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Punishment

Una McIlvenna

Punishment in the early modern period was explicitly designed to inspire a range of strongly felt emotions, and scholars have long attempted to understand the motivations and feelings of those who ordered, carried out, suffered, and witnessed the often painful, bloody, and shaming punishment of convicts. There existed an extraordinary variety of forms of state-sanctioned punishment in the early modern period, from corporal forms such as the pillory, whipping, dismemberment, and branding, to capital forms such as hanging, decapitation, quartering, burning, and breaking on the wheel, not to mention extra-legal punishments such as charivari (or ‘rough music’) and vendettas. Although more attention is usually given to execution, all of these variations should be viewed as a continuous spectrum of penalties from which judges could select the exact degree of appropriate punishment. They could, for example, decree that a prisoner should have an appendage removed before death for symbolic purposes, or that, when breaking a prisoner on the wheel, he was to be kept alive until a specified number of blows to the body had been carried out. Whatever the ruling, all punishments involved a display of the criminal who would make a public confession of their sins before the sentence was carried out.

There was also a variety of emotions that the spectacles of these punishments were expected to engender in both spectators and convicts. The 1532 German legal code known as the *Constitutio Criminalis Carolina* specified that women convicted of infanticide should be buried alive and impaled ‘in order that their fear may be the greater’.¹ Lesser crimes that

¹ Cited in Richard Evans, *Rituals of Retribution: Capital Punishment in Germany 1600-1987* (Oxford: Oxford University Press, 1996), 31.

merited only the pillory could see the convict wearing a *Schandmaske* or ‘mask of shame’.² Execution ballads that sang the news of crime and punishment often employed the first-person voice of the condemned criminal, whose admission of fear, remorse, and shame as she awaited her impending death was designed to instil both compassion and fear in listeners. The ballad in the voice of Judith Brown, convicted of murdering her mistress and burned alive in 1684, achieves this by describing her emotions at her imminent punishment, and ends with a typical warning to her spectators:

Alas! you may behold
 my sad and dismal doom,
 Both hands & heart, and e'ry part,
 in flames you'l see consume.

To you that come to see,
 a woful sinners fall,
 O let those cruel flames now be,
 a warning to you all.³

The rationale behind the public nature of punishment was that crimes were a sin on the community that all members should be involved in expiating. They did this through physical participation in the event, attending the ‘drawing’ of the victim from the prison to the

² Evans, *Rituals of Retribution*, 54.

³ *THE / Unfaithful Servant; / AND / The Cruel Husband. / Being a perfect and true account of one Judith Brown, / who together with her Master Iohn Cupper, conspired the Death of her Mistris, his / Wife, which accordingly they did accomplish in the time of Child-bed, when she lay / in with two Children, by mixing of her Drink with cruel Poyson; for which Fact / she received due Sentence of Death at the late Assizes in the County of Salop, to be / Burned; which was accordingly Executed upon the Old Heath near Shrewsbury, on / Thursday the Twenty-first day of August, 1684.* (London: John Deacon, 1684).

punishment site, pelting victims in the pillory, and pulling on the legs of hanging victims to speed up the death. They could also participate in a more metaphysical sense, praying and meditating on the fate of the convict, and performing ballads and verse that broadcast news of the events.

Pain, fear, and horror, experienced by both prisoners and spectators, were felt by the legal authorities to act as visual deterrents against sin and crime, as powerful an argument for the death penalty in the period as retribution. The traditional sentencing formula for hanging in southern Germany and Switzerland specified that the body should remain hanging on the gallows so that ‘others shall witness his punishment as a fright and a warning’.⁴ But it was the emotion of shame that played a central role in public punishment, integrally linked as it was with early modern ideas of honour. Shame was defined in a different way in the early modern period to our modern definition of it as a private, personal emotion, and was instead closer in meaning to the term ‘infamy’. One’s honour was inextricably bound up with the honour of one’s family, which meant that physical disfigurements such as branding and dismemberment were a social stain not just on the convict but also his family, and that the shame of capital punishment had lasting social repercussions for surviving family members beyond the lifetime of the executed criminal. The manual for a Bolognese lay confraternity of comforters, who devoted themselves to helping condemned prisoners prepare for their executions, contains one chapter titled ‘Which deals with how the shame of public execution should be disparaged’, although the manual’s repeated focus on this emotion reveals how significant a factor it was for the condemned.⁵

⁴ Cited in Richard van Dülmen, *Theatre of Horror: Crime and Punishment in Early Modern Germany*, trans. Elisabeth Neu (Cambridge: Polity, 1990), 96.

⁵ *The Art of Executing Well: Rituals of Execution in Early Modern Italy*, ed. Nicholas Terpstra (Truman State University Press, 2008), 212.

With this in mind, each method of punishment was finely calibrated to exact a specific degree of shame. The concept of honour was dictated by social rank and so, while punishments were designed to fit the crime, they also differed according to the convict's social status. In accordance with Roman law, it was believed that the amount of time spent in connection with the weapon of death was in direct proportion to the shame incurred by the criminal. Thus, swift decapitation by the sword or axe was reserved in many countries for the nobility, while those lower down the social scale were left to slowly strangle to death by a hempen rope.

Shame was also linked to the natural elements: to perish by air (as when left to rot on the wheel), by fire (as when burned at the stake), by water (as when drowned), or by earth (as when buried alive), were all considered more shameful by both legal authorities and onlookers than the quick blow of a hand-crafted sword, itself linked with images of chivalry.⁶ Upon death, this shame would be transferred to the family of the condemned, who would suffer ostracism and abuse because of the specific method by which the criminal had been punished. The execution ballad of John Flodder who, in Norwich in 1615, was hanged in chains – a punishment which meant his corpse would decompose while on display, thereby denying him a burial – was explicit about his family's shame due to this particular punishment:

His hated body still on Earth remaines,

(A shame unto his kin) hangd up in Chaines⁷

The stigma conferred on the relatives was so great that in his speech to the newly formed Assemblée nationale in December 1789, the French physician Joseph-Ignace Guillotin proposed six articles in favour of the reformation of capital punishment, of which Article 3

⁶ Evans, *Rituals of Retribution*, 57.

⁷ *The Araigment of Iohn Flodder and his wife, / at Norwidge, with the wife of one Bicks, for burning the Towne of Windham / in Norfolke, vpon the xi. day of Iune last 1615. Where two of them are / now executed, and the third repriued vpon further confession.* (London: John Trundle, 1615)

proposed that ‘The punishment of the guilty party shall not bring discredit upon or discrimination against his family’.⁸ The subsequent transformation of capital punishment to the same brief act of decapitation for all, regardless of rank or criminal deed, followed by burial of the corpse, did away with the centuries-old stigma of shame being transferred onto the surviving kin.

This concept of dishonour was, in many Continental countries, also linked to the profession of executioner, who was responsible for administering all punishments, both corporal and capital, as well as carrying out legislated torture. It was a civic role that often included other unsavoury yet necessary tasks, such as disposing of animal carcasses or managing urban waste and sewage. Executioners and their families were often so stigmatized that they had to live outside town boundaries, wear distinctive clothing, and only inter-marry with other executioner families.

A papal decree of 1312 allowed convicted prisoners the sacrament of confession before their death, which thereafter profoundly changed the status of the condemned for spectators. If visibly repentant, the prisoner could play the role of exemplar, about to enter Heaven after his ordeal. The punishment ritual, with its explicitly religious overtones, was thus intended to evoke compassion in the spectators for one who was suffering in the same way as the Christian martyrs had done. Edward Jackson, executed for treason at Tyburn in 1684, was said by the Ordinary of Newgate to have uttered on the scaffold such ‘Heavenly Expressions, with such Passion, Loudness, and Earnestness, that he melted Hundreds of Spectators into

⁸ Paul Friedland, *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2012), 218-224.

Tears'.⁹ By contrast, if the prisoner was clearly unrepentant, contemporaries were always deeply troubled by what they perceived as a soul presumably on its way to Hell. When Henry Cuffe, executed in 1601 for his role in the Earl of Essex's plot, was openly defiant on the scaffold, declaring his innocence, he was interrupted multiple times by shocked listeners. One official cried,

"O! how dare you decline from the good example of the penitent death your Lord made, that now go about to justify yourself? You must confess your sin, and make satisfaction to the world that you are justly condemned, that you may the better deserve forgiveness for this your foul and traitorous fact, both of God and the Queen."¹⁰

Cuffe's fellow condemned, Sir Gilly Merrick, also interrupted him to advise him to 'spare a discourse, which, however rational, was not very seasonable when he was taking leave of the world.'¹¹ This special status of the condemned, on a transition between the earthly life and the afterlife, is likely to be the reason for the widespread folk beliefs in the magical powers of the blood, body parts, and clothing of the recently executed. It also explains the popularity of songs and prose confessions in the first person voice of the convict throughout the early modern period; such first-person accounts promoted a compassionate view of the condemned and acted as a powerful deterrent, urging listeners and readers to shun sin so as to avoid the same fate.

⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.2, 07 December 2015), *Ordinary of Newgate's Account*, May 1684 (OA16840526).

¹⁰ *Calendar of State Papers, Domestic Series of the Reign of Elizabeth 1601-1603*, Vol. CCLXXIX, 25. (March 13 1601) 'Speech of Mr. Cuffe at his execution for treason'; Document Ref.: SP 12/279 f.35

¹¹ *Cobbett's State Trials*, Vol 1 (London: Hansard, 1809), 1413.

The rise of a culture of sensibility in the eighteenth century led to a belief among elites that visually witnessing the physical punishment of others was emotionally unacceptable for those who were 'properly elevated'. The introduction of the guillotine in France in 1792 was intended to address the growing dissatisfaction with the ubiquitousness of executions, the cruelty of execution techniques, capital punishment's inefficacy as a deterrent, and – most importantly – the inequality inherent in using different execution methods for criminals of different social status. As the ultimate levelling device of a newly-enlightened penal system in which everyone got executed the same way, the guillotine's shocking ability to end life in a split second also managed to remove all need of the executioner, and with him, over half a millennium of infamy associated with the myriad ways in which he could punish and destroy the body.

Thus, although many European countries did not abolish the death penalty – and in some cases were still publicly executing prisoners – until the twentieth century, Enlightenment ideals created an intellectual and emotional climate that transformed centuries of beliefs around the public, communal nature of punishment. Instead of a system in which each member of the community was involved in the expiation of sin through a range of punishments that reflected and reinforced social hierarchies, the growing belief in the rights and dignity of the individual decreed that such public display of a person's shame and humiliation was 'cruel and unusual' punishment.

Given the early modern belief that punishment should be terrifying and shameful enough to be a deterrent as well as a quasi-religious experience designed to invoke compassion, it is a topic which historians have always felt comfortable discussing in terms of the emotions it provoked. The highly sensationalised reporting of early modern executions has therefore

proved to be a productive source for this research. However, while some work has been done on dishonour and the role of the executioner for France and the German lands, we still need a more precise understanding of the role that shame played in early modern punishment rituals. Given the communal nature of punishment in the early modern period, there also needs to be more work done on the performativity – of convicts, officials, and spectators – during these often lengthy and detailed rituals.

Further Reading

van Dülmen, R., *Theatre of Horror: Crime and Punishment in Early Modern Germany*, trans. Elisabeth Neu (Cambridge: Polity, 1990)

Van Dülmen's work remains seminal in the field for its attention to the methods, rationales, and outcomes of the execution ritual in the German lands.

Friedland, P., *Seeing Justice Done: The Age of Spectacular Capital Punishment in France* (Oxford: Oxford University Press, 2012)

Friedland's recent study, applicable not just to France, is valuable for its interrogation of the motives behind the eagerness with which spectators flocked to public executions, and how the revolution in sensibilities spelled the end of public punishment.

Gatrell, V.A.C., *The Hanging Tree: Execution and the English People 1770–1868* (Oxford: Oxford University Press, 1996)

Examining how attitudes to execution in England evolved over the eighteenth and nineteenth centuries, Gatrell's study is valuable for its use of sources from a range of social levels, particularly those which allow us insight into the emotions of the lower classes.