The 'Shock' of Torture: a Historiographical Challenge

by Carolyn Strange

'What we learn from history depends entirely on *how* we do it.'¹

James Sheehan, 2005

In 2004 and early 2005, penal practices in prisons and detention camps most Westerners found difficult to spell, let alone locate on a map, rocked politicians and ordinary folk at the epicentres of global power, after prison guards' infliction of pain and humiliation dominated nightly news and daily front pages. In some instances state officials proved that incidents had been staged, and that some images of abuse had been doctored. For the most part, however, authorities scrambled to attribute the embarrassing pictures and activities to 'a few bad apples'. Hardly a sophisticated riposte, this cliché nevertheless characterized official efforts to isolate sadists from honourable soldiers, and to distinguish the aberrant conduct of individuals from the admirable objectives of war.² While the mass circulation of these images prompted good-hearted patriots to fear that efforts to fight evil in the form of terrorism might have unleashed evil in the course of war, they inspired cynical observers to challenge the UK and US administrations' claims that abuse was atypical and inconsistent with military objectives. This anti-imperial interpretation, that violating human rights is inevitably a product of Western racism and neo-colonialism, hints that history might have something to do with these recent scandals, their shocking qualities, and their official orchestration. Undoubtedly it does, but in digging for torture's historical roots, how deep to go, and where to turn?

Most critical analysts scratch down to 11 September 2001. The first substantial condemnation of US involvement in torture came from the journalist Seymour Hersh, in the form of *New Yorker* articles in the spring of 2004 which were quickly updated and edited into *Chain of Command: the Road from 9/11 to Abu Ghraib*, in 2004.³ *The Torture Papers* (2005), an exhaustive edited collection of official memoranda, has since proved that the US administration had laid solid political and legal groundwork for the use of torture years before its scandalous public exposure in 2004. Like Hersh's book it begins in 2001.⁴ Most historians, no matter what their field of specialization, find such narrow time-frames for historical analysis inherently dubious; yet historians have hardly dominated the ranks of those who have exposed and criticized human-rights abuses committed in the course of waging the GWOT ('global war on terror').⁵ Investigative journalists, lawyers, political scientists, media theorists, psychologists,

criminologists and literary theorists have contributed evidence and provided perspectives that have profoundly challenged the framing of the war according to mainstream media outlets and political administrations, yet they have done so without grounding their critiques in history. Rather than criticizing ahistorical scholarship and political interventions, historians might lend their skills and devote their energies to challenge the US and UK administration's declared 'shock' over the circulation of torture images. I suggest that we start by deepening our knowledge and understanding of the body as an object of pain, humiliation, and death – not in foreign wars and military operations, but in the context of domestic, civil punishment, where determining the limits of sanctioned violence, rather than removing violence from penal repertoires, has been a matter of persistent deliberation in modern democracies.

Let us begin lexically with 'shocked' and 'appalled'. These two words, expressed repeatedly by men of power, summed up official US and UK shame over publicly-distributed torture images. While they appeared both in and *as* captions for front-page tabloid coverage of the scandals, the words were simultaneously key signifiers in government statements. On 19 January 2005 they were given their most authoritative imprimatur by Prime Minister Tony Blair, when he commented on the appearance of photos showing British troops beating Iraqi captives and placing them in degrading poses: 'Everyone finds those photographs shocking and appalling and there are simply are no other words to describe them.' The very loyal opposition agreed, with Conservative leader Michael Howard stating: 'The appalling photographs in today's newspapers bring shame on our country, but we should recognize that they in no way reflect the true character of Britain's armed forces.'⁶

Whether one dismisses such expressions as damage control and spin-doctoring or considers them more generously as indications of heartfelt repugnance, the inference of surprise expressed in the word 'shock' is noteworthy. When Blair and Howard spoke in early 2005, similar images had been circulating for nine months, after explicit photos of abuse in Abu Ghraib had aired in April 2004 on the CBS news magazine programme, *60 Minutes*. They too had prompted official statements of shock. President George W. Bush claimed that he had no prior knowledge of the images until he saw them, like millions of others, on television on 28 April 2004. Issuing an apology a week later, on Al Arabiya, an Arabic-language satellite television channel that broadcasts throughout the Middle East, he declared that the photos 'reflect... badly on my country. Our citizens in America are appalled by what they saw, just like people in the Middle East are appalled'. So disturbing were these images (the President assured Jordan's King Abdullah II) that they were nauseating: 'Americans, like me, didn't appreciate what we saw... it made us sick to our stomachs.'⁷ Testifying before the Senate Armed Services Committee concerning the photos, Secretary of Defence Donald Rumsfeld sounded short of

a thesaurus when he searched for words to describe the impact of the photos: 'it surprised everyone. It shocked the Congress. It shocked me. It shocked the president. It shocked the country.'⁸

These declarations of shock, repeated literally *ad nauseam*, performed a potent justificatory role in the coalition's war on terror and mission of democratization. Only countries as civilized and culturally refined as Britain and the US could have felt shame so keenly; only the most politically advanced of democracies could have bolted into action and prosecuted individuals responsible for infractions of military discipline. Visual proof of coalition troops' barbarity, perpetrated in the same institutions and countries where murderous regimes had previously operated, temporarily dissolved the critical boundary between tyranny and democratic accountability, but the swift and severe court-martial proceedings that followed solidified and reaffirmed them. Major General Meyers, Chairman of the US Joint Chiefs of Staff, reacted to the Abu Ghraib pictures by saying that he too was 'appalled' but he quickly moved to commend his troops, who had bravely brought the abuses to light: 'It's important to realize that it was American soldiers that turned these people in, and that as soon as we found out we took very quick action to investigate that situation.'⁹ Fortunately, as British and US officials have assured the public, the barrel of good apples in the military remains full and rosy.

Far from facing electoral defeat after the scandal broke, as many had predicted in the initial aftermath of the Abu Ghraib scandal, President Bush roared to victory, which he capped with an ultra-patriotic inaugural address (dubbed the 'burning Bush' speech). Addressing his fellow Americans and the entire world, he highlighted the country's mission to light the fires of freedom around the world. Lighting fires begins by drawing moral lines, as Bush pledged:

We will persistently clarify the choice before every ruler and every nation: The moral choice between oppression, which is always wrong, and freedom, which is eternally right. America will not pretend that jailed dissidents prefer their chains, or that women welcome humiliation and servitude, or that any human being aspires to live at the mercy of bullies.¹⁰

That this carefully prepared text could redeploy words that, six months earlier, had signified appalling abuse (jailed dissidents, chains, humiliation, servitude, bullies) suggests that the administration's capacity to absorb shock rested on its faith in the American public's yearning for moral certitude; only through such yearning might Americans purge shame-inducing memories. Similarly, while the red, white and blue in the Union Jack has not (and perhaps cannot) be waved with equal patriotic vigour, public uneasiness over the war and revulsion over troop abuses did not force

a revision of British involvement in the Great War On Terror (henceforth GWOT). Like Bush, Blair returned to power after the spring 2005 election.¹¹

Self-serving memory loss is not peculiar to office-seeking politicians, however. Across the West, in popular memory and in scholarly discourse, the recent history of pain and death as penal techniques (both sanctioned and unsanctioned) in liberal democracies has been under-acknowledged, even forgotten. Penal violence can surprise only if one is under the illusion that such techniques belong exclusively to the West's distant past, or to the recent past of the world's most brutal regimes. Thus, the dark-skinned Muslim men in the Abu Ghraib and Camp Breadbasket pictures were not themselves shocking: their images were interchangeable with those that had circulated in Western media since the first Gulf War, intended to illustrate Iraqi and Taliban human-rights abuses. The appalling feature of the pictures, instead, was the light-skinned, Christian men and even women – not Taliban goons or Saddam's henchmen – who had posed gleefully alongside their captives. As Dominick LaCapra has written, 'something would not shock us if it were not already in us, in however potential, subdominant, or repressed a form'.¹² Widely publicized photos of prisoner abuse revealed how readily that potential could be realized.

Small groups of scholars, particularly lawyers, journalists, and researchers in non-governmental agencies, have thus far contributed most to remind the West of its own penal practices that involve bodily pain and degradation. For example, Human Rights Watch (HRW), the organization that regularly monitors and exposes prison-administration violations in the US, attempted to capitalize on public shock by connecting off-shore torture to the everyday practices in contemporary US prisons. As HRW's US programme director stated: 'the sadistic abuse and sexual humiliation by American soldiers at Abu Ghraib prison has shocked most Americans – but not those of us familiar with US jails and prisons.' Yet HRW's evidence of 'wanton staff brutality and degrading treatment of inmates'¹³ typically draws on inmate testimony (often anonymous) rather than visual documentation, a media effect that hampers efforts to generate political action.¹⁴ More significantly, the harsh punishment and beatings of ordinary criminals for civil offences has not registered viscerally in the UK and US, where government pledges to appear 'tough on crime' continue to win votes. If fires of freedom are lit in British and American prisons, they are set by the inmates, not prison authorities. Indeed, criminologists observe that civilian punishment since the 1970s has undergone a process of 'decivilization' (notably in countries currently playing a large role in the GWOT), with vastly-expanded prison populations, harsh penal regimes and shaming punishments.¹⁵ And as critical race scholars have established, even visually-documented brutal practices have recently been rationalized as necessary evils in the (racialized) war on crime.¹⁶

In the absence of widespread critical knowledge of and concern over the treatment of criminals in Western prisons, the torture images from Iraq,

Afghanistan, and Guantanamo Bay have stood out as spectacular and as spectacularly out of the ordinary. Indeed, until the damning photos fell into the hands of US news editors in the spring of 2004, mainstream media numbed the public by 'staying mum' in the face of authoritative *written* documentation of torture.¹⁷ Organizations such as the Red Cross, Amnesty International and HRW, in contrast, struggle to maintain pressure by connecting GWOT torture both to UK and US domestic penal practices and to the use of torture in countries, such as North Korea and Iran, which Westerners dismiss as barbaric. While both of these arguments undermine the credibility of the claims to be shocked, they could draw more powerfully on evidence of historical attempts to distinguish between the unsanctioned and sanctioned use of violence in penal contexts. The soldiers and contract workers who have carried out orders to 'loosen up' prisoners are not simply embodiments of war's inevitable psychological stresses; they are not merely rogue guards formerly employed in badly-run institutions; they are not foreign mercenaries, hired from murderous regimes: they are home-grown products of Western culture and history. Closer attention to that history might not only enhance our understanding of penal modernity but assist in moving beyond 'shock' to fully-historicized analyses of the body's *enduring* appeal as a penal object in modern democracies.

This is not just another plea for people to pay more attention to history (and historians). Fuller understanding of the shifting rationales through which prohibited violence has been distinguished from justified violence in modern democracies is necessary for two reasons. First, as we have discovered through admissions since the photo scandal, executive members of government have approved the use of 'stress and duress' techniques designed to extract intelligence, even if, like Donald Rumsfeld, they avoid the 'torture word' in their testimony.¹⁸ Equally worrying, though less 'shocking' (since it allows the coalition to keep its hands clean), is considerable evidence that GWOT partners have knowingly 'rendered' suspected terrorists to countries with egregious human-rights records, such as Egypt and Syria. Second, historiographical neglect of bodily punishment in the recent past leaves unchallenged the myth that modern liberal democracies drew the line ages ago between painful, degrading, and lethal penal practices, on the one hand, and on the other hand, techniques that rely on isolation and treatment, and avoid intentionally inflicting pain. Historiographical neglect allows us to imagine that if punishment involving these bodily and psychic effects persisted beyond the nineteenth century it was only in uncivilized places, or totalitarian states, or only when imperial powers applied it in colonial settings.¹⁹ This impression is flatly incorrect. There is considerable state-generated evidence about sanctioned and illicit violent practices in modern Western prisons, documented in investigations into the roots of prison riots, for example; there are also largely untapped sources in the memories of people on the giving and receiving ends of punishment.

Before moving to a discussion of the work that historians might do to make such practices better known, I explore how and why the historiography of bodily penal practices has become lumpy and lopsided. Historiographical unevenness – thin on the twentieth century's penal practices directed at the body, and thick on pre-modern torture and corporeal punishment in colonial and indigenous contexts – deprives criticism of coalition troops' violent and humiliating practices of its historical context. Historians who might otherwise express criticism over Bush-style moral line-drawing draw lines of their own, through periodization and regional specializations. Consequently we know a great deal about Roman torture and the crucifixion of Christians; there are countless works on the Spanish Inquisition and the European, British and American witch hunts; there are scholarly accounts by the dozen on European colonial punishment and the penal practices associated with slavery; and there is a rich literature on England's Bloody Code. Only in places where the most dramatic and brutal practices persisted in the twentieth century does the historiography remain rich. A recent example is David Anderson's *History of the Hanged*, a study of Britain's use of the death penalty and shock treatment in the dying days, quite literally, of empire in Kenya (and a book marketed expressly as a sobering reminder of the British capacity to behave barbarically in racialized colonial contexts). For Anderson, evidence that British colonial rulers executed almost 1,100 Mau Mau convicts, at the very point when British Parliamentarians were contemplating the death penalty's abolition, is a chilling and shameful index of racist imperialism.²⁰ No sensible historian would disagree, but only a criminal-justice historian of the twentieth century might recall that abolition was only *debated* in the 1950s, and that judicial whippings had been outlawed in England only in 1947.²¹

Historians, for the most part, are drawn to the same dramatic displays of public punishment that attract less studious members of the public, who line up for dungeon tours, visit torture museums, and consume *Horrible Histories*. This means that we have devoted comparatively little thought to modern penal violence, committed most commonly in enclosed prison settings, and through techniques designed to limit suffering. Commenting on this chronological imbalance in Australian historiography, for example, Mark Finnane observes that histories of the convict era, with its chain gangs, public executions and floggings, are 'seemingly inexhaustible' but the 'later history of punishment' is little explored. Paul Griffiths makes a similar point about English historians' fixations when he says that: 'Public execution hogs the historiography of punishment and the cultural shifts that follow on from penal change'. Once we arrive at the mid to late nineteenth century, when the prison, the reformatory, and the borstal became the principal modes of punishment in liberal democratic states, the pace of historiography on physical punishment loses momentum. Even historians who acknowledge the importance of physical punishment's

persistence in new guises neglect the twentieth century. V.A.C. Gattrell's *The Hanging Tree*, for example, criticizes historians who interpret the move from public to private executions as a humanitarian advance. 'Inside prisons for a century yet', Gattrell intones, 'murderers continued to be strangled on ropes too short or ropes too long, dying more dreadfully [he claims] in private than in public, in chilly proceedings with crowd support withdrawn.' Nevertheless he leaves to other historians the task of conducting the research necessary to support his argument. For Gattrell the story ends in 1868 – the year of the last public execution in England. Paul Griffiths's and Simon Devereaux's collection, *Penal Practice and Culture*, is an important recent addition to the historiography but again, the dates in the subtitle (1500 to 1900) leave the impression that the penal past in European countries is meatiest before the twentieth century, when punishment was designed to be both painful and public.²²

In the US, a country where the death penalty and corporal punishment have persisted into the twenty-first century, it is unsurprising that historians have contributed considerably more scholarship on physical punishment beyond 1900. The over-riding orientation of works in this body of historiography is summed up in Louis P. Masur's subtitle to his authoritative history of capital punishment: 'the transformation of American culture'.²³ Written in the vein of American exceptionalism, US historiography is driven by a compulsion to explain why the US does not share other liberal democracies' rejection of death as a tool of state justice. For Stuart Banner, the death penalty's endurance is due largely to a US tradition of populist politics and the vestiges of slavery, a racist form of injustice that pervaded both the post Civil War criminal-justice system and the enduring semi-sanctioned practice of lynching, particularly, though not exclusively in the South.²⁴ Whitman provides a similar explanation in his comparison of penal culture in the US and Western Europe.²⁵ As he contends, more hierarchically-oriented cultures in Germany and France maintained a sense of *noblesse oblige* toward even the criminal, and incorporated royalist mercy into modern penal bureaucracies, whereas US democracy leaves ample room for harsh justice, and the popular inclination to cast out and degrade the criminal other – most commonly the poor and the black.

But is this history so exceptionally American? Other jurisdictions, such as Canada, shared penal practices and policies with the US until the 1980s, even though Canada's political culture and history, as well as its federally-controlled administration of criminal-justice policy, differ significantly. Canada did not abolish whipping until 1972,²⁶ and the death penalty was abolished only in 1976, yet there is no major study that compares the country's twentieth-century penal practices to those of the US in the same period. In this instance, national boundaries have become historiographical barriers that parochialize the penal past.

Most of the historiography on bodily-oriented punishment in the past century is tilted toward illiberal regimes, such as military dictatorships

in Chile, or European totalitarian states. Genocidal violence perpetrated by the state understandably overshadows the small-scale use of corporal and capital punishment, both judicially ordered and spontaneously imposed. For example, Richard Evans begins his major work on executions in German history from 1600 to 1987 by observing that the death penalty has been 'oddly neglected as a specific subject in the Third Reich; in the post-war period, it is virtually ignored'. Until his book in 1996, he says, there was 'very little to go on' past the nineteenth century. Only recently has Evans's challenge been met, in Nikolaus Wachsmann's superb study of the Nazi prison system. Compared to the vast literature on Nazi extermination programmes, Wachsmann observes, literature on judicially ordered punishment and violence within civilian prisons remains rudimentary. As a consequence, historiographical preoccupations produce misleading impressions: 'the concentration camps were much more lethal. But this did not mean that these penal institutions were humanely administered safe havens which had "nothing to do with concentration camps"', as former prison officials claimed after the war'.²⁷ Similarly, the history of bodily punishment in the French penal system (beyond the Revolutionary era) has attracted far less scrutiny than the use of torture in Algeria, which has become a vibrant issue in French historiography over the past decade and a half.²⁸ Far less well known is the fact that France was one of the last democracies to end public executions (in 1947);²⁹ it also lagged behind many European nations in abolishing the death penalty only in 1981. This patchy appreciation of Europe's domestic past raises a significant historiographical question: is it appropriate to interpret violent forms of punishment solely in terms of racist imperialism, or might French soldiers fighting in Algeria have simultaneously been exporting and imposing memories of domestic penal practices?

These historiographical orientations, either toward gruesome colonial penal practices or those of military dictatorships and totalitarian regimes, as well as the pillorying, whipping, and beheadings of the distant past, suggest that physical punishment played a negligible role in modern Western punishment. One reason for this is the enormous influence cast over criminal-justice historiography by Foucault's *Discipline and Punish*. Who could forget the opening, literally a blow-by-blow account of the maiming, drawing, quartering and burning of Damiens the regicide in 1757? This, Foucault argues, was the body made flesh, on to which the sovereign violently imprinted his power for all to see and fear. The bulk of the book details the transition toward the micro-management of prisoners' movements and activities. The pain in this new modulation of power is produced through discipline: it is psychological, not physical (beyond the discomfort of restricted movement, diet, exercise). One element of psychic pain was the new mode of observation in which 'inspection functions ceaselessly', rather than spectacularly, in public rituals of pain and shame.³⁰ The crowd is not just *ruled* out but *walled* out by the edifice of the prison. He allows

that physical pain and humiliation lingered, but Foucault's opus was a study of the disciplinary society, not a comprehensive history of punishment.

Historians of punishment, both followers and critics of Foucault, tend to pursue the question that drives the first few pages of *Discipline and Punish*: how and why did the public punishment of the body decline and what replaced it? And how did societies founded on one constellation of power shift to another? In more empirically-grounded studies than Foucault's historians have challenged his chronology, but they have done so, most often, by moving backward in time rather than forward. By 'tinkering with chronology', we now know, it is possible to locate the origins of the prison in the early sixteenth rather than the nineteenth century; the emergence of humanitarian discourse against bodily punishment may be traced prior to the Enlightenment.³¹ Asking when things began and ended is, of course, a valid mode of historical inquiry. But granting primacy to the 'what changed?' question over the equally plausible and intriguing question, 'what endured?' places recent practices of physical punishment in a historiographical blind spot. Bearing in mind that many historians still regard the twentieth century as claustrophobically close to the present, most have left this period to historical sociologists and criminologists. How have these scholars framed the body's enduring use as an object of punishment?

Social science literature on what David Garland calls modern penalty³² is not unlike the historical work cited above. Again we see the nineteenth century characterized as a watershed, after which European states, the US, and white-dominated colonies such as New Zealand and Australia managed criminal and deviant bodies through penal regimes. With no attempt to cover this literature comprehensively, I touch on the work of several influential sociologists of punishment to show how capital and especially corporal punishment has been explained away, rather than made central to their inquiries into modern 'penalty'. Curiously this viewpoint unites rather than divides liberal and Marxist criminologists. If we consider the 1939 classic of Marxist sociology, Rusche and Kirchheimer's *Punishment and Social Structure*, we find the argument that 'the coming of the prison was rooted in capitalism and the proliferation of factories where wage-earners worked in walled spaces'. This very big book gives very little space to the gallows or the whipping post, except to characterize bodily punishment as a 'tool of discipline to keep the working classes in dumbstruck awe'. These German sociologists were reacting in part to liberal criminologist Radzinowicz, who linked the decline of physical punishment and its privatization to the growth of humanity and a move toward more humane treatment of prisoners. Naïve as this Whiggish interpretation appears, especially in light of punishment's recent 'decivilization',³³ it remains the party line in college-level criminology and penology textbooks. A century after Durkheim theorized that modern contractual societies become less reliant over time on practices that shame and dehumanize, mainstream criminology continues to frame contemporary punishment as an advance

over the dark and distant past, when punishing the criminal's body stirred collective emotions.³⁴

Garland's *Punishment and Modern Society* was a path-breaking addition to this roster in 1990, particularly in its theoretical rigour wedded to broadly leftist and anti-racist politics. Yet he too treads lightly over bodily punishment in the modern West. According to Garland, 'modern penality is...institutionally ordered and discursively represented in ways which deny the violence which continues to inhere in its practices.' This sounds promising; however, for Garland 'violence' means the pains of imprisonment (lack of privacy, degradation, alienation). He expressly does not mean painful physical punishment because 'our modern sensibilities... have been attuned to abhor physical violence and bodily suffering'. While Garland concedes that the death penalty remains legal in many countries and appealing on account of its perceived deterrent effects, 'corporal punishment', he claims, 'is not an option on the modern agenda. Instead, corporal punishments are a fact of history...' Garland's subsequent book, *The Culture of Control*, provided an opportunity to refine this statement, but as the title suggests, intentionally-inflicted pain remains beyond his purview.³⁵ Yet corporal punishment was not a component of the *distant* past when he published this later work in 2000 (for example, it remains legally sanctioned as a form of school discipline in twenty-three US states, many of which allow striking with instruments).³⁶ Only a decade ago US teenager Michael Fay was caned for the offence of spray-painting cars in Singapore. Reports of his caning prompted a substantial proportion of Americans to suggest that the punishment be imported for others of Fay's ilk.³⁷ And most dramatically the GWOT has created opportunities for politicians and law professors to express public support for the utility and justifiability of torture.³⁸ Evidence of this nature suggests that a reassessment of torture's links to physical violence – in multiple theatres of twentieth-century Western punishment – is in order. Otherwise we define penal modernity in terms of its aspirations rather than its practices, both sanctioned and unsanctioned. It is not *modern penality* that 'denies the violence which continues to inhere in its practices': it is historians and historical sociologists.

THE PERSISTENCE OF PAIN AND DEATH

What might a historiography of physical punishment that fully *integrated* the modern, liberal, democratic West look like? And how might such research better equip historians to challenge recent expressions of shock over evidence of torture in detention camps and prisons? There is certainly much to look *at*, and much work to be done to document continuities between pre-modern, modern, and post-modern punishment.

Returning to Anderson's work on Kenya, it is worth recalling that the English governors and colonists who wanted to see the Mau Mau belligerents hanged *en masse* had not been catapulted from the eighteenth

century, when crowds gathered at Tyburn to witness public hangings: they had sailed from modern England, where the death penalty was *still* in practice, albeit behind prison walls, until 1964. Capital punishment, a crude and vicious tactic of colonial rule, was simultaneously a quiet, calculated act of violence inflicted on English men and women. England was not odd for continuing to rely on the death penalty almost a century after its public performance was banned. Most Western democratic jurisdictions followed a similar chronology, waiting until the 1970s and 1980s (1984 in Western Australia, for example) to abolish the death penalty. To be sure, the numbers killed were far lower by the 1950s than they had been in 1800, but convicted criminals (primarily murderers) continued to face execution, and most met their fate through pre-modern techniques of punishment, particularly the noose.

In most jurisdictions, the suffering of the condemned, not just psychological stress but physical distress, remained a component of the death penalty, even though techniques of execution changed and the language of punishment was sanitized. In the US, where the death penalty resurfaced in 1976 (after the Supreme Court had ruled it unconstitutional in 1972), early strides had been made to reduce the painfulness and uncertainties of death by hanging. First came the electric chair, in 1889, followed in 1921 by the gas chamber. France had innovated much earlier, with the guillotine in the midst of the Revolution. Penal historiography, however, follows the professional executioner's line, that capital punishment is painless if conducted properly. Because most historians and criminologists who study modern punishment disaggregate capital punishment from corporal punishment – intentionally painful but non-lethal violence – we collude in the state's fiction that pain, suffering and humiliation were purged from modern penalty somewhere around the mid to late nineteenth century. Documenting the pains the executed might have endured is difficult but not impossible, since personnel involved in the task of execution admitted under oath that pain, not to mention terror, regularly preceded death in modern executions. For instance testimony taken in the English Royal Commission on Capital Punishment (1956) and a similar inquiry in Canada the same year confirmed that the snapping of spinal cords during hanging was never a sure bet: men and women slowly strangled and suffocated, gasping for air and soiling themselves in the process. And even a century after the electric chair was invented it continued to malfunction, sometimes literally cooking prisoners and setting their bodies alight before stopping their hearts.³⁹ Thus criminal-justice historians and sociologists who ignore pain in penal modernity can hardly rely on the 'lack of evidence' excuse. In failing to push the chronology of physical punishment into the twentieth century, by focusing on non-corporeal forms of punishment, and by treating the death penalty separately from wider analyses of punishment, historians and criminologists have given to painful and deadly punishment the role

of pre-modern 'extra' or anomaly in the contemporary penal cast, rather than the *character* role it deserves in the drama of modern punishment.

Corporal punishment's history suffers even more from scholarly neglect. Unlike the death penalty, corporal punishment loses its logic if it *fails* to transmit pain. Surely the whip, the paddle, or the slap could have no place in modern punishment? But they have, and they did, for a considerable proportion of the past century. Whippings within prisons were staged and performed differently from how they had been in early modern England, when convicted criminals were tied to wagons and whipped through the streets in front of onlookers, or in Tsarist Russia, where the 'language of the lash' was a ruthless means to keep serfs from rising. Whipping remained in practice in places such as Southern Rhodesia, where it was deeply implicated in colonial strategies of rule (stinging the backs of black bodies, not white ones).⁴⁰ Most historians would find this unsurprising, but what to make of corporal punishment's endurance in a country as benign and 'civilized' as Canada, where corporal punishment remained a judicial sentence until 1972, not 1872 as one might suppose from the lack of historiography on the practice in its twentieth-century guise?⁴¹

Such sanctions were meant to hurt, and judges imposed them on people (primarily young men) considered insensible to anything but pain. In Canada the lash was ordered most frequently to punish men found guilty of offences against the body (rape or sodomy) and those who had assaulted wives or common-law spouses. In England, the Cadogan Committee of 1938 recommended that whipping no longer be imposed as a criminal sanction; yet judicially-ordered whippings continued in Her Majesty's prisons until 1948. English judges imposed whipping sentences most frequently for robbery – thefts that often involved bodily assaults.⁴² Here we see, in mid twentieth-century liberal democracies, echoes of ancient techniques and rationales of punishment, redolent of the *lex talionis* system of corporal sanction for an offence against the body.⁴³ Intentional, ritualized administrations of pain were not outlawed sometime around the Enlightenment – they were reorchestrated and restaged over the following two centuries.⁴⁴

As the penal-welfare complex solidified in liberal democratic states, the executioner remained a part-time employee well past the 1950s; sentences of whipping continued to be carried out, and the strap remained an instrument of order, both in schools and in prisons, as a means to deal with institutional offenders. These violent practices were no longer public performances, as they had once been, but were they less humiliating or painful? A recent BBC radio documentary, which features several British men relating their experience of having been flogged in the 1940s, leaves no doubt that the object and effect of their punishment was pain. One man recounts his experiences as a fourteen-year-old prisoner:

I was taken away downstairs someplace. I was left alone, oh...seemed like hours. That was really bad in itself. It gave you time to think, then,

you see. Then when they finally came there was a policeman – a police officer – and a doctor. The doctor examined you to see if you were fit to take the punishment, and if you're alright, they put you on a bench on your stomach, and your pants go down and your shirt goes up. And I think they had the strongest policeman in the force – a nice thick arm – and he administers the beating... The first one I really felt it. I jumped and I bit my lip, and I think the second and third I really felt, but the fourth one I was pretty numb by then. I don't think I actually felt the last one. I think I was too far gone...

Significantly, in relation to recent concerns over the pornographic composition of torture images, the teenaged-boy's semi-nakedness and helplessness before his captors remained vivid in the old man's memory:

I think it had more of a mental effect on me than a physical effect... I think the whipping done far more than what a year or two years in a reform school would have done. It's *embarrassing... humiliating*, you know, to be in that position. It's one of the worst experiences a fourteen-year-old can have.⁴⁵

This is a history about which we know almost nothing, largely because we have not bothered to ask the people involved at the either end of the strap. If we undertake oral histories to uncover their stories and integrate them within broader analyses of modern penality, will it be possible to draw such stark distinctions between pre-modern and modern punishment's uses of the body in the liberal West?

A more refined analysis of penal modernity *in practice* is clearly warranted. Studying the history of modern punishment without taking physical violence fully into account is like defining modern reading tastes according to *Ulysses*, rather than *Gone with the Wind*: that is, the avant-garde and modernist emerged and cohabited with the attractions of 'the traditional' in modern penal styles, as well as in the arts. Using the body as an object of punishment was not highbrow correctionalism, but it had the enduring appeal of a blood-pumping drama – emotionally compelling, intuitively persuasive, and culturally sensible – *across* the twentieth century.

Is compensatory history, such as an extra chapter in a future edition of *Punishment and Modern Society*, the answer? Perhaps so, but recent events in the GWOT might prompt more historians to undertake the difficult task of analysing how forms of carceral, therapeutic, and physical punishment although logically *incoherent* were uncomfortably conjoined. By the mid to late nineteenth century, most Western jurisdictions had exempted females from the whip, but male offenders continued to face corporal punishment, both as a judicial sentence and as an element of institutional discipline.⁴⁶ The rapists and robbers who were lashed in this era were not punished

at public whipping posts: they were strapped inside penitentiaries at pre-assigned moments in their sentences; at other times their bodies were disciplined through routines, labour, uniforms, surveillance, and the probing of their minds. Male inmates who violated prison rules were assigned to psychologists and social workers, and dosed with pharmaceuticals, yet the same prisoners could also face whippings for institutional offences – only if they were reasonably fit, if they were struck by certain instruments on specified parts of the body for particular types of offences, and if they were punished in the presence of assigned personnel. Thus micro-management of physical punishment, not its absence, defined modern modes of sanctioned violence in penal contexts. These specifications further defined other forms of physical violence, such as beatings by guards or sexual humiliation, as ‘sadistic’ or ‘barbarous’. Bodily punishment persisted not just in some regressive prisons, or in backward countries, or the pre-modern West: it continued to operate alongside modern disciplinary techniques in the same places, at the same times, and often inflicted through the same institutions and agents.

Thus the expressive style of penal violence in GWOT prisons and camps, not the practices themselves, were shockingly out of kilter with Western self-perceptions of rationality and restraint. The Abu Ghraib pictures showed improvised theatrical displays, suggestive of sado-masochistic pornography. As such they bore closer resemblance to carnivalesque orgies than to rule-bound penal governance. The grinning Sergeant Charles Graner and his girlfriend Army Reserve Pfc. (private first class) Lynndie England violated the prescripts of permissible punishment because they chose the wrong medium and genre to record their actions – not the prison-guard watch report but the workplace snapshot-cum-trophy photo.⁴⁷ The *practices* documented in these images were not nearly so disturbing (or titillating) as the settings, the instruments used, the genders of the bodies, and the body parts exposed, touched, and posed.⁴⁸ Print, television and internet media focused on the pictures’ ‘sexiness’ (even if genitalia were tantalizingly digitized for public consumption) but the dry memoranda that placed military and civilian personnel in positions of power and set the scenes for torture failed to make sexy reading, let alone viewing.⁴⁹ How many other forms of bodily punishment have occurred, and continue to occur, as Western politicians and legal counsel continue to stretch the boundaries of permissible violence?⁵⁰ Susan Sontag offered a sobering response: the ubiquity of ‘shocking’ images and their capacity to induce pity and disgust divert us from considering ‘what pictures, whose cruelties, whose deaths are *not* being shown’.⁵¹

CONCLUSION

My call, in sum, is for historians of punishment to venture further up the chronological dial toward the present. We won’t hear the sobs, shrieks

or jeering of the crowd gathered at public hangings, nor the crack of the whip wielded by the muscle-bound flogger, but we can still pick up familiar strains of painful punishment in twentieth-century penal practices. This requires listening past the dominant motif of the prison, the clinic, and the reformatory, while not tuning it out. Bloody and intentionally degrading punishment is troublingly easy to find in colonial settings, totalitarian states and military regimes, but it also endured subtly, sporadically, and selectively in the liberal democratic West. And we should surely recall that what is subtle and sporadic for the historian was painful and probably humiliating for somebody's body. At this particular moment in the West's history, when 'interrogation' can be transposed into 'interview', and when politicians can tiptoe around 'the torture word', that story is worth telling.⁵² This is a question not only (as James Sheehan urges) of *how* we do history but where we set our temporal and geographical sights. If the critically engaged historian's special burden is to keep present the pasts we prefer to forget, we might do more to shift the West's 'shock' into the nagging pain of self knowledge.

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NOTES AND REFERENCES

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1 James Sheehan, 'How do we Learn from History?', *Perspectives* 43: 1, January 2005, pp. 5–6: 6.

2 Michael Massing, "'Bad Apples" or Predictable Fruits of War?', *Los Angeles Times*, 10 May 2004, republished <http://www.commondreams.org/views04/0510-02.htm>.

3 Seymour Hersh, *Chain of Command: the Road from 9/11 to Abu Ghraib*, New York, 2004.

4 Deputy Assistant Attorney General John C. Woo prepared this memo for the Deputy Counsel to the President. *The Torture Papers: the Road to Abu Ghraib*, ed. Karen J. Greenberg and Joshua L. Dratel, Cambridge, 2005, p. 3.

5 Historians have not been completely silent, particularly in the US. For example, see postings on <http://www.historiansagainstawar.org>.

6 Hansard, House of Commons, 19 Jan. 2005. For an audio account, which includes excerpts of Blair's and other MPs' statements, listen to Michael Drudge, 'New Iraq Prisoner Abuse Photos Shock Britain', Voice of America on-line: <http://www.voanews.com/english/2005-01-19-voa12.cfm>.

7 Maura Reynolds, 'Bush Issues an Apology on Prisoners', *Los Angeles Times*, 7 May 2004, p. A.1.

8 The complete transcript of the hearing was published in the *Washington Post* on 7 May 2004. See <http://www.washingtonpost.com/wp-dyn/articles/A8575-2004May7.html>.

9 Stephen Hedges, *Chicago Tribune*, 3 May 2004, p. A5.

10 While the words 'free' and 'freedom' appear most frequently, the apocalyptic passages in the inaugural address refer to fire: 'By our efforts, we have lit a fire as well – a fire in the minds of men. It warms those who feel its power, it burns those who fight its progress, and one day this untamed fire of freedom will reach the darkest corners of our world.' <http://www.whitehouse.gov/news/releases/2005/01/20050120-1.html>.

11 On the failure of evidence showing British involvement in torture to erode Blair's credibility, see Victoria Brittain, 'Why are we welcoming this torturer?', *Guardian On-Line*, 24 Feb. 2005: <http://www.guardian.co.uk/comment/story/0,3604,1423861,00.html>.

12 Dominick LaCapra, *History and Reading*, Melbourne, 2000, p. 67.

13 Jamie Fellner, 'Prisoner Abuse: How Different are US Prisons?', Human Rights Watch Commentary, 14 May 2004: <http://hrw.org/english/docs/2004/05/14/usdom8583.htm>. See also Steve Martin, 'Sanctioned Violence in American Prisons', in *Building Violence: How America's Rush to Incarcerate Creates More Violence*, ed. John P. May and Khalid R. Pitts, Thousand Oaks, 2000, pp. 113–17.

14 Most analysts agree that visual imagery, not the evidence as such, produced the scandal. On the politics and aesthetics of such images, see Abigail Solomon-Godeau, 'Abigail Solomon-Godeau's dispatches from the image wars', *Artforum International* 42: 10, summer, 2004, pp. 61–2.

15 David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society*, Chicago, 2001. For a comprehensive, comparative analysis of punishment in Britain, the US, Canada, and New Zealand see John Pratt, *Punishment and Civilization: Penal Tolerance and Intolerance in Modern Society*, London, 2002.

16 For example, video evidence of beatings in a California youth facility produced neither shock nor led to prison staff dismissals. See Jennifer Warren and Tim Reiterman, 'No Charges in Videotaped Beating Case', *Los Angeles Times*, 24 April 2004, p. B6.

17 Michael I. Niman, 'Strange Fruit in Abu Ghraib: the Privatization of Torture', *The Humanist* 64: 4, July/August 2004, pp. 18–24. Niman does credit the 'alternative' US press, and the 'world press' (primarily European) for reporting allegations of torture as early as 2002.

18 In a 4 May 2004 Defense Department Operational Update Briefing, Rumsfeld stated: 'I don't know if it is correct to say...that torture has taken place...and therefore I'm not going to address the torture word'. <http://www.defenselink.mil/transcripts/2004/tr20040504-secdef1423.html>.

19 For example, Biko Agozino argues that Western criminology was tested first in the colonies then brought back to imperial centres: Biko Agozino, *Counter-Colonial Criminology: a Critique of Imperialist Reason*, London, Pluto, 2003. Clare Anderson provides similar evidence for India in her *Legible Bodies: Race, Criminality and Colonialism in South Asia*, Oxford, 2004.

20 David Anderson, *Histories of the Hanged: Britain's Dirty War in Kenya and the end of the Empire*, London, 2005. The 'dirty war' subtitle draws a direct parallel to Argentina's military coup and to the French war in Algeria.

21 Britain came close to reintroducing the lash in 1960. Great Britain, Home Office, 'Corporal Punishment: Report of the Advisory Council on the Treatment of Offenders', London, 1960.

22 Mark Finnane, *Punishment in Australian Society*, Melbourne, 1997; Paul Griffiths, 'Introduction: Punishing the English', in *Penal Practice and Culture, 1500–1900*, ed. Simon Devereaux and Paul Griffiths, London, 2004, p. 1; V.A.C. Gatrell, *The Hanging Tree: Execution and the English People*, Oxford, 1994, p. 590.

23 Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture*, New York, 1989. See also Franklin Zimring and Gordon Hawkins, *Capital Punishment and the American Agenda*, New York, 1986.

24 Stuart Banner, *The Death Penalty: an American History*, Cambridge, Massachusetts, 2002, pp. 142–3; 278–9. Michael Pfeifer makes a similar argument in *Rough Justice, Lynching and American Society, 1874–1947*, DeKalb, Illinois, 2004.

25 James Q. Whitman, *Criminal Punishment and the Widening Divide between America and Europe*, New York, 2003.

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28 Philippe Bourdre, *Le livre noir de la guerre d'Algérie: Français et Algériens, 1945-1962*, Paris, 2003.

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30 Michel Foucault, *Discipline and Punish: the Birth of the Prison (Surveiller et punir)*, Paris, 1975), transl. Alan Sheridan, London, 1977, p.11.

31 Most historians continue to identify the Enlightenment as the prime generator of humanitarian sentiment and rationalities, which transformed Western punishment. See Lynn Hunt, 'The 18th Century Body and the Origins of Human Rights', *Diogenes*, 51: 3, 2004, pp. 41-56.

32 By penalty he means 'the whole process of criminalizing and penalizing ... the complex of laws, processes, discourses, and institutions which are involved in this sphere ...': David Garland, *Punishment and Modern Society*, Chicago, 1996, p. 10, n. 12.

33 See especially John Pratt, *Punishment and Civilisation*.

34 Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure*, New York, 1939; Leon Radzinowicz, *A History of English Criminal Law and its Administration from 1750*, 4 vols, London, 1948; Emile Durkheim, 'Two Laws of Penal Evolution', *Année sociologique* 4, 1902, pp. 63-95. Critical left analyses do exist, but they focus primarily on punitive segregation and the racist and classist disciplinary effects of social control, rather than the persistence of physical pain.

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39 Carolyn Strange, 'The Undercurrents of Penal Culture: Punishment of the Body in Mid-twentieth century Canada', *Law and History Review* 19: 2, summer 2001, pp. 343-85.

40 John Beattie, *Crime and Courts in England, 1660-1800*, Princeton, 1996; Abby M. Shrader, *The Languages of the Lash: Corporal Punishment and Identity in Imperial Russia*, DeKalb, Illinois, 2002; Great Britain, Departmental Committee on Corporal Punishment, Report, London, 1938, Appendix.

41 Strange, 'The Undercurrents'.

42 Canada, Joint Committee of the Senate and the House of Commons on Capital and Corporal Punishment and Lotteries, Minutes and Proceedings of Evidence, Ottawa, 1954, vol. 3.

43 In 1929, for example, the New South Wales Labor government in Australia introduced whipping to punish razor gang members and child molesters: Finnane, *Punishment*, p. 122.

44 'The notion of a rights-possessing, autonomous, inviolable self became the foundation of democracy as an ideal, even if it was then, and is now, an ideal far from actually achieved': Hunt, 'The 18th-Century Body', p. 52.

45 The man now believes that whipping should be reintroduced to deter young offenders. 'The 1940s', Eyewitness, BBC Radio, 2005. I am grateful to Joanna Bourke for allowing me to listen to this programme before the documentary was broadcast.

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50 H. Bruce Franklin, 'The American Prison and the Normalization of Torture', in *Torture, American Style*, ed. Margaret Power, *Historians Against the War* Publication 3, November 2004, posted on: www.historiansagainstawar.org/resources.

51 Susan Sontag, *Regarding the Pain of Others*, New York, 2003, p. 14.

52 Australian intelligence officer Rod Barton's allegations that he and other Australians interrogated Iraqis prompted denials from the Minister of Defence but led to a Senate Inquiry, established to determine whether or not Australians were 'present, during any interrogations or interviews (however defined) of persons detained in relation to the war in Iraq...'. http://www.aph.gov.au/Senate/committee/fadt_ctte/iraq/tor.htm.