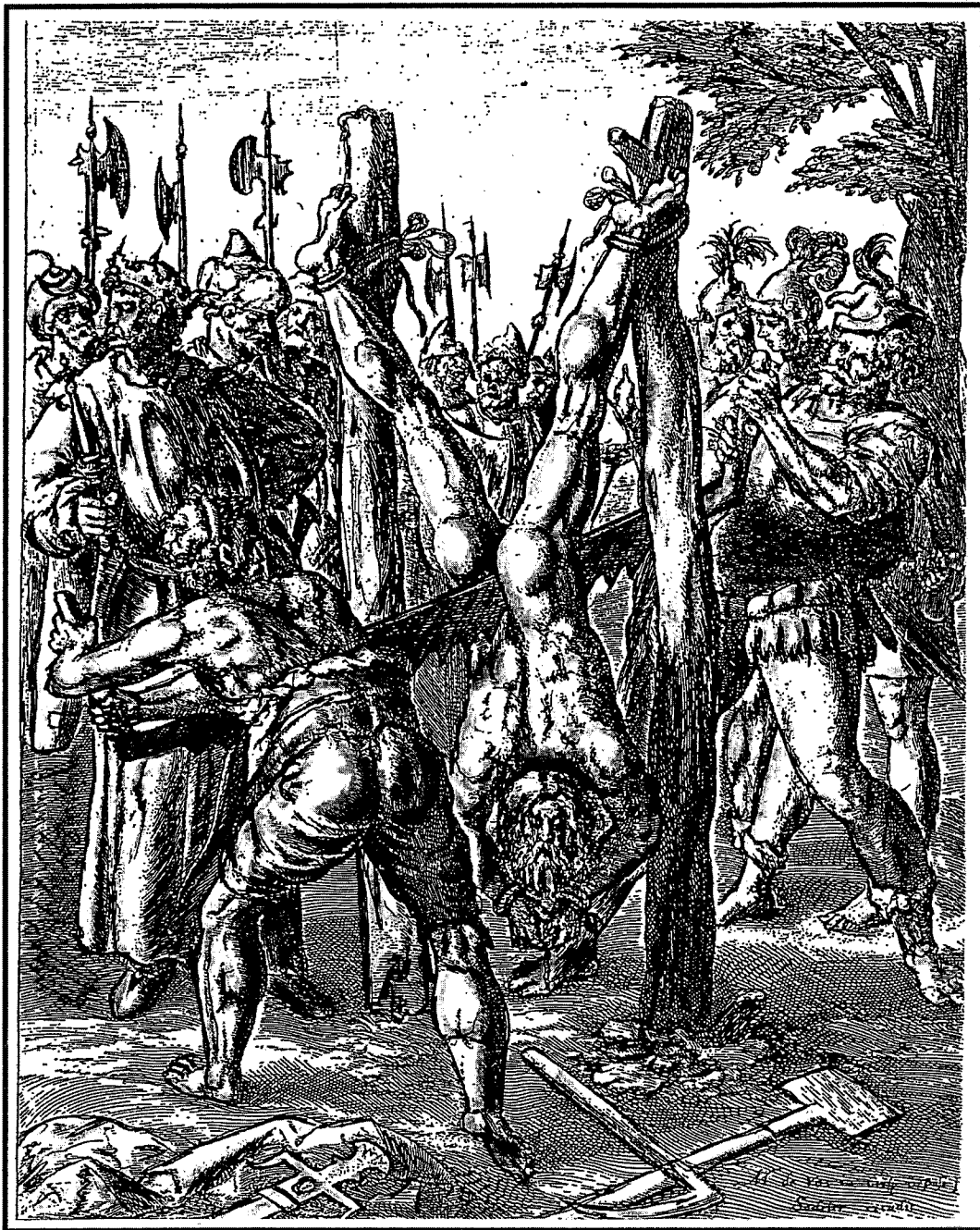


CRIMINAL JUSTICE

The Ever Evolving Technology of Punishment



Martin de Vos, "The Martyrdom of the Prophet Isaiah," c. 1600.

THE ONLY DIFFERENCE IN THE LAST 700 YEARS OF RETRIBUTIVE JUSTICE SYSTEMS IS THAT THE SO-CALLED TECHNOLOGIES OF PUNISHMENT HAVE BEEN REDEFINED

The State had developed methods and technologies of punishment that are far more palatable to public sensibilities.

By
P.J. O'Shea

One of the consequences of the transition to State justice that first occurred during the twelfth century has been the shift from restitutive solutions, to solutions that are exclusively retributive. This is not to suggest that savage punishments were not practiced in earlier models of justice, but only to point out that when the state became the organizing force of society, punishment was pursued and administered as if it were synonymous with justice. Punishment became a specialized function of the State and, just as importantly, a ritual performance. The vast majority of earlier punishments were corporal. They were performed publicly as brutal examples and as a reminder of the State's claim to the "monopolization of violence." Grand displays were staged in the public squares and the populace was encouraged to participate. During these events, unspeakable tortures were

celebrated as just retribution for violating the laws of the State.

Flogging

The most commonly practiced form of punishment was flogging. Its popularity became universal and was employed not only to punish criminals, but also to maintain family and academic discipline. As the State expanded its jurisdiction into homes, schools, and ultimately into just about every facet of institutional life. Flogging in public squares for minor disciplinary infractions became commonplace. Laws were also passed that permitted husbands to flog their wives to ensure obedience. The flogging of criminals, however, was administered with the greatest severity and zeal. For example, the infamous Russian knout was frequently used. This device was constructed of several dried and hardened thongs of rawhide

interspersed with hooks that would enter the exposed flesh of those being flogged. Severe floggings frequently resulted in death.

colony, the letter "B" was branded on the forehead as punishment for blasphemy.

Mutilation

The use of the whipping post was only recently abolished in America. In Delaware, prison wardens personally administered floggings to prisoners. The last recorded legal flogging took place in Delaware on June 16, 1952. Flogging persisted routinely (if unofficially) in Mississippi prisons up until a time when the federal courts put an end to the practice in 1972.

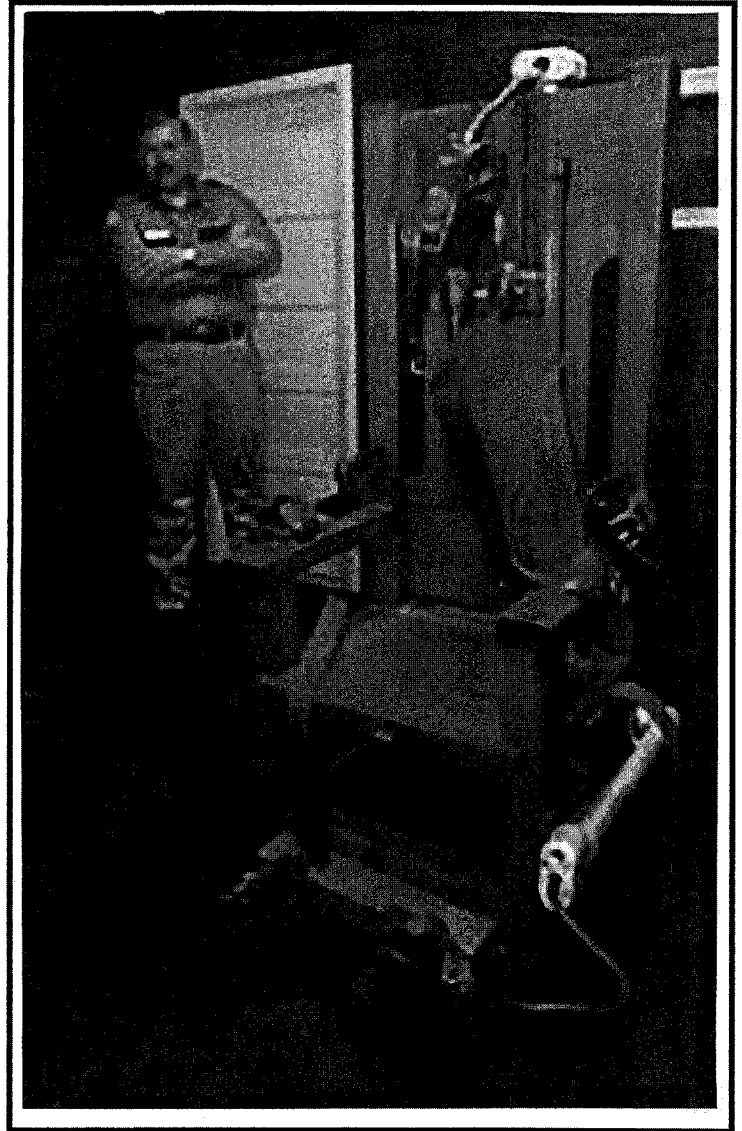
The practice of mutilation has a long and sordid history. Thieves and counterfeiters had their hands cut off, liars and perjurers had their tongues cut out, and sex offenders had their genitals severed from their bodies. This practice continues in some countries to this very day. In America, "eye for an eye" justice exists in its starkest and most extreme form – capital punishment.

Stocks and Pillory

The stocks and pillory were designed to subject the offender to public shame. These instruments of punishment locked the criminal's head and arms in a wooden frame located in a public place. In some cases, criminals were stoned or their ears were nailed to the pillory, and the accused was compelled to rip his ears loose or have them severed. The pillory was abolished in England in 1837.

Branding

The practice of branding offenders was another common form of punishment. In Colonial America, the east Jersey codes of 1668 and 1675 established that first-time offenders of burglary be branded with an "T" on their hand. Second time offenders were to have an "R" branded on their forehead. In the Maryland



Old Sparky – Florida State Prison, Raiford

Public Executions

The most extravagant displays of punishment however, were the public executions that became a daily ritual and a binding force of urban life between the 15th and 19th century. "The spectacle of public execution followed a precisely established liturgy, it was a spectacle through which Authority offered a representation of its own terrible omnipotence, of the *merum imperium*. The setting for this act

**The Tabloids, Prime Time
Television Shows And The
Internet All Publicize The Photos
of Criminals And Go To Great
Lengths To Retell the Stories Of
Their Actions As a Way To Hold
Them Up To Public Scorn.**

was the city – but not the idealized version of it that we are used to. The whole of the urban fabric became involved in this ritual thanks to the careful choice of routes for procession to the gallows – a procession during which various unspeakable litanies of suffering were revealed. And when the prisoner arrived at his final destination a dizzy but calculated variety of torture was inflicted upon him – in a spectacle that was put on for the public that included all ranks of society, the hybrid and disturbing human universe that was to be found within the city. The atrocity of these, often interminable, tortures was designed to achieve the maximum involvement of the public in the application of this just retribution for the grave offenses committed against the absolute standard of Law.¹

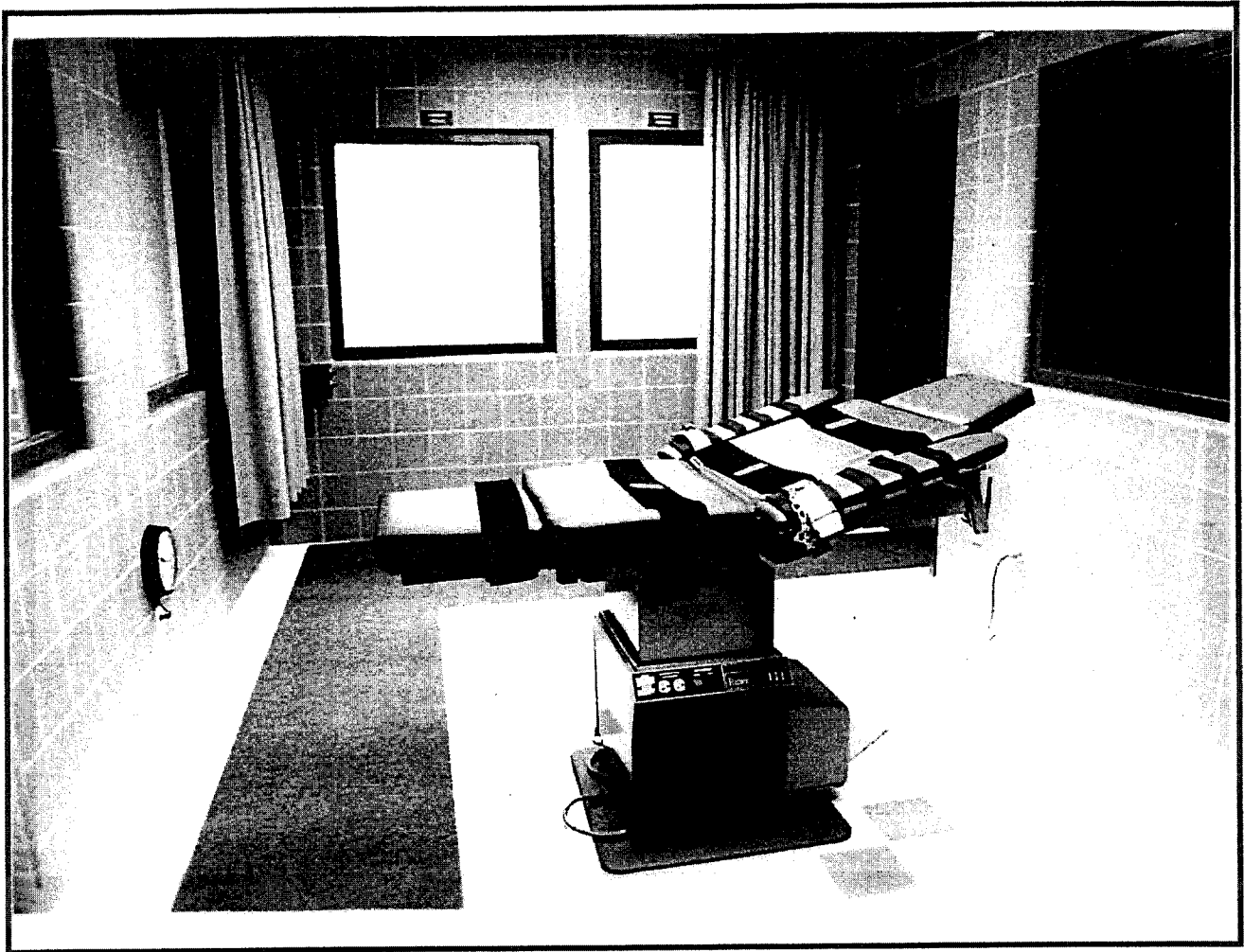
Records of these executions indicate that the procession of tortures was indeed savage and gruesome. The condemned frequently were mutilated, quartered, burned, dragged through the streets by horses, and then executed. In Venice, a man who was guilty of theft from the Church was condemned by the Council of Ten on December 3, 1549, to be "...put on a raft and transported down the Grand Canal as far as Santa Croce; at six different points on that journey his flesh is to be torn with red hot tongs. The he is to be tied at the tail of a horse and dragged to the Scuola de San Marco, where his right hand will be cut off and hung around his neck. Thence, with a crier announcing his

crimes (as is to be done on the journey down the Grand Canal as well), this Nadalin is to be brought between the two columns and hanged until dead on the galleys erected there. Thereafter his body is to be burned and reduced to ashes²"

By granting permission to the people to participate at these executions, the State reinforced its exclusive claim to define and dispense "justice." In the process, vengeance triumphed as the guiding force of Law. Punishment became a symbolic act that was no longer connected to the vindication of the rights of victims or to society's moral outrage, but dramatized the consequences of violating the laws of the State.

Retributive Justice

The function of punishment as a symbol and as a means of exalting the inviolable power of the State remains a primary purpose of retributive justice today. Under the guise of public safety, incapacitation, or rehabilitation, the State nationalizes the administration of punishment as essential to justice. The only difference in the last 700 years of retributive justice systems is that the so-called technologies of punishment have been refined. The State has developed methods and technologies of punishment that are far more palatable to public sensibilities. The crude displays of corporal punishment and brutality have been replaced with the more sterile terrors of modern science. All of the favorite punishments of medieval times have been retained in a new guise. For example, the pillory is still widely used today. The tabloids, prime time television shows and the internet all publicize the photos of criminals and go to great lengths to retell the stories of their actions as a way to hold them up to public scorn. This is not only very popular entertainment, but big business as well.



Execution Chamber –United States Penitentiary, Terre Haute, Indiana

The practice of branding has not lost its appeal. After serving their terms of incarceration, prisoners become “ex-convicts” for life. Ex-cons are not branded with a mark upon their bodies, but their names and histories are placed on-line through internet search engines for life. The commission of a crime at age 18 is enough to forever exclude “ex-cons” from participation in a whole range of vocational and employment positions. In some states, convicted drunk drivers are required to place stickers on their vehicles denoting their degraded status, thus subjecting them to both the pillory and a form of branding.

Mutilation in various forms is still advocated for sex offenders on a regular basis. For those with a history of violent crimes, the State can mandate the use of powerful chemicals that erode portions of the human brain. Chemical and surgical lobotomies have been performed by the State on those classified as criminally “insane.”

Prisons

Prisons have become “correctional centers” where punishment is defined as reformatory and rehabilitative. Notwithstanding these misplaced rationalizations, prisons are still places of

unspeakable brutality. Psychological punishment such as long term solitary confinement have, and are being used to supplement more traditional forms of corporal punishment.

The use of so-called ‘supermax’ prisons is now at an all time high in America. According to the latest figures available, at least 45 states have either constructed or use these barbaric facilities. Prisoners, fortunate enough to eventually be released from such brain-twisting environments, often go on to commit horrendously violent crimes against an unsuspecting public.

Capital punishment in America has never disappeared. Executions continue to be carried out in the name of the State. According to the Death Penalty Information Center, in 2015, 28 people were executed in America. Almost 3,000 prisoners currently languish on death row and 31 states still allow executions.³ Currently, several states are reexamining the gruesome method they employ when carrying out an execution. A few states have even suggested a return to the electric chair. Up until quite recently, the law permitted the execution of juveniles. It was only through courageous action by the Justices of the United States Supreme Court that this barbaric and brutal practice finally came to a halt.

Conclusion

Thus, modern technologies of punishment differ from their crude antecedents only because they are more ambitious. Early modern forms of punishment punished the body, often in brutal ways. Modern uses of prison seek, as French historian Michael Foucault has noted, to reach the soul. American Quakers who championed the prison did so with the expectation of encouraging repentance and conversion. As we now know, that experiment has proved to be a colossal failure.

As long as the State retains “ownership” of the crime, participants in the criminal justice system will be treated almost as irrelevant entities whose needs are subordinate to those of the State. The shifting ideologies of rehabilitation, deterrence, and retribution result in short-term adjustments that serve only to reaffirm State authority over criminal justice.

-
1. Lionello Puppi, *Torment in Art* (New York: Rizzoli International Publications 1991), 7.
 2. Ibid. 20
 3. www.deathpenaltyinfo.com. Accessed 4/5/16

Cover Illustration reproduction done by
Rodney M. Ball.

Authors Note

Portions of this article represent an updated version of the article “**The Politics of Punishment**” originally written by Luke Janusz (1957 - June 29, 2003). That article originally appeared in the Spring 1992 issue of **ODYSSEY**, a nationally accredited Alternatives in Criminal Justice magazine. Mr. Janusz served as Publisher and Editor of **ODYSSEY** from its inception. This author served as a staff writer for **ODYSSEY**. This updated version titled “**The Ever Evolving Technology of Punishment**” is dedicated to honor the memory of Luke. RIP.