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# Punishment and Sociocultural Development in the Later Middle Ages

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## **Punishment and Sociocultural Development in the Later Middle Ages**

SCOPVS LEGIS EST, AVT VT EV QVE PVNIT EMENDET, AVT POENA EIVS  
CAETEROS MELIORES REDDET AVT SVBLATIS MALIS CAETERI  
SECVRIORES VIVAT.

*The aim of law is either to correct him who is punished, or to improve the others by his example, or to provide that the population live more securely by removing wrongdoers.*

(Orenstein 2001, 177)

Thus reads the inscription beneath the engraving of Pieter Bruegel the Elder's *Justitia*, a poignant representation of punishment, torture, and execution in mid-sixteenth century France. The left half of the engraving, a showcase for some of the various forms of public execution and punishment commissioned throughout the later Middle Ages, exhibits wrongdoers being crucified, hanged, broken on the wheel, and burned at the stake. One man is seen kneeling in what appears to be a pool of blood, presumably not his own, as he anticipates the ultimate blow of the executioner, while another man is forced to swill an unidentified liquid whilst he is simultaneously stretched and tortured on the rack. Also visible in the engraving are a few of the punishments reserved for lesser crimes, such as flagellation and dismemberment.

Many modern explanations for the justification of punishment tend to rely on the functions of punishment elucidated by Bruegel's *Justitia*. Writing more than four centuries after Bruegel's death, Thorsten Sellin similarly suggests that "the services to the community that the death penalty might be expected to perform are (1) the satisfaction of the demand for retribution by making the criminal pay for his misdeed with his life; (2) the realization of the hope that his execution will discourage others from committing capital crimes, i.e., general deterrence; and (3)

the removal of the danger that his survival would pose to society, i.e., prevention” (1980, 6). For centuries, scholars have attributed the function of justice and punishment to one of these three observations, with each explanation based upon one of two antithetical theories of punishment: retributivism and utilitarianism. The objective of this paper is to examine the contributions of each theory as applied to past and current justifications for punishment in the later Middle Ages, as well as to provide the basis and understanding for its application to a sociocultural framework.

### **Theories of Punishment: Retributivism and Utilitarianism**

For more than half a millennium, historians writing about punishment and execution in the later Middle Ages have conformed their analyses with the premises of either the retributive theory of punishment or the utilitarian theory of punishment. Retributivism suggests that punishment is justified because the offender deserves to be punished. According to Michael Cavadino and James Dignan, retributivism “looks backwards in time, to the offense. It is the fact that the offender has committed a wrongful act that deserves punishment, not the consequences of punishment, that is important to the retributivist” (2007, 44). Punishment is therefore justified by retributivists as an end within itself. It is in this idea of just desert that retributivists find justification for their theory of punishment. Utilitarianism, on the other hand, takes into consideration the perceived benefits to society that are produced from the punishment and suffering of the wrongdoer. The utilitarian theory therefore attempts to justify punishment by nature of its extrinsic social value. As C. L. Ten explains, utilitarians believe that “the right act is that which produces the greatest utility, or is most conducive to the welfare of all those affected by the act” (1987, 3). Punishment thus serves as the means to a desirable social outcome because the positive consequences of punishment outweigh the negative consequences of non-punishment.

As mentioned earlier, each of the three functions of punishment correspond to either the retributive or the utilitarian theory of punishment. The first of these functions, the correction of the offender, is consonant with the claims of the retributive theory. Unlike the second and third functions, which take into consideration the social consequences of punishment, the first function focuses entirely on the individual. If a transgression warrants punishment, the criminal is corrected. The offender thus deserves, or rather receives, something that he or she would not otherwise have had. In this sense, retributivism “strikes the offender ... [and] cancels his debt to society” (Sellin 1980, 6). The second and third functions of punishment are consistent with the notions of the utilitarian theory. The second function, punishment of the offender as an example to the other members of society, corresponds to the utilitarian principle of deterrence. As such, the spectacle of punishment serves to dissuade others from committing acts of crime. The third function, the removal of the individual from society, also pertains to the utilitarian theory in that the absence of the offender precludes him or her from perpetrating additional acts of social deviation and detriment. In both instances, the future consequences of punishment are preferred to the extant conditions concomitant with non-punishment.

Although the matter of justification as it relates to public execution and punishment in the later Middle Ages has for centuries been a subject of contentious debate, a preponderance of historians have elected to focus on the didactic, or utilitarian, functions of punishment. In most instances, these scholars cite the deterrence of the would-be offender as the most common justification for punishment. As such, both the administration of justice and the spectacle of punishment wrought to benefit the members of society. The fourteenth century works of Neapolitan scholar Lucas de Penna (1320-1390) demonstrate this utilitarian function of deterrence when he reasons that the purpose of public execution and other forms of punishment

is to avert future crime by “inculcating fear of punishment in potential criminals” (Sellin 1980, 76). Writing on the subject of punishment in fifteenth century France, Christine de Pizan (1363-1430) similarly contends that “no one will want to become evil when everyone will know that you are their punisher ... in this way there will necessarily be peace among [the] people, which is the glory and dignity of every kingdom” (Gauvard 1999, 26-7). Recent scholarship likewise suggests that public execution and other forms of punishment common to the later Middle Ages served a utilitarian purpose. As Esther Cohen explains, public executions served as “both punishment and lesson ... while one suffered the penalty, others benefitted from the lesson” (1993, 149). It is worth mentioning, however, that there is some division among adherents of the utilitarian theory concerning the efficacy of punishment as a mechanism for deterrence. According to J. A. Sharpe, “the deterrent effects of public execution, despite the wishes of the state [and] the energies of the clergy ... should not, perhaps, be overestimated” (1985, 167). Sellin likewise suggests that although public executions and other forms of punishment in the Middle Ages were supposed “to foster law obedience by the subsidiary deterrent effect they would have on potential offenders ... deeply rooted sentiments of primitive justice, animating the law and its enforcers, called primarily for retribution” (1980, 75).

Michel Foucault, in his infamous work *Discipline and Punish*, similarly suggests that public execution and torture acted as a means of deterrence, although modern historians are often critical of Foucault's surmise that punishment functioned primarily as an instrument of repressive social control. According to David Garland, Foucault's social control of punishment model exposes modern scholars to assumptions that are both “intellectually constraining” and “counterproductive” (1990, 3). Trevor Dean moreover argues that *Discipline and Punish* “has had the unfortunate consequence of reinforc[ing] older opinions ... which allowed for their idea

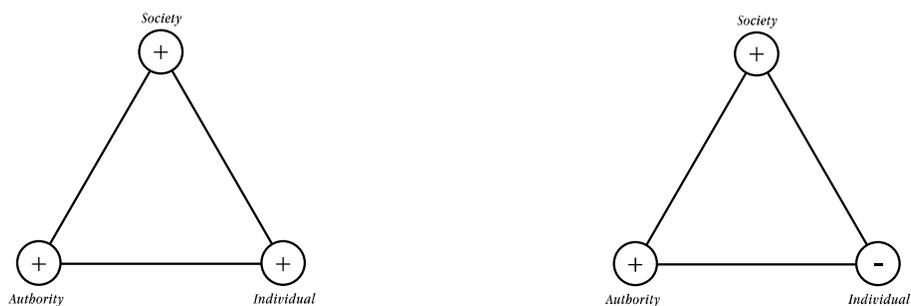
of late medieval justice to be filled by images of extreme cruelty” (2001, 120). Dean's pointed criticism is also directed towards Johan Huizinga, who, like Foucault, suggests that life in the Middle Ages was both dominated by and obsessed with immeasurable acts of ruthless barbarism. “So violent and motley was life,” writes Huizinga, “that it bore the mixed smell of blood and roses. The men of that time always oscillate between the fear of hell and the most naïve joy, between cruelty and tenderness, between harsh asceticism and insane attachment to the delights of this world, between hatred and goodness, always running to extremes” (Huizinga 1954, 27). It is worth emphasizing once more that modern historians are generally unreceptive to the conjectures of Foucault and Huizinga. Recent scholarship also remains skeptical of authors who insist without evidence that punishment functioned primarily as a method for repressive social control.

### **Sociocultural Foundations: Utilitarianism Meets Esotericism**

Although most historians subscribe to the consequentialist underpinnings of the utilitarian theory, this does not mean that scholarship, current or past, is or has been confined exclusively to a singular, cohesive theory of punishment. Recent trends, however, demonstrate that historians are now grasping for a more comprehensive, multidisciplinary approach to the concepts of justice and punishment in the later Middle Ages. As Sharpe contends, historical analysis of public execution and other forms of punishment should be read “in a broader social and cultural context” (1985, 147). Danielle Westerhof similarly suggests that public executions ought to be considered “in a wider sociocultural context,” adding further that scholars should bring into disrepute “the narrower view of these events as state-controlled legalized acts of repressive violence or as emotive expressions of personal hatred and frustration” (2007, 106). This notion of a sociocultural context mentioned by Sharpe and Westerhof is also elucidated by Cohen when

she proposes that “the law was meant not only to punish but primarily to redress the social balance.” “Implicit in the actual execution of justice,” Cohen continues, “was the perception of the law as a vehicle for human relations rather than a behavior-control mechanism” (1990, 286-7). What all three authors appear to propose is that public executions and other forms of punishment in the later Middle Ages served as a means of social engineering that, in the broadest of esoteric strokes, reinforced the social fabric of the times by contributing to the development of both the individual and society.

The basis for the sociocultural framework expounded by Sharpe, Westerhof, and Cohen is derived from Fritz Heider's Balance Theory, which attempts to explain human interaction in terms of benefit and harm. As Heider explains, a balanced state is “a situation in which the relations among entities fit together harmoniously; there is no stress towards change. A basic assumption is that sentiment relations and unit relations tend toward a balanced state ... if a balanced state does not exist, then forces toward this state will arise. If a change is not possible, the state of imbalance will produce tension” (1983, 201). The following example, a simplified rendering of Heider's model of interpersonal relations (1983, 208), reflects the ways in which public execution and other forms of punishment and torture promoted development and stability in the later Middle Ages:



The model on the left reflects a balanced sociocultural structure. When the relations among

authority, society, and the individual “fit together harmoniously,” that is, when all three entities function in accordance with the rule of law and other established norms, the sociocultural structure is balanced and “there is no stress towards change” (1983, 201). If one of these entities runs counter to the forces of a balanced state, in this case as the result of negative action or deviation by the individual, the other two forces of authority and society will act upon the individual to redress the imbalance.

Elaine Scarry argues that the balancing effect of these forces, the “deconstruction” of the criminal's world, made possible the “construction and reconstruction” of the existing social structure in the later Middle Ages (1985, 161). Marla Carlson believes similarly that the ritual of public execution “erase[d] and reinforce[d] social differentiation” (2003, 80). In either case, the authors both suggest that the corrective nature of extant sociocultural forces allowed for the simultaneous “making and unmaking” of reality (Scarry 1985). Westerhof likewise contends that public executions functioned not to “eradicate the memory of the criminal and crime” but rather to preserve the memory of both, acting as a sort of utilitarian deterrence for the rest of society. (2007, 105). Scholars have also emphasized the “spectacle of suffering” (Spierenburg 1984) as an important component of the social engineering process in the Middle Ages. As Mitchell Merback suggests, communal participation was crucial to medieval perceptions of crime and the rule of law (1999, 32). Pieter Spierenburg similarly reasons that in order for the punishments to be effective, the public had “to see that 'justice reigned' ... [since] the reign of justice implied the presence of persons powerful enough to catch and punish transgressors of the law” (1984, 55). The correction of the individual in the Middle Ages thus preserved the social order and ensured the stability of the entire system.

Jean Froissart's account of the fourteenth century public execution of Hugh Despenser the Younger demonstrates the sociocultural dynamics of punishment in the later Middle Ages.

The following description takes place after Despensers had been “bound to the smallest, thinnest, and most weakly horse” and ceremoniously paraded to the sound of music throughout a number of English towns:

First, he was dragged on a hurdle through all the streets of Hereford, to the sound of horns and trumpets, until he reached the main square of the town, where all the people were assembled. There he was tied to a long ladder, so that everyone could see him. A big fire had been lit in the square. When he had been tied up, his member and his testicles were first cut off, because he was a heretic and a sodomite, even, it was said, with the King, and this is why the King had driven away the Queen on his suggestion. When his private parts had been cut off they were thrown into the fire to burn, and afterwards his heart was torn from his body and thrown into the fire, because he was a false-hearted traitor ... After Sir Hugh Despensers had been cut up in the way described, his head was struck off and sent to the city of London. His body was divided into four quarters, which were sent to the four principle cities of England after London. (Froissart 1981, 44)

The public humiliation and morbid execution of Hugh Despensers the Younger might perhaps compel the reader to reconsider the criticisms of Foucault and Huizinga. But if, as Foucault suggests, public executions indeed functioned as ceremonial "exercise[s] of terror" (1977, 49), one might feel inclined to ask the question: for whom? Certainly not the spectators. That “*all the people*” of the town had gathered to partake in the darkest moments of Young Despensers' life suggests their desire to be part of something greater than just themselves. This sort of communal interest and involvement demonstrates not the presence of a crowd repressed by the state, but rather that of an audience fascinated by the rule of law and the implementation of justice. Sharpe

similarly contends that public executions were “not simple display[s] of brutality intended to cow or entertain some animalistic mob.” Rather, Sharpe maintains that public executions were a matter of “ceremony and ritual,” adding further that “the reactions which they aimed to incite among spectators were ... more complicated than mere terror” (1985, 146-7).

Relevant also to Froissart’s account of Hugh Despenser’s death are the statements of Bruegel and Sellin. In this instance, it would appear that all three justifications of punishment are valid: Despenser’s death served first to redress the social imbalance of his crime by dispensing his just desert; second to warn others of the consequences of his transgressions; and third to improve society by eliminating the threat of any future transgressions on the part of Despenser. As such, both the retributive and utilitarian justifications for punishment are evidenced by the execution of Hugh Despenser the Younger. According to Froissart, the punishment administered to Despenser was not inconsistent with the punishments dispensed to other traitors. Accordingly, Despenser’s execution served a retributive purpose in that he received a just desert consonant with those meted out to other conspirators at the time. Hugh Despenser’s execution is also consistent with the utilitarian justifications for punishment in that the consequences of his extirpation functioned ultimately to advance the social welfare, presumably in the forms of deterrence and prevention. When these forces collide, the sociocultural dynamics of Hugh Despenser’s execution become more apparent, and thus add new meaning to Spierenburg’s spectacle of suffering. The exemplum of Hugh Despenser the Younger benefitted society not only because it deterred and prevented future occurrences of crime and social deviation, but also because it contributed to the growth of both the individual and society by reinforcing structure and stability in the Middle Ages. As Spierenburg similarly suggests, public executions

influenced "two areas of social development: the development of mentalities and changes in human organization" (1984, 200).

This paper has considered the application and meaning of punishment in the later Middle Ages. The retributive and utilitarian theories of punishment help to explain the reasons for such punishment, while primary sources such as Bruegel's *Justitia* and Froissart's account of the execution of Hugh Despesner the Younger elucidate further the manner in which punishment likely played out in practice. Although these events are far from universal, such occurrences are neither isolated nor infrequent. When examined through a sociocultural framework, these episodes provide an avenue for a better understanding of the sometimes 'horrific' episodes of punishment and public execution in the later Middle Ages.

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