifying force.

The paradigmatic reference point for medieval discourse on meaning of pain was the passion of Christ. As Caroline Walker Bynum observes, Christ’s pain and blood gives, what she calls, “salvific significance” to what we share with him as humans: we suffer. The transfiguration of that suffering from an horrific act of human blood-letting to a wondrous purgative gift of redemption lay, in part, in Christ’s voluntarily undergoing torment. So too its efficacy in cancelling the debt owed for sin depended not upon Christ’s substitution as a debtor, for he owed nothing, but upon his offering his own suffering as a gift which was neither obligatory nor constrained. From the standpoint of the medieval man or woman, the passion provided an exemplar whereby human suffering could, in imitation of Christ, provide access to the Divine. In contemporary descriptions of executions across the middle ages of western

Europe what the historian witnesses is a complex array of rituals which indicate that far from being a damned wretch, the condemned who accepts his sacrifice becomes in the eyes of the spectator a holy vessel whose suffering of a good death is a sign of his redemption and his entry into heaven. Not atypical is the execution of the soldier Jean Corbelet in Caen in 1760 for the murder of a comrade. After being fastened down to the wheel he began to sing *Salve Regina* imploring the crowd to join in. Suffering each blow to his body, Corbelet and the crowd began to intone the *Veni Creator* as the crowd, and then Corbelet, and then again the crowd, and then again Corbelet sang each verse until finally the condemned man's voice began to fade. The sources are replete with such participatory stories whereby the condemned man embraces his executioner, promises a crowd to intercede on behalf of all he has injured in this life once he reaches heaven purified of his sin, or makes a public proclamation of repentance going to his death with a degree of dignity that frequently reduced a crowd to hot weeping tears.

Behind these spontaneous popular practices was an understanding of pain that is both theologically complex and dramatically foreign to the mindset of the early modern period and which spilled over in the medieval period to expressive norms played out in the spectacle of capital punishment. The two great teachers of the kinship between human torment and redemptive punishment are the fourteenth century figures of St Catherine of Siena and Dante. For both, as well as for the tradition of thought which they represent, pain was not a function of the body but of the soul. Bodily pain therefore was experienced as impressions upon the soul which, in turn, may or may not suffer depending upon the context and the soul's condition of spiritual health. Moreover, bodily pain itself is always derivative. Though pain maybe experienced as a bodily sensation that racks and torments one's physical being, its point of origin

is the suffering of the soul.

But how and why does the soul suffer? In St Catherine's *Dialogue*, written when she was in a state of ecstatic rapture, God revealed to her that the human's willing desire to "suffer every pain and hardship even to the point of death" for the salvation of her soul is "very pleasing" to him. The sense of this seemingly cruel pleasure, St Catherine wrote, lay in the idea of love. Plainly put, pain is a signifier of the soul's adoration of the good. Thus, in response to St Catherine's petition to be purged of her sin, God revealed to her: "In loving me, you come to know more of my truth, and the more you know, the more intolerable pain and sorrow you will feel when I am offended." There is, in one's love for the good, nothing but immense suffering for in his longing to unify with the good the human being becomes starkly aware of his inadequacy and imperfection. One despises his sins. He feels unsuitable and insufficiently pleasing. Accordingly, the Deity explains to Catherine, "suffering and sorrow increase in proportion to love. When love grows, so does sorrow."

In the context of punishment, it is not one's pain that atones for sin, but rather the sorrow that bodily suffering signifies. Thus, St Catherine writes, "suffering atones for sin not by finite pain but by reason of perfect contrition of the heart." Such contrition "blots out" all foolish wrongs. Indeed, the Deity tells St Catherine that he will forget that he ever was offended. In terms of Christian metaphysics suffering is a good. What it signifies is the human longing to dwell in unity with the Divine. Given that such longing is itself a good, so too is suffering itself. For the damned also, suffering partakes of the good. As Michael Smith clarifies in his work on Dante's *Inferno*, the damned in hell do not know the nature of their true suffering. While it appears to them that they are being held captive by demonic tormenters, in truth it is their own

desire which holds them there and causes their anguish. The damned have chosen to cherish vice over virtue. The pains they suffer are not penalties inflicted upon them *because* they sinned, rather the pains are inherent to the sin. Thus the violent are immersed in blood, flatterers are sunk in excrement, and the treacherous dwell frozen cold and hard. The torment the soul experiences is an attribute of its disordered state. And it is in the idea of disordering that we come to see the most profound reason for the damned's agony. Virgil explains to Dante that everyone by nature loves and seeks God understood as the primal Good. Yet, the damned thwart this natural desire by preferring to commit themselves to sin. As Smith clarifies, it is the thwarting of their natural desire for the good that is the damned's pain. The damned are tormented by a divided self which is caught between its choice of wrong, and the pain of that choice in denying the angels of its better nature.

It is against this backdrop that we should understand the cryptic remark of Foucault that the medieval execution was "a moment of truth that all the spectators questioned: each word, each cry, the duration of the agony, the resisting body, the life clung desperately to it, all this constituted a sign." The condemned's cries of anguish manifested the pain his soul underwent when thwarted from its pursuit of a merely apparent good that revealed itself to be an evil. This thwarting cleansed and prepared the offender to receive divine grace. So too bodily pain denoted the offender's yearning to wed the Divine. As St Catherine taught, it was a longing compounded by agony for in such longing came regret and sorrow for one's maleficence. There is perhaps no more striking image of the way in which these ideas shaped and informed the ritual of execution than the popular practice of obtaining drops of the condemned's blood in the belief that in imitating Christ by voluntarily sacrificing his life, the offender partook in a miracle whose proof

was in the curative properties of his bodily fluid.

By the early nineteenth century, prison sentences had replaced capital or corporeal sanctions as the most commonly imposed punishment. One can locate in the reformist literature of the nineteenth century a very different conception of pain than that which had prevailed in the medieval period. Two strands of reformists literature existed. One, decidedly religious advocated stern programs of silence, and/or strict work regimes done in isolation so that, as the reformer Jonas Hanaway said, “the walls of the prison will preach peace to his soul . . .and he will confess the goodness of his maker and the wisdom of the laws of his country.” There existed a second group of secular reformers who insisted that the “final end of punishment is not by way of atonement or expiation.” Rather, punishment was a deterrent against “future offenses of the same kind.” Yet what these two groups shared in common were a set of beliefs concerning the meaning of, and necessity of pain, in punishment.

The pain of punishment had become, in the words of Bentham, a “mischief,” and “in itself evil.” Bentham’s judgment was the logical consequence of a new way of thinking about human identity that came to dominate English philosophy and jurisprudence during the early modern period. In the eighteenth century David Hume attacked the rationalists who sought to defend abstract reason as the source for all reflections upon morality. One cannot derive cultural norms, argued Hume, from the faculty of neutral reason. Rather, he said, it is our passions which determine our norms as we respond or recoil from pleasure’s promise or pain’s threat. Being posited was a new conception of man. While medieval theologians had stressed man’s helplessness before God, the emphasis was now upon man’s helplessness before Nature. Seeking to find man’s meaning in other than the heavens, Enlightenment thinkers discovered man’s

entitlement in the amoral drive of biological life. No longer was man conceived of as seeking his final end in attainment of the good. Rather he sought escape from life's end – that is to say, escape from his finitude, which is to say, from his pain.

In the context of punishment, two seemingly paradoxical beliefs emerged from utilitarianism. Penal reforms such as Bentham and J. Priestly argued that 1) the pain of punishment was an evil that any rational man would seek to avoid; and 2) given that man possessed a calculable rationality, pain could be employed to manage him. Taken together this new thinking, which continues to inform penal discourse today, birthed a theory of rehabilitation. Historians have remarked of this movement in penal reform that the new cause is to reform the offender by “attacking his mind and soul.” Yet, ironically both have become, through theories of behaviorism, instruments of his body. It is, says Bentham, through the means of sensory deprivation, such as solitary confinement, the inducement of hunger through a hard diet, and dwelling in darkness that the mind of the offender will be reduced to a “gloomy void” that is “forced” to pay attention to and accept those ideas that shall make him a obedient citizen. The pain the body endured was no longer tied to the internal promptings of the soul, but to the sensory effect of external stimuli.

The medieval world has by the nineteenth century been turned topsy turvy. Previously it was assumed that by undergoing the most severe bodily torments, the offender would be able to ascend upward toward his natural resting place with the good. This lofty vision of the human being was replaced by a darker vision of man as a dog who would writhe in his attempt to escape pain. So too, whereas the older practice of capital sanctions sought to recall the wrongdoer's spirit, the intent now was to break his spirit and thereby induce change. On the grounds of pain

and pleasure, man was now predicable, controllable, trainable. Even his once inviolable relationship with his god could be molded and shaped by authority. And finally, whereas suffering was once meaningful tied inextricably from the seeking of good, it now was a self evident evil which was to be employed by man against man as a tool of manipulation.

We remain committed to the belief that bodily suffering must be eradicated from punishment. In the United States, the death penalty survives, however, it sits on the periphery of America's penal regime. And there too the law insists that death must itself be painless thus leading the courts to grapple with ever changing technologies in their search for a method of execution that will ensure the condemned does not suffer. In an effort to distance itself ever further from its role in the infliction of pain, the state is unabashed in its use of euphemisms and what Nils Christie calls a pedagogy of professionalism which renders punishment, clean and hygienic, an act purged, at least linguistically, of all suffering and misery.

Yet, as sociologists point out, the ban upon the infliction of bodily pain upon a wrongdoer trades one kind of suffering for another. As David Garland remarks, imprisonment for long periods of time can produce "acute mental and psychological suffering" that can bring about physical deterioration and the erosion of cognitive and social skills." In a word, say the sociologists, incarceration is dehumanizing. What I wish to provocatively suggest is that it is the very processes that we moderns label as "humane," that render punishment dehumanizing. In our attempt to escape or, perhaps more accurately, obscure suffering's intimate bond with punishment we purposely depersonalize, bureaucratize, sanitize, and privatize the prisoner's pain. In so doing, we do not defeat punishment's pain. Rather we vanquish the possibility of a shared discourse which through a constellation of collective imagery, ritual, and language lends

penal pain its sense and significance.