

The Medieval Blood Sanction and the Divine Beneficence of Pain: 1100 - 1450

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*Here the worldling now all bound in fetters lies
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's door.¹*

Across medieval western Europe those who committed serious wrongs, such as homicide, arson, treason, and rape were subject to a wide range of capital punishments that were seemingly brutal, frequently bloody, and at times spectacular. Grisly images of an executioner dismembering a condemned's limbs from his torso, smashing his chest cavity, gouging his eyes, or piercing his body with hot pokers are the common subject of scaffold art in the high middle ages.² Such images attest to the critical role of pain in medieval capital punishment. Whereas in our day all attempts are made to render penal death painless, in the high and late middle ages the tie between pain and death is not only tolerated but purposefully exacerbated.

Other forms of punishment did exist. While imprisonment rarely was awarded for serious crime,³ in some parts of Europe a serious offender might escape the gallows by paying a

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¹ Anon., *Des bekannten Diebes, Morders und Raubers Lip Tullians, und seiner Complicen Leben und Ubelthaten*. . . (Dresden, 1716) (discussed and translated in Richard Evans, *Rituals of Retribution: Capital Punishment in Germany* (Oxford, 1996), p.97.

² Lionello Puppi, *Torment in Art: Pain, Violence and Martyrdom* (New York, 1991), pp. 1-50.

³Ralph Pugh, *Imprisonment in Medieval England* (Cambridge, 1968); Jean Dunbabin, *Captivity and Imprisonment in Medieval Europe* (New York, 2002) are the two major works on medieval imprisonment. Ecclesiastical imprisonment for wayward monks or nuns functioned as

hefty fine, or by abjuring the realm as a result of being exiled or of promising to make pilgrimage.⁴ So too, a vast array of impediments to capital punishment were available. Procedural delays at trial were relatively easy to obtain. And those who had committed serious wrong could save life and limb by availing themselves of sanctuary, applying to the king for a pardon, or invoking the claim of benefit of clergy. Still, a convicted felon could find himself on the gallows or hoisted upon the wheel where he was likely to undergo intense physical suffering.

It is with this experience of penal pain that this paper is concerned. The aim of this enquiry is to trace those conditions of thought which situated the medieval blood sanction as an appropriate response to serious wrongdoing. Accordingly, and contrary to scholars such as Elaine Scarry who argue for a naturalistic understanding of pain whereby its experience is

an accepted practice within the monasteries by the beginning of the eleventh-century. In the secular realm, from the early twelfth-century in England imprisonment was used not only for custodial and coercive purposes, but for punishment as well. Thus, for example, those who had failed to carry through on the prosecution of an appeal might find themselves in gaol or Tower. Glanvill, *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill*, trans. G.D. Hall (Oxford, 1994), p. 21. So too, in Bracton's day, an appellant offering trial by battle and withdrawing on the field was sent to prison, though recommended to mercy. Henry Bracton, *On the Laws and Customs of England*, trans. S. Thorne (4 vols, Cambridge, 1968), vol.2, p. 401. While such confinements were coercive, often they contained a penal element. For example, the length of sentence was often indefinite or in cases of definite sentences the release was not conditioned upon the prisoner meeting an obligation such as the payment of debt or carrying through with a prosecution. Pugh, *Imprisonment*, pp. 5-9. The same can be said of the Continent. As in England, rulers used imprisonment as an alternative to a blood sanction when the wrongdoer was thought to be too politically important to be punished in the usual way. Dunbabin, *Captivity*, p. 100. Occasionally coercive imprisonment could also carry a penal aspect. Still, from the twelfth to the fifteenth-century secular courts punished by imprisonment only on an ad hoc basis.

⁴ Trevor Dean, *Crime in Medieval Europe* (London, 2001), pp. 118-144.

actively destructive of language and the world,⁵ this article argues that the experience of pain in punishment can only be understood as a happening *in* a historical world. Thus what punitive pain signifies, its rhyme and reason, indeed its experiential shape, depends upon the cultural sensibility of a given age.

As legal historians note, the period from the twelfth to the fifteenth-century witnesses a dramatic change in the way that medieval men and women viewed serious wrongdoing.⁶ Whereas in the central middle ages, crimes such as homicide, arson, and theft were typically considered to be private wrongs that entitled the victim or his kin to demand compensation or to engage in a blood feud, beginning in the twelfth-century serious wrongdoing came to be seen as an offense against a community and subject to the infliction of punishment.⁷ Over the centuries, as this new conception of serious wrong takes hold, the punishments that attach to crime steadily increase in severity. Historians see this trend as the outcome of a preventative jurisprudence. “Cruel punishment taught a lesson . . . to the populace at large. The sight of punishment deterred crime.”⁸ Yet, as other historians note, a hallmark of medieval dispute resolution – in both the

⁵ Elaine Scarry, *The Body in Pain: The Making and Unmaking of the World* (New York, 1985), p. 13.

⁶ Frederick Pocock, “The King's Peace in the Middle Ages,” *Harv. L. Rev.* 13 (1900), p. 177; J.H. Baker, *An Introduction to English Legal History* (3d. ed. 1990), p. 571. Patrick Wormald has argued that this movement occurred earlier than Henry II's reforms, where most historians place it. He argues that in late Anglo-Saxon law there was already a move from compensation to penalty by the King's hand. Patrick Wormald, “Frederic William Maitland and the Earliest English Law,” *Law & Hist. Rev.* 16 (1998), p. 16.

⁷ Michael Weisser, *Crime and Punishment in Early Modern Europe* (New Jersey, 1979), pp. 52-67; Dean *Crime*, pp 125-126.

⁸ Dean, *Crime*, p. 126.

civil and criminal spheres – was a belief in the importance of concord and reconciliation.⁹

Diverse practices and procedures such as the royal pardon, the privilege of sanctuary and the high acquittal rate of the English jury (to name but a few) all found justification in the belief that the aim of justice, criminal or otherwise, was to restore right relations between a wrongdoer and those he had offended individually and as a community.¹⁰

This paper argues that while one cannot discount the language of deterrence that crops up in assorted sources, the cultural acceptance of the blood sanction lay less with such utilitarian concerns and more with that set of conciliatory principles that informed dispute resolution more widely. The ideal of concord, in turn, was shot through with spiritual meaning. It both shaped and shaded the medieval view of punitive pain. As Roselyne Rey notes, within medieval Christendom, bodily pain possessed an affirmative and positive meaning as that which was to be endured as a divine gift, as a sacrificial offering that allowed the one suffering to share in Christ's passion, or as a sign of purgation that offered the hope of man's redemption.¹¹ This

⁹ See e.g. Richard Firth Green, *A Crisis of Truth* (Philadelphia, 1999), pp.81-83; Paul Hyams, "Trial By ordeal: The Key to Proof in the Early Common Law," *On the Laws and Customs of England: Essays in Honor of Samuel Thorne* eds. M Aronold, T. Green, & S Scully (1981), p. 98; Michael Clanchy, "Law and Love in the Middle Ages," *Disputes and Settlements: Law and Human Relations in the West*, ed. John Bossy (1983); Trisha Olson, "Of Enchantment: The Passing of the Ordeals and the Rise of the Jury Trial," *Syracuse Law Review* 50 (2000), pp. 138-141; T Kuehn, "Arbitration and law in Renaissance Florence," *Renaissance and Reformation* 23 (1987), pp. 289-92

¹⁰ Thomas A Green, *Verdict According to Conscience* (Chicago, 1985), pp. 1-30 (on jury nullification); Naomi Hurnard, *The King's Pardon for Homicide Before A.D.1307*, (Oxford, 1969), is the only full treatment of the prerogative in English in this period. For the Tudor period see K.J. Kesselring, *Mercy and Authority in the Tudor State*, (Cambridge, 2003). For France see Claude Gauvard, "De Grace Especial," *Crime, etat et Societe in France a la fin du Moyen Age* (Paris, 1991). On sancruary see Trisha Olson, "Of the Worshipful Warrior: Sanctuary and Punishment in the Middle Ages," *St. Thomas Law Review* 16 (2004), pp 494-496.

¹¹ Roselyne Rey, *The History of Pain* (London, 1995), p. 49.

same cluster of beliefs informed medieval punishment even in its most excruciating and sanguinary form. In the realm of the schoolmen, in the cloister of the mystic, within the poetic imagination, and in the space of the execution where men and women came to witness the death of the condemned, one encounters the conviction that his torment opened rather than closed a path to conciliation. At its core the medieval execution was neither a celebration of expulsion nor a passive witnessing of exemplary terror. To be sure, these themes had their place. But they did not predominate. Rather, the medieval execution was a ritual that opened the possibility for the condemned who died well to be transfigured in the eyes of the spectators into a holy vessel whose suffering signaled his entry into heaven and his reconciliation with his community.¹² Our task is to trace the details of this thought within medieval texts that spoke to the spiritual significance of bodily pain. We then look at the way those conditions of thought intersected with the spontaneous practices and customs that attended the execution. Such an enquiry, I argue, opens a way to understanding the intelligibility of frequently bold and dramatic capital punishments to the culture that practiced them.

Part One provides an overview of medieval punishment for serious wrongdoing as it existed from the twelfth to the fifteenth-century. Notwithstanding the diversity of procedures that existed in western Europe, certain themes will appear that cut across space and time and

¹² In the realm of art history some work has been done on the redemptive meaning spectators attached to the execution though the place of pain in this understanding has not been explored. See Mitchell B Merback, *The Thief, the Cross and the Wheel* (Chicago, 1999), pp. 155-156; Samuel Edgerton, *Picture and Punishment: Art and Criminal Prosecution During the Florentine Renaissance* (Ithaca, 1985). Similar work has been done by French and Italian legal historians for a little later period. Michel Bee, “la Spectacle de l’execution dans la France d’Ancien Regime,” *Annales XXXVIII* (1983), pp. 843-62; Adriano Prosperi, “Il sangue e l’anima ricerche sulle compagnie di giustizia in Italia,” *Quaderni Storici* 51 (1982), pp. 959-999.

which are suggestive of common modes of thought.

Part Two turns to the learned discourses upon pain that provided part of the cultural context for the blood sanction's imposition. The question hovering in this section is whether one *can* discern a shared understanding of bodily pain that cuts across various genres? Attempting to answer this question requires looking at diverse sources and thus much time is spent upon the discourses of theology, medicine, and law as well as upon texts written by those caught by an affective piety. One learns from these texts that the way in which various disciplines and orthodoxies understood suffering was deeply bound up with how each conceived of the relationship between the soul and body. This relationship, in turn, affected discourses upon pain's import to man's longing for God, to his experience of and participation in evil, and finally to the justification for his punishment when he did wrong. After tracing the way in which these ideas conjoined to form a framework for medieval thought about the significance of bodily penal pain, we turn to Dante's *Divine Comedy* for it is here that the nexus between suffering, redemption, and punishment finds its most luminous and exact rendering.

In Part Three we turn to the popular practices that attended the infliction of corporeal punishment. By relying on a variety of sources that speak to infliction of capital punishment, we can discern patterns of thought that while not fully formed or schematized are nevertheless unabashed in viewing the condemned's pain as both a sign of his redemption and as a conduit for its realization.

Two points should be made. First, much time is spent in this enquiry considering the thought of exceptional personages such as Thomas Aquinas, Julian of Norwich, Catherine of Siena and Dante. Some may doubt whether these men and women may be considered to be

culturally representative. Yet, while these were exceptional men and women, it is also true that they were chosen by their contemporaries “as heroines, [heros], mirrors, and lessons – as lenses through which God’s power and human aspiration were focussed toward each other.”¹³ Thus the experience and thought of these theologians, saints, and poets tells us something about the normative tenets concerning pain that were held by the culture that admired and lauded them. Second, given the ambition of this project to explore a variety of discourses, it is not possible to mount a detailed investigation into the diffusion or reception of various texts or to trace all the potential influences upon individual authors. Yet, the aim here is not to establish, for example, that Catherine of Siena read Thomas Aquinas and that therefore *he* must have influenced her vision of the import of bodily pain. Rather, the aim is to see whether by juxtaposing dramatically different texts one can tease out a shared core set of beliefs about the meaning of bodily pain in the context of punishment.

I. The Birth Of Criminal Law and the Function of Punishment

We begin with a brief overview of the salient features of the nascent criminal law as it emerges in the late twelfth and thirteenth-century.

A. Public Crime and the Emergence of Punishment

From the twelfth to the fourteenth-century across western Europe the conception of wrongdoing as a private affair between a wrongdoer and his victim steadily gives way to an idea of serious wrong as an offense against the entire community which is subject to punishment by the lord or king who acts on the community’s behalf.

¹³ Caroline Walker Bynum, *Holy Feast, Holy Fast: The Religious Significance of Food to Medieval Women* (London, 1987), p. 7.

This transition first occurs in England where by the time of Henry II serious offenses such as homicide, larceny, robbery, arson, and rape had become pleas of the crown and were punishable by death or mutilation.¹⁴ Frederic Maitland writes, “On no other part of [English] law did the twelfth-century stamp a more permanent impress of its heavy hand” than on that which was to “be the criminal law of after days.”¹⁵ In moving from the beginning of the century to its end, Maitland notes, one is keenly aware that they come to breath a “different air.”¹⁶ In contrast, there existed no well-developed state in twelfth-century France. The blood feud remained rampant, and private courts dotted the landscape as a result of the Carolingian age’s granting of immunities that gave lords jurisdiction over their fiefs and manors.¹⁷ Accusation during this period continued to be a matter of private law.¹⁸ In those territories that would become France, negotiated peace remained the norm.¹⁹ Yet, like England, and through the rule of strong kings such as Philip II and Louis IX, the crown established its authority and concomitantly its role as a guardian of justice.

In contrast to England and France, The Holy Roman Empire in the thirteenth-century

¹⁴ T.Green, *Verdict According to Conscience*, pp. 9, 30.

¹⁵ Frederic Maitland & F. Pollock, *The History of English Law* (2 vols, Cambridge, 1968), vol. 2, p. 446.

¹⁶ *Ibid.*

¹⁷ Marc Bloch, *Feudal Society*, L. Manyon trans., (2 vols, Chicago, 1961), vol. 2, p. 359. It was not until the end of the fifteenth-century that the Capetians succeeded in bringing the last of the fiefs under royal control.

¹⁸ Julius Goebel, *Felony and Misdemeanors* (1937), pp. 229, 237.

¹⁹ Patrick J. Geary, “Living With Conflict in Stateless France,” *Living with the Dead in the Middle Ages* (Ithaca, 1994), pp. 149-151; Stephen D. White, “Feuding and Peacemaking in the Touraine Around the Year 1100,” *Traditio* 42 (1986), pp. 195, 197.

lacked effective royal courts and feuding continued to be a dominant method of dispute resolution for serious wrong. Still, the *Saxon Mirror* of c.1225 indicates that notwithstanding the multiplicity of jurisdictions that existed within the empire, there was by the thirteenth-century a developing sense that all judicial authority came from the Emperor.²⁰ Through the assorted incorporation of criminal punishments promulgated by rulers at various times and copied into manuscripts of the *Mirror*, one sees “a steady shift from a wergeld system of composition to a system of criminal law.”²¹ A hint of how a legal text mirrored cultural perception is given by literary works such as Der Stricker’s *Karl der Grosse* (1215-30) where the legend of the death of Charlemagne’s nephew Roland as a result of his betrayal by Genelun is cast as a confrontation between the law of personal justice, feud, and compensation and law as an expression of Divine will as represented by the Emperor and which, when transgressed, damages the Empire as a whole.²² Similarly, in the Italian city states, beginning in the late thirteenth-century, one can trace the movement away from a conception of serious wrongdoing as a personal and private matter between the wrongdoer and his victim toward a public conception of wrong as against “*honorem et bonum statum comunis*” (Siena, 1236).²³

²⁰Maria Dobozy notes that the many manuscripts that exist of the *Sachsenspiegel* provide “ample evidence that the book was conceived broadly enough to be valuable to a wide audience both inside and outside the German speaking parts of the empire.” *The Saxon Mirror*, trans. Maria Dobozy (Philadelphia, 1999), p. 17.

²¹ *Ibid.* p. 21.

²² On both the dissimilarities and continuity between Father Konrad’s *Rolandslied* (c. 1172) and Der Stricker’s *Karl der Grosse* see Vickie L. Ziegler, *Trial by Fire and Battle in Medieval German Literature* (New York, 2004), pp.21-51.

²³ Sara Rubin Blanshei, “Crime and Law Enforcement in Medieval Bologna,” *Journal of Social History* 16 (1982), pp. 121-38; P. J. Jones, *The Italian city-state: From Commune to Signoria* (Oxford, 1997), pp. 377-379; G. Ruggiero, *Violence in Early Renaissance Venice* (New

The belief in the right of personal vengeance did not disappear even in those places where a conception of wrongdoing as a public offense gained ground the most quickly. Indeed, frequently felonies could be considered as both a private and a public wrong. Thus in Flanders during the late twelfth-century execution of an offender might still be left to a volunteering kinsman of the victim.²⁴ Similarly in England in the early fourteenth-century, a victim of rape might be expected to gouge out the eyes and/or severe the offender's testicles herself.²⁵ By the mid-fourteenth-century, however, royal authority over the trial and punishment of crime had asserted itself in western Europe.²⁶

This movement toward a public conception of crime was accompanied by an increase in the severity of prescribed punishments. By the fifteenth-century serious crime was punished by death throughout western Europe. The manner of execution varied according to the nature of the crime and/or a region's customs. By the late twelfth-century all felonies in England were punishable by death. The penalty usually imposed was hanging, though traitors, if they were men, were dragged along the ground to the gallows by ropes attached to horses.²⁷ From at least

Jersey, 1980).

²⁴ R.C. Van Caenegem, "Law and Power in Twelfth Century Flanders," *Cultures of Power* ed. Thomas N Bisson (Philadelphia, 1995), p.162.

²⁵ *The Eyre of Kent of 6 and 7 Edward II (1313-1314)*, ed. F.W. Maitland, L.W. Vernon Harcourt and W.C. Bolland, (Seleden Soc., London, 1909), p. 134.

²⁶ A Esmein, *A History of Continental Criminal Procedure*, trans. John Simpson (London, 1914), pp. 50-51.

²⁷ Suzanne Lewis, *The Art of Matthew Paris in the Chronica Majora* (1987), p. 235; Henry Summerson, "Attitudes to Capital Punishment in England," *Thirteenth Century VIII* eds. Michael Prestwich, Richard Britnell and Robin Frame (Woodbridge, 2001), pp. 120-134. There were exceptions to hanging. *Britton* tells us that burning was the penalty for arson, sodomy, sorcery, and heresy. *Britton*, ed. Francis.M. Nicolas (Oxford, 1885; 2 vols. reprint 1983), vol. 1,

the mid-thirteenth-century the body was sometimes disembowelled and then dismembered after hanging.²⁸ Women were burnt alive.²⁹ Frequently the method of execution depended upon local custom. In Kent, the Eyre rolls record felons as having been “drowned by judgment” or buried alive.³⁰ In Dover convicted offenders were thrown from the cliffs.³¹ So too, those who committed felonies that involved an element of treachery — such as wives who killed husbands, parricides or homicides who killed with stealth — faced the torment of a more brutal death.³²

On the continent, punishments for serious wrongdoing were no less severe. In Germany, as was true across western Europe, those wrongs which involved treachery were designated as treasonable offenses incurring death. Thus for example, the slaying of someone while he was asleep or the seduction of a married woman were spoken of as treason. In Nuremberg women were buried alive for simple theft. And in the *Saxon Mirror*, the customary law of Saxony provided that thieves were to be hanged if the amount lost was above three shillings. All murderers, traitors, murderous arsonists, and thieves who stole from a mill or church were to be

pp. 41-42.

²⁸ *Recueil des Chroniques par Jehan de Waurin* trans. and ed. W. & E.L. C. P. Hardy (London, vols. 5 1864-91), vol. 2, p. 41-43.

²⁹ *Westminster Chronicle*, p. 323 (speaking of sentence of Elizabeth Wanton burnt for aiding in death of her husband in 1388).

³⁰ Summerson, “Attitudes,” p. 124.

³¹ *Ibid.*

³² In England, in 1352, Parliament distinguished “petit treason” (the killing of a superior) from high treason for the first time by statute though the distinction had a long history in customary law. W. M. Ormrod (ed.), 'Edward II: Parliament of 1352, Text and Translation', in *The Parliament Rolls of Medieval England*, ed. C. Given-Wilson et al., item 4. CD-ROM. (SDE, Leicester, 2005) {hereinafter *The Parliament Rolls of England*}.1352, p. 239.

broken on the wheel.³³ Robbers and men who raped were to be beheaded while faithless Christians who practised magic were to be burned on the pyre.³⁴

Similarly in the mid-thirteenth-century Philippe de Beaumanoir writes in regard to the customs of Beauvais that “whoever is arrested for a serious crime and convicted, for example, for murder, or treason, or homicide, or rape, should be drawn and hanged” and so too” he forfeits all his wealth to the lord.”³⁵ Arsonists, and thieves are to be hung, sodomites are to be burned, and counterfeiters are to be boiled.³⁶ Again, treason is given a broad definition to include those acts where “you show no sign of hatred and yet you harbor a deadly hatred” that leads one to kill or simply injure another.³⁷

In the Italian city-states of the early thirteenth-century, the common penalty for crimes of violence was composition where the offender would pay a monetary fine to the victim. If the wrongdoer was contumacious he would be banished and he could not return until the compensation was paid and a *pax* had been made between him and the victim or the victim’s kin.³⁸ By the first half of the thirteenth-century certain wrongs were seen to be outside these practices of honour and reparation and thus prostitutes, adulterers, and sodomites were banished

³³ *Saxon Mirror*, Bk II, § 14.

³⁴ *Ibid*, Bk II, § 12.

³⁵ *Coutumes de Beauvaisis of Philippe de Beaumanoir*, trans. F.P.K. Akehurst (Philadelphia, 1992), Ch 30, § 824.

³⁶ *Ibid*. § 304.

³⁷ *Ibid*. § 826.

³⁸ Blanshei, “Crime and Law Enforcement in Medieval Bologna,” pp. 122-123.

while hired assassins were beheaded.³⁹ From the latter half of the thirteenth-century, this personalized system of justice became “much harsher and depersonalized with a deterrent and public or community-oriented conception of crime and punishment” taking centre stage.⁴⁰ Thus in late thirteenth century Bologna, legislation was enacted which prescribed a death sentence for all homicide. Everywhere there was a trend toward increased severity of penalties. With the revival of Roman law came a “growing array of savage and spectacular punishments, from death by burning and quartering to starvation in a cage, with preliminary public torture.”⁴¹

B. The Argument From Deterrence and the Ideal of Conciliation and Mercy

The movement toward increasingly severe punishments was justified on grounds of deterrence. It was a “new” discourse, revived from the Roman law and given a fresh life in the work of the canonists and civilians of the early thirteenth-century.⁴² In 1203, Pope Innocent III responded to the Bishop of Lund's inquiry about the propriety of laity using force upon rogue clergy and prelates incarcerating wayward clerics. The pope replied that both acts were justified, for “[t]he wicked respond to impunity by becoming yet more wicked, and as a matter of public utility crimes should not remain unpunished.”⁴³ In a similar fashion, Hostiensis, one of the most eminent of the thirteenth-century decretalists, warned of a too-easy mercy that would provide a

³⁹ *Ibid.*

⁴⁰ Jones, *The Italian City-state*, pp. 376-377.

⁴¹ *Ibid.*, p. 379.

⁴² Richard Fraher, “Preventing Crime in the High Middle Ages: The Medieval Lawyer’s Search for Deterrence,” *Popes, Teachers, and Canon Law in the Middle Ages* (1989), p. 229.

⁴³ Fraher, *Preventing Crime*, p. 221; Richard M. Fraher, “The Theoretical Justification for the New Criminal Law in the High Middle Ages: *Rei Publicae Interest, Ne Crimina Remaneant Impunita*,” *Illinois Law Review* (1984), p. 584.

wrong incentive. He argued that proper punishment “cultivate[d] terror and restrain[ed] others from sinning.”⁴⁴ In the preface to book three of his *Speculum iudiciale* William Durantis repeats Innocent’s injunction concluding that “the life of the evil doer should not be endured.”⁴⁵ And fourteenth-century bishop and theologian Durandus of St. Pourçain captured the conventional wisdom that justified deterrence: “It is possible that for some time men will do good only under terror of punishment.”⁴⁶

As Richard Fraher has meticulously traced, though similar ideas existed in the early Middle Ages, it was not until the scholastic age that deterrence emerged as the fundamental justification for punishment of serious wrong (i.e. *crimina* or *malefica*) both in the work of canonists and civil law jurists. Representative is the work of Italian jurist Albertus Gandinus (d. ca. 1310) who held that homicide and other major crimes remained punishable even after a concord had been reached between a wrongdoer and his victim.⁴⁷ The same assertion appears in the early thirteenth-century in the work of Bracton. He borrows directly from the Decretales of Gregory IX in his discussion of non-prosecuted appeals of felony. Notwithstanding an appellor’s decision to retract his accusation, Bracton declares that the “felony may nonetheless exist, and if it is not convicted wicked deeds will thus remain unpunished, which ought not to

⁴⁴ Hostiensis, *Lectura in quinque Gregorii Noni decretalium libros* (Venice 1581) (reprint, Turin, 1965), 5.39.35.

⁴⁵ William Durantis, *Speculum iudiciale* (Basel, 1574) (2 vols., Aalen reprt. 1975), vol.2, bk. 3, preface.

⁴⁶ Quoted in Fraher, *Preventing Crime*, p. 231.

⁴⁷ Jones, *The Italian City-state*, p. 377.

be.”⁴⁸ In other words, judges are discouraged from respecting out of court settlements, and urged to instead inquire into the guilt or innocence of the accused. The phrase *ne crimina remaneant impunita* operates as a shorthand for jurists for the proposition put forth by Innocent III that the failure to punish wrongdoers leads to an “audacity of impunity, through which those who were bad become worse” included within the *Decretales*.⁴⁹ In the context of prosecution of theft, Bracton again insists on the importance of punishment even when the items taken are trivial for to pardon the convicted man is to encourage his offending again.⁵⁰

Over time, this new criminal jurisprudence seeps into the wider consciousness. A fourteenth-century Florentine writer of an advice book spoke to the exemplary function of public executions writing “Go to church often, to sermons, because you will learn many good examples . . . and likewise go to see men executed, not out of pleasure . . . but so that it can be of example to you.”⁵¹ And the potential of the execution to strike terror in the heart of children was not lost on French parents who whipped their children when offenders were hanged to imprint the scene upon their memory.⁵² In the mid-fourteenth-century, Ambrogio Lorenzetti’s fresco *The Allegory of Good Government* in the Palazzo Pubblico in Siena portrays the allegory of

⁴⁸ Bracton, vol.2, p. 402, n.3.

⁴⁹ X 5.39.35.

⁵⁰ Bracton, vol. 2, p. 427. On English judges borrowing from the canon law in the context of rejecting private settlement of felonies see Daniel Klerman, “Settlement and the Decline of Private Prosecution in Thirteenth-Century England.” *Law and History Review* 19 (2002), pp.47-49.

⁵¹ *Mercanti scrittori: ricordi nella Fierenze tra Medioevo e Rinascimento*, ed. V Branca (Milan, 1986), pp. 23-4.

⁵² Dean, *Crime*, p. 126.

Securitas as a winged woman draped only by a veil who flies over the town holding in her left hand a gallows from which hangs a dead man.⁵³ The image works as an exemplary warning to any who would breach the laws of the city-state. And in literary texts such as the *Karlmeint* written in the first half of the fourteenth-century, the author presents Karl as most concerned that Roland's traitorous murderer suffers a punishment that will "give the world an example" and "which people will consider in amazement for more than a thousand years!"⁵⁴ The detailed description of the array of horrific deaths that Karl contemplates in his pursuit of using Wellis' death as a deterrent is striking when compared with *Karl de Grosse*, written only a century earlier, where Karl casts Genelun's punishment in the retributive language of debt asking the court simply to determine "what kind of death [Genelun] owes" him.⁵⁵

Yet, the social and juridical lexicon of deterrence coexisted with others discourses that point to a very different understanding of what medieval justice required in the face of serious wrongdoing. In the literature on good kingship, and in texts that open a window unto unwritten customary laws and practices, the belief is expressed throughout our period that the focus of dispute resolution – criminal or otherwise – is, and ought to be, upon concord and reconciliation.⁵⁶ So too, within the canonists' writing, predominately in the beginning of our

⁵³ Puppi, *Torment in Art*, p. 14.

⁵⁴ Quoted in Ziegler, *Trial*, pp. 71-72.

⁵⁵ *Ibid.*, p. 80.

⁵⁶ Patricia McCune, *The Ideology of Mercy in the Law and Literature of the Middle Ages* (unpublished PhD thesis, University of Michigan, 1989); Thomas Green observes, the very inaccessibility of the language of mercy to the modern may lead the historian to "underestimate its pervasiveness and importance" to the middle ages. "A Retrospective on the Criminal Jury Trial 1200-1800," eds. Thomas Green & J. Cockburn *Twelve Good Men and True: The Criminal Jury Trial in England 1200-1800* (Princeton, 1988), pp. 358-400, 387; Olson, "Of

period, the propriety of mercy, toleration, and concord is emphasized.

The import of conciliation in the resolve of private wrongs is apparent in the sources from early in our period. In the *Leges Henrici Primi* (c.1115), for example, acts of disobedience toward one's lord or superior were to be graciously resolved. "[I]f anyone ma[de] amends to another for his misdeed" and offered something beyond what was owed "along with an oath of reconciliation," it was commendable of the wronged man to "give[] back the whole thing."⁵⁷ He continued, "it ought to be sufficient" that the accused had "in some measure offered himself to his accuser."⁵⁸ And in the context of a private right of the kin regarding a homicide the *Leges Henrici Primi* declares:

With respect to an offender who has either confessed or is of manifest guilt, the proper course is to hand him over to the relatives of the slain man so that he may experience the mercy of those to whom he displayed none.⁵⁹

As Stephen White has uncovered in twelfth-century Touraine and Paul Hyams in post-conquest England, though honor required the taking up of the vendetta when one was wronged by another, so too the "noble lion whose anger spared the prostrate" was lauded.⁶⁰ And notwithstanding the consensus of jurists that judges must proceed with the prosecution of serious wrong even when a

Enchantment," pp. 182-183.

⁵⁷ *Leges Henrici Primi*, trans. L.J Dower (1972), p. 143 c36, 2, 2a..

⁵⁸ *Ibid.*

⁵⁹ *Ibid.* p. 291, c.92, 92, 15.

⁶⁰ The quote is from an eleventh-century poem which Hyams concludes found its model in a bestiary text. Paul Hyams, *Rancor and Reconciliation* (Ithaca, 20003), p. 129; Stephen D White, "Feuding and Peace-Making in the Touraine around the Year 1100," *Traditio* 42 (1986), pp. 195-63.

private concord had been made between the malefactor and the victim, settlement continues to be favoured by victims. In looking at eyre records from 1194 to 1294 in England, for example, Daniel Klerman estimates that between roughly 40 to 67 percent of cases brought by appeal were settled.⁶¹ In fifteenth-century Florence, in the diaries of Buonaccorso Pitta and Luca Landucci the import of “pardon” either as an imperative of Christian charity or as a demand of honor once an adversary has responded to the required display of rage with contrition is taken as a matter of course.⁶²

The discourse and practice of conciliation, mercy, and tolerance also formed countermelodies to the vocabulary of deterrence and terror that surrounded discussion of wrongdoing as an offense against the public authority. Indeed, there remains in the late middle ages a blurring of the lines between private and public wrong and concomitantly running parallel to emergent penal policy on the continent and in England was a form of dispute resolution that focussed on accommodation between the parties and on charity.⁶³ Late fifteenth-century Florence is but one example as disclosed by the records of the *Otto di guardia*.⁶⁴

⁶¹ Klerman, p. 16. Note that the 17 percent is the lowest possible number for cases settled in Klerman’s data base if one assumes that settlements were always recorded. *Ibid.* That all settlements were recorded, however, seems doubtful.

⁶² *A Florentine Diary from 1450-516 by Luca Landucci* (New York, 1969), p. 77; *Two Memoirs of Renaissance Florence: the Diaries of Buonaccorso Pitti and Gregorio Dati* (New York, 1967), pp. 52-53.

⁶³ B. Lenman and G. Parker, “The state, the community and criminal law in early modern Europe,” *Crime and the Law: The Social History of Crime in Western Europe Since 1500*, ed. V.A.C. Gatrell, B. Lenman and G. Parker (London, 1980), p. 23; Edward Powell, *Kingship, Law and Society: Criminal Justice in the Reign of Henry V* (Oxford, 1989), pp. 82, 91.

⁶⁴ A. Zorzi, “The judicial system in Florence in the fourteenth and fifteenth centuries,” *Crime Society and the Law in Renaissance Italy*, eds. T. Dean, K.J.P. Lowe, (Cambridge, 1994), p. 55-56.

Moreover, an accused could avail himself of a variety of procedural impediments to his trial. Both the claim of benefit to clergy or a flight to sanctuary legally ensured that, even if guilty, he would not suffer a blood sanction.⁶⁵ So too, in England the rate of jury acquittal remained enormously high throughout the period, particularly in cases involving homicide.⁶⁶ The deliberations of the medieval English jury are veiled in mystery. Still, and notwithstanding that some of the acquittals may have resulted from lack of sufficient evidence, or from the jury's determination that the law or punishment in question was out of step with the norms of the community,⁶⁷ bits and pieces of evidence exist that strongly suggest the English jury often acquitted out of simple mercy. Indeed, it is upon this ground that a few complained about the English jury trial. Thomas Brinton, Bishop of Rochester in the late fourteenth-century complained in a sermon:

If a voluntary murderer or most notorious thief who according to every law ought to pay the just penalty of his wickedness, is captured in order that justice may be done upon his person, as though in compassion, they strive to keep him from danger, some saying "He is young: if a youth has gone wrong, the old man will be able to amend."⁶⁸

⁶⁵Gervase Rosser, "Sanctuary and Social Negotiation in Medieval England." *The Cloister and the World: Essays in Medieval History in Honour of Barbara Harvey*, eds. J. Blair & B. Golding (1996), p. 63; Trisha Olson, "Of the Worshipful Warrior: Sanctuary and Punishment in the Middle Ages," *St. Thomas Law Review* 16 (2004) pp. 473-549.

⁶⁶ Green, *Verdict According to Conscience*, p. 22; J. G. Bellamy, *Crime and Public Order in England* (London, 1973), p. 124; J.G. Bellamy, *The Criminal Trial in Later Medieval England* (Toronto, 1998), pp.97-98.

⁶⁷ Green's work on the disjunction between fourteenth-century juries and the common law on the question of the level of blame that should attach to what we today call manslaughter is path-breaking. Green, *Verdict According to Conscience*, pp. 1-34.

⁶⁸ Quoted in G.R. Owst, *Literature and Pulpit in Medieval England* (Oxford, 1966), p. 340.

The Crown voiced similar dissatisfaction a century earlier in the statute of Westminster (1275) complaining that juries wrongfully acquitted the guilty when the accused was a local man.⁶⁹

Why the stranger was treated differently than a local defendant is a matter of speculation. One possible reason is offered here. Each juror swore an oath to speak the truth (*verum dicere* - verdict). Now, the juror also held the role of a quasi-witnesses as well as an arbitrator of right.⁷⁰ Hence, he would commit perjury, a grievous sin, which put his soul at grave risk if he were to bring in a false verdict. Yet it is not clear at all that a “true” verdict referred to a factually accurate judgment. The Middle English “trouthe” denotes ethical verity rather than empirical reality.⁷¹ It is reasonable to surmise that the disparity in conviction between the stranger and the neighbour frequently reflected the jury’s judgment about the accused’s character, a judgment that the jury could not make in the case of the stranger. The jury asked “is the accused law-worthy? A good son?”

Accordingly, the accused’s willingness to make up for his offense mattered to the jury. At times acquittal could be part of an outside agreement formed at a “loveday” where a wrongdoer and victim made amends. In Fifteenth-century England, it was not atypical for men to be acquitted of homicide when it was shown that they had offered and made satisfaction to a

⁶⁹ *Statutes of the Realm 1275-1713*, Record Commission (12 vols., London, 1810-28), vol. 1, p. 26.

⁷⁰ Most recently Michael McNair has emphasized the juror’s role as a witness. Michael Macnair, “Vicinage and the Antecedents of the Jury,” *Law and History Review* 17 (1999), p. 583..

⁷¹ Green, *A Crisis of Truth*, p. 20 (speaking to Richard Rolle's use of truth to render the Latin fidelity). Elsewhere, Green explores the way in which “trouthe” encompassed the idea of loyalty and the highest moral goodness). *Ibid*, p. 17-23.

victim's kin.⁷² Also, it mattered to the jury whether it could count on the accused to behave himself in the future. In his research on the 1328 Lincolnshire Trailbaston proceedings, Bernard McLane found that at times acquittal in homicide cases seem to turn upon whether an accused could find pledges to ensure his future good conduct.⁷³ Anthony Musson has found cases in the Fourteenth-century where the jurors themselves would act as a pledge for an acquitted defendant.⁷⁴ As Thomas Green argues, the medieval jury's high acquittal rate reflected "deeply engrained notions of how social harmony was to be maintained through composition with, rather than ultimate rejection of, the offender."⁷⁵ The complaints that exist about the juries' high acquittal rate indicate that their inclination to be merciful was common knowledge. Yet, strikingly, complaints about the acquittal rate were infrequent. Between the fourteenth and sixteenth-century in England, not a single jurist nor chronicle writer complained that the jury conviction rate was too low.⁷⁶

There exists in this period too a deeply rooted cultural expectation that the good king will be merciful. In sermon literature, legal text, and the mirrors for kings the crucial role of mercy to the good king is a constant refrain. The twelfth-century theologian, preacher, and poet Alan of Lille refers to cruelty in his *Art of Preaching* as excessive justice that is the opposite of mercy.

⁷² Edward Powell, "Settlement of Disputes by Arbitration in Fifteenth Century England," *Law and History Review* 2 (1984), pp.27-28.

⁷³ Bernard W. McLane, "Juror Attitudes towards Local Disorder: The Evidence of the 1328 Lincolnshire Trailbaston Proceeding," *Twelve Good Men and True*, pp. 59, 61 & n. 80.

⁷⁴ Anthony Musson, "Twelve Good Men and True? The Character of the Early Fourteenth-Century Juries," *Law and History Review* 15 (1997), p. 138.

⁷⁵ Green, *Verdict*, p. 64.

⁷⁶ Bellamy, *Criminal Trial*, p. 97.

Clementia, he writes, characterizes the king and *crudelitas* the tyrant.⁷⁷ Putting forth King David as the example that men should set before their eyes he writes “Read of the clemency in David who wore himself out bemoaning the madness of his scheming son . . . Clemency is the adornment of princes and the steadiest light. This alone distinguishes between the cruel and pious, between king and tyrant.”⁷⁸ Tacitly repeating the same theme, the author of the *Leges Henrici*, explains that the reason “pleas concerning more serious charges and meriting greater punishment” are assigned to the “justice and mercy” of the king alone is that “more abundant pardon may be had for those seeking it.”⁷⁹ While the passage adds that more abundant retribution also may be had for those transgressing, what is striking is the declared intention to give pardon to those seeking it for what are labeled as *more* serious wrongs. So too, in literary sources across the period, mercy is presented as a cardinal virtue of good kingship. Louis IX of France advises his eldest son (the later Philip III) that though it might at times be “needful” that he make war against a faithless vassal:

Be careful not to start the war before you have good counsel that the cause is most reasonable, and before you have summoned the offender to make amends, and have waited as long as you should. And if he ask mercy, you ought to pardon him, and accept his amende, so that God may be pleased with you.⁸⁰

In the mid-fifteenth century English translation of *Three Considerations*, it is said that without

⁷⁷ Alan of Lille, *The Art of Preaching*, trans. Gillian R. Evans (Kalamazoo, 1981), pp. 80, 83.

⁷⁸ *Ibid.*, pp. 82-83.

⁷⁹ *Leges Henrici Primi*. p. 115, c. II, 16a.

⁸⁰ “Saint Louis' Advice to His Son,” *Medieval Civilization*, trans. and eds. Dana Munro and George Clarke Sellery (New York, 1910), pp. 366 -75.

mercy, justice could be considered “felonye.”⁸¹ Similarly, in Hoccleve’s *Regement of Princes* written in 1411 to Henry, Prince of Wales, the virtue of forgiveness is urged.⁸²

The language of mercy signified more than rhetorical flourish. Across western Europe and throughout the period royal pardons were easily obtainable. The reason commonly given for the grant of a pardon was the king’s piety and his “reverence for the one of whom he had firm hope of grace and mercy.”⁸³ Frequently, a pardon would follow after a wrongdoer contritely confessed his deed. A representative example is Richard II’s pardon of John Northampton in 1384 who, though accused of plotting sedition, received the King’s grace after fully confessing and pleading for mercy.⁸⁴ Similarly in France, convicted traitors, if they were contrite and formally returned to the king’s obedience, could obtain pardon.⁸⁵ The penitential analogue in kingly acts of grace is unmistakable. Legal historians tend to be critical of the pardon prerogative considering it to be antithetical to a civilized system of justice whereby inexcusable

⁸¹ “The III Consideracions Right Necesserye to the Good Governauce of A Prince,” *Four English Political Tracts of the Later Middle Ages*, ed. Jean-Philippe Genet (London, 1977), pp.200, 199-200

⁸² *Hoccleve’s Regement of Princes* ed. Frederick Furnivall (E.e.t.s. London, 1996), ll. 3319-3346.

⁸³ *Cal. Close Rolls 1409-1413*, p. 375; *Cal. Pat. Rolls, 1446-1452*, p. 68; *ibid.*, p. 461; *ibid.* 1334-1338, p.159. See also, Claude Gauvard, “*De Grace Especial*,” pp. 914-927.

⁸⁴ *The Westminster Chronicle*, trans. LC Hector and Barbara Harvey (Oxford, 1982), p. 96-97. Richard II frequently employed his prerogative even in circumstances where Parliament had excepted a man from pardon as in the case of John Awedyn of Essex who had participated in the rebellion of 1381. *Cal. Pat. Rolls, 1381-1385*, p. 239.

⁸⁵ S.H. Cuttler, *The Law of Treason and Treason Trials in Later Medieval France* (Cambridge, 1981), p. 135-137. On the pardon generally in medieval France see Yves-Bernard Brissaud, *Le Droit de grace à la fin du moyen âge* (Poitiers, Thesis of law, 1971).

wrongdoing should be properly punished in the name of deterrence.⁸⁶ Thus, for example, historians characterize the English crown's frequent use of this form of the pardon power in the fourteenth and fifteenth-century as a failure of justice.⁸⁷ In support of this argument, historians point to the complaints by Parliament that such pardons "greatly encouraged" murderers, robbers, and other felons to "offend."⁸⁸ Nevertheless, as Helen Lacy shows in the context of general pardons "far from opposing [its] use . . . the Commons [in the fourteenth-century] had been at the forefront of its evolution."⁸⁹

In 1377, in celebration of his fifty-year jubilee, Edward III issued a general pardon that included in its terms pardon for "trespasses, negligences, crimes, ignorances and all other articles of the eyre, and many other things . . . which the punishment was a matter of fine or ransom, or other money penalties, or else of imprisonment."⁹⁰ While Edward did not include felonies in the grant, he did extend his grace to less serious wrongs. The spiritual and redemptive significance of the pardon is unmistakable.⁹¹ Speaking for the King who was too ill to attend, Bishop

⁸⁶ Naomi Hurnard, *The King's Pardon*, p. 25. See also H. Lacey, "'Mercy and Truth Preserve the king': Richard II's use of the Royal Pardon", (International Medieval Congress, Leeds, 2004), unpublished paper; R.L. Storey, *The End of the House of Lancaster* (London, 1966) pp. 210-216.

⁸⁷ Bellamy, *Crime and Public Order*, p. 195; J Jusserand, *English Wayfaring Life in the Middle Ages*, trans. L. T. Smith ((1891 reprinted 1961) p.166.

⁸⁸ 10 Edw. 3, c.2; *Westminster Chronicle*, p. 417 (complaint of parliament in 1390). In the fourteenth-century, the English Parliament also complained in 1310 and 1347.

⁸⁹ H. Lacey, "'The King's Mercy: Perceptions of Pardoning in the Late Medieval Legal System'", (Political Culture Research Group, York, 2003), unpublished paper.

⁹⁰ *Parliament Rolls of Medieval England*, of 1377, pp. 361-316.

⁹¹ W.M. Ormrod, "Edward III," *History Today* 52 (2002), pp. 20-26.

Houghton brought into relief the penitential ideology that undergirded the pardon power. In his opening sermon, Bishop Houghton spoke to the King's illness as a means whereby the king was "purified from all filth of sin, if there was any," and thus revived at God's pleasure as His "vessel of grace"⁹² Then, alluding to the concessions forced upon King by the Good Parliament, he invited members of parliament to reconcile themselves to the King's peace, and in so doing receive the king's bounty. In response, the Commons requested the King to grant a general pardon which "would relieve. . . and release of all manner of debts, fines, issues, forfeitures and amerancements" for all "times past until the fiftieth year" of his reign.⁹³ Mark Ormrod observes, "the English crown had, in effect, adopted a secular equivalent to the plenary indulgences offered to those pilgrims who travelled to Rome at a time of the jubilee."⁹⁴ General Pardons also issued for felonies. For example, in 1382 with support of Parliament, Richard II issued a general pardon to the citizens of York which included "all insurrections, treasons, seditions, murders, [and] felonies."⁹⁵ The import of royal mercy was woven into the fabric of English culture. Complaints concerning it were not directed at its propriety, but at those who abused it by not genuinely reconciling themselves to obedience.

Notwithstanding the canonical turn in the early thirteenth-century toward deterrence as the justification for punishment of serious wrongs, there existed an older tradition of thought, collected and explicated in Gratian's *Decretum*, or *Concordance of Discordant Canons* (c.

⁹² *Parliament Rolls of Medieval England*, Parliament of 1377, pp. 361-16.

⁹³ *Ibid.*, 361-56.

⁹⁴ Ormrod, 'Edward III', pp. 20-26.

⁹⁵ *Cal. Pat. Rolls*. 1381-85, p. 187.

1140),⁹⁶ that centered its discussion of punishment upon the scriptural tenets of charity, toleration, and mercy located in the New Testament. The *Decretum* stresses a necessary relationship between justice and mercy and praises concord as the aspirational ideal to which men should strive.⁹⁷ Quoting Pope Gregory the Great, Gratian asserts “Discipline is not served without mercy, nor mercy without discipline,”⁹⁸ and again “true justice has compassion, false justice disdain.”⁹⁹ The question of how to reconcile justice with mercy plagued both canonists and theologians throughout the centuries.¹⁰⁰ In Causa XXIII of the *Decretum* Gratian struggles with the question of whether penal force or the blood sanction is an appropriate response to wrongdoing. Again and again Gratian returns to the New Testament injunctions to turn the other cheek, or to replace the sword in the scabbard, as he confronts Old Testament scripture concerning the legitimacy of penal violence.¹⁰¹ Notwithstanding his apparent recognition of the conundrum that justice tethered to mercy presents, Gratian bluntly asserts in his *dicta* that when one suffers wrong he ought not to revenge himself but rather that evil (*mali*) should be

⁹⁶ *Decretum Gratiani*, ed. Emil Friedberg (Leipzig, 1879).

⁹⁷ *Decretum*, C. XXIII, q. 4, post. c. 15.

⁹⁸ *Ibid.*, Dist. 45, C. 9.

⁹⁹ *Ibid.*, Dist. 45, C. 15

¹⁰⁰ Linda Helyar, *Justice and Grace* (PhD dissertation, Univ. of California at Berkeley, 1991), pp. 10-35.

¹⁰¹ Though C. XXIII - CXXVII has been unofficially designated the *causae haereticorum* in recognition that Gratian’s discussion of the blood sanction occurs against the backdrop of his confrontation with the problem of heresy, Sally Scully points out that subsequent commentators treat heresy peripherally when explicating C. XXIII treating instead the question of whether judicial killing is ever justified as the primary topic of the causa. Sally Anne Scully, “Killing ex officio: The Teachings of 12th and 13th century Canon Lawyers on the Right to Kill” (Ph.D. diss., Harvard University, 1975), p. 22.

tolerated.¹⁰² The learned French priest Alger of Liege had written much the same at the beginning of the twelfth-century: “if the iniquitous [could] not be corrected, they must be tolerated . . . The wicked must be tolerated to preserve unity.”¹⁰³ Gratian, however, also quotes Augustine for the proposition that “requital” (*vindicta*) that aims to “correct” a wrongdoer is not prohibited.¹⁰⁴

Gratian ultimately concludes that Christians are not forbidden from inflicting the blood sanction though he strictly confines it asserting that it only loses its character as a sin when it is imposed by the secular authority¹⁰⁵ and when that authority acts with *miser cordia* (with mercy, compassion)¹⁰⁶ and *dilectionis* (with love, esteem and favor).¹⁰⁷ The immediate and urgent question for the modern mind, perhaps, is how the infliction of bodily torment and death upon an offender can be understood as an act of love? So too, in what sense is “requital” (*vindicta*) by the return of death for serious wrong a “correction” rather than annihilation of the wrongdoer?¹⁰⁸ These questions will help frame the following discussion concerning the scholastic and mystical reflections upon the spiritual significance of suffering in a human life.

¹⁰² *Decretum*, C. 23, q. 4.

¹⁰³ Jacques Le Goff, *The Birth of Purgatory* Arthur Goldhammer trans. (1981), p. 212; Gabriel le Bras, “Le Liber de misericordia et justitia d’Alger de Liege,” *Nouvella Revue Historique de Droit Francais et Etranger* (1921) pp. 80-118.

¹⁰⁴ *Decretum*, C XXIII, q. 4., c. 51.

¹⁰⁵ *Ibid.*, C XXIII, q. 5.

¹⁰⁶ *Ibid.*, C. XXIII, q. 4, c. 35 (*Homini est miserendum, peccatori est irascendum*).

¹⁰⁷ *Ibid.* C. XXIII, q. 4, c. 51. Gratian quotes directly here from Augustine’s *Sermon on the Mount*.

¹⁰⁸ *Ibid.*

For now, it is enough to remark that when surveying the landscape of medieval criminal procedure as a whole it is striking how little the blood sanctions were used in our period notwithstanding the array of offenses for which some form of bodily punishment was prescribed.¹⁰⁹ Now in some instances the decision to forego capital punishment for a “lesser” pain hardly appears to reflect concerns for achieving concord with an offender. For example, in England in the thirteenth-century maiming such as gouging out an offender’s eyes was substituted as a “mercy” in place of hanging.¹¹⁰ Such punishments, it seems, irrevocably excluded a wrongdoer from his community marking him (or her) with infamy. Nevertheless, the ideal of concord permeates the sources shaping penal and procedural practices alike. Moreover, even where blood penalties are sanctioned, one finds it justified not only on the grounds of deterrence, but instead upon the idea of love and esteem for the condemned (*cartias*). Accordingly, asking after the intelligibility of the blood sanctions in medieval punishment requires grappling with the question of how it conceptually fit with a criminal procedure infused with the spirit of conciliation. To put the question more sharply, what was the mode of thought that allowed medieval western Europe to simultaneously embrace mercy as an attribute of justice proper, and to nevertheless resort, however infrequently, to the wreaking of fantastic suffering upon the body of the felon?

¹⁰⁹ See eg. Carola Small, “The Cost of Urban Justice: The Example of Arras 1300-1329,” *Simbolo e Realta Della Vita Urbana Nel Tardo Medioevo* (1988), pp. 255-261; Samuel Edgerton, *Picture and Punishment: Art and Criminal Prosecution During the Florentine Renaissance* (Ithaca, 1985), p. 144; A. Zorzi, “The judicial system in Florence in the fourteenth and fifteenth centuries,” p. 54.

¹¹⁰ *Select Pleas of the Crown 1200 - 1225*, ed. F.W. Maitland (London, Selden Soc.1888), § 7 (eyre of Shropshire) (Alice Critheereche, convicted of theft “deserved death but by way of dispensation the sentence is mitigated so let her eyes be torn out.”).

II. The Spiritualization of the Body: Punishment and Pain

Notwithstanding the jurisdictional division between the temporal and spiritual courts, when one looks to the beliefs, modes of experience, and ways of conceiving that shaped western European criminal law it is difficult to contain any matter in “secular” or “religious” boxes. Clerics dominated the judicial benches of local and royal courts until the late thirteenth-century.¹¹¹ Analogously in the late twelfth-century the line between “sin” and “wrong” was blurred;¹¹² and until the mid-thirteenth-century proof was by the ordeal (i.e. *iudicium Dei*). In certain regions, jurists held to the belief that the corpse of a victim would rise up in accusation by bleeding or grabbing a suspect brought within its view.¹¹³ Both practices attest to the way the miraculous was intertwined with the profane. Throughout our period the pardon power and the practice of sanctuary were justified in terms of spiritual categories of thought. In the context of punishment, penance, L’amend honorable, pilgrimage, and excommunication were penalties common in the “secular” law on the continent.¹¹⁴ So too, while continental jurists drew on the Roman law in their development of the *ordo iudiciarius* whereas common law jurists drew upon ancient Germanic traditions, in both juridical traditions the discourses of medieval theology influenced the content and character of their work. And finally, the ritual of the execution was

¹¹¹ For example, in 1272 the English bench was nearly entirely clerical. By 1307, the balance shifted to a little less than half. Theodore.F.T. Plucknett, *A Concise History of the English Common Law* (Boston, 1956), p. 236.

¹¹² G.R. Evans, *Law and Theology in the Middle Ages* (London, 2002), pp. 12-13.

¹¹³ Gauvard, *De Grace Especial*, p. 926; Valentin Groebner, *Defaced: The Visual Culture of Violence in the Late Middle Ages* (New York, 2004), p.108 contains a reprint of Diebold Schilling’s 1513 drawing of such an event in his Chronicle from Lucerne.

¹¹⁴ Ludwig von Bar, *A History of Continental Criminal Law* (London, 1913), p. 147; Hanna Zaremska, *Le Bannis au Moyen Age* (Paris, 1996), pp. 111-114.

replete with spiritual imagery and iconic symbology.

Accordingly, one must not ignore the spiritual texts when trying to glean the stores of images and categories of thought that comprised the moral bank from which both jurists and laity drew when interpreting the meaning and reason of punitive pain. Thus we begin with those texts. Next we turn to scholastic medical discourse and to that of the jurists to see in which ways these disciplines reflected or departed from the teachings of the theologians. In the second section time is spent on the mystical reflections on pain within the fourteenth-century and the way in which the ideal of penitential pain overlapped scholastic theology's treatment of evil and punishment. In the third section, we turn to Dante's *Divine Comedy*.

A. The Rapprochement Between Soul and Body in The Experience of Pain

In his provocative essay on *The Problem of Pain in Punishment*, Karl Shoemaker argues that in seeking to understand the place of pain in medieval punishment one must grapple with the idea, distinctive to medieval theology, that pain originates not first in the body, but in the "soul's striving for the good."¹¹⁵ Similarly, Esther Cohen suggests that we cannot discern the significance that medieval men and women placed upon various expressions of pain, unless we first come to understand the way in which all "major discourses on pain – in theology, medicine, and law – viewed 'physical' pain as a function of the soul."¹¹⁶ Conversely, in his work on the theological treatments of pain by the thirteenth-century Masters at Paris (1230-1300), Donald

¹¹⁵ Karl Shoemaker, "The Problem of Pain in Punishment," *Pain, Death and the Law* (Michigan, 2001), p. 30.

¹¹⁶ Esther Cohen, "The Animated Body in Pain," *American Historical Review* 25 (2000) p. 42; David B Morris, *The Culture of Pain* (Berkeley, 1993), p. 152-73.

Mowbray argues that in the work of the theologians a “vocabulary of pain” emerged whereby bodily pain, in whatever context, was viewed as essentially a physical experience that was analytically distinct from operations of the rational soul.¹¹⁷

In each of these historical accounts, albeit to varying degrees, the body and soul are conceptually divided. In Shoemaker’s account of the relationship of pain to medieval punishment its physicality is ignored. The blood sanction’s meaning resides in the disembodied suffering of an isolated soul. A similar conceptual division occurs, albeit much less starkly, in Cohen’s work.¹¹⁸ In contrast, in Mowbray’s project the discussion of the theologians’ understanding of the relationship of bodily pain to the soul is truncated leaving the impression that Aquinas and his contemporaries viewed the soul’s relationship to bodily pain as nothing more than a biological process of shared sensory perception. In some sense, the soul is reduced to a functionary of the material.

What these discussions overlook is the way in which medieval discourses on pain understood it to be an experience of soul *and* body existing as one entity, one nature, one substance. Shoemaker’s account in particular implies a Platonic dualism – that is the belief put forth by Hugh of St. Victor and Robert Melun that person *is* the soul “to which the body is

¹¹⁷ D.C. Mowbray, “The Development of Ideas About Pain and Suffering in the Works of Thirteenth Century Masters of Theology at Paris: 1230 - 1300,” (unpublished PhD thesis, Univ. Of Bristol, 1999), p. 41.

¹¹⁸ However, in her article “Towards a History of European Physical Sensibility: Pain in the Later Middle Ages,” *Science in Context* 8 (1995), pp. 47-74, Cohen recognizes that in the late middle ages the human body as God’s creation also was an “expression of divine willPhilopassoanism was [] predicated on a perception allowing for no dichotomy of body and soul.” *Ibid.*, p. 57. Thus it is unclear why in Cohen’s discussion of pain she asserts that theologians saw it as a function of the soul independent from physical sensation. Cohen, “Animated,” p. 42.

attached as tool, garment, or prison” – that fails to grapple with the way late thirteenth-century belief in the composite nature of identity came to dominate theological discourse. As Bonaventure writes “the person is not the soul; [she] is a composite . . .thus [Mary] must be [in heaven] as a composite . . .; otherwise she would not be there in perfect joy.”¹¹⁹ For Aquinas and his contemporaries, the soul stood to the body as form to matter. “Body and soul are not two actually existing substances, but out of the two of them is made one substance actually existing,”¹²⁰ Accordingly, when we feel, it is the whole man who feels, neither the soul alone nor the body alone. Aquinas said about the suffering of Christ’s soul “soul and body are one being. So when the body is disturbed by some corporeal suffering, soul is of necessity disturbed indirectly as a result”¹²¹ As Caroline Walker Bynum stresses within medieval culture the reverse was assumed as well:

when soul is disturbed, body is disturbed. Pain and imperviousness to it happened to a personal entity that is body and soul together. . . .The many tales of temporary resurrections of the dead, of corpses bleeding to accuse their murderers or sitting up to reverence the Eucharist, of cadavers growing or smelling sweet or even exuding food after death point to a widespread cultural assumption that person is body as well as soul, body integrally bound with soul.¹²²

Thus when enquiring into the learned discourse concerning pain, one must bear in mind that for

¹¹⁹ Bonaventure, *De assumptione B. Virginis Mariae*, sermon 1, sect. 2, *S. Bonaventurae Opera omnia*, ed. Collegium S. Bonaventurae, (10 vols., Quarrachi, 1882-1902), vol. 9, p. 690. See also Aquinas, *Summa Contra Gentiles*, trans., A.C. Pegis, J.F. Anderson, V.J. Bourke, & C.J. O’Neil (4 vols., Notre Dame, 1975), bk. 4, ch. 79, vol. 15, p. 249 where Aquinas asserts that Plato’s idea that the soul is happiest without the body cannot be right for the soul is more like God when it is united to the body because then it is more perfect.

¹²⁰ Thomas Aquinas, *Contra Gentiles*, ii. 69.

¹²¹ST, 3a, q. 15, art 4.

¹²²Caroline Walker Bynum, *Fragmentation and Redemption* (New York, 1991), p. 235.

these thinkers pain's physical experience was intimately bound up with the condition of the soul *and* that the state of the soul was bound up with pain's physicality. Bodily torment, in a variety of contexts, not only signified the soul's strife, but was itself the catalyst for the soul's realization of serenity.

Theological discussions of pain in the high middle ages were wide ranging. Questions about the efficacy and/or necessity of bodily suffering to penance, the martyr's ability to withstand pain, the topology of Hell's torments, the fate of unbaptized children in Limbo, the existence of evil, and the nature of the crucified Christ's suffering all, in some way, necessitated exploration into the nature of human suffering and the relationship between the body and the soul in the human experience of pain. Peter Lombard (c.1100-1160) taught at the Cathedral school at Paris and wrote the *Four Books of Sentences* around 1155. His work was the standard textbook of the later twelfth and thirteenth-century forming the basis of commentaries by scholastics such as Bonaventure and Aquinas. In the *Sentences*, Lombard reflected upon the nature and degree of Christ's suffering:

However, every sense is of the soul. For the flesh does not feel, but the soul, using the body like an instrument. Whence Augustine in book XII on *Genesis* writes "the body does not feel but the soul feels through the body which it uses like a messenger to confirm in itself what itself reported on the outside." Therefore just as the soul sees or hears through the body when as instrument is outside it, so even the body feels certain evils which it would not feel without the body such as hunger, thirst and things of this sort. However it feels [i.e. the soul] certain things not through the body but even without the body such as fear and things of this sort. Therefore the soul feels pains but some through the instrument of the body, but some not.¹²³

¹²³ Petri, Lombardi, *Sententia in IV Libris Distinctae*, (2 vols, Grottaferrata, 1981), vol. 2, bk. 3, dist. 15, ch. 1,2, pp. 92-94 (translations are my own unless indicated otherwise).

Peter the Lombard, as Aquinas would a century later, relied heavily upon Augustine of Hippo. Concerned to explain whether a fleshy body could endure eternal torment, Augustine observed that what must be recalled is the soul's capacity to suffer "pain" [*dolor*] while being at the same time unable to die.¹²⁴ He argues:

Moreover, if we consider the matter more diligently, we shall see that what is called bodily pain really pertains to the soul. For it is the soul, not the body, which feels pain, even when the pain arises in the body, for the soul feels pain at the place where the body is injured. Thus just as we speak of bodies feeling and living, though the feeling and living comes from the soul, so also do we speak of bodies suffering in pain, though no pain can exist in the body apart from the soul.

Though Augustine seems to deny the reality of bodily pain, in the next sentence he clarifies that the soul "suffers pain with the body in that place where something occurs to hurt it."¹²⁵ However, the soul can also suffer pain apart from the body both when joined to it, or when it is not "established" in the body.¹²⁶

Augustine's argument concerning the primacy of the soul's suffering in the experience of bodily pain was "known, cited, and reaffirmed for centuries to come."¹²⁷ It met with some refinement, as in the work of Aquinas, but essentially Augustine's understanding of pain as an experience of an integrated soul and body remained unchanged. Aquinas' discussion of pain occurs within the first part of the second part of the *Summa Theologiae*, written to teach those

¹²⁴ Augustine, *The City of God Against the Pagans*, ed. & trans. R.E. Dyson (Cambridge, 1998), bk XXI, ch. 3, p. 1046.

¹²⁵ *Ibid.*, p. 1047.

¹²⁶ *Ibid.*

¹²⁷ Cohen, "Animated," p. 43.

young Dominicans who were beginners in theology.¹²⁸ The second part of the *Summa* discusses “the movement of rational creatures toward God.” It is in this context that Aquinas considers the nature of pain. He writes: “Pain is said to be bodily because the cause of pain is seated in the body, as for instance, when one suffers something that injures the body. But the actual movement of pain always occurs in the soul: ‘the body cannot feel unless the soul does so too,’ as Augustine says.”¹²⁹ Though Aquinas recognizes a distinction between *dolor* and *tristitia* insofar as the first is tied to the “exterior perception” of the body and the second to the “interior perception of the soul,” he considers the experience of *dolor* (i.e. bodily pain) to be dependent upon the manner in which it is perceived and treated by the soul.¹³⁰ Indeed, the mutual inter-penetration of body and soul is so acute that, as Aquinas observes, anguish can so weigh down a man’s “spirits” that his “limbs [become] immobilized” or he is deprived of speech.¹³¹

Whereas theologians stressed the primacy of the soul in the human experience of pain, within scholastic medical discourse the way in which bodily pain both *affected* and was affected by the condition of the soul is placed in sharp relief. Those learned in medicine viewed illness and

¹²⁸ The edition used is *The Summa theologica*, trans., Fathers of the English Dominican Province (London, 22 vols., 1912-36) [hereinafter ST]. See generally James A. Weisheipl, *Friar Thomas d’Aquino: His Life, Thought, and Works* (Oxford, 1975), p.219. Aquinas did not begin his *Summa* until 1266. Weisheipl judges that the earliest date the second part could have been begun was 1270. *Ibid.* p. 222. Aquinas never completed Part III. He ceased writing in 1273 leaving his discussion of Penance unfinished. After a mystical experience when saying Mass, he told his secretary that he had reached the end of his writing given “that all I have written seems to me like so much straw compared with what I have seen and with what has been revealed to me.” Copleston, *Aquinas*, p. 10.

¹²⁹ ST, 1a2ae, q. 35, art. 1, Reply 2.

¹³⁰ ST, 1a2ae, q., 35, art. 2, Reply.

¹³¹ *Ibid* art. 8, Reply; q 37, art., 4, ad. 1, 2.

its painful afflictions as a consequence of either a disorder in the balance of “elemental qualities (*mala complexion*) of the body,” or as a result of sudden” physical change.¹³² In regard to pain due to imbalance, Taddeo Alderotti (1223 -1295) who taught medicine at Bologna concurred that the passions of the soul (*accidentia anime*) could deeply affect physical health and, conversely, that one’s physical condition could impact the soul. The learned physician Turisanus, a pupil of Taddeo, found the “elemental qualities in the bodies of some people to be so well balanced that they experienced only temperate and beneficial emotions.”¹³³ It was held too that the soul’s condition could impact the body. The entire range of human emotions such as joy, sadness, anguish, anger, and shame located in *accidentia anime* were said by Turisanus to be the physician’s concern for all would affect the *complexio* of the body. Hence he asserted that the experience of pleasure caused an abnormal amount of heat to radiate from the heart whereas suppression of sensual passion could cause epilepsy in men, suffocation of the womb in women, and kidney pain in both sexes.¹³⁴

Strikingly, within the work of jurists one can detect the seeds of a very different understanding of human pain. While jurists do not question the composite nature of human identity, there is in their work an undeniable, though nascent, commitment to a view of man as primarily a creature whose rational soul is powerless to shape, transform, or affect the raw experience of bodily pain. As noted earlier, beginning in the mid-thirteenth-century, jurists

¹³² Nancy Siraisi, *Taddeo Alderotti and His Pupils*, (Princeton, 1981), p. 224.

¹³³ *Ibid.*, pp. 65, 227; Salmon, Fernando, “Academic Discourse and Pain in Medieval Scholasticism,” *Medicine and Medical Ethics in Medieval and Early Modern Spain: An Intercultural Approach*, S. Kottek & Luis Garcia-Ballester eds. (Jerusalem, 1996), pp.142-143.

¹³⁴ Siraisi, *Taddeo Alderotti*, p. 227.

increasingly justify punishment on the grounds of deterrence. Alongside the canonists already mentioned, Albertus Gandinus, an Italian judge during the second half of the thirteenth-century is worthy of mention. The first to write a treatise on criminal law, Gandinus rests his discussion on punishment upon a single proposition: *opus est exemplo ut pena unius sit metus multorum*.¹³⁵

The purpose of punishment is to instill dread. Lucas de Penna, fourteenth-century judge and jurist repeats much the same in his commentary upon the Codex.¹³⁶ And when we reach the fifteenth-century, the same utilitarian ideal is put forth by the jurist Angelo Gambiglioni who writes in his *Tractatus de maleficiis* that corporeal punishment should “provoke such dread that those who witness it should fall speechless.”¹³⁷ Implicit in such assertions is a emergent materialism whereby the human being is conceived of as primarily a creature who, on the basis of what Aquinas calls servile fear, will react to avoid the experience of bodily pain. Gone from these juridical works is the scholastic theologian’s belief in the primacy of the rational soul that directs and informs the body’s experience of pain.

This is not to say that jurists altogether denied the import of the soul in the experience of pain. Judicial torture became a fixture of criminal procedure on the continent in the thirteenth century as a consequence of Lateran IV’s prohibition of clerical involvement in proof by ordeal.¹³⁸

¹³⁵ Gandinus, *Tractatus de maleficiis*, vol. 2 of Hermann Kantorowicz, *Albertus Gandinus und das Strafrecht der Scholastik* (2 vols, Berlin, 1907-26), p. 52.

¹³⁶ Walter Ullmann, *The Medieval Idea of Law as Represented by Lucas de Penna* (London, 1946), pp. 147-149.

¹³⁷ Quoted in A Zorzi, “Rituali e cerimoniali penali nelle città italiane (secc. XIII-XVI),” *Riti e rituali nelle società medievali*, eds. J. Chiffolleau and L. Martines (Spoleto, 1994), p. 144.

¹³⁸ John Langbein *Torture and the Law of Proof* (Chicago, 1977), pp. 1-25.

Torture, or *quaestio*, was defined as “an inquisition performed in order to extract the truth by way of torment and bodily pain.”¹³⁹ Some jurists, however, asserted that *tormentum* derived from *torguere mentem* meaning to torture the mind.¹⁴⁰ Others substituted “*cordis* (heart’s) for *corporis* (body’s) *dolor* since the suffering of the soul was considered an integral part of torture.”¹⁴¹ Jurists asserted “torture . . . can be called agony of soul and body for the extraction of truth.”¹⁴² So too, jurists were persuaded that resistance to confession under torture could result from witchcraft which prevented the one being tortured from sensing pain.¹⁴³

Yet what jurists do not discuss is impassibility, the widespread belief that those with a pure and innocent soul will remain unaffected by bodily torment. Though a frequent theme in the art of the high middle ages as in, for example, *The Martyrdom of St. Agatha* from 1473, where the saint seems almost self-satisfied in her imperviousness to her grisly-erotic torture,¹⁴⁴ jurists remain silent about the possibility that the innocent soul under penal torture might escape the experience of pain. Jurists do acknowledge that individuals may vary in their capacity to endure pain as exemplified by the general rule that women were to be tortured before men “because the man has greater constancy and will take longer to confess, and the woman will do so faster, for her heart is sudden

¹³⁹ Cohen, “Animated,” p. 50.

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² Piero Fiorelli, *La Tortura giudiziaria nel diritto comune* (2 vols, Milano, 1953-54), vol. 1, pp. 186-189.

¹⁴³ *Ibid.*, vol. 1, pp. 218-23.

¹⁴⁴ Reproduced in Caroline Bynum, “Violent Imagery in Late Medieval Piety,” *GHI Bulletin* 30 (2002), p. 7, plate 9.

and inconstant.”¹⁴⁵ Yet, such variance is understood to have little to do with the commitments of thought within the realm of the rational soul. In some sense, biological instinct is given primacy over the freedom of the will residing in the higher functions of the soul.

Much could be said about the seeming divide between the jurists, on the one hand, and the theologians and learned in medicine, on the other, concerning the nature of human identity that is implied by each discipline’s discussions of pain. It suffices now to merely highlight one aspect of that divide. The juridical commitment to deterrence and to the use of torture presupposes that pain is an experience of harm from which any sane person will recoil. It is on the basis of this assumption that torment or the threat of death is thought to be efficacious. Now in Aquinas’ discussion of servile fear, he recognizes that men will “shrink from detriment to their own body.”¹⁴⁶ Yet, he carefully notes that to forsake “justice on that account is contrary to natural reason.”¹⁴⁷ Man contains “the natural image of God” within the higher parts of his soul which graces him with the capacity to discount pain in the name of the right.¹⁴⁸ Moreover, writes Aquinas, bodily pain could in some circumstances be a source of “inward joy”¹⁴⁹ This idea repeats in Dante’s *Divine Comedy*. The penitents on the mount of Purgatory speak of their intense agonies as “solace” (Purg. XXIII, l 71). A similar, though not identical, proposition found

¹⁴⁵ *Repetito super materia quaestionum sive toturarum*, attributed to Bartolus of Sassoferrato, *Omnia quar extant opera* (11 vols., Venice, 1615), 10, fol. 250 cited in Cohen, “Animated,” p. 51.

¹⁴⁶ ST, 2a2ea, q. 19, a. 3, reply.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

¹⁴⁹ ST, 1a2ea, q. 35, art. 7, Reply.

popular expression in the context of the blood sanction. In a woodcut designed by Wolfgang Katzheimer for the municipal law code, *Bambergerische Halsgerichtsordnung* there is depicted a judicial procession out of the prison where a man in shackles is led by officials toward, one may assume, the place of his execution. He is attended by a friar with a crucifix and above the participants' heads is a banderole with the words: "If you bear your pain patiently / it shall be useful to you/ Therefore give yourself to it willing."¹⁵⁰ The presence of this drawing on a mundane municipal code suggests that in some way medieval men and women understood scourging, maiming, or decapitation to be a spiritual good for the condemned. The question is, of course, how could bodily suffering contribute to one's joy – a word used by medieval theologians in the very particular sense of bliss.¹⁵¹

B. Pain as an Attribute of Love

We have taken time to stress that the physical body of man, as well as his soul, was *spiritually* significant to his experience of bodily pain. One reason for pressing that matter reveals itself now. As Caroline Bynum's work emphasizes, "extravagant attention to flesh . . . characteristic of the period is not 'flight from' [the body] so much as 'submersion in.'"¹⁵² Though most medieval men or women were not directly in touch with Aquinas' idea of hylomorphism, the practices of the devout which were admired and venerated by the culture reflected a belief in the body as a means to spiritual concord with God.

¹⁵⁰ Merback, *The Thief*, pp. 155-156.

¹⁵¹ ST. *Supplement*, q. 90, art. 3, Reply.

¹⁵² Caroline Walker Bynum, "Why all the Fuss About the Body? A Medieval Perspective," *Critical Inquiry* 22 (1985), pp. 14-15.

Within medieval religious consciousness, the ideal of *imitatio Christi* and teachings of penitential purgation provide a focal point for the culture's understanding of bodily pain as an affirmative good.¹⁵³ The two acts are profoundly related to each other. In each, the tormented and bleeding body is seen as providing access to the divine, while at the same time signifying the soul's struggle to find repose.

1. *Imitatio Christi*

In part the flesh became a vessel for communion because Christ's humanity became such a central theme in late medieval piety.¹⁵⁴ Thus in Margery Kempe's visions she held Christ in bed and boldly stroked his toe.¹⁵⁵ Angela of Foligno, Adelheid Langmann, and Catherine of Siena married Christ in eucharistic visions. Bynum writes, "underlining the extent to which the marriage was a fusion with Christ's physicality, Adelheid received the host as a pledge rather than a wedding ring, while Catherine received . . . the ring of Christ's foreskin."¹⁵⁶ And Angela Foligno was driven to such longing, that in penitence she disrobed before the crucifix and offered her naked body to Christ with a promise of "perpetual chastity."¹⁵⁷

¹⁵³ *Ibid*; Le Goff, *The Birth of Purgatory*, pp. 14-21

¹⁵⁴ R.W. Southern, *The Making of the Middle Ages* (New Haven, 1959), pp. 231-40. On the importance of the Eucharist and the way in which imagery of Christ's wounds dominated host salutations see Miri Rubin, *Corpus Christi: The Eucharist in Late Medieval Culture* (Cambridge, 1991), pp. 1-25, 303.

¹⁵⁵ Margery, Kempe, *The Book of Margery Kempe*, trans. Lynn Staley (New York, 2001), ch. 35, pp. 86-89

¹⁵⁶ Bynum, *Holy Feast*, p. 246.

¹⁵⁷ Angela of Foligno, *Le Livre de l'expérience des vrais fidèles: Texte latin publié d'après le manuscrit d'Assise*, trans. and ed. M-J Ferré and L. Baudry (Paris, 1927).

The collective turn toward Christ's humanity engendered in medieval piety an intense focus upon His suffering during the Passion. In the visual arts images of Christ sitting in judgment were supplanted by those of a crucified Jesus.¹⁵⁸ By the fourteenth-century, sculptors, painters, poets, and playwrights centred their best efforts on detailing the Man of Sorrows in all of his agony.¹⁵⁹ The reflections of the schoolmen such as Lombard, Aquinas and Bonaventure in the twelfth and thirteenth-century upon the suffering human Jesus found expression within the devotional practices of fourteenth-century European culture – a culture keenly aware that the redemption of humanity from eternal death hinged on pain. In the Book of Hours and in drawings upon amulets, which were popular in the late middle ages, depictions of Christ's body focused upon the bleeding and suffering flesh of the Passion.¹⁶⁰ In the early fourteenth-century, in private prayer books and in votive masses in missals, devotion to the wounds becomes prevalent.¹⁶¹

It was in co-suffering with Christ's lacerated bleeding body that pious medieval men and women most dramatically sought to inhere in his humanity. Between 1200 - 1500, religious practices such as fasting, eucharistic frenzy, self-mutilation, or the experience of stigmata

¹⁵⁸ Georges Duby, *The Age of the Cathedrals: Art and Society 980-1420*, trans. E. Levieux & B. Tompson (Chicago, 1981), pp. 107-08.

¹⁵⁹ Examples are abundant. The "Man of Sorrows," ca. 1430, by Meister Francke, now in Hamburg, is a startling beautiful image of the suffering Christ, who appears as judge, lover, and sacrificial victim. Jeffrey Hamburger, *The Visual and the Visionary: Art and Female Spirituality in Late Medieval Germany* (New York, 1998), p. 375. On the extent to which Passion narratives, which informed painting, reached a large lay audience see Thomas Bestul, *Texts of the Passion: Latin Devotional Literature and medieval Society* (Philadelphia, 1996), pp. 7-10.

¹⁶⁰ L. Gougaud, *Devotional and Ascetic Practices in the Middle Ages* trans. G.C. Bateman (London, 1927), pp. 80-91; D Gray, "The Five Wounds of Christ," *Notes and Queries* 208 (1963), pp 84-87; Rubin, *Corpus Christi*, pp. 302-304; Richard Kieckhefer, *Unquiet Souls: Fourteenth Century Saints and Their Religious Milieu* (Chicago, 1984), pp. 14-15, 122-37.

¹⁶¹ Gougaud, *Devotional*, pp. 82-83.

frequently involved excruciating pain. Yet, rather than representing an attempt to escape the flesh, such acts were directed at realizing the “opportunity of physicality.”¹⁶² The body not only provided a gateway to the divine. It possessed spiritual significance in its own right:

Late medieval theology . . . taught that at the central moment of Christian ritual, the moment of consecration, God became food-that-is-body. . . In becoming flesh God takes on humanity and that humanity saves, not by being but *by being broken*. The food on the altar was thus for all Christians a symbol both of assimilation and of rending. To eat was to consume God . . . and to eat was also to rend and tear God. . . It was only by bleeding, by being torn and rent, by dying, that God’s *body* redeemed humanity. To become that body by eating was therefore to bleed and to save – to lift one’s own physicality into suffering and into glory.¹⁶³

In the fourteenth-century, holy women such as Julian of Norwich prayed for “every kind of pain, bodily and spiritual . . . every fear and assault from devils” in order that she may become closer to Christ in his suffering.¹⁶⁴ Both Margaret of Ypres’s self-flagellation and Columba of Rieti’s food asceticism, which culminated in her starving herself to death at the age of thirty-four attested, paradoxically, to the way in which bodily suffering born of physical deprivation or bodily affliction “released torrents of bodily energy toward God.”¹⁶⁵ The experience of bodily pain not only signified the sufferer’s longing to be near to her saviour. It provided medieval men and women with a locus of redemption and did so by the very *fact of its physicality*. Abstract thoughts by virtue of man’s being a limited being must be “clothed” in words or images to achieve actuality

¹⁶² Bynum, *Holy Feast*, p. 246.

¹⁶³ *Ibid.* p. 251.

¹⁶⁴ Julian of Norwich, *Showings* trans. James Walsh (London, 1878), p.126. All references to Julian’s Long Text are from this translation. (Hereinafter LT).

¹⁶⁵ Bynum *Holy Feast*, p. 246.

writes Dante. Man's understanding is obliged to corporealize meaning.¹⁶⁶ The body, as the drapery of the soul (*vesta* is Dante's constant metaphor in the *Divine Comedy*), provided man with a way to encounter meaning.¹⁶⁷

It would seem that it could be no other way for a culture dominated by a religion whose central tenet was that humanity had been redeemed by a Divinity that choose to become flesh and to suffer human torment and death. Redemption meant precisely this: that one partook in joy by being returned home to the shelter of His arms. The body, by the teaching of the Atonement and Resurrection, was the means by which home *would* again be realized. More than this, however, the sacrificial pain of the body condemned to die signified that one *already* dwelled, and had always dwelled, within His shelter. Penetrating the sense and reason of this last idea necessitates enquiring into the theologians' and mystics' treatment of evil and its relation to the soul's experience of pain.

2. On Evil and the Torment of Being

As Shoemaker observes, lurking in the background of medieval discourses on pain was the question of how suffering (and I would add sin) could exist in a world created by an absolutely good Deity?¹⁶⁸ The answer put forth by theologians and mystics mattered deeply to the question of how medieval culture justified corporeal and capital punishment.

The question of theodicy imposed itself upon the scholastics with grave urgency. Standing

¹⁶⁶ Dante Alighieri, *De Vulgari Eloquentia*, trans. A.G. Ferrers Howell (London, 1973), I, 3, 1-2.

¹⁶⁷ Nancy Lindhein, "Body, Soul and Immortality: Some Readings in Dante's *Commedia*," *Modern Language Notes* 105 (1990), p. 14.

¹⁶⁸ Shoemaker, "The Problem of Pain," p.29.

as a portal to the twelfth-century, Anselm of Canterbury treats the question of evil in his treatise *De casu diaboli*.¹⁶⁹ A little more than a hundred and fifty years later Aquinas writes *De Malo* (1265-1268).¹⁷⁰ These two works represent an unbroken continuity of thought about the ontological status of evil that stretches back to Augustine and Plotinus. For Aquinas “evil” (*malum*) bears a more inclusive sense than the word does for us today including within its definition the idea of “hurt,” “misdeed,” and “misfortune.”¹⁷¹ In accord with the philosophical tradition of his time, Aquinas divides evil into the two broad categories of suffering (*malum poenae*) and moral wrong (*malum culpae*).¹⁷²

In asking after the relationship of both kinds of evil to an absolutely good Deity, both Anselm and Aquinas begin by enquiring into what sort of thing evil is. In both its active and passive sense, both men conclude evil is no-thing for it lacks *esse*.¹⁷³ In this they follow Augustine.¹⁷⁴ Rather than being anything actual, says Aquinas, evil is a lack – an absence of a good that ought to be present. Hence, it is not evil that stones lack sight, for sight is not what the

¹⁶⁹ Anselm of Canterbury, “The Fall of the Devil,” *Three Philosophical Dialogues*, trans. Thomas Williams (Cambridge, 2002).

¹⁷⁰ Thomas Aquinas, *On Evil*, trans. Richard Regan (Oxford, 2003).

¹⁷¹ *Ibid.*, p. 14.

¹⁷² *Ibid.*, A. 3, Response, p. 28-30.

¹⁷³ *Ibid.*, A. 1, Response, p.6; Reply 20, p. 10.

¹⁷⁴ Augustine, *Confessions and Enchiridion*, trans. A.C. Outler (1955) *Enchiridion* ch. 11: “For what is that which we call evil but the absence of good? In the bodies of animals, disease and wounds mean nothing but the absence of health; for when a cure is effected, that does not mean that the evils . . . namely, the disease and wounds - go away from the body and dwell elsewhere: they altogether cease to exist; for the wound or disease is not a substance but a defect in the fleshy substance.”

Deity naturally intends for a stone. Yet, for a man to lack sight is evil for he ought to see.¹⁷⁵ The same can be said of moral evil. It is a privation in that it represents the absence of man's right relation to law (*qua* right) which he ought to have by virtue of his status as a law-worthy being. Writes Anselm, "when [humans] abandoned that rectitude, it lost something great and received in its place nothing but its privation which has no essence and which we call injustice."¹⁷⁶

Fourteenth-century mystic and anchoress, Julian of Norwich, agrees. In the last quarter of the fourteenth-century, she composed a book that detailed her visionary experience of the Passion. Little is known about her except what she herself relates in her *Book of Showings*. While Margery Kempe's account of her visit with Julian suggests her regional reputation as a holy woman, the small number of extant manuscripts of her *Showings* indicates that the book did not circulate widely.¹⁷⁷ Nonetheless, her writing suggests a wide and learned acquaintance with the devotional and theological traditions of her day.¹⁷⁸ Thus her work tells us something about the way affective spirituality in the fourteenth-century encountered the subject of pain.

Julian's vision occurred in her thirtieth year as she lay near to death in Norwich.¹⁷⁹ On the eighth day of her illness a priest was called to her bedside. He held a crucifix before the dying woman's eyes and suddenly, she tells us, her pain diminished. Through the rest of the day and night she experienced a series of miraculous visions which centred upon Christ's suffering. Once

¹⁷⁵ ST., 1a, q. 5, a. 48, 3.

¹⁷⁶ Anselm, "The Fall of the Devil," ch. IX, p. 69.

¹⁷⁷ Denise Nowakowski Baker, *Julian of Norwich's Showings* (Princeton, 1994), p. 3.

¹⁷⁸ *Ibid.*, p. 7-8.

¹⁷⁹ *Ibid.*, p. 10-15.

she recovered, she quickly wrote down the content of her sixteen visions which has come down to us as the Short Text.¹⁸⁰ She spent twenty years pondering their meaning. She then wrote an expanded version of her book known as the Long Text.

Julian understood her grave illness and vision to be God's response to her prayer for three gifts sometime prior to May 1373.

I desired three graces by the gift of God. The first was to have recollection of Christ's passion. The second was a bodily sickness and the third was to have, of God's gift, three wounds . . . the wound of contrition, the wound of compassion, and the wound of longing with my will for God.¹⁸¹

She sought acute physical and spiritual pain as a means to deepen her awareness of her own sinfulness and to bring her closer to the Son and Father. Like the scholastics, Julian wished to understand why evil (i.e. suffering and sin) is necessary in a world created by an absolutely good Deity? She begins, as they do, by seeking to discern what sort of thing evil is. She writes in the Short Text: "O wretched sin, what are you? You are nothing. For I saw that God is in everything; I did not see you . . . I am certain that you are nothing."¹⁸²

For theologians such as Anselm and Aquinas and mystics such as Julian, and in conformity with the traditions in which they wrote,¹⁸³ evil's character as privation signified that ultimately it

¹⁸⁰ Julian of Norwich, *Revelations of divine love, translated from British Library Additional MS 37790*, trans. Frances Beer (Rochester, NY, 1998). All citation to the Short Text is from this translation (hereinafter Short Text).

¹⁸¹ LT, p. 125-127.

¹⁸² Short Text, 23; LT, ch 3, 11.197-198.

¹⁸³ Jeffrey Russell, *Lucifer: The Devil in the Middle Ages* (Ithaca, 1984), pp. 194-197, 286-287.

“cannot exist except in good”: evil is parasitic and requires the existence of good (being) in order that it may corrupt it.¹⁸⁴ Put differently, as a privation, evil can exist only in a being and since all being, as created by the Deity, is good, evil can deform, corrupt, and twist the good, but it can never completely triumph over it for to eradicate the good completely would be to eradicate itself.¹⁸⁵ Thus, says Aquinas, “it is impossible to find anything totally evil.”¹⁸⁶ Similarly writes Julian, in each soul “there is a godly will which never assented to sin nor ever will.”¹⁸⁷ There are of course differences of thought within the individual traditions that these thinkers represent. Yet what they share is a vision of evil as a chosen (in the case of moral fault) or as a given (in the case of endured suffering) perversion of the subject’s intended actuality. In the context of the wrongdoer who commits himself to evil, Aquinas and Julian both taught that no matter the quality of the evil it was impotent to eradicate the essential goodness (understood as “potentiality to perfection”) that inheres in being.¹⁸⁸

At the centre of this thought is an understanding of spiritual anguish both as a good and as constitutive of the human condition. “Sin,” writes Julian is the “cause of all this pain.” She is not speaking morally, but ontologically. When the human being commits wrong, he acts in “opposition to [his] fair nature.”¹⁸⁹ As a consequence, Aquinas writes, he causes “disorder” within

¹⁸⁴ Aquinas, *On Evil*, A.2, Response, p. 13; Lombard, *Sententiae* II, d. 34, c. 4, n. 1-2.

¹⁸⁵ *Ibid.*

¹⁸⁶ ST 1a2a, q., 35, art. 6, reply.

¹⁸⁷ LT, ch 14, p. 53.

¹⁸⁸ Aquinas, *On Evil*, A. 2, Response, p. 15.

¹⁸⁹ LT, ch 14, 63.

his soul.¹⁹⁰ The wrongdoer is alienated from his deepest self and thus is thrown into discord between who he is in himself and what he is for himself. This condition of self-estrangement, says Julian, causes pain.¹⁹¹ Though Aquinas asserts that “awareness” of one’s union to evil is a necessary condition of the soul’s experience of pain,¹⁹² the belief was common in the late middle ages that the corruption of evil inflicted a spiritual wounding even upon those who mistook evil for an apparent good. What such pain testifies to is the thwarting of man’s natural desire for the good – for Julian the longing of the godly will that cannot be tempted to sin, and for Aquinas the essential being of man that evil cannot obliterate.

Yet, so too, pain accompanies man’s seeking of the good. In response to St Catherine of Siena’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.”¹⁹³ There is in man’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. He despises his sins. He feels unsuitable and insufficiently pleasing to his maker. Accordingly, the Deity explains to Catherine, “suffering and sorrow increase in proportion to love. When love grows, so does sorrow.”¹⁹⁴

Within this tradition, the converse was also true: when sorrow grows, so does love. Julian

¹⁹⁰ ST 2a2ae, q. 87, a..6, ad. 3.

¹⁹¹ LT, ch 14, p. 51.

¹⁹² ST 1a2ae, q. 35, Reply.

¹⁹³ Catherine of Siena, *Dialouges*, trans. Suzanne Noffke (New York, 1980) p. 20

¹⁹⁴ *Ibid.*

writes, “sin is the sharpest scourge with which any chosen soul can be struck . . .it makes a man despicable in his own sight so much at times he thinks himself that he is not fit for anything but as it were to sink into hell . . .”¹⁹⁵ It is through such anguish, says Julian, that men and women develop the wounds of contrition, compassion, and longing for God. Through both spiritual and bodily affliction, one becomes receptive to “God’s mercy.”¹⁹⁶ Indeed she sees the Fall, and hence pain, as necessary, for “if we did not fall we should not know how feeble and wretched we are in ourselves” and thus the wonder and boundlessness of “the love of our creator.”¹⁹⁷ Pain brings man to his knees. In so doing, “it purges and makes us know ourselves and ask for mercy.”¹⁹⁸ In terms of medieval Christian metaphysics the soul’s suffering signifies the human longing to dwell in unity with the Divine. Given that such longing is itself a good, so too suffering contains an admixture of good. In the context of bodily suffering, pain opened a way for the soul to come to self-realization and thus to dwell in repose with the Good.

3. Penal Pain as the Affirmation of Being

Though Julian of Norwich does not write of punishment, in reflecting upon the meaning of human pain, she emphasizes its power to effect a reunion between man and God by bringing him – through torment – to a knowledge of the boundlessness of divine mercy. Begun as a theodicy Julian’s *Showings* culminates as a vision about human redemption. Within Aquinas the ways in which the subjects of pain, evil, punishment, and human redemption overlap and shade into each

¹⁹⁵ LT, ch 13, p. 39.

¹⁹⁶ *Ibid.*

¹⁹⁷ *Ibid.*, ch 14, p. 61

¹⁹⁸ *Ibid.*, ch 13, p. 27.

other is more explicit.

In a way similar to the visionary saints, Aquinas sees the bodily suffering of the wrongdoer as a means by which the disquiet and discord within his soul is ameliorated. Though Aquinas writes that punishment may be seen as an evil for those punished,¹⁹⁹ so too, it is also potentially a good for the wrongdoer.²⁰⁰ Through “pain” and “penance” punishment “reduces” a wrongdoer to “order.”²⁰¹ This is true even when the offender suffers death. “The death inflicted by the judge profits the sinner, if he be converted, unto the expiation of his crime; and, if he be not converted, it profits so as to put an end to the sin, because the sinner is thus deprived of the power to sin any more.”²⁰² Expiation represents more in Aquinas than the simple removal from the wrongdoer of “a kind of advantage gained” by preferring his own will above the requirements of the law which, by being removed, erases punishment’s debt.²⁰³ Following Aristotle, Aquinas everywhere speaks of punishment *qua* pain as a “kind of medicine” or remedy which will “cure” and “heal” the discordant will of the wrongdoer.²⁰⁴ As scholars of Aquinas note, he understood the essence of punishment to be the subjection of an offender to something contrary to his will.²⁰⁵ The bodily pain inflicted stands as metaphor for the thwarting of the desire for evil understood in the medieval

¹⁹⁹ *On Evil*, q. I, a. I, ad I

²⁰⁰ ST, 2a2ae q. 43, a. 7, ad. 1; Aquinas, *Summa Contra Gentiles*, Bk III, c. 144, n.9.

²⁰¹ Aquinas, *Summa Contra Gentiles*, Bk III, c. 144, n.9

²⁰² ST, 2a2ae, q. 25 a. 6 ad 2; 2a2ae q. 83 a. 8 ad 3.

²⁰³ See John Finnis, *Aquinas* (Oxford, 1998), p. 211.

²⁰⁴ ST, 2a2ae, q. 43, a. 7, ad 1; q. 66, a.6, ad. 2 .

²⁰⁵ Finnis, *Aquinas*, p. 212.

sense as the absence of good.

To understand how such thwarting (which is experienced as pain) cures or remedies the wrongdoer one needs to recall the status of evil's ontological reality as no-thing. In the context of medieval Christian metaphysics, punishment – as a suppression of the will to evil (*malum culpae*) – is the negation of negation. In the doing of wrong “man departs from the order of reason, and consequently falls away from the dignity of his manhood.”²⁰⁶ He reduces himself to a “beast of servitude” slavishly choosing to do what pleases him rather than what he ought.²⁰⁷ Thus, in that the wrongdoer's will to evil is thwarted, his ontological reality as a being (*qua* good) is reaffirmed. The “bitterness” of the medicine “restores him to health.”²⁰⁸ This is no less true in those cases where the punishment inflicted is death for as an act of repression of the offender's wayward will he is restored to the order of justice which is his true dwelling place. “Now hatred of a person's evil is equivalent to love of his good. Hence also this perfect hatred belongs to charity.”²⁰⁹ It is at this point that we may recall Gratian's judgment that even in the infliction of death, one must (and indeed can) act out of love.

Aquinas, at times, speaks as a utilitarian whereby the evil of physical punishment to a wrongdoer is outweighed by the benefit of removing a corrupted limb from the body politic.²¹⁰ So too, he explicitly allows for deterrence writing that the hanging of thieves serves as an example to

²⁰⁶ ST, 1a2ae, q.64, a. 2, ad. 3.

²⁰⁷ *Ibid.*.

²⁰⁸ ST, 1a2ae, q. 87, a. 7, Reply.

²⁰⁹ ST 2a2ae, q. 25, a. 6, ad. 1.

²¹⁰ ST 1a2ae, q. 87, a. 8, ad. 2.

others.²¹¹ Occasionally he at times speaks of *retributio* not as an ordering of the discord both external and internal to the wrongdoer, but rather as a “withdrawal” of God in recognition that the offender is “undeserving.”²¹² Yet when his insistence upon the potentially medicinal character of punishment is considered in the context of his discussion of evil, the reader is prompted to ponder the way in which scholastic culture viewed punitive pain – including the blood sanction – as that which both heals and affirms the wrongdoer in his status as a person. Indeed, “mercy [even] appears in the punishment of the just in this world, since by afflictions lesser faults are cleansed in them, and they are the more raised up from earthly affections to God.”²¹³

Although punitive pain signifies an affirmation of the wrongdoer’s personhood, Aquinas stresses that whether its medicinal potential is realized depends upon the wrongdoer’s stance toward the pain he suffers. When a wrongdoer voluntarily undertakes his punishment it takes on the character of a “satisfaction” and thus “loses somewhat of the nature of punishment: for the nature of punishment is to be against the will.”²¹⁴ In its character as a satisfaction, punitive pain becomes a conduit for the soul’s movement toward health and joy. Nonetheless, the experience of pain remains an agony for those undergoing it. So too, it follows from Aquinas’ thought that while an offender may resent and recoil from his punishment, it remains an act that confirms him in that it strikes to counter the evil that attacks his status as a being.

²¹¹ ST 1a2ae, q. 87, a. 1, ad 2.

²¹² Aquinas, *On Evil*, A. 5, Response, p. 36. (“nothing should have that of which it is undeserving.”)

²¹³ ST 1a, q. 21, a. 4.

²¹⁴ ST 1a2ae, q. 87, a. 6.

The preceding discussion suggests a kinship between the Fourteenth-century mystical saints' devotional reflections upon redemptive pain and the discourse of thirteenth-century scholastic theologians such as Aquinas upon the nature of punishment. Nowhere is the stuff and matter of this kinship more richly detailed than in the poetry of Dante Alighieri (1265 - 1321).

C. The Divine Comedy

Without entering into the debate about whether the notion of “a” medieval mind is or is not a fiction,²¹⁵ what can be said in the context of Dante is that his “imagination work[ed] habitually within [the] system . . . of theology and cosmology of the Middle Ages” giving to the abstractions of scholastic thinking bodily form.²¹⁶ Moreover, as scholars of the *Comedy* well recognize, “Dante came to maturity when the most sweeping and exciting intellectual revolution of the Middle Ages had just crested.”²¹⁷ The years 1190 to 1250 witnessed the scholastic interpretation of Aristotle,²¹⁸ the spreading of courtly love throughout the courts of Europe,²¹⁹ the availability of such literary

²¹⁵ Frederic L Cheyette, “Beyond Western Civilization: Rebuilding the Survey,” *The History Teacher* 10 (1977), p. 535; Joseph Mazzeo, “Some Interpretations of the History of Ideas,” *Journal of the History of Ideas* (1972), pp. 379-394.

²¹⁶ *The Divine Comedy of Dante Alighieri*, trans. John D. Sinclair (Princeton, 1970), 1961, p. 11.

²¹⁷ Dante Alighieri, *The Divine Comedy of Dante Alighieri*, ed. and trans. Robert M. Durling (2 vols, New York 1996), vol.1, p.15. Citation of the *Inferno* and *Purgatory* is to this translation which occurs in the body of the text for reader convenience. Citation to *Paradise* is to the Sinclair translation.

²¹⁸ Translation of Aristotle from the Arabic into Latin began around 1120, but is not until 1190 that he may properly be said to be rediscovered as something more than a logician. *Cambridge History of Later Medieval Philosophy*, ed. Norman Kretzmann, et al., (Cambridge, 1988), pp. 22-25.

²¹⁹ The birth of courtly love is usually said to have occurred in the late Eleventh-century in Provence region of southern France. By the middle of the thirteenth-century, the troubadour philosophy had become practically institutionalized throughout the courts of Europe. Nathaniel

models as Virgil's *Aeneid* and Ovid's *Metamorphoses*, and finally the comprehensive treatment of theology in a *summa*. Dante was, "the heir and product of this intellectual ferment."²²⁰

Dante was born in Florence in 1265 where he spent his life until 1302 taking a leading role in politics and in the intellectual life of his city. In 1302 he was perpetually exiled from his beloved city for allegedly engaging in acts hostile to the Church. Scholars agree that the *Inferno* was published around 1314, the *Purgatorio* shortly thereafter and the *Paradiso* in 1320.²²¹ The work is inspired by Beatrice, a woman whom historians know little about other than Dante's ardour for her. In a letter to Can Grande, to whom Dante dedicates the *Paradiso*, he sets out the aim and subject of the *Comedy*. The subject of the work "according to the letter alone" is "simply a consideration of the state of souls after death," he writes.²²² But if one considers the work's "allegorical meaning, the subject is man, liable to the reward or punishment of justice, according as through the freedom of the will he is deserving or undeserving."²²³

As Michael Smith suggests in his penetrating essay *Punishment in the Divine Comedy* there exists a scholarly understanding of the relationship between pain and punishment in the *Comedy* that seems obvious given its congeniality to the current Anglo-American view of punishment.²²⁴

Smith, *The Expansion and Transformation of Courtly Literature* (Athens, GA 1980).

²²⁰ Dante, *Inferno*, p. 12 (introduction).

²²¹ *Ibid.*

²²² Latham, C.S., *A Translation of Dante's Eleven Letters* ed. G.R. Carpenter (Boston, 1892), p. 195

²²³ *Ibid.*

²²⁴ Michael Smith, "Punishment in the Divine Comedy," *Cumberland Law Review* 25 (1995) pp. 533-576.

In the modern view, the pains of Hell and Purgatory within the *Comedy* represent externally imposed sufferings that God inflicts upon wrongdoers as a retribution. The poem, in places, suggests such a reading. During their journey through Hell, Dante and Virgil repeatedly remark upon the ways in which God works his “vengeance” (Inf. Canto 28, l. 142, Canto 9, l. 88-90, Canto 14, l. 16-18). In Purgatory, Dante speaks of punishment as “payment” of a “debt” (Purg. Canto 10, l. 106-108, canto 11, l. 88, canto 23, l. 14-15). And in the eighth circle of Hell, the sower of discord Bertran de Born explains that the division of his head from his trunk represents “counter-suffering” for the division he caused between a young king and his son (Inf. Canto 28, 142).²²⁵ In regard to deterrence, it seems evident that Dante wrote, in part, to warn his reader. That he sought to achieve this end through the use of terror, whereby the reader who learned of the torments that awaited the sinner after death would be frightened into changing his path, seems evident from the manner in which both Dante and Virgil react to the torments they witness as they travel through Hell. Nonetheless, as Smith argues, there exists another understanding of the meaning of penal pain in Dante’s work that while difficult to discern is truer to his thought.

The souls in Hell and Purgatory suffer spiritual pain awaiting Judgment Day to be reunited with their bodies. Thus, at first blush, Dante’s work may appear to have little to say about the way in which Christian medieval European culture conceived of the relationship between the body and soul in the context of the wrongdoer who suffered punishment. Yet, throughout the poem (and putting aside the theological puzzle of how a disembodied soul suffers bodily pain), the images of the bodily sufferings of the damned and the penitent speak to the souls’ unquenchable need for their bodies to fully be at home with the Good. So intense is the soul’s need of the body that when

²²⁵ Armour, Peter, "Dante's *contrapasso*: Contexts and Texts," *Italian Studies* 55 (2000), pp. 1-20

deprived of it by death, the soul immediately “imprints” its body upon the air (Purg. Canto XXV).²²⁶ Though in Paradise the spirits are said to be *luci* rather than *ombre*, they “plainly showed their desire for their dead bodies” (Par. Canto IV, l. 60-64). And in Dante’s recognition of Beatrice where he exclaims to Virgil that “not a drop of blood is left in me that does not tremble: I know the tokens of the ancient flame” one is inescapably drawn to the way in which sexual passion is sublimated into the “symbol” of ordered love that Beatrice represents (Purg. Canto XXX, LL. 46-48).²²⁷ The material world of sight and sound, of bodily perception and experience, is a necessary condition of man’s realization of his redemption.

In Dante’s rendering of the pains of Hell what he presents his reader is not a place of externally imposed suffering. Indeed, Gross reminds us that while Bertran in Canto XXVIII of the *Inferno* describes his pain as a *contrapasso* for his sin, the reader knows by now that “even the most eloquent of the damned have major blind spots” in their understanding.²²⁸ Rather, the damned suffer the vileness of their sin – a sin to which they remained committed up to their time of death. Indeed, they “are eager to cross the river [Acheron], for divine justice so spurs them that fear turns to desire” (Inf. Canto 3, ll 121-126). Even after death the damned pursue their vice. And it is the pain inherent to this commitment that the damned feel. For example, in the circle of the wrathful who endure the pain of being submerged in black mud, the damned see a likeness between their present and their earthly state. The wrathful wail “we were sullen in the sweet air that is gladdened by the sun, bearing in our hearts a sluggish smoke, now we are sullen in the black

²²⁶ Lindheim, “Body, Soul,” p. 14.

²²⁷ *Ibid.*, p. 15.

²²⁸ Kenneth Gross, “Infernal Metamorphoses: And Interpretation of Dante’s Counterpass,” 100 *Modern Language Notes*, p. 44.

mire” (Inf. Canto VII, ll 115-126). The lustful are whirled by tempests, the violent immersed in hot blood, and hypocrites wear robes gilded on the outside but crushing within. In each case the correspondence between the damned’s suffering and their sin refers not to a punishment that is imposed upon them by an angry god, but rather to *an aspect of the sin itself*.²²⁹

Dante’s imagery vividly renders the medieval Catholic teaching that sin diseases the soul, twisting, corrupting, and tormenting it by its very presence. The pain the soul suffers in Hell for sin is in some way a “continuation of the condition of sinfulness on earth.”²³⁰ The only difference is that the intellectual powers are strengthened after death and thus, in accord with the teachings of medieval theology, the damned souls suffer no more than they did on earth. Rather, their experience of sin is no longer veiled by misleading appearance: in Hell they know sin for what it is.

There is another sort of pain in Hell. By committing themselves to vice, the punished are divided within themselves for they thwart the soul’s natural desire for the good. The damned’s grief springs from their loss of “the good of the intellect” (Inf. Canto 3, ll. 17-18). As Virgil explains to his charge, “each [man, woman and child] confusedly apprehends a Good in which his spirit may be quieted, and desires it, and therefore each strives to reach it” (Purg. Canto 17, ll 127-129). Yet though born “to form the angelic butterfly” able to fly to justice unimpeded, the sinner instead “bend[s]” his “sight on emptiness” thereby becoming “like defective vermin” (Purg. Canto X, ll. 127-130, Par. Canto IX, ll 10-12). By choosing to remain committed to their sin, the

²²⁹ Smith, *Punishment*, p. 553; Dorothy Sayer, *Introductory Papers on Dante* (London, 1954), pp.68-70; Joseph Mazzeo, “Dante’s Conception of Love,” *Journal of the History of Ideas* 18 (1957), pp. 147-60.

²³⁰ Smith, *Punishment*, p. 554.

primordial desire of the damned to return home to their creator is thwarted. This thwarting is Hell's primary pain. One hears echoes of Julian of Norwich's vision of the "godly will." So too Dante follows Aquinas in envisioning penal pain as signifying the "pain of loss" of the "immutable good."²³¹ In some way, Smith suggests, the pain of the damned signifies that God remains present and near. The acute sense of loss of the Good that comprises the soul's agony reflects God's love for, as Smith writes, by "preserving in them the good desire which is the source of their pain," God does not allow them to fall even further to evil thereby extinguishing their being.²³²

Purgatory is different from Hell. Unlike the damned, the souls in Purgatory joyfully embrace the pain of their penances. And their pains are not eternal. After a period of time in Purgatory the souls will enter Paradise. Yet, as Smith observes, in critical ways Hell and Purgatory are akin to each other. In both places souls experience pain. And in some instances the souls in Purgatory are led to experience the essential truth of their sin as are the damned in Hell. Thus, as are the wrathful in Hell, souls who are purging the sin of anger are blinded by black, acrid smoke. In Hell the hypocrites wear gilded coats of lead which burden them and in Purgatory the prideful are bent to the ground under heavy loads (Purg. Canto 10, ll. 115-120, 130-139).²³³ What distinguishes one place from the other rests then not so much in the idea of lesser or more severe degrees of pain, but rather in the condition of the soul that experiences the pain. Recall Aquinas' distinction between suffering as punishment (i.e. evil) or as satisfaction. Smith suggests, that what is at stake in the experience of pain in Purgatory is the soul's undergoing both the thwarting of

²³¹ ST, 1a2ae, q. 87, a. 4, Reply.

²³² Smith, "Punishment," p. 573.

²³³ *Ibid.*, p. 564.

sinful disposition – which remains even after a particular sin has been forgiven – and the pain of not yet being fit to present oneself before God which those in Purgatory so eagerly wish to do.²³⁴

Thus Umberto on the Cornice of the Proud tells Date, “I was son to a great Tuscan - Guglielmo Aldobrandeschi was my father.” He sheepishly adds “I don’t know if you ever heard of him. I am here to make satisfaction for my insolent pride of race” (Purg. Canto 11, ll. 58-60).

In both Hell and Purgatory then Dante imagines the torments of punishment as not good in themselves, but nevertheless as signs of the Good that dwells eternally, albeit besmirched, within the human soul of the wrongdoer. Referring to the moment when the soul was created, Dante tells his reader “but your life the Supreme Beneficence breaths forth immediately, and He so enamours it of Himself that it desires Him ever after” (Par. Canto VII, l. 139). Dante renders poetically the teaching adhered to by the schoolmen and those beset of an affective piety. Even for those in Hell, within man lives a “godly will” which never “assents to sin.” Thus ripped from its right relationship to the Good, by its own choice to pursue lesser or merely apparent goods, the soul suffers. And yet, so too, with a disposition inclined toward other than the Good, the soul that turns back to right relations also suffers for desires that conflict with seeking the good are thwarted.

What binds each thinker to the other, whether poet, theologian, or mystic, is the abiding belief that, in the words of Dante, “”The glory of Him who moveth everything, which is God, doth shine in every corner of the Universe but in one part more and in another less” according “to the virtue of the recipients.”²³⁵ Read collectively, these texts offer an understanding of penal pain that ties the figurative and the literal suffering of the body to the soul’s yearning for both the true Good

²³⁴ *Ibid.*

²³⁵ Latham, *Letters*, p. 202.

and merely apparent goods. For the wrongdoer, the experience of violence done to his being will be eagerly sought or fearfully endured depending upon the commitments of his soul. But in all cases, the pain that pierces that soul is, at its nub, a sign of God's presence and of the wrongdoer's essential goodness (however veiled) for even at his vilest moment he is a being created by God. Moreover, the wrongdoer's bodily suffering is ameliorating: by negating the negation that is evil, penal pain affirms his status as a worthy being.

III. The Good Death

While the wider culture may have been unschooled in the theological concepts of the self-estranged will, or of evil as privation, scattered and fragmentary accounts of the execution suggest that medieval men and women interpreted the meaning and propriety of the condemned's suffering by recourse to the same structures of thought and mode of feelings that shaped the faith and thought of such learned figures as Aquinas, Julian, and Dante. What one encounters in descriptions of the medieval execution are traces of what fifteenth-century theologian Nicholas de Cusa, called *docta ignorantia*, or "learned ignorance," that bespoke a piety as profound as its learned counterpart.²³⁶ In religious iconography and executionary ritual (which in the period frequently intersect and overlap), in liturgical practices (such as devotion to the Eucharist host), and in extra-liturgical practices (such as veneration of the saints and flagellant processions), the belief in the unity of soul and body existing as one substance is expressed not as a philosophical axiom but as an acute and affective knowledge that the flesh is a locus of salvific promise which both renders visible the secrets of the soul and aids it to access the divine. Within the chronicles,

²³⁶ See F.P. Pickering, "Notes on Late Medieval German Tales in Praise of *docta ignorantia*," *Bulletin of the John Ryland Library* 24 (1940), pp. 121-37; For Cusa see his own *Of Learned Ignorance*, trans, G. Heron, (London, 1954), and Eugene F. Rice, "Nicholas of Cusa's Idea of Wisdom," *Traditio* 13 (1957), pp. 345-68.

songs of deeds, and iconography one finds this knowledge brought to bear upon the execution.

In these sources we find traces of a widespread belief in the potentiality of the condemned to harness the brutalization of their flesh to the pursuit of a mystical union with God in imitation of Christ's suffering.²³⁷ The chroniclers, for the most part, are clearly moved by the executions of penitent men and women that they commemorate. Their tone is compassionate, their language laudatory. The accounts suggest, albeit tacitly, that in dying well the offender not only heals the breach between himself and God, but is also reconciled with the community that participates in his death.

A. Possible Refutations and Competing Meanings

The medieval belief that deformation, and mutilation, of the body can make visible the hidden inner corruption that is wrought by the presence of evil within a being is well known among medievalists. To take but one example, disfigurement by the cutting off of a malefactor's nose is an issue in several Fourteenth and Fifteenth-century cases from Nuremberg. In each of these cases a husband or wife committed adultery and the wronged spouse attacked either the paramour or the offending spouse and thus was guilty of assault or mayhem. Significantly the attacking spouses received extremely light sanctions (fine or the stocks) for the assaults notwithstanding that the law on the books stated that the attacker should suffer a like injury as that which he inflicted on his victim. Tracing this specific mutilation in both the classical literature and bawdy humour of the period, Valentin Groebner mounts a strong case for the way in which the populace associated the nose with sexuality seeing it as a figurative representation of the male

²³⁷ For a somewhat like view of the execution in a little later period see Michel Bee, "la Spectacle de l'execution dans la France d'Ancien Regime," *Annales* XXXVIII (1983), pp. 843-62

member.²³⁸ The act of deforming the adulterer's face by mutilating his nose embodied, made visible, the inward sexual corruption of his being. It is in the context of this belief that outward deformity mirrors inner corruption that a missing or disfigured nose was grounds for exclusion from ordination to the priesthood.²³⁹

Much more problematic is demonstrating that there existed a widespread belief in medieval Europe that mutilations and torments, such as occur for traitors, or even simple death by sword or rope, could purify the condemned. For one, it must be granted that neither the Church nor the crown obviously embraced this understanding of the execution. For example, practices such as forfeiture of a felon's property (moveable and/or immoveable) which occur both in England and France, as well as the English practice of attain where by a traitor lost all civil rights to pass title of property or to inherit bespeak the permanent character of the stain that was believed to cover the offender as a consequence of his deed.²⁴⁰ And the Church's unwillingness to participate directly in the shedding of blood on the ground that it was the cleric's duty to pray for nefarious and the secular realm's duty to wield the sword of justice suggests that as an institution the Church did not view the execution in terms of a quasi-liturgical drama. Though the ritual of *auto de fe* (public

²³⁸ Groebner, *Defaced*, p. 68-73.

²³⁹ *Corpus iuris canonici*, ed. E. Friedberg (Leipzig, 1879), 1, dist. 49, c. 1. On the extraordinarily permeable and fluid boundary that existed between bodily disease and spiritual corruption in this period see Katherine Parke, *Doctors and Medicine in Early Renaissance Florence* (Princeton, 1985), pp. 50-52. One of the most well known examples, perhaps, is leprosy which in the late middle ages is increasingly associated with uncleanness which in turn is assumed to be a manifestation of inner corruption. R.I. Moore, *Formation of a Persecuting Society*, (Cambridge, 1987), pp. 45-65.

²⁴⁰ For examples of attain see *Cal. Patent Rolls, 1452*, p. 514; *Ibid., 1451*, p. 508. On the law of treason in England see J.A. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge, 1970), pp. 191-95; J. R. Lander, "Attainder and Forfeiture 1453-1509," *Historical Journal* IV (1961), pp. 120-151; Cuttler, *The Law of Treason*, pp. 120-133.

penance) during the Spanish Inquisition, first recorded in 1481, indicates the complexity of the Church's thought on the link between blood letting and salvation, its insistence that the religious not directly shed blood would seem to undermine the argument that the execution represented a salvific drama.²⁴¹

Second, the rituals of the medieval execution cannot be neatly contained within a single historical narrative of aspiration. Rather, the body and soul of the condemned, his humanity, "became a kind of projection screen, a locus of negotiation and even struggle" between rival modes of thought about the normative and epistemological import of the execution.²⁴² The sources reveal a struggle between those, such as Beaumanoir, who insisted upon the utilitarian value of the execution to inspire fear²⁴³ and those who, like Jean Gerson, insisted upon the execution's salvific meaning. So too, retribution has its place. Chroniclers, in recording acts of wrongful homicide, remind their readers that "blood cries out for vengeance."²⁴⁴ And in 1450 one chronicler observed that one could keep a political score card by simply watching the heads upon London bridge being put up or taken down according to what party happened to be in power. In popular expression that year became known as "the harvest of heads."²⁴⁵

²⁴¹ Because the *auto de fe* has its heyday a bit after our period, it has not been discussed. Discussion of heresy too has been avoided for the focus here has been primarily upon the secular jurisdiction. For a general history of the *auto de fe* see, Henry Charles Lea, *A History of the Inquisition of Spain* (New York, 4 vols 1906-1907).

²⁴² Merback, *Thief*, p. 137.

²⁴³ Beaumanoir, *Coutumes*, § 883, ch 1, 446; Carlo Calisse, *A History of Italian Law* (New York, 1969), pp. 175; Guido Ruggiero, *Violence*, p. 41.

²⁴⁴ *Westminster Chronicle*, p. 517.

²⁴⁵ W. Gregory, "Chronicle," *The Historical Collection of a Citizen of London in the Fifteenth Century*, ed. J Gairdner (London, 1876, reprt.1965), pp. 191-197.

At times, various meanings of the execution conflate. As we saw, within canonical texts salvific and utilitarian justifications for punishment vie for dominance. In the realm of theology recall that Aquinas justified punishment upon both utilitarian and penitential grounds. Conversely, within the temporal realm, notwithstanding those secular authorities who spoke of penal pain as a way to instill terror, remember that the royal pardon found its justification within a vocabulary of mercy and charity that was charged with religious association and which reflected a view of suffering as both redemptive and purifying.

Thus, not surprisingly, two or more justifications for the blood sanction and/or pre-execution torment appear within a single source. In the fourteenth-century, a chronicler of Saint Denis records a particularly brutal execution of two Augustinian monks who had claimed supernatural curative powers. Defrocked, and beheaded, the headsman then placed their heads on lances, their cut-off limbs in front of the gates of Paris, and their trunks on the gibbet. The chronicler observes, “these two miserable men atoned for their iniquities and served as an example to traitors and criminals.”²⁴⁶ At other times, strict utilitarianism is the rule. Around 1300, the government of Siena issued a law declaring that the purpose of punishment was to inspire fear in others and thus a gallows was to be built where the hanged were to remain until they fell of their own weight.²⁴⁷ In 1461 the authorities in Strasbourg prohibited the removal of corpses after execution because this meant “the gallows stood entirely empty, as if no thief were punished here.”²⁴⁸

²⁴⁶ *Chronique du religieux de Saint-Denys contenant le Regne de Charles VI de 1380 a 1422*, ed. M.L. Bellaguet, (6 vols., Paris, 1839-52) vol. 2, pp. 662-669.

²⁴⁷ *Il costituito del comune di Siena* (2 vols, Siena, 1903), vol. 2, p. 402.

²⁴⁸ Spierenburg, *Spectacle of Suffering*, p. 58.

Within popular culture, violence against the body of a malefactor, be it only an act of mutilation such as the gouging out of his eyes or the ultimate act of taking his life by sword, rope, or fire, holds varied, and at times, conflicting meaning. For example and as mentioned above, in fifteenth-century Nuremberg the municipality treats assaults upon adulterous spouses lightly notwithstanding that the written law proscribes that a wrongdoer suffer a like injury as that he has inflicted. The assaults typically concern the angered spouse attempting to or succeeding in defacing the offending spouse or paramour by cutting of the nose. Punitive violence, in this context, seems to signify an attempt to save face, by the defacing of the culprit.²⁴⁹ At times spectators to a corporeal punishment expressed hatred or contempt toward the offender. Those sentenced to the pillory found themselves at the mercy of a public encouraged by authorities to pelt them with rotten fruit, mud, and dung.²⁵⁰ In 1500 three Florentine murderers went on the executioner's cart being "tortured most cruelly with red hot pincers through the city" and it is recorded "all the people were desirous that they should be tortured without pity."²⁵¹ The *Chronique parisienne anonyme* records the crowds shouting at Henri de Taparel's execution "Let him be hanged, thus²⁵² he will pronounce no more false judgment!" The most intense expressions of collective hatred were directed at traitors and political tyrants. Although occurring a little after our period, the accounts of the crowd's insatiable rage at Ravaillac who had murdered Henry IV of France and its treatment of the corpse of Concino Concini, who was accused in the great public

²⁴⁹ For specific cases see for example *Die Chronik des Henrich Deichsler*, in *Chroniken der deutschen Städte vom 14 bis ins 16* (Leipzig, 1872), vol. 11, pp. 687-688.

²⁵⁰ Merback, *Thief*, p. 147.

²⁵¹ Landucci, *Florentine*, p. 176.

²⁵² *Chronique parisienne anonyme*, p. 50-53.

Declaration et Proestation of 1617 of “usurp[ing] in the name of the king . . . an absolute authority in the realm” and whom Louis XIII thus felt compelled to assassinate vividly illustrate the popular view of such men as unredeemable demons whose bodies must be annihilated in order to free the community from their pollution.²⁵³

In the case of Ravailiac, his breasts were pulled with pincers, the offending arm that had stabbed Henry was plunged into burning sulphur, and his body was tormented with molten lead, boiling oil and resin with hot wax being applied to the wounds.²⁵⁴ The crowd eagerly took a role so that when Ravailiac was drawn by four horses the people pulled on the ropes to help the horses.²⁵⁵ Actively the crowd worked to ensure that his suffering was severed from any hope he may have had for redemption. Priests seeking to administer last rites were prevented from doing so by the populace while at the same time the crowd fell upon Ravailiac with swords, knives and sticks to dismember his body.²⁵⁶ In the case of Concini, the people of Paris, moved it seems by loyalty to King Louis and thus by contempt for the corpse of the tyrannical Concini, removed him from his grave and cut his body to bits: “Parts of the corpse then were fed to dogs, the heart was cooked and eaten with vinegar, the limbs were burned . . . and the ashes cast to the wind.”²⁵⁷

B. The Social Practice of the Blood Feud and the Theme of

²⁵³ Ronald Mousnier, *L'Assassiant d'Henry IV* (Paris, 1964), p. 32; “L’eterrent, obseques et funnerailles de Conchine, Mareschal d’ Ancre,” R.O. Lindsay and J. Neu, *French Political Pamphlets* (Madison, 1964), No. 3860;

²⁵⁴ Orest Ranum, “The French Ritual of Tyrannicide in the Late Sixteenth Century,” *Sixteenth Century Journal* XI (1980), p. 71.

²⁵⁵ *Ibid.*, p. 72.

²⁵⁶ Mousnier, *L'Assassinat d'Henri IV*, p. 34.

²⁵⁷ Ranum, *The French Ritual of Tyrannicide*, p. 79.

Yet, notwithstanding institutional ambivalence about, or rejection of, the redemptive possibility of bodily torment, it must be remembered that the scaffold is the place where social and popular culture and formal legal, political, and religious institutions intersect. What one finds at this intersection is a reinterpretation of legal and religious forms of thought by both the witnesses to the execution and the condemned. Indeed, one cannot help but be struck by the way the bits and pieces of information left to us point to a pervasive cultural commitment to penal violence and blood letting as an instrument that freed the wrongdoer's soul from the torment of its alienation from self, community, and God. The tolling of the bell as a prisoner was led to the scaffold, his kneeling and public confession or his telling a story that stressed the necessity of punishment for sins,²⁵⁸ the priest's carrying of votive images near to the condemned's face, (which represented the culprit's penitential worthiness)²⁵⁹ and the crowd's compassionate and respectful response to the man who contritely and bravely faced his death hint at a cultural understanding of penal suffering as a carrier of redemptive promise.

What is striking about the medieval execution is the way in which all its elements coalesced to *transfigure* the ritual of death whereby an act calculated to instill terror upon would be wrongdoers became an act of spiritual and communal reconciliation. I say "transfigured" because in spite of the authorities effort to construct the execution as an act of ultimate defeat for the

²⁵⁸ E.g., Matthew Paris, *English History From the Year 1235-1273*, trans. J.A. Giles (3 vols., London 1852-54), vol. 1, p. 176, 409.

²⁵⁹ Samuel Edgerton, *Picture and Punishment: Art and Criminal Prosecution During the Florentine Renaissance* (Ithaca, 1985), p. 44; Merback, *Thief*, 153.

condemned, the spectators and offender frequently act in unison to elevate the death ritual from a blunt exercise of judicial power to a liturgical drama centred upon salvation and sacrifice. This is not to deny that for some the execution surely was no more than an act of exemplary terror. So too, in literary texts such as the fourteenth-century *Karlmeinet* the traitor Waellis' death is both "a penance for [his] sin, so that it will go well with [his] soul" and a message and "example" to the world.²⁶⁰ In all likelihood, many who came to witness an execution took a similar view. To the unreflective understanding, the suffering body of the condemned both signified both a warning and a carrier of redemptive hope. Nevertheless, albeit perhaps unconsciously, each participant to the medieval execution -- judge, crowd, cleric, executioner, and condemned -- was left to make a cosmic choice: man was, in his *essence*, a reactive creature who, as the thirteenth-century decretalist Hostiensis held, could not help but respond to incentives based upon temptation and terror, or he was a being capable of being tested by his suffering and of using it as a means to respond to the angels of his better nature.²⁶¹ In the former case, the meaning of the condemned's pain was primal and simple: it served to cower those who witnessed it providing them with an incentive for conformity and brutalized the one who suffered it. In the latter case, suffering was transformative, upraising, and reintegrating.

The bits of evidence available suggest that irrespective of the message authorities or jurists

²⁶⁰ Translated portions of these quotes are in, Ziegler, *Trial*, pp. 70-71.

²⁶¹ The thinker who would clarify the way in which deterrence and redemptive punishment depended upon a radically different understanding of the constitutive nature of man is the early nineteenth-century thinker, Friedrich Hegel. He writes that to base punishment upon the idea of threat "presupposes that a man is not free, and its aim is to coerce him by the idea of an evil." F. Hegel, *Philosophy of Right* trans. T.M Knox (Oxford, 1967), § 99, ad. 62. He continues, "To base a justification of punishment on threat is to liken it to the act of a man who lifts his stick to a dog. It is to treat a man like a dog instead of with the freedom and respect due to him as a man." *Ibid.*

thought the execution should convey, and contrary to the particular ontology of man implicit within a utilitarian jurisprudence, participants, witnesses, and the condemned repeatedly choose to keep faith with the thought that man is born “to form the angelic butterfly” and thus could encounter his bodily suffering and death as a means to thwart his own defective commitment to lawlessness” (Purg. Canto X, ll. 127-130). The sources suggest a cultural sensibility that saw in man – even in his status as a wrongdoer – a capacity to transcend his nature as a creature and to respond, not to temptation or threat, but to that part of his being which medieval theologians, mystics, and poets avowed remained tied to his Creator in even the darkest hour. The tearing and torment of the condemned’s body allowed him to be “bathed and drowned in the blood of Christ crucified” and to “become so drunk” as to completely lose himself in union with the Good.²⁶²

C. The Ritual of Purgative Pain

When the execution became a public spectacle is unclear. Typically the gallows were outside the walls of a city though in the case of sensational trials an execution might be staged in various parts of a city centre.²⁶³ In some instances, the execution could occur in relative isolation. Henry Summerson concludes from his research of English gaol delivery and eyre rolls from 1200-1350 that executions for felony were “commonly hole-in-corner affairs, with few witnesses.”²⁶⁴

Yet, though few detailed accounts of the European execution exist prior to the sixteenth-century, it is plausible they were well attended from early in our period. In late twelfth and early thirteenth-century England, for example, the counties were visited every four to seven years by the

²⁶² Catherine of Siena, *Letters*, vol. 2, p. 695.

²⁶³ Edgerton, *Pictures*, p. 139.

²⁶⁴ *Ibid.*, p. 130.

royal eyre which would hear all pleas of the crown as well as taking care of administrative concerns of the crown. These were huge undertakings lasting many days and drawing together suitors and presentment juries from all around with as many as two thousand people in attendance. Those who were sentenced to death were usually dealt with quickly. As Summerson observes, it was common for four vills to participate in a felon's execution.²⁶⁵ In Mathew Paris' chronicle of the early thirteenth-century, he mentions the "people" gathered to witness executions of rather ordinary offenders as if such gatherings were common.²⁶⁶ On the continent, scattered references to the executions of common malefactors who are without notoriety suggest that groups of some size typically gathered to witness the deaths. Remarks upon the "great multitude of people" recurs in chronicle descriptions of early fourteenth-century executions in Paris and in fifteenth-century Florence.²⁶⁷ And of course, when the condemned was politically or spiritually important, large crowds gathered. In the twelfth-century Orderic Vitalis relates the story of Earl Waltheof's execution in 1076 for conspiracy against his lord, William the Conqueror. Orderic writes that the Normans were cautious and took the Anglo-Saxon hero to be beheaded early in the morning "whilst the people slept" out of fear that if awake the people would "prevent them carrying out the royal will."²⁶⁸ One chronicler estimates an audience of 200,000 people attended the 1475

²⁶⁵ Summerson, "Attitudes," p.122.

²⁶⁶ Paris, *English History*, vol. 1, 176 (1239); vol. II, p. 296 (1249).

²⁶⁷ *Chronique parisienne anonyme du XIV siècle*, ed. A. Hellot, (Nogent-le-Rotrou, 1884), pp. 53, 127, 167; Landucci, *Florentine*, p. 204.

²⁶⁸ Orderic Vitalis, *Ecclesiastical History*, ed. and trans. Majorie Chibnall, (6 vols, Oxford, 1969) vol. 2, p. 321. The execution is also mentioned in *The Chronicle of Florence of Worcester With the Two Continuations*, ed. & trans. Thomas Forester (1968). However, no mention is made of Norman fear of the people.

execution of the count of Saint-Pol, constable of France, for treason.²⁶⁹

The presence of witnesses and spectators is significant to the medieval execution. Rather than being passive observers, spectators acted as the vigorous guardians of the Deity's justice and His mercy. Acts of intercession, with their obvious analogue in saintly intervention, could reduce scaffold tortures planned for the condemned. This was particularly true in the case of pleas by women. It is reasonable to speculate that such acts of female intercession found their justification in the archetype of the Virgin Mary, the compassionate intercessor who cheated "Hell of its most promising candidates."²⁷⁰ Thus the body of Gilles de Rias, hanged for the rape and murder of children in 1440 was saved from burning by the appeal of several noble women.²⁷¹ In France and Germany a man may be saved from his death if a woman interceded asking for the condemned's man hand in marriage.²⁷² This custom is first recorded in 1274 in France and lasts into the sixteenth century.²⁷³ Moreover, the crowd could stop an execution when there was error such as a rope breaking or a beheading being botched.²⁷⁴ Lucas Landucci, a fifteenth-century Florentine

²⁶⁹ Jean de Roys, *Journal ou Chronique scandaleuse, 1460-1483*, ed. B. de Mandrot, (2 vols, Paris, 1894), vol. 1, 361.

²⁷⁰ Duby, *Age of Cathedrals*, p. 164.

²⁷¹ Dean, *Crime*, p. 136. On the Queen as intercessor see Paul Strohm, "Queens as Intercessors," *Hochon's Arrow* (Princeton, 1992), p. 101.

²⁷² P. Lemerrier, "Une curiosite judiciaire au Moyen Age: la grace par mariage subsequent," *Revue d'histoire du droit* 33 (1955), pp. 464-474; Basin, *Histoire*, vol. 2, 376-77; *Journal d'un bourgeois de Paris*, p. 250; Esther Cohen, *The Crossroads of Justice: Law and Culture in Late Medieval France* (Leiden, 1993), p. 193, n. 40.

²⁷³ Cohen, *The Crossroads of Justice*, p. 194.

²⁷⁴ Nicole Castan, "Summary Justice," *Deviant and the Abandoned, Selections From the Annals*, ed. Robert Forster and Orest Ranum, trans. Elborg Forster and Patricia Ranum (Baltimore, 1978), p. 111.

diarist, notes an execution where the “compassion” of the crowd for a condemned man who bravely faced his death became so overwhelming that the crowd attacked and killed the executioner when he bungled the beheading.²⁷⁵ Similarly into the fifteenth-century when a scaffold ladder was missing or found to be too short, jurists bowed to the popular belief that the event was a sign of God’s judgment that the condemned was either innocent or a recipient of divine mercy. In these instances, the death sentence would be remitted.²⁷⁶ All of these customs indicate a cultural readiness to accept a condemned man back into the communal fold.

That judges and crown were responsive speaks to the way in which the juridical realm was the custodian and interpreter of the storehouse of religious and ethical knowledge that comprised the wider culture. Although after the late sixteenth-century officials would curtly dismiss beliefs in Divine signs as those of the rabble, in medieval Europe jurists did not shy away from interpreting extraordinary events during the infliction of penal pain as a manifestation of Divine will that constrained what mere human judges may do. Thus in 1384 Richard II pardoned John atte Puttes after he endured *peine forte et dure* for so long that “it seem[ed] a miracle” he remained alive.²⁷⁷ Similarly, in 1359, Cecilia Ryge-way, accused of murder, received a full pardon from Edward III after she “remained alive for forty days . . . without food or drink, after the manner of a miracle.”²⁷⁸ At times the king would grant a pardon at the last moment as in the case

²⁷⁵ Landucci, *Florentine*, p. 204.

²⁷⁶ Gauvard, “*De Grace Especial*,” p. 180

²⁷⁷ *Cal. Pat. Rolls*, 1381-1385, p. 373.

²⁷⁸ *Cal. Pat. Rolls*, 1354-1358, p. 529. Andrea McKenzie, “‘This death some strong and stout hearted man doth choose’: the Practice of *Peine Forte et Dure* in Seventeenth- and Eighteenth-Century England,” *Law and History Review* 23 (2005), p. 300.

of the traitor Roger Chumberleyn who had been drawn, hanged, and then marked for disembowelling with a knife when suddenly he received pardon from Henry VI out of reverence and in imitation of “the Passion of Christ and the Virgin Mary.”²⁷⁹

Conversely, when the populace or crown did not intercede, the salvific promise of Christ’s passion “was nowhere more fully realized than in the redemption of the criminal who confessed, atoned, and suffered his pain steadfastly.”²⁸⁰ Medieval representations of the Passion in painting, woodcuts, and plays of the mid-fourteenth and fifteenth have long been studied for the manner in which they reflected contemporary execution practices. Much less studied is the way in which the execution drew upon the Passion and contemporary beliefs about the significance of fleshy violence and blood letting to man’s redemption and ultimate salvation. Each step in the execution ritual was directed toward elevating the execution into a ritual of religious sacrifice that tethered together bodily violence to the soul’s purification.

Across western Europe it was the custom to allow the wrongdoer to perform some penitential act prior to his death. In thirteenth-century France, the condemned malefactor was denied the right to penitence; yet, this was exceptional. It was in this context that Clement V, in 1312, forbade the practice of denying confession to prisoners.²⁸¹ In Strasbourg the granting of confession was a long standing custom. In England, the thirteenth-century tracts *Court Baron* and *Placita Corone* both represent a trial against thieves as concluding with a bailiff being told to take

²⁷⁹ *Cal. Pat. Rolls*, 1446-1452, p. 68. *Ibid.*, 1441-1446, p. 278.

²⁸⁰ Merback, *Thief*, p. 149.

²⁸¹ Fernand M Delorme and Anoyisius L. Tautu eds., *Acta Clementis PP.V* (1303-1314) (Rome, 1955), p. 95, no. 62 (1312).

the convicted man to see a priest.²⁸² And Summerson records a case where “Cristina Cray, ineptly hanged at Hereford in 1290, was said to have made confession to a Franciscan on her way to the gallows.”²⁸³

In the Italian city states, such as Florence, as well as in Rome, and France comforters from organizations of lay brothers attended the condemned’s spiritual needs the night before his execution.²⁸⁴ In Florence, the fact that the brothers counted Michelangelo and Lorenzo De Medici among its members suggests the way in which succour of the condemned was intertwined with the ideals of civic duty. The cart which took the convicted man to the scaffold might stop before designated shrines allowing the man a bit of respite to gather his fortitude.²⁸⁵ In fifteenth-century Florence, the final stop before reaching the municipal gallows was the chapel of the Tempio Brotherhood. In c.1440 Fra Angelico painted a large tempera panel of a *Lamentation* for the altar. The facade of this little church, just a few feet from the gallows, was covered with a fresco depicting the Passion of Christ. Other paintings within the church were of a similar nature, with one showing St. James the Lesser miraculously holding up two hanged victims to keep them from strangling. Fixed to the pavement, directly in front of the *Lamentation* was a stake to which the condemned man would be chained thus allowing him to kneel and to receive the last rite before

²⁸² *Placita corone*, ed. J.M. Kaye, Selden Society (London, 1966), 17; *The Court Baron*, ed. F.W. Maitland, Selden Society (London, 1890), 64.

²⁸³ Summerson, *Attitudes*, p. 131.

²⁸⁴ Edgerton, *Pictures*, p. 160; Jean de Roye, *Chronique scandaleuse*, vol. 2, pp.349, 358-61; Thomas Basin, *Histoire des regnes de Charles VII et de Louis XI* ed. Jules Quicherat (4 vols., Paris, 1855-59), vol. 2, p. 377.

²⁸⁵ Edgerton, *Pictures*, p. 141.

being led to the gallows.²⁸⁶

In some regions it was the practice not only to ensure that he be allowed to make confession, but that he partook of the host. Though, in the central middle ages, the condemned were frequently denied the Eucharist on the ground that it stayed in the body three days after ingestion and “it would be a scandal if Christ, who is believed still to be in the gullet should be delivered to the gallows,” by the end of the fourteenth-century, through the efforts of those such as Jean Gerson (preacher and rector of the University of Paris) the condemned did receive the host.²⁸⁷

What is most striking is the way in which the witnessing community participated with the condemned in the realization of his salvation. So too, the flow of words, expressions of feelings, and reciprocal gestures that occurred between the condemned and those who came to witness his death carried a this-worldly significance. Rather than an act of ultimate expulsion from the community, there are traces of the idea in the sources that in offering up his body, the condemned reconciles himself with the body of the community. Indeed, once the Eucharist or ceremonies akin to the sacrament of the Mass were allowed the condemned, he was emphatically included within the *corpus Christianorum*.²⁸⁸

Frequently the condemned confessed to the crowd or performed penitential acts in the public space of the scaffold. In Paris it was common for the condemned to be required to make

²⁸⁶ *Ibid.*, p. 194.

²⁸⁷ Cohen, *The Crossroads of Justice*, pp. 198-201.

²⁸⁸ Though the giving of the sacrament was never popular in France, quasi-sacramental ceremonies occurred such as the constable of St. Pol being permitted to hear Mass and to consume blessed water and bread before his death. Jean de Roye, *Chronique Scandaleuse*, vol. 2, p. 358.

amende honorable, a formal act of penitence usually performed in front of a church during a stop in the procession to the scaffold.²⁸⁹ In a little later period in England, the offender was encouraged by authorities to confess before the crowd and to evince his contrition.²⁹⁰ Typically these acts of confession were passionate and heartfelt. In the mid-thirteenth-century, Matthew Paris speaks of the execution of one William Marsh who had “lived as a pirate . . . indulging in plunder and rapine.” At his execution he “poured out his soul in confession” to John of St. Giles persuading Paris that the man had, as Giles said, gone to his death “by way of repentance.”²⁹¹

There are scattered references to similarly dramatic gallows confessions in chronicles from the fourteenth and fifteenth-century.²⁹² In 1392, John Paule, a servant at the church of Westminster, was sentenced to hang after being convicted of homicide.²⁹³ Though he had attempted to clear himself of the homicide, in an effusion of self-condemnation on his way to the gallows Paule declared himself deserving of death for “his treachery and ingratitude to God and the church of Westminster in deceitfully luring out of sanctuary” persons who were later arrested and hanged.²⁹⁴ In 1388 that on his way to the scaffold Sir Nicholas Brembre “devoutly recited the Placito and Dirige . . . and asked pardon of everyone . . . and thus with great contrition brought his

²⁸⁹ Pieter Spierenburg, *The Spectacle of Suffering* (Cambridge, 1984), p. 53.

²⁹⁰ Bellamy, *Crime and Public Order*, p. 189.

²⁹¹ Paris, *English History*, vol. I, p. 409.

²⁹² *Johannis de Trokelowe et Henrici de Blaneforde Chronica et Annales*, ed. H.T. Riley (Ross Series, 1865), p. 328; Jean de Roye, *Chronique scandaleuse*, vol. 2, pp.349, 358-61; Basin, *Histoire*, vol. 2, p. 377.

²⁹³ *The Westminster Chronicle*, p. 497.

²⁹⁴ *Ibid.*

life to an end . . . his contrition and piety moved almost all the bystanders to tears.”²⁹⁵ In 1326 Hugh Despenser the Younger, reputed to be a monster and a favourite of Edward II was convicted of treason in the aftermath of Queen Isabella’s and Roger Mortimer’s successful revolt against the king.²⁹⁶ The *Annales Paulini* which gives a most full account of the events of 1326 records that though he was “drawn through the whole city of Herford, then hanged, then beheaded,” he “humbly and patiently suffered anything and professed publicly to all that he had merited worse, and he often asked pardon of those who stood near and the passerbys.”²⁹⁷ Frequently, the dying man promised to intercede on behalf of those who witnessed his death once he arrived in Heaven purified of his sins.²⁹⁸ So too, he would beg the spectators to pray for him, in an act of intercession, thereby diminishing his time in Purgatory.²⁹⁹ Perhaps one of the most well known confessions is that of the rebel Jack Straw who detailed a plan by the rebels involved in the Peasants’ Revolt to kidnap Richard II after being promised masses for his soul for three years.³⁰⁰ The striking feature of these scaffold confessions is their vigour. They do not ring with resigned

²⁹⁵ *Westminster Chronicle*, p. 315. For another similar account of Brembre’s execution see *Cobbett’s Complete Collection of State Trials*, ed. Th. B. Howell (London, 1809), vol.1, cols. 118-119).

²⁹⁶ *Froissart’s Chronicles* trans. John Jolliffe (New York, 1968), p. 20.

²⁹⁷ *Annales Paulini, Chronicles of the Reign of Edward I and Edward II*, ed. W Stubbs (London, 1965), p. 319-320.

²⁹⁸ Richard van Dülmen, *Theater of Horror: Crime and Punishment in Early Modern Germany* trans. E. Neu (Cambridge, 1990), p. 120.

²⁹⁹ Thomas Basin, *Histoire des règnes de Charles VII et Louis XI*, ed. Jules Quicherat, (4 vols, Paris 1855-59), vol. 2, p. 53; *Journal d’un bourgeois*, p. 33; *Chronique du religieux de Saint Denys*, vol. 5, p. 76. See for example the quote by Bartolomeo d’Angelo from his *Ricordo del ben morire* (Brescia, 1589), pp. 364-365 located in Edgerton, *Pictures*, p. 131.

³⁰⁰ Thomas Walsingham, *Chronicon Angliae*, trans. EM Thompson (London: Rolls Series, 1874), pp. 309-310.

despair. Rather, they evoke the image of men committed to their own death as a means of both spiritual cleansing and of reconciling themselves to their community.

The witnessing spectators, in turn, respond to these shows of contrition with strong emotions figuratively clasping the condemned to their heart. Within the chronicles men and women weep, cry out, offer prayers of intercession, and encourage the condemned moved by what one late fifteenth-century chronicler of Nuremberg repeatedly calls the “beauty” of the repentant malefactor’s death.³⁰¹ Notwithstanding that the act of hanging or decapitation ended a malefactor’s physical life, the sources leave the distinct impression that the witnessing community bestowed forgiveness upon the penitent wrongdoer thereby reconciling him to itself though the matter that comprised his body was crushed. Indeed, in the Italian city-states it was important to the legal authority that, even when there was the possibility of error and an innocent man faced the scaffold, the condemned should die reconciled with those who killed him.³⁰² In Italy the comforters who attend the condemned to the scaffold in the late middle ages, urge him to not go to his death with hatred, but to forgive judge, witnesses, and all others who have had a role in his sentence.³⁰³ Upon reaching the scaffold it was not uncommon for the condemned to act with graciousness toward the executioner. Representative is the execution of Mansart du Bois in Paris in 1411 who, in response to the headsman’s request for forgiveness for what he was about to do, begged the executioner to embrace him. The chronicler writes, “there was a great multitude of

³⁰¹ *Die Chronik des Heinrich Deichsler*, in *Chroniken der deutschen Städte vom bis in 16. Jahrhundert* (Leipzig, 1892), vol. 11, *passim*.

³⁰² Prosperi, “Il sangue e l’anima,” pp. 959-60

³⁰³ Domenico Caparozzi, “Compendio per conforto de’ rei condannati alla morte . . .,” in *Viterbo, appresso Girolamo Discepolo* (1613), pp. 56-57.

people, who nearly all wept hot tears.”³⁰⁴ In 1413, the provost Pierre des Essarts, who was convicted of unjustly imposing the death sentence upon his political adversaries in the aftermath of the unsuccessful *Cabochien* revolt, is quick to forgive his executioner. “When he realized that he must die he kneeled before the executioner, kissed a small silver pendant that the executioner wore, and softly forgave him for his death.”³⁰⁵ In 1405, when the archbishop of York, Richard le Scrope faced his executioner it is recorded that he “saide. . .to him that sholde smyte of his hed, ‘for His loue that suffrid v woundes for alle mankynde, yeue me v strokis, and I foryeue the me dethe.’ And so he dede.”³⁰⁶

The method of execution contained a symbology that emphasized the kinship between penal pain and spiritual purgation. With the exception of Germany where death by the wheel and by live burial remains frequent, the three most common blood sanctions in this period are hanging, beheading, and being burnt at the stake. Beheading, was said to be reserved for the upper nobility, hanging for the masses, and burning at the stake for heretics or for those who had committed particularly heinous crimes. Beheading, Edgerton tells us, represented the removal of the figurative crown from the head of the noble wrongdoer. Thus, for example, in Giotto’s painting *Justice* a woman is enthroned with a crown upon her head. In her hands she holds the scales of justice. In one pan, an angel brandishes a sword upon the head of a seated figure who wears a

³⁰⁴ Quoted in Johan Huizinga, *The Autumn of the Middle Ages*, trans. R. Payton & U. Mammitzsch (Chicago, 1996), p. 4.

³⁰⁵ *Journal d’un Bourgeois de Paris (140-1449)*, ed. Jacques Megret (Paris, 1881 repr. Paris, 1944), p.22.

³⁰⁶ *An English Chronicle of the Reigns of Richard II, Henry IV, Henry V, and Henry VI Written Before 1471*, ed. J.S. Davies (London, 1856).

crown. In the other pan, an angel reaches to place a crown upon another seated figure.³⁰⁷ What is personified is Distributive Justice who, according to Aquinas, “gives to each what his rank deserves . . . good and bad, honour and shame.”³⁰⁸ It is against this symbolic backdrop that the act of beheading took on special meaning. To decapitate a man was to remove the figurative crown from his head. The crown symbolized his nobility which was conceived of as a matter of his virtue as well as of his blood. It was the way that many condemned wished to die. The sources suggest that more was at stake than wanting to avoid death by strangulation at the gallows. King Edward IV's Constable John Tiptoft, Earl of Worcester, was executed for treason in 1470. His friend, Vespasiano da Bisticci, wrote that “the people wished that he should die as the kings had died” and thus the scaffold was covered with tapestries and carpets.³⁰⁹ Tiptoft then bade the headsman to take off his head with three strokes “in honour of the holy Trinity.”³¹⁰ Known as a merciless constable who engaged in cruelty, one may doubt this show of respect from the people. Yet, what is striking about Vespasiano’s narrative is the way in which he portrayed the beheading as a devotional sacrifice.

Indeed, the visual aspect of beheading overflowed with soteriological imagery. With the exception of England, the usual procedure in beheading was for the condemned to kneel in prayer. The executioner would then strike his neck upright and from behind with a swing of a long heavy

³⁰⁷ Edgerton, *Pictures*, p. 126.

³⁰⁸ ST, 1a, q. 21, Reply

³⁰⁹ Myron Gilmore, ed. *Vespasiano: Renaissances, Princes, Popes, and Prelates* (New York, 1963), pp. 337-338.

³¹⁰ *Ibid.*

sword.³¹¹ The image of the condemned appearing to be imploring for divine mercy at the moment he suffers the blow was exceptionally poignant. The many pictures painted in late medieval Europe of Christian saints being martyred in this way attest to the image's cultural resonance.³¹² So too, the prevalence of the image suggests the way in which a penitential motif could blur the lines between punishment and martyrdom. Often in such paintings the headsman appears nearly diabolic embodying in artistic form the disdain with which medieval culture held executioners. Though he held the status as an officer of the law, he often lived the life of an outcast and was treated as automatically notorious and thus deprived of certain legal rights.³¹³ There is a sense, says Edgerton, in which the medieval executioner stood in for Lucifer whom the Divine used to keep man tested.³¹⁴ His dress served to reinforce his iconic role. On the continent he often wore gaudy feathered hats and tight britches, and he performed his function stripped bare to the waist. The gestures and equipment of the beheading served to transfigure an act of temporal justice into a redemptive drama whereby the kneeling man, while not often a martyr, was posed as a soul struggling for salvation in the presence of a demonic force in the shape of the executioner.³¹⁵ Strikingly, in fifteenth-century Florence the most common blood sanction was beheading suggesting that in this formerly republican city-state even the lowly was allowed a noble death.³¹⁶

³¹¹ Anonymous, *Beheading With A Sword and a Body Broken on the Wheel* 1417, plate 6, in Lionello Puppi, *Torment in Art: Paint, Violence and Martyrdom* (New York, 1991), p. 17.

³¹² *Ibid.*, *passim*.

³¹³ Gerald D. Robbins, "The Executioner: His Place in English Society," *British Journal of Sociology* 15 (1964), pp. 234-253

³¹⁴ Edgerton, *Pictures*, p. 134.

³¹⁵ *Ibid.*, p. 135.

³¹⁶ Landucci, *Florentine*, p.4, 11, 213.

Hanging too had its symbolic imagery. Rather than the hangman's noose, it was the ubiquitous hangman's ladder that held special iconographic significance in late medieval Europe. As an instrument of the *Arma Christi*, the execution ladder invited its association with one of the most sacred symbols of Jesus' Passion. Devotional writers such as St. Bonaventura speak of the world as a ladder and which in contemplating we will "mount up to God."³¹⁷ Painters too employed the ladder as metaphor for spiritual ascent.³¹⁸ Ostensibly a punishment that signified degradation, the gallows also served as an analogue for man's capacity to share in Christ's humanity through suffering. The ladder invited the penitent wrongdoer to figuratively ascend the Cross embracing his suffering and ultimate death as the means by which his renewed devotion to God and thus the Christian community became manifest.

Once the torments and/or death occurred, contemporaries took much time to record the emotional posture of the wrongdoer as he died. The making of a good death, shriven and in preparedness with a contrite heart to deliver one's soul to God, dominated lay religious life in the fourteenth and fifteenth-century. To this end, practical instruction booklets known as the *Ars moriendi* were a common form of literature for the laity including the illiterate who relied upon block-book woodcuts that illustrated the penitential steps a dying man must take, and the frame of mind he must nurture, in order to achieve salvation.³¹⁹ The discourse of the *ars moriendi* provided

³¹⁷ Bonaventura, *The Mind's Road to God*, trans. G Boas (New York, 1953), p. 10.

³¹⁸ Craig Harbison, "Visions and Meditation in Early Flemish Painting," *Simiolus XV* (1985), p. 90; Gertrud Schiller, *Iconography of Christian Art*, tr. Janet Seligman (Greenwich, Conn., 1972), vol. 2, pp. 184–98; Flora Lewis, "The Wound in Christ's Side and the Instruments of the Passion: Gendered Experience and Response," *Women and the Book: Assessing the Visual Experience*, ed. Lesley Smith and Jane H.M. Taylor (London, 1996), pp. 204–229.

³¹⁹ Paul Binski, *Medieval Death: Rituals and Representation* (Ithaca, 1996) pp.41-46.

popular culture with a way to interpret the bodily signs that accompanied death both at the deathbed and at the scaffold. Wrote one chronicler in admiration for the resoluteness of an offender in face of his pain, “he died like a Christ merrily and willingly.”³²⁰ In 1400 a witness to the execution of John Holland, earl of Huntingdon, was similarly moved to record how the earl faced his “fate” with *patientia* and *humiliter*.³²¹ When in 1440 Sir Richard Wyche and Roger Norman were condemned to be burnt for hearsay, the author of the *Brut* writes:

. . . and thus they ended their lives in this world. And the peple that sawe theym dye, had gret compassion on theym, for the confession and ende that they made in their good byleve, and thanked God for his sonde.³²²

And again in Ferrara in 1496 was recorded the death of forger who facing his death “staunch and steadfast” and verbally reinforcing himself with the hope of salvation “made everyone cry who saw him die so well.”³²³ In the sixteenth-century, Holinshed held that “our condemned persons doo go so cheerefullie to their deths for our nation is free, stout, hautie, prodigall of life and bloud.”³²⁴

As we saw with the saints who engaged in *imitatio Christi*, the condemned’s willingness to undergo his pain not only allowed him to assimilate Christ’s suffering, but to purify himself of the

³²⁰ Quoted in Theodor Hampe, *Crime and Punishment in Germany: As Illustrated by the Nuremberg Malefactors’ Books*, trans. M Letts (New York, 1929), p. 78.

³²¹ “Annales Ricardi Secundi,” *Chronicles and Memorials of Great Britain and Ireland During the Middle Ages*, (Nendeln, reprint, 1964), p. 328.

³²² *The Brut of England*, ed. F Brie (London, 1906-1908), vol. 2, p.476, Appendix F.

³²³ *Diario ferrarese dall’anno 1409 sino al 1502 di autori incerti*, ed. G Pardi, *Rerum italicarum scriptores*, (Bologna 1928-38), vol. 24, pt. 7, pp. 162, 175.

³²⁴ *Holinshed’s Chrconicles of England, Scotland and Ireland*, ed. Henry Ellis (London, 6 vols. 1807-08), vol. 1, p. 310. Sir Thomas Smith said much the same. “In no place shall you see malefactors goe more constantly, more assuredly, and with less lamentation to death than in England.” Thomas Smith, *De Republica Anglorum*, ed. L Alston (Cambridge, 1906), p. 105.

sin of his wrong. Through the suffering of his death, the traitor John Holland, sought to expunge his “filth.”³²⁵ We find a like idea in a long tradition of votive imagery devoted to illustrating the culprit’s worthiness of redemption such as the fifteenth-century woodcut on the title page of Jacob Issickemer’s miracle book where a demolished victim of the wheel is propped up before an altar offering his suffering as supplication to an apparition of the Virgin and Child who look lovingly down upon him. Indeed the title of the piece is “The Virgin Receiving Offerings From Pilgrims.”³²⁶

Not all legal historians agree that the torment suffered by the condemned and his ultimate death carried an otherworldly meaning that was understood by crowd, authorities, and the offender alike. Claude Gauvard vigorously argues against seeing the execution as a penitential ritual. She notes that the condemned did not dress in penitential garments and that they usually went to the scaffold on a dung cart, “a mode of transport not associated with repentance.”³²⁷ Others note that Florentine children played with the corpses of the condemned dragging them about or cutting off the hands. Dice might be made from their bones and occasionally the disembowelled innards were thrown to the dogs.³²⁸ Still, only traitors were treated so roughly. So too, though the convicted customarily wore secular attire, the colours they choose to wear carried symbolic meaning. This is particularly true in the case of nobility where the colours chosen for their attire functioned as statements, whose interpretation depended upon a chivalric-religious tradition, about hopes for

³²⁵ “Annales Ricardi Secundi,” p. 328.

³²⁶ Merback, *Thief*, p. 153.

³²⁷ C. Gauvard, “Pendre et dependre a la fin du Moyen Age: les exigences d’un rituel judiciaire,” *Riti e rituali nelle società medievali*, ed. J. Chiffolleau (Spoleto, 1994), pp. 204-205.

³²⁸ Dean, *Crime*, p. 137.

their soul in the aftermath of their death.³²⁹

However nebulously, there drifted in the air the thought that by embracing his death, the condemned acted to confirm his love of the Good and in so doing moved – like Dante’s penitents – closer to bliss. A dramatic, but not thematically unique, story was recorded by Catherine of Siena. In 1375 Nicolas Tuldo was sentenced to death in Siena for speaking against the city’s magistrates. Catherine wished to aid the young man in preparing for a good death and to offer him comfort. She visited him and later writes that “he was comforted and consoled so that he confessed his sins and prepared himself very well” hearing Mass and taking communion.³³⁰ He beseeched Catherine to accompany him to his death and she agreed. Sometime after she writes that before being beheaded “his will was united and submissive to the will of God” making an end as a “peaceable lamb” who “called holy the place of justice [i.e. the gallows]!”³³¹ In recording the event, Catherine emphasized the joy with which Nicolas approached his death. He laughed in delight in seeing her at the chopping block. He was meek in allowing her to place his neck on the block. She writes that when the blade struck his neck, “his mouth said nothing but ‘Gesu!’ and ‘Caterina!’ and as he said this I received his head into my hands . . .my eyes fixed on divine Goodness.”³³² Catherine’s account of Nicolas’ death erases the line between sinner and beloved explicitly: God received this soul “only through grace and mercy and not for anything he had done.”³³³ The blood Nicolas

³²⁹ Cohen, *Crossroads*, p. 187; Michel Pastoureau, “Les couleurs medievales: Systemes de valeurs et modes de sensibilite,” *Figures et couleurs* (Paris, 1986), pp. 35-49.

³³⁰ *Letters of Catherine of Siena*, T273, pp. 86-87.

³³¹ Catherine of Siena, *Les lettres de Sainte Catherine*, trans. E. Cartier (Paris, 1886), pp. 886-91

³³² *Ibid.* P. 88.

³³³ *Ibid.*

sheds, and the ultimate suffering it brings, was – paradoxically – life bearing. His blood was “received into [Christ’s] own blood” and mingled with it as a “flame of holy desire” that lifted Nicolas up into a “sharing” of that “tormented love” that had died for humankind.³³⁴

Catherine’s view of Nicolas’ death was not idiosyncratic. The audience to the medieval execution was evoked to the strongest feelings of compassion by the wrongdoer who endured his agony in a way that signaled to the crowd his desire to please God through his suffering. In the case of Nicolas’ death, Catherine’s associate Fra Tomaso Caffarini who was present at the execution writes that the crowd “marveled” at what transpired.³³⁵ So too the fluidity and permeability of the line between sinner and saint stressed in Catherine of Siena’s account of Nicolas’ death also appears in the practices of the confraternities who in comforting the condemned at the execution regaled them with stories of those martyrs whose manner of death most echoed their own.³³⁶ Indeed, the inversion that sees rebirth in death, and bliss in pain, was not uncommon to the period. A frequent motif in the late twelfth-century miracle tales is of the wrongdoer who is punished by the fastening bans of iron around his neck or arm who then is banished “until by pilgrimage and prayer his reconciliation and pardon should be manifested by the miraculous loosening of the fetter, showing that the soul [through the trials of the body] was . . . released from [its] bond.”³³⁷ The kinship that existed between the condemned and the saint in search of God insofar as each sought to transcend sin through the mortification of their flesh also

³³⁴ *Ibid.*

³³⁵ *Letters of Catherine of Siena*, p.88 n.31.

³³⁶ Vincenzo Paglia, *La morte comfortata; riti della paura e mentalita religiosa a Roma nell’eta moderna* (Rome, 1982), p. 84.

³³⁷ Henry C. Lea, *Superstition and Force* (1866), p. 285.

finds frequent expression in late medieval literature, art, and sermons.³³⁸

The redemptive potential of the wrongdoer's pain rested not so much in the fact that he paid the penal debt as it did in the idea that his suffering was itself a revelatory sign of his love of the Good (*qua* God). But, such bodily suffering was also efficacious. Notwithstanding the theologian's and mystic's call of *contemptus mundi* that sounds at various intervals throughout the period, medieval culture was wedded to the belief that its world carried sacramental meaning. In stark contrast to the ancient and early modern world, in the high and late middle ages the flesh did not hamper man. Rather, it aided him in encountering bliss. In the context of veneration of the Corpus Christi, Miri Rubin writes "it was this-worldly in emphasizing that channels of regeneration and salvation were available and attainable, renewable and never exhaustible."³³⁹ In the context of the execution, folkloric tradition commingled with orthodox Christianity fostering what the modern may consider to be gruesome practices. The condemned's suffering body not only mapped the movements the soul's striving for the Good. Its physicality contained in *itself* demonic and/or godly forces. Demons were thought to reside in the unrepentant or traitorous wrongdoer and thus one finds instances where witnesses to the execution ate of the dead man's flesh to ensure his obliteration.³⁴⁰ Conversely, the spilt blood of the wrongdoer who died a sacral death was believed to contain curative properties and thus the sick and afflicted would attend the

³³⁸ For late medieval literature see Jerome Baschet, "Les conceptions de l'enfer au XIV^e siècle: Imaginaire et purvoir," *Annales E.S.C.* 40 (1985), pp. 183-205; for artistic expression of the same idea in the fifteenth century see Alberto Tenenti, *La vie et la mort à travers l'art du XV^e siècle* (Paris, 1952), pp. 30-48; Jean Gerson, *Six sermons français inédits*, ed. Louis Mourin (Paris, 1946), p. 81, 446, 462 (imagery of sinners as false traitors, cut throats; hell is a gibbet and the devil its hangman); pp. 219-44 (sermon equating purgatory as prison and hell as death sentence).

³³⁹ Rubin, *Corpus Cristi*, p. 348.

³⁴⁰ Ranum, "The French Ritual of Tyrannicide," p. 72.

execution to drink the dying man's blood.³⁴¹ In other cases, the bones of those who most bravely met their death were kept as relics.³⁴² More than an exotic practice of a few on the fringe of the community, the confraternities for the comfort of the condemned at times gathered up their dismembered body parts and the instruments of execution, in the manner of relics.³⁴³

What these practices attest to is the strength of the belief in the spiritual efficacy of the bleeding and tormented body. The sublimity and profundity of medieval thought concerning the transformation of suffering into salvation, of the essential unity of body and soul, and of the power of physicality, aided by grace, to actualize the divine depended for its detailing upon a few exceptional personages. Nevertheless, the popular imagination intuited, albeit in an unreflective and simplified manner, those movements of thought that allowed a belief in the power of the suffering flesh to simultaneously *release* the wrongdoer's soul from sin's captivity, and to be at the same time no more than a *signifier* of the soul's striving toward the Good. Notwithstanding the growing number of jurists that justified the blood sanction by reference to its force as an instrument of terror, the rituals that attended the execution suggest that its primary power lay elsewhere: the thief, heretic, or murderer who died well achieved salvation and in some instances glorification.³⁴⁴ At the moment the soul left Nicolas' body, writes Catherina of Siena, she saw “

³⁴¹ Prosperi, “Il sangue e l'anima,” p. 965. For the persistence of this practice in the seventeenth-century see Evans, *Rituals of Retribution*, p. 95. On the belief in the healing properties contained in the redeemed offender's body parts and fluids see Piero Camporesi, *The Incorruptible Flesh: Bodily Mutation and Mortification in Religion and Folklore* (Cambridge, 1988), p. 19; William S. Heckscher, *Rembrandt's Anatomy of Dr. Nicolaas Tulp* (New York, 1958), pp. 164-166 n. 180.

³⁴² J Jusserand, *English Wayfaring Life in the Middle Ages*, p. 33;

³⁴³ Prosperi, “Il sangue e l'anima,” p. 994, n. 8.

³⁴⁴ On the belief that the penitent wrongdoer could attain heaven, rather than purgatory, as a result of his suffering a representative example comes from a 1504 pamphlet by the

the God-Man as one sees the brilliance of the sun.”³⁴⁵ In devotional art such as the 1360 Bohemian panel painting *Calvary* Christ languishes as the two thieves twist violently upon their crosses.³⁴⁶ The work in agonizing detail demands the viewer to witness the bloodbath of the triple execution. Yet, in the horror of Calvary, the artist locates its paradox: The profusely bleeding wounds of Christ’s hands drip upon the heads of the two thieves. The Good Thief, his head contorted and bent back upon his neck catches in his mouth the blood pouring from Christ’s wounds. The image, as did all medieval art of the Crucifixion, drew not only upon Scriptural symbology, but upon the culture’s lived experience of the normative import of the penal execution.³⁴⁷ Catherine’s vision of Christ at Nicolas’ execution and the customary practice of blood drinking at the execution by the afflicted spoke to a cultural belief that in dying well the condemned was purified. His purification, in turn, contained a physical reality. As in the miracle of the Eucharist, Christ mingled his blood and flesh with matter thereby sanctifying it.

C. The Unrepentant

Nuremberg poet Kunz Has. He writes of the execution of a baker’s assistant who has brutally killed five people. “After having all ten fingers chopped off, the murderer, who had confessed to his crimes, was tortured with red hot pincers . . . before finally being impaled. He had given the executioner precise instructions on how to treat him so that his torment might last as long as possible . . . Thus the murderer died among the crowd’s tears and prayers of intercession. His head had inclined to the right side, a sign, the poet explained that he had been forgiven and accepted into Heaven.” Groebner, *Defaced*, pp. 103-104. See also Monika Hellwig, “The Life of the World to Come,” *The Human Condition in the Jewish and Christian Traditions*, ed. F.E. Greenspahn (Hoboken, 1986), p. 215 on the doctrine of the immediate beatitude.

³⁴⁵ *Letters of Catherine of Siena*, p. 88. On reported miracles occurring at executions see The Walsingham, *Historia Anglicana*, ed. H. Th. Riley (London, 2 vols. 1863-1864), vol. 2, pp. 266, 270-271, 31, 32.

³⁴⁶ An excellent discussion of this painting occurs in Merback, *Thief*, p. 218-220.

³⁴⁷ *Ibid*, pp. 1-25.

_____ In Ferrara in 1445, a certain Benà, a linen comber, and a murdering thief was hanged. In reading his sentence he said: “if he has ever seized a soul, let the Devil now take the soul from my body.”³⁴⁸ The chronicler reports:

And when he had said the words it seemed as if all the carriages and carts . . . were flying here and there, making a great noise: all the people ran away, some here some there, so that Benato was almost the only one left. [And those who ran away] lost cloaks, berets and shoes – and there was a great fright.³⁴⁹

The discussion thus far has focussed upon the condemned who repented of their wrong and, with what must have entailed an unfathomable exertion of will, actively sought to locate in their torment and death the presence of a loving God who had bestowed suffering upon their body and soul as a mark of His devotion. The question looms about the significance of the blood sanction in medieval culture when the condemned refused to commit themselves to this sacrificial drama. The possible answers to this question brings the discussion to the point where learned religious, philosophical, and literary thought divides, in some respect, from customary popular beliefs.

In the case of Benato, his tempting of Satan drives the crowd to a frenzy for just as the medieval Deity could reveal His presence at the execution so too could demons. The forces of Good and Evil might well contend over the soul and body on the scaffold.³⁵⁰ The belief in evil as a demonic force that infected the body and soul of the condemned was so culturally embedded that across medieval Europe it was customary for an executioner to burn on the spot all the ropes that he used in an hanging for fear that the instruments of the execution had become infected with the

³⁴⁸ M. Roberti, “Il libro dei giustiziati di Ferrara a 1441-1557,” *Atti del R. Istituto Veneto* 66 (1906-1907), p. 834 n.2, pp. 829-40.

³⁴⁹ *Ibid.*

³⁵⁰ Edgerton, *Pictures*, p. 47.

same evil that pervaded the dying man and had led him to transgress the law.³⁵¹ Often labelled by historians as a “superstition” that shared little with orthodox medieval Catholicism, the belief in the palpable reality of evil was a natural and intelligible implication of a religious culture whose centerpiece was the image of the embodied God.

What the torment of the condemned who stubbornly remained unrepentant signified to those who witnessed the execution remains unclear for these are not matters the chroniclers concentrated upon. Rather their interest appears to have been in the pains of the contrite malefactor. One can extrapolate from the sources that speak to the particularly rough treatment by a crowd of traitors or tyrants that their torment was thought to mimic the pains that awaited their souls in Hell.³⁵² Gone from these fragmentary accounts of the recalcitrant offender is any indication that the populace saw the dying man’s or woman’s anguish as a sign that their being remained tied to God in the way, for example, spoken of by Dante in his poetic rendering of the condition of the souls in Hell.

Nevertheless, insofar as “culture” refers not to what is popular and common but rather to the highest forms of thought within a particular period that imperceptibly and incrementally shape and carve a particular people’s distinctive character, something else can be said about punitive pain in regard to the unrepentant offender. We are brought full circle back to our discussion of the scholastics, mystics, and poet. Implicit in Aquinas’ account of evil as privation and of

³⁵¹ L. Puppi, “Il mito e la trasgressione Liturgia urbana delle esecuzioni capitali a Venezia tra XIV e XVIII secolo,” *Studi Veneziani* 15 (1989), pp. 107-30. 113, n.11; Prospero, pp. 962-63.

³⁵² Though this is not always the case. For example, in 1584, the assassin of William of Orange, Balthasar Gerard, suffered a most horrible death tortured for over eighteen days. Finally the prison Lieutenant was asked to finish him off by strangling him so that “his soul should not despair and be damned.” Brantôme, *Mémoires. La Vie des hommes illustres*, II, (1722), p. 191-92

punishment as the countering of the will to evil (and thus as necessarily painful) is the thought that the infliction of punitive pain is an act of honouring the very identity of the wrongdoer as a being. And since “being and good are convertible” what punishment honours by thwarting the will to evil is the condemned’s goodness.³⁵³ Thus though the recalcitrant may view his ordeal on the scaffold as no more than the brutal extinguishing of his life, understood from within the thought of scholastics and mystics such as Anselm and Aquinas, or Julian of Norwich and Catherine of Siena, the medieval blood sanction affirmed his essence as a law-worthy being.

Returning to Dante for a moment, the condemned who suffered the sword, rope, or fire without contrition cast himself to Hell. Yet, as the *Inferno* illuminates, the condemned’s worldly pains may be understood too as pointing to Divine love. Recall that by committing themselves to vice, the punished in Hell are divided within themselves for they thwart their soul’s natural desire for the good. They grieve the loss of “the good of the intellect” (Inf. Canto 3, ll. 17-18). This thwarting of their naturally “godly will,” as Julian calls it, is their soul’s primary anguish. This anguish of the soul, which is inextricable from the suffering experienced by the body on the scaffold, is conceived by Dante as a sign of God’s ardour. We return to Smith’s careful explication of Dante’s text. As Smith writes, it is by “preserving in [the sinner] the good desire which is the source of their pain,” that God does not allow them to fall even further to evil thereby extinguishing their being.³⁵⁴ Though Dante writes of the soul’s journey after death, his poem by his own observation is also an allegory of the state of man insofar as he liable to the award of punishment for wrongdoing.³⁵⁵

³⁵³ Aquinas, *On Evil*, A.2, Response, p. 13; ST 1a2a, q., 35, art. 6, reply.

³⁵⁴ Smith, “Punishment,” p. 573.

³⁵⁵ *Ibid.*

Taken together, the thought of the learned, theologian, and mystic offer a way of understanding punitive pain of the unrepentant offender that may or may not have been intuited by the craftsman, burgher, spinner, noblewoman, or miserable poor who came to view the execution - or by the condemned themselves. But what the discourse of the poet, theologian and mystic does tell us is that there existed in this period an intricate and multi-layered tradition of thought that opened up the possibility of finding purpose and sacral meaning in the bodily pain and death of even the most obdurate.

Conclusion

This article has taken as its basic assumption that we cannot understand the meaning and significance of, at times, horrific punitive attacks upon the body by the medieval legal order without situating the blood sanction in a broad and deep cultural context whereby account is taken of the way medieval western Europe thought about suffering not only in relation to punishment, but in relation to evil, to the agony of the crucifixion, and to the union of the body and soul.

As Michel Foucault discerned in *Discipline and Punish* those who came to witness the dying man's death and, in some cases, torment questioned and took in "each word, each cry, the duration of the agony, the resisting body, the life that clung desperately to it" for all this constituted a sign of the soul's progress to its salvation.³⁵⁶ The symbols of the medieval execution suggest that more was at stake in the suffering and ultimate death of the wrongdoer than exemplary punishment aimed to instill terror upon all would-be wrongdoers. Considered collectively, these rituals of pain and death indicate that the judicial authority was contingent upon a popular commitment to, and preoccupation with, an idea of bodily suffering as both a conduit to the

³⁵⁶ Michel Foucault, *Discipline and Punish* (New York, 1979), p. 46.

wrongdoer's redemption and as a sign of his salvific status.

This meaning, in turn, relied for its expression upon a rich traditional vocabulary of both Christian and folkloric symbols. Implicit in the rite of penal death in this period is a cultural dedication to the idea that bodily pain was emblematic of the soul's torment as it strived to realize that part of itself that "never assented to sin nor ever will." Not only did the execution provide the condemned with a way to harness his pain to his pursuit of his mystical union with God, the sources suggest that in dying the good death the offender reconciled himself to his community. In this respect, and notwithstanding those discourses that envisioned the execution as an exemplary act of condemnation, the narratives left to us suggest that in many respects the medieval execution was praiseworthy and merciful, for it confirmed the condemned's status as a law-worthy being.

This understanding of painful execution depended upon, indeed was possible, because of intense focus from 1200 to 1450 upon the nexus between soul and body. Bernard of Clairvaux has body speak to soul which is scolding it in his *Conversion*: "I am your body, your very self."³⁵⁷ In the thirteenth-century the hagiographer of *Christina Mirabilis* expresses the same:

Then, taking her feet with both hands, she would kiss the soles of her feet . . . and say "O most beloved body! Why have I beaten you? Why have I reviled you? Did you not obey me in every good deed I undertook to do with God's help? You have endured tormentO best and sweetest body . . .is the end of your hardship, now you will rest in the dustand then, at last, when the trumpet blows, you will rise again purified of all corruptibility and you will be joined in eternal happiness with the soul you have had as a companion in the present sadness."³⁵⁸

Rather than a prison which trapped the soul, body was both integral to human identity and a

³⁵⁷ Bernard of Clairvaux, "On Conversion," *Bernard of Clairvaux: Selected Works* trans. G. R. Evans (New York, 1987), pp. 69-70.

³⁵⁸ Thomas of Cantimpré, *The Life of Christina Mirabilis*, trans. Margot H. King, *Matrologia latina 2* (Saskatoon, 1986), pp. 27-8; see also Caroline Walker Bynum, "The Power in the Blood," ed. Stephen Davis, *The Redemption* (Oxford, 2004), pp.177-207.

conduit of religious experience. Thus in this period, the body in pain spoke to, reflected back, and shaped, the experience of pain in the soul. Behind this stress on the composite nature of human identity was an intense and energetic emphasis in late medieval Christendom upon the embodied and suffering Son. His torn and bloodied all so human flesh was in the late medieval period the paradigmatic image around which medieval culture revolved. When turning their attention to questions of soteriology and theodicy, scholastic theologians, mystics, the learned, and in some fashion the culture at large, were forced to confront the relation between human redemption and the brutalized flesh of a dying god. Bernard would ponder “Why you ask me, by blood when he could have done it by word . . . It is given to me only to know that it is so, not why it is so.”³⁵⁹ Nonetheless, as we have seen in this discussion, men and women attempted to make sense. It was a short step from Calvary to the scaffold. Representations in medieval art of the Crucifixion and saintly martyrdom drew upon artists’ lived experienced of the rituals of the scaffold, wheel and pyre. Conversely, however, a theology of blood, suffering, redemption, and sacrifice provided a way for late medieval Europe to encounter the blood sanction and the condemned who endured it. The witnessing crowd, it may be speculated, knew not why the felon’s redemption must be by blood; rather they only knew that it was so.

³⁵⁹ Quoted in Bynum, *The Power in the Blood*, p.177.