

Shame as a Means of Punishment

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In the conference I presented my paper in the session "Identity and Publicity". I found this title very appropriate to my subject. After all, the big question in my work is the relations between the community and a criminal. My main concepts are honor and shame, and they were not only inner or personal, but very public values in the late medieval German society, at least in the sense of the criminal justice system and the dishonoring punishments.

The paper in the conference was based on my master's thesis: "*Auss liebe der gerechtigkeit, vmb gemeines nutz willen. A Study on Shame as a Means of Punishment in the Late Medieval Germany*" (University of Joensuu, 2000). My aim was to tell generally what this was all about and also to give the audience a glance into the doctoral thesis I am now beginning to write.

In my master's thesis I focused on the crime and punishment in German towns in the beginning of the 16th century. The main source was the *Constitutio Criminalis Carolina*, which is a corpus juris dated in 1532. Also the earlier version of CCC, *Constitutio Criminalis Bambergensis* was used. They both are profane, not religious laws. CCB was meant to be regional and CCC then became its national successor. (CCC = *Die Peinliche Gerichtsordnung Kaiser Karls V., Constitutio Criminalis Carolina*, in "*Die Carolina und ihre Vorgängerinnen. Text, Erläuterung, Geschichte. Herausgegeben von J. Kohler, Professor der Rechte in Berlin.*", kritisch herausgegeben von J. Kohler und Willy Scheel, 1900 Halle.)

While I was reading CCC I found out that there were not so many dishonoring punishments mentioned in it. I could only find the most common ones, such as pillory and flagellation. But in the text of CCC it was more than once clearly said, that a criminal can and must be punished in a dishonoring way according to the "old local laws", out of which the judge then chooses the penalty. So, because of the huge variety of the dishonoring punishments, all of them could not be written down. This means that the judicial texts are not the source I should be looking for if I wanted to

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understand the dishonoring punishments and the meaning of shame in the late medieval German society. This might sound like a simple discovery, which it actually is. Sometimes it just takes time to figure out the simplest things.

According to Gerd Schwerhoff there is an area in the criminal history that has not been studied as much as it should. It is the difference between the laws and the actual reality (Schwerhoff 1991: 20). This is where my greatest interest lies. Therefore, I now intend to extend my sources to other texts (e.g. pamphlets, judgments) and hopefully pictures and other physical objects as well. In my work I hope to find knowledge and information about the most interesting forms of the dishonoring punishments and how people reacted when they saw them being used. Why was shame such an important issue in the lives of the late medieval Germans – or was it really? What made it an efficient method in the criminal justice system? How did shame appear in the punishments? Is there any chance for us to understand the symbolism used in the penalties?

Shame and honor

Together the two concepts, shame and honor, form the core of my work. They reveal the two important characteristics of the late medieval identity. They are, so to speak, the two different sides of the coin, and closely related to the idea of publicity. Laws were made and traditions were followed in order to punish; as a result the honor of the criminal should be decreased by punishments. In the minds of the early modern Germans honor was part of a social capital. It was, so to say, one's passport to the community (Schreiner & Schwerhoff 1995: 5–10).

Each individual had a certain amount of honor, and that amount depended on his or hers social class, wealth and reputation he was born with. This was a completely natural order in a world with a strict hierarchy created by God. However, a man could also loose his honor, or a part of it, for example because he committed a crime or engaged in an unfortunate marriage. The latter was quite certain, if he married to a lower class or to a family with a bad reputation (Schreiner & Schwerhoff 1995: 142–166, Borst 1983: 583). In that case shame would take the place of the lost honor. So, when honor decreased, shame increased.

Shame was a fearful thing, because it could ruin one's honor. Without honor there could not be any normal participation in the every day life (Hergemöller 1994: 2, Blauert & Schwerhoff 1993: 175–180). Shame was also contagious. That is why one could not touch the executioner, not even sit in the same table in the tavern. (Dülmen 1988: 94–95). A special law protected craftsmen building the gallows, so the shame of the gallows could not contaminate them. When gallows was build every carpenter in the town had to help in the process. The more carpenters the less shame on each of them. (CCC §215–217, Schreiner & Schwerhoff 1995: 14).

Punishing in a dishonoring way

The late medieval Germans believed that a crime committed by one person caused shame on the whole community (Schwerhoff 1991: 162, 230, 314–315, Borst 1983: 70, Dülmen 1988: 44). Therefore punishing was important not only in the sense of recompensating the crime but more in repairing the damage done to the honor of the community. Crime and punishment had to be equal so that they could neutralize each other. The idea was not, however, to improve the criminal and make him a better person, who could take part in the normal life of the society after he had expiated his crime (Hinckeldey 1980: 152–154, Foucault 1980: 31–32). It was more to make a warning example of him. The punishments were both deterrent and repayment.

The idea of the dishonoring punishments was to decrease the honor by increasing shame. This happened by disgracing and dishonoring the criminal. Physical and spiritual honor were not divided, touching the first could damage the latter (Blauert & Schwerhoff 1993: 35–36, Foucault 1980: 22–39). Punishments were always public. Their success depended on the people's reaction. Without the public nature of the punishments the aspect of shame would never have had the effectiveness it was supposed to have had. (Blauert & Schwerhoff 1993: 159, 177). There is no point in standing in the pillory if nobody's watching.

Pillory was, infact, an interactive punishment. For it to work out as it was meant to work people had to react in a certain way. They were expected to throw rotten vegetables, tickle, mock and let a goat lick the salt put on the feet of the poor criminal etc. Taking part in the punishment must have also been a way to show and emphasize the difference between one's honor and the shame of the criminal. Afterwards the community felt cleaner.

Without honor the individual at that time had no chances to live a normal life in society, or perhaps be a part of it at all. That is why the dishonoring punishments were so efficient. If someone lost his or her reputation and honor, the whole life certainly changed radically. It was, however, almost only the people of the lower class who were punished this way. Honor was their only property, the only thing that could be taken away from them, whereas wealthy people could always pay themselves out of the awkward situation. (Schwerhoff 1991: 144).

Very often the criminals were also exiled from the town (Schreiner & Schwerhoff 1995: 2). If the punishment had given a visible stigma, it was very presumable that the criminal had to live the rest of his life in the forests as a robber. No honorable town or society would accept an abnormal, potentially dangerous person. An outlaw was cursed and had no protection from any law (Borst 1983: 585–587). Sad enough, this was also often the fate of a noncriminal with a physical sign that could be confused with a stigma caused by a punishment, for example a missing ear or nose. People took this person as a sinner who deserved to be punished for his misbehavior (Schreiner & Schwerhoff 1995: 312–313).

The criminal justice system in Germany was divided into two categories: *Strafen an Hals und Hand* (physical and death penalties) and *Strafen an Haut und Haar* (dishonoring penalties). (Fehr 1962: 168–168). Also the first category included shameful aspects. Hanging for example was a very shameful punishment because it made the body look laughable and afterwards the corps was also disposed so that everyone could see it to rot to dust. Women could not be hanged because their bodies could not – for moral reasons - be seen publicly. The most shameful death penalty of all was the wheel. In this horrible way of dying shame and unimaginable physical pain were indivisible.

The second category aimed to the decrease of honor, either totally or partly. (Schmidt 1983: 64). The variety of dishonoring penalties was extremely wide, especially in the southern parts of Germany (Blauert & Schwerhoff 1993: 163, 171). Without understanding the hidden meanings of the punishments the whole criminal process would have made no sense for the early modern man. The Germans living in the 15th and 16th century were familiar to the symbolism used in their criminal justice system. Honor and shame were dead serious values in their lives. To understand this is the key to understanding the dishonoring punishments and the meaning of shame in general.

The dishonoring punishments were often very visual and full of obvious symbolism. (Dülmen 1988: 65–66). For example cutting off the two fingers was a punishment for swearing to false oath. This is probably the most well known example of the judicial symbolism and a very simple way to tell people what had happened: those two fingers were set on the bible while swearing an oath and now they were not worthy to swear anything anymore. (CCC §107). The penalty caused a physical stigma that told people not to trust this person and that he has lost his honor.

The shameful masks for the gossiping women showed their crime clearly with their big nosy noses, huge ears and eyes with which the woman had spied her neighbors. The judgment was very often additionally written on the wall. So the nature of the crime could not stay hidden from anyone. Neither could the identity of the criminal; even in big cities everybody knew who was behind the mask (Hinckeldey 1980: 161). If it was not written anywhere, people asked or they were told. There is a paradox in gossiping – it could be something punishable as well as an acceptable way to spread the news.

Without knowing the late medieval way of thinking and the aspects of honor and shame, it can be difficult for us to understand the symbolism in the penalties. For example, why was it so shameful to cut off ten centimeters of a lady's dress or her to be married with a crown made of stalk? Both were ways to show that the woman was not pure anymore. She had acted in an immoral way, which was not suitable for a woman (e.g. having an illegitimate child). That is why she was not supposed to have the status of an honorable wife. The symbolism in her dress told people to deny her that (Hinckeldey 1980: 156).

These have been just some thoughts and examples on my research theme. I certainly hope to find more of them because I am very interested in the concept of honor and shame in the late medieval Germany. I think this is a subject that can help us to understand the human nature in the past – and maybe in the present as well. Unfortunately there are still a couple of countries in the world today, where publicity and shame play a central role in at least some of the penalties. But that is already another story...

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