



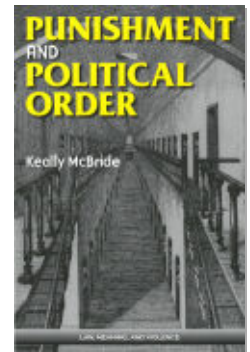
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## CHAPTER 1. The Whip of Utopia: On Punishment and Political Vision

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# The Whip of Utopia

## *On Punishment and Political Vision*

He who will not listen must feel.

—German proverb

Utopias and dystopias amplify the powerful ambiguity of all political philosophy as thinking that nonetheless tries to accomplish change. They are fictional accounts that are deliberately ahistorical and present dreams or nightmares—not manifestos that demand action. As Judith Shklar notes, “It is a vision not of the probable but of the ‘not-impossible.’” We tend to dismiss utopian visions as fantastic or idealistic to a fault: a proposal that is labeled “utopian” is not destined for realization. Paradoxically, the limitations of utopias as blueprints provide their political salience. Utopias present a viewpoint unmarred by history or necessity; in contrast to utopia “all historical actuality is here brought to judgment . . . and found wanting.”<sup>1</sup> The power of utopian writing springs from the careful presentation of contrast: contrast between the culture being presented and the reader’s and/or writer’s own, and between idealism and practicality. Dystopias also bring a shock of recognition through comparison. Here is a distasteful vision. What elements of this picture can be found in your own world?

In this chapter, I look at two pieces of writing from remarkably different ages and orientations that fulfill the political function of utopias and dystopias: Sir Thomas More’s *Utopia* and Franz Kafka’s “In the Penal Colony.” The parallels between the two pieces are striking, even though the tone of each work could not be more different. Travelers cross cultural and political boundaries and present their wisdom to an audience. The message of each is sufficiently ambiguous and uncomfortable to propel a shift in perception on the part of their readers. Both texts frame their message by focusing on practices of punishment. Here I will explain how this thematic focus is closely related to the overall

purpose of both texts to shift the political consciousness of their audience. Punishment allows More and Kafka to mobilize their readers: how will you respond to this exercise of power? What practices of state power do you accept as given, and why? Furthermore, examining practices of punishment displays how a regime itself negotiates between the demands of rule and the pursuit of justice. Both utopian thought and punishment serve as a catalyst: they offer the pointed opportunity for reflection and critique. How do we judge the exercise of power in relation to its larger ideals, and how are we to respond, given this newly found awareness?

More and Kafka both drive home the message that political orders are contingent upon the proclivities, not only of their rulers, but also of the population at large. An outside perspective stirs our consciousness; we evaluate the strange world being presented, but then, ideally, we turn these trained eyes onto our own systems and start to consider what an outsider would say. Punishment as the central theme in both of these texts helps to intensify this process of political reeducation in a number of ways.

First of all, it brings the incomplete nature of political regimes into sharp focus. The basic task of political order is to create harmony out of what is a volatile and varied population. For this reason, the unruly aspects of human existence are rarely glimpsed in tracts of political philosophy and most works of political science today. Political philosophy is often engaged in composing systems that neutralize or eliminate human imperfections; recent political science strives for empiricism and predictive capabilities, hence the out of the ordinary is "controlled" or registered in "standard deviations." Nonetheless, anything involving human beings strays from the ideal-type. Political orders invariably contain ideals that are imperfectly realized: therefore a clash between ideal and empirical is bound to occur. Even if our theories and models do not acknowledge this chasm, political regimes must find some way of dealing with the troubling propensity of human beings to nonconformity. This gap between human behavior and political ideals is occupied by state punishment. The nagging reality that accompanies the impulse to political idealism is the mortality and bodily existence of human beings. The body that desires, bleeds, kills, and dies is the inescapable ground of human life: it administers and requires punishment to bring it into line with the promise of order. Punishment is where the ideal of perfect administration collides with our moral and

material weakness. It is one thing to have an ideal, another thing altogether to realize it. Emphasizing this difficulty allows both More and Kafka to deny their readers the simple denigration of the real in favor of the ideal; instead they are forced to reckon with the need to balance both aspects in a regime.

Second, punishment not only points toward the unrealized promise of political order; it also provokes the question, What efforts to realize an ideal are appropriate? More and Kafka both present punishment as an expression of a regime's ideals, not just its brute powers. From the perspective of an outsider as provided by More and Kafka, we reconsider accepted forms of punishment and are forced to judge which practices are truly appropriate in the name of realizing ideals. As Corey Robin points out in *Fear: The History of a Political Idea*, the horrors of the twentieth century have led us to regard idealism with suspicion. Totalitarian regimes are commonly blamed upon "ideas that cast death . . . as a way, the way, of life."<sup>2</sup> George Kateb describes a similar dynamic in his essay "The Adequacy of the Canon," arguing that what he terms the "hyperactive imagination" is culpable for the mass atrocities of the twentieth century. He describes the hyperactive imagination as "the rabid capacity to make the present absent, to imagine a different reality, to have designs on that reality."<sup>3</sup> What characterizes this imaginative capacity is the ability to see a vision of what can be to the complete exclusion of what is, combined with the drive to turn that vision into reality. While Kateb's examples are extreme, which is appropriate to his task of explaining the catastrophes of our times, this dynamic is present in the more mundane acts of state punishment, as both More and Kafka make clear. Most people would regard killing, maiming, or depriving personal freedom in the name of an ideal with considerable suspicion. Yet this is precisely what states do when they punish. Clearly individual rights are subordinated to some ideals today, no matter how fervently we think we distrust this sort of activity.

But Robin's observation about the ideologically wary population of the early twenty-first century prods me to argue that the other option—relinquishing any ideal at all—is just as tragic. If idealism leads to egregious actions, it is tempting to conclude that it is simply a dangerous element in politics. Should we do no more than embrace order for the mere sake of order? I don't think so. Clearly the correct balance must be a dedication to ideals that is not myopic, and a willingness to envision alternatives while acknowledging material preconditions and limita-

tions, which ultimately is the message presented by *Utopia* and "In the Penal Colony."<sup>4</sup>

Both texts are deliberately disorienting, helping us to see that the question of how to relate political ideals and a given population cannot be definitively resolved; rather, it is the negotiation between the two that composes political citizenship. In these texts, and in our lives, punishment provides a clear forum for the negotiation between rights and pragmatism and the cultivation of legitimacy and stability for a political regime. By making these points through the presentation of punishment, both More and Kafka bring an urgency to our ability to grasp these dilemmas of political thought. In punishment, the ethereal debates about theory and practice contained in virtually all tracts of political philosophy fall to the ground in a most spectacular fashion; questions of principle and right become ones of life and flesh.

### *Punishment in Utopia*

In a letter, Erasmus reported that Sir Thomas More had initially written only the second book of *Utopia* that described the practices and society of the Utopians but then later wrote the first "because it was needed." So rather than being a straightforward account of a fictive society, there are two different worlds represented in *Utopia*, and it is in the juxtaposition of the two that the book's central themes and brilliance are achieved.

Sir Thomas More's *Utopia* begins by setting the stage of Raphael Hythloday's detailed account of the political and social order of Utopia. Thomas More is in Flanders during a journey for the business of state, when his friend Peter Giles introduces him to Raphael Hythloday, who has traveled the world and combines the wisdom of a philosopher and the scientism of an explorer. The second book is the traveler's account of Utopia; the first book is a dialogue between Giles, More, and Hythloday that frames the story of the second.

The themes of the first book are complex, but two important elements emerge from the seemingly secondary introduction. The first is that Hythloday is established as a reliable source, unsullied by service to any of the powers that be, in marked contrast to More himself who is in Flanders serving the Crown. This is one of the most central problems for anyone interested in political reform: only those subject to a political order would be motivated to reform it, but they lack the perspective

to know what the alternatives are. The purpose of utopian works is to insert the outside perspective into a given political context, thus achieving a destabilization of perception. Greatly impressed by Hythloday's acute observations and knowledge of different political orders, the narrator, More, wonders, "why do you not enter into the service of some king . . . this learning of yours and your knowledge of peoples and places would not only serve to delight him but would also make you fit to inform him."<sup>5</sup> Hythloday recoils at the suggestion saying he would not want to be enslaved by any king. A king's ear is deaf to all but the counsel he seeks, and Hythloday would prefer to be pursuing the truth than currying favor.

When Peter Giles first introduces Hythloday to More, he tells him he is a voyager "like Plato," immediately linking his geographical wisdom with the same remove as the philosopher. Plato wanted philosophers to rule, because they would ensure the persistent impact and enlightened judgment of the outside perspective. Quentin Skinner has discussed this dynamic in More's *Utopia* and termed it the *problem of counsel*. Hythloday uses this interchange as an example of his unwillingness to compromise, and how this truthfulness would be poorly received by rulers. The struggle over counsel and politics is also autobiographical: Skinner reports that More had agreed to go into the service of Henry VIII immediately before writing the book.<sup>6</sup> Though Hythloday insists that he is not to be corrupted by service to actual powers, the text of *Utopia* suggests otherwise. Hythloday's indignant protestations can be read as signaling that the suggestions that follow are uncorrupted by proximity to power. After his cantankerous pronouncement regarding the state's creation of thieves, Hythloday's powerful listeners *do* entertain alternative notions of punishment. And while the first book of *Utopia* insists that princes spurn wise counselors and vice versa, the second book plainly offers Hythloday's services by recounting his story. Hythloday's perspective as an outsider makes him bring reformatory ideas to English penal practices, but it also establishes to the reader the necessity of seeing one's order from the outside. More points out the paradox that guides his utopian project: only the wisdom of outsiders can provoke this kind of self-reflection and the potential for reform.

The content of this debate over the relationship between wisdom and ruling is punishment. As an example of the myopic wisdom of rulers, Hythloday recounts a conversation with the Archbishop of Canterbury and one of the king's counselors about the practice of hanging

thieves. The counselor lauded the rigorous application of the principles of justice: "They were executed everywhere, he said, sometimes as many as twenty at a time hanging on one gallows, and he remarked that he was all the more amazed that the country was cursed to have so many of them prowling about everywhere, since so few escaped punishment."<sup>7</sup>

Hythloday disagrees with this assessment and offers an enlarged view of the problem of thievery including the shortage of land (his famous sheep-eat-men observation), the learned incompetence of the middlemen who administer the feudal orders, the markets for beef and wool, the desire for luxurious living, and the presence of gambling houses that leave many in desperate ruin. The bodies that litter the state's gallows could not be pulled down quickly enough to make room for more under such circumstances.

Certainly unless you remedy these evils, it is pointless for you to boast of the justice administered in the punishment of thieves, a justice which is specious rather than either just or expedient. In fact when you bring people up with the worst sort of education and allow their morals to be corrupted little by little from their earliest years, and then punish them at last as grown men when they commit the crimes which from childhood they have given every prospect of committing, what else are you doing, I ask you, but making them into thieves and then punishing them for it?<sup>8</sup>

The crime has nothing whatsoever to do with the punishment but instead results from social organization.

More scholar George Logan has observed that the debate about punishment aptly establishes the primary themes of *Utopia*.<sup>9</sup> In commenting that the practice of hanging thieves is neither just nor expedient, Hythloday introduces the central question of *Utopia*, and indeed virtually all political thought, by asking how best to reconcile the needs of practicality and justice. Hanging thieves, since it fails to prevent thievery *and* is a betrayal of the principle of proportionality in punishment, fits neither criterion. While it is tempting to assume that More is building the ideal with little attention to the practical, in actuality *Utopia* offers a more nuanced message on this problematic, which becomes clear when contrasting the penal practices of little value in England with the penal practices of *Utopia*.

To introduce a utopian vision by discussing punishment seems counterintuitive to say the least, so we expect to encounter a rapid shift from the critique implied in the first book to a more idyllic political vision in the second. But the unsavory elements of More's discussion persist even in the second book of *Utopia*, when we have presumably moved from the corrupted European order to the Utopian one. Hythloday has commented that inequalities of wealth and property create crime, along with an undue love of luxury. Utopia has eliminated wealth, luxury, and property yet still has to conduct punishments. If Hythloday's prognosis in the first book were to hold true, in such a perfectly engineered society there would be no need for punishment. Nevertheless, we find slavery in Utopia. Rather than killing criminals, Utopians enslave them, and they perform many of the menial tasks upon which their society is absolutely dependent. Prisoners wear differently colored clothing for quick recognition and must devote their lives in public service to amend for the harms caused to the community by their crimes.

There are three classes of slaves: those who were condemned to death in other countries and sent to Utopia where they can instead labor their days away; the poor of other countries who presumably come to Utopia and request to be their slaves since such an existence is better than the life offered to them in their own countries; and finally the Utopians who have committed crimes. "Utopian slaves, however, they treat more harshly since they consider them baser and deserving of more severe punishment because they had an extraordinary education and the best moral training, yet still could not be restrained from moral wrongdoing."<sup>10</sup>

Hythloday points out with apparent delight the practicality of this system of punishment: all benefit from their labor when none would profit from their execution. The public slaves also serve as a countermonument. He compares the criminals in chains to the statues of local heroes: they both serve as an incentive for citizens to become virtuous. If slaves can prove that "they regret the sin more than the punishment" the sentence can be ended, commuted by the rulers or by popular vote.<sup>11</sup> This comment reveals an understanding of the complexities of state punishment. This penitence is no simple task to discern or to produce. For virtually everyone who is punished is quite sorry indeed that they have been caught, but very few become truly remorseful of their crime.



One paradox of punishment is that the pain is supposed to encourage reform and recognition of personal duty. On the contrary, those being punished are more likely to blame those administering the pain for their misfortunes. Acceptance of personal responsibility for the crime would require that the person being punished give more legitimacy to the law and its executioners than to their personal choices or comfort. Hythloday's account of punishment in Utopia quickly discards these subtleties. If the slaves refuse to labor and are disruptive "they are finally slaughtered like wild beasts." So much for the inherent worth of man and the promise of just social order whereby individuals combine together, sometimes giving up their individual gain for collective good.

The international order of Utopia is no less troubling. The Utopians are a peace-loving people, so they hire mercenaries to fight their wars so as not to stain their own population with wanton bloodletting. As self-proclaimed peaceniks, we might assume they fight only in self-defense, but they invade other countries who may have insulted their friends, countries who treat their citizens badly (and who might be happier as slaves in Utopia), or countries that *might* threaten their interests. Ultimately, Utopia sounds imperialistic. Shlomo Avineri has commented upon these unappealing aspects of Utopia, concluding, "Utopian thinking never really maintains that the given human nature is perfect; on the contrary, it has to be purged and cleansed from its intrinsic evil."<sup>12</sup> In Avineri's view, Utopia is created as "perfect" by its ruthless excision of anything that is less than perfect—wars are fought on other turf and by soldiers from other countries, slaves become the repository of the population's moral failings—their public display asserts the relative morality of everyone else. The problem with Avineri's reading is that it replicates the simplistic understanding of crime and punishment that Hythloday explicitly rejects in the first book of *Utopia*. More does not think you can eliminate thievery by killing thieves; instead you must look into the inherent causes of criminality. In Hythloday's view, Utopia does all it can to prevent criminality through the eradication of property and wealth and by creating the best possible system of education. Nonetheless, More remarks to Hythloday, "For everything will not be done well until all men are good, and I do not expect to see that for quite a few years yet."<sup>13</sup> The only available strategy is to balance the needs of practicality and justice and to create the best possible arrangements for cultivating virtue and achiev-

ing stability. The social organization dispenses with all the requirements of justice; those people that persist in falling outside the utopic order can be punished in the way that is most expedient.

If this is the case, then punishment is far more central to *Utopia* than it first appears, and in fact, displays the central problem of the book. What do you do with the failings of humans in even the most perfect of social orders? In less than perfect orders, the state can be blamed, at least in part. But there are convicts even in Utopia. On the one hand, we could take the presence of punishment as a sign of freedom, rather than failure, within the administered world of Utopia. After all, as opposed to other forms of social control, such as conditioning, propaganda, or peer pressure, using punishment to maintain order "maximizes individual freedom within the coercive framework of law."<sup>14</sup> Individuals have a choice whether to obey the law, and punishment is a form of control that is deferred until a transgression has actually occurred.

On the other hand, Hythloday observes the rage that erupts when this bestowed freedom is abused. The fury of the Utopians was reserved for the betrayal of their own perfection by members of the society. These deviants prove the inevitable incompleteness of political order; no matter how beautifully constructed a society is there will always be those who fall outside of the boundaries. Perfection, defined as the ability to construct a society where justice is fully realized, is a mirage; the real test of a society is how it manages its failures. This is why *Utopia* begins with a discussion of criminality, and why the pressing question of political order is not simply the ideal, but how to relate the ideal with the pragmatic. The final answer is clearly not offered here in *Utopia*, and More suggests that it never can be—the matter is left open for debate at every point in the book.

The message of *Utopia* is that a perfect reconciliation of justice and expediency is not possible, therefore how the state decides to punish reveals where it falls in juggling the two elements. I agree with others who have suggested that *Utopia* ultimately argues that there is no way to engineer a perfect convergence of justice and practicality.<sup>15</sup> The thematic of punishment becomes central in the text because this is exactly where states are forced to try this negotiation. Yet punishment also circles back to the first theme I introduced here, and that is the wisdom of outsiders. In the cases of both England and Utopia, observers recount their official practices of punishment, opening both regimes to examination. More wants us to adopt the outsider position and turn back to

question English penal practices as representative of the character and purpose of the regime. Does a government feast upon its unfortunate? Does it profit from criminality and thus secretly cultivate it? Does it take too much pleasure in disciplining the bodies of criminals or viewing their misery? Every political order has stated ideals and beliefs, but practices of punishment reveal whether and how these ideals are betrayed. Conversely, ideals, when followed absolutely, can be just as problematic. Is outrage too vehement? Do we lynch in the name of our own righteousness? More suggests that we need to discard the examples of both the English and the Utopians, and balance idealism and practicality in punishment. For instance, a country would never throw everyone who sped on a highway into jail for criminality; on the other hand, it would create chaos to give up trying to regulate traffic. The negotiation between practicality and principle is played out over and over in choices about why, how, and whether to punish crimes.

As the reported discussion between Hythloday and the Archbishop of Canterbury in the first book suggests, another central issue in determining practices of punishment is how responsibility is perceived. What is so startling about seeing this debate articulated in 1516 is that it is the same one that we have today. Does the amount of criminality have any relation to the punishments administered, or does it have more to do with social conditions outside the law? There is a series of relationships implied here: in one view, the crime incurs the punishment; the causal relationship exists in the frame of reference of individual choice. Failure to punish harshly would send the message that the crime is not deserving of punishment, severing the causal link. Crime would then run rampant. This view assumes that the criminal always has a good incentive to break the law, and that punitive pain must outweigh the calculated advantage.

The other viewpoint, here represented by Hythloday, sees the causal relationship existing in a different frame of reference: social conditions create the crime. If social conditions are such that either a true or perceived advantage is derived from crime, then the social order has simply failed. Society must be organized in such a way that there is no gain from participating in criminal activity. Until this level of social engineering has been achieved, the need to punish must be perceived as a failure on the part of the state in accomplishing its mission, not necessarily a failure on the part of the criminal.

This debate signals why the assumptions about individual responsi-

bility that support practices and conceptions of punishment are so difficult. If we assume that people are malleable enough to be trained, then why suddenly assume that their choices are individual? More observes that the special fury of the state is reserved for those people who bite the hand that trained and fed them: "After all I've done for you, see what you have done!" The structures of punishment insist we are individuals, but political order assumes we are educable citizens. One aspect of determining the role of punishment in political order is the negotiation between persistent human unpredictability and the promise of social administration. Practices of punishment are one arena where societies are forced to grapple with the fact that human beings are conditioned yet free.

Punishment as a practice is particularly salient: it represents, as I have said, much about how a regime deals with its failings. More also makes it clear that the population participates in these given structures through their acceptance or questioning of them. Today, we as readers are outsiders to both regimes that More describes in *Utopia*, hence it is much easier for us to be critical of them. Those subject to a political system are most likely to accept its practices. Utopia offers the view from the outside as an impetus to reform. But More makes it plain that the prisoners described in both regimes provide another cause for reflection—they are the internal dissidents to the established order as well as the products of that regime's failure. In other words, those being punished and those viewing the punishment fall outside the regime's common preconceptions of proper order, thereby harboring the potential for critique and change. Of course, those being punished have none of the legitimacy or dispassion of the observers, and they have guilt, not objectivity on their side.

### *In the Penal Colony*

Dystopias can be read as companion volumes to utopias, and indeed viewing Kafka's "In the Penal Colony" alongside More's *Utopia* provokes many of the same considerations of audience, idealism, political order, and punishment. Franz Kafka's fictional work provides a crystalline vision of politics by taking the familiar elements of our administration of justice and placing them in an unfamiliar context or by magnifying common assumptions or trends. Kafka's work is often fantastic in form, but his intent was worldly. His dreamlike narratives push

readers to recognize the world as it actually is, not as it is commonly perceived. In a conversation with Gustav Janouch, Kafka described his work as follows: "The dream reveals the reality, which conception lags behind. That is the horror of life—the terror of art."<sup>16</sup> It isn't that Kafka creates dreamlike worlds; instead his work brings out the surreal aspects of our own. Kafka's bizarre yet straightforward descriptions penetrate his readers who then carry that sense of estrangement into their own experiences. Those who have read *The Trial* will never sanguinely face a bureaucratic maze again; those who read his story "In the Penal Colony" will respond to the phrase "sentenced to death" with a shudder. Jane Bennett has written about Kafka's work as a contribution to political thought, arguing that he writes genealogical stories that "highlight the contingent elements of an ideal, or its falsifications, or the arbitrary devaluations and exclusions that accompany it, or the incompatible elements within it."<sup>17</sup> "In the Penal Colony" shakes our perception of the relationship between punishment, justice, and enlightenment to the very core. I can think of no better place than Kafka to start unraveling common assumptions about punishment and politics.

The narrator of the story is an explorer who is visiting a penal colony. He is apparently someone of stature, as all the administrators in the colony assume that he shall report back on their activities and that his opinions shall carry some weight. Most of the story takes place with four characters around a machine in a deserted area of a penal colony. The officer is showing the explorer a machine invented by the original Commandant of the colony; the two main characters are accompanied by the condemned and the soldier who is guarding the prisoner. The officer is preparing the machine for the condemned, who failed to obey his orders: over the course of twelve hours, the machine will write the sentence "Honor Thy Superiors" over the body of the man repeatedly. The machine is carefully designed to inscribe the sentence upon the condemned, literally. The mechanism is carefully designed to kill its victims, but very slowly and with great precision. The officer observes that at the sixth hour, "Enlightenment comes to the most dull-witted. It begins around the eyes. From there it radiates. A moment that might tempt one to get under the Harrow oneself."<sup>18</sup> Most courts simply proclaim the sentence or judgment; here the punishment inscribes the judgment onto the body of the prisoner. The Officer points out that after the Harrow's work is done, it can truly be said that "the judgment has been fulfilled."

The story begins with the observation, "It's a remarkable piece of apparatus." In life, Kafka was employed by a Worker's Accident Insurance Company to calculate the risk of employments in mechanical and industrial occupations.<sup>19</sup> One can imagine that the story might have had inspiration from the claims of actual workers. At any rate, Kafka's own occupational experience is on display as he takes pages to explain the intricate workings of the machine: the engineering precision required to inscribe the sentence upon the body of the prisoner without killing him or her is indeed truly breathtaking. Wool and cotton pads dab away at the skin of the prisoner after each inscription of the sentence upon his skin. This promotes cleaner scarring, making the sentence legible for those attending the proceeding. They have gone to great lengths to concoct a system of punishment that is precise, deliberate, and exact. The punishment is the exact realization of the sentence; the punishment consists of the moral to be learned. The Harrow is the product of generations of technological and medical knowledge: it is both the brutal product and grim instrument of human enlightenment. Hegel's view of just punishment as reestablishing the proportional and exactly calibrated to the crime is monstrously achieved here.

It is important that the story's narrator be an outsider, someone who is neither subject to nor required to administer the system of justice in the penal colony, in order to share in the reader's horror as the machine and its purpose are revealed. As outsiders, both the explorer and reader offer the possibility of clear evaluation and critique of deformed practices of justice and punishment. The political brilliance of the story is the fact that Kafka denies the explorer and the reader any easy judgments. As Walter Benjamin observed, Kafka's goals of changing the consciousness of his readers is accomplished by presenting the tragic events of individuals—for instance, turning into a bug or being investigated for no clear reason—in a context where "everything continues as usual."<sup>20</sup> Can we, the readers, continue with our lives when confronted with the brutality of these practices? If so, we become as complicit as the figures in the story that administer death with the ease of habit and the scaffolding of legitimacy.

The officer explains the workings of the machine with unflappable zeal. The mechanical descriptions are punctuated with explanations of overcoming manifold difficulties to achieve perfection in the machinery: "So that the actual progress of the sentence can be watched, the Harrow is made of glass. Getting the needles fixed in the glass was a

technical problem, but after many experiments we overcame the difficulty. No trouble was too great for us to take, you see" (147). The enthusiasm and precision of the officer's description matches the mechanism of the machine: both seem bizarrely juxtaposed to the practice of torture.

Suddenly, the officer begins to beg the explorer for assistance: now that the old Commandant is dead, the new Commandant refuses to order the parts necessary for the maintenance of the machine. The machine of perfect justice and enlightenment is thereby threatened, as its mechanisms grow creaky. At first, the officer sounds like a bureaucrat frustrated in the accomplishment of his appointed task—he cannot service the machine properly. "Now he has taken charge of the machine money himself, and if I send for a new strap they ask for the old strap as evidence, and the new strap takes ten days to appear and then is of shoddy material and not much good. But how I am supposed to work the machine without a strap, that's something nobody bothers about" (151). Kafka's officer predates Arendt's Adolf Eichmann by forty-nine years but demonstrates the same bureaucratic exertions behind grisly murder.

However, the reader slowly starts to understand that the officer is a true believer in the machine, not a mindless servant of it. He believes in the machine as both a product of and impetus for human accomplishment. Through the machine he can help change the world, not merely administer it. The old Commandant was not content to be exiled with criminals in a penal colony; he worked tirelessly to devise a way to reform and redeem those that had been given up by the mother country. The machine was designed to bring enlightenment to the penal colony, mechanically lifting the most hopeless cases to the highest stage of human consciousness. Arnold Weinstein has observed that the machine in this story presents one solution to the fundamental problem of language: "Language cannot *be* what it says."<sup>21</sup> Designing the machine that solves this problem reveals an intensive familiarity with the traditions of law and the Enlightenment, not an ignorance of them, as we might be tempted to assume.

The opacity of language is the same problem in the law and the founding of political orders generally.<sup>22</sup> The word or law cannot be the world that it brings forth: it is the classical dilemma of political philosophers that idea and practice are distinct, they are always removed from their object. Punishment is to bring the law, the imperative, into exis-

tence—to move it beyond the realm of mere language. The machine transforms the impotence of language into the force of understanding. The officer comments, “Our sentence does not sound severe,” and indeed no law does until it is somehow realized. The punishment machine perfectly realizes the law and therefore serves as the head, heart, and soul of the colony, which, according to the officer, had been perfectly organized by the old Commandant. This is a person who cared about creating good in the world, and who believed in the perfectibility of human beings through knowledge, technology, and political institutions.

The officer explains that originally the entire colony would turn out for the executions, people fighting for the privilege of watching it up close (the honor was awarded to children, naturally). “How we all absorbed the look of transfiguration on the face of the sufferer, how we bathed our cheeks in the radiance of that justice, achieved at last and fading so quickly!” (154). The past glory of the machine is a sad contrast to the colony and its machine as the explorer finds it. No one attends the executions, and the machine groans due to its neglect. Without popular support and maintenance even a mechanism of perfect justice falls into disrepair. The officer wails at the explorer: “Do you realize the shame of it?” (155). He views the explorer as the last hope to resurrect the former glory of the mechanism and return justice to the colony.

When the explorer tells the officer that he will not support him in his attempts to save the machine and carry out the vision of the old Commandant, the officer frees the condemned man and places himself under the Harrow. He programs the machine to inscribe “Be Just!” on himself. The last true believer in the system proves his devotion by placing himself into its mechanisms. The machine starts to malfunction, and despite efforts by the explorer, the Harrow goes haywire and kills the officer. His rapid death denies him the torturous pleasure and the radiance of justice that he has thus far experienced only vicariously. The explorer regards the face on the officer’s corpse: “It was as it had been in life; no sign was visible of the promised redemption; what the others had found in the machine the officer had not found; the lips were firmly pressed together, the eyes were open, with the same expression as in life, the look was calm and convinced, through the forehead went the point of the great iron spike” (166).

The ending of the story considerably complicates Kafka’s message, which until now could be seen as a description of maniacal devotion to



a deformed sense of justice. Closely followed by the soldier and the now freed condemned man, the explorer goes back into the town to find the new Commandant and report on the day's events, but instead finds the old Commandant's grave. It is hidden underneath tables in a teahouse; the other patrons move a table out of the way to reveal the state of the old Commandant's legacy. Inscripted upon his grave is the message, "Here rests the old Commandant. His adherents, who now must be nameless, have dug this grave and set up this stone. There is a prophecy that after a certain number of years the Commandant will rise again and lead his adherents from this house to recover the colony. Have faith and wait!" (167). Other patrons in the teahouse sneer at the message on the grave, and the explorer begins to recoil from the people around him. The belief in redemption sheltered by the officer and his Commandant has now disappeared from the colony, hidden under a table and brutally sacrificed in the Harrow. Those that remain are inarticulate, disbelieving.

The infuriating complexity and ultimate political significance of this story come from Kafka's refusal to provide a straightforward reference point. Initially the officer seems fanatical, and the condemned man, the lamb about to be sacrificed. Then the officer sacrifices himself, while the condemned man's face is animated by the cruelty of the machine. In contrast to the justice sought by the man in the Harrow—the officer who has programmed the machine to inscribe "Be Just" on his body—the newly freed man watches his sacrifice and responds, "So this was revenge. Although he himself had not suffered to the end, he was to be revenged to the end. A broad silent grin now appeared on his face and stayed there all the rest of the time" (163). The people in the tearoom sneer at the optimism of the grave's inscription and the notion of resurrection. In contrast, the idealism of the officer and old Commandant seems virtuous, even touchingly naive. They dared to believe in enlightenment for all people, even the most abject, here in exile. The dream of earthly redemption for the incorrigible might be better than simply waiting for them to die out on the edge of the world.

Having frustrated the simple condemnation of the officer and old Commandant, and denying the condemned man any redeeming qualities, Kafka then proceeds to refuse the explorer any moral credibility as well. After he sees the grave and the response of those around him, the distressed and confused explorer scurries in a panic toward the docks, not stopping to talk with the new Commandant, and manages to jump

on a ship as it pulls away from shore. The soldier and condemned man grasp at him and try and follow him onto the boat; their actions beg the explorer to provide the second chance that the penal colony has not. Will he take on the mantle of redemption refused by the new Commandant and bring them with him? "They could have jumped into the boat, but the explorer lifted a heavy knotted rope from the floor boards, threatened them with it, and so kept them from attempting the leap" (167). The reader cannot help being relieved to join the explorer and leave the entire scene behind with this last sentence.

All of Kafka's writing provokes more questions than it answers. "In the Penal Colony" has many interpretations, many of which seem plausible. The problem, as Sander Gilman observed about Kafka's work, is that "it is infinitely rereadable and inherently uninterpretable because it is so very interpretable."<sup>23</sup> It reproduces what we bring to it: hence it makes sense that this story's interpretations reflect the times and proclivities of its readers. In 1968, Wilhelm Emrich saw that "In the Penal Colony" was about the passing of an older order and the birth of a new one.<sup>24</sup> Many readers have found Jewish, anti-Jewish, Christian, and anti-Christian messages in the text. More recently, for example, in 2001 Paul Peters claimed the story "may indeed ultimately and appropriately be read as a kind of master narrative of the 'primal scene' of colonialism itself."<sup>25</sup> Falling in line with this company of critics, I think that focusing on the act and interpretation of punishment in this story—which seems to be an entirely novel approach—is particularly revealing. However, I make this argument while agreeing with some of the earlier emphases: we should think about punishment here in relationship to the existence of penal colonies, religious or earthly redemption or the lack thereof, the passing of a regime, and our position as outsiders who can judge.

Clearly, there are religious elements in the story, as many critics have observed. The innocent officer dies, replacing his body with the one of the condemned, seemingly destroying the machine through his sacrifice. The spiritual father of the colony, one who "combines everything in himself . . . soldier, judge, mechanic, chemist, and draughtsman," lies in wait, declaring a return if the earthbound are faithful. Though many are engaged in arguing whether the story falls in line with Christian or Judaic impulses, Kafka considerably complicates the story as a religious one in a number of ways.<sup>26</sup>

Redemption everlasting isn't the product of the Harrow and its

inscription: instead earthly illumination is. The recognition brought on by the machine is fleeting, since it is inevitably followed by death within six hours, but it seems significant that “enlightenment” with all of its philosophical, abstract, and disembodied overtones is the product of the torture device. Suffering is not rewarded in the next life but instead is the direct route to knowledge in this one. The officer who puts himself into the machine as a demonstration of his faith in it doesn’t gain the desired effect: enlightenment comes only from pain, not belief. Kafka’s story uses religious motifs, but sharp twists change the effect of these elements in the story: the Harrow provides redemption in this world, and thereby it is an integral element of the political system of the colony.

Recent observers have begun to note the colonial setting of the story instead of the religious motifs.<sup>27</sup> It is certainly plausible that Kafka was concerned with writing a commentary on colonialism, as research suggests he was greatly influenced by the experiences of his uncles working in the French efforts to colonize Panama.<sup>28</sup> What other critics have not suggested is that the setting in a penal colony is of particular importance, and more telling in the narrative than straightforward colonialism. Of course, penal colonies and colonialism were closely related endeavors (as I also explore in chapter 5). However, the rationale behind the penal colony was particularly incoherent. Penal colonies were developed in part for their economic utility in settling the globe. Yet they were also developed from a particular conundrum created by the rapid change in ideals and even regimes of governance in Western Europe. Penalties were more punitive than general predispositions were liable to support. Before the relatively high-cost penitentiary and prison options were developed, governments adopted exile as a more humane alternative to corporal and capital punishment. Convicts would be sent to designated penal colonies and then remain as settlers. The policy makes sense as a measure of making punishment more humane and also as a method to populate the globe with settlers from their nation. But the practice does not make sense at all from the ideological standpoint driving colonization—the civilizing mission—either through education, institutions, or religion, often attached to colonial enterprises. How are those deemed unfit for European citizenship supposed to provide for the cultivation of other races? What sort of transformation is happening in these penal colonies to turn the convict into colonial lord? The French government in particular was concerned

with this puzzle, as evidenced by the debates that were spurred by administrative reports from New Caledonia: was life too hard or too easy for the convicts? Should they be treated as prisoners or settlers? Stephen Toth has argued that the ideological incoherence of the practices of penal colonization led to the French cessation of the practice in the late nineteenth century.<sup>29</sup>

The self-examination and vulnerability to criticism that result from practices of punishment and colonization are similar: in the name of what ideal do we engage in this practice? The transition from one regime to the next brings the opportunity for new consciousness of political order, a theme captured by Kafka's description of the passing of the order from the old Commandant to the new Commandant. In a sense, we are all outsiders with an ability to see events and practices without a dulled consciousness at the beginning of a new regime. Colonization also creates the conditions that juxtapose outside perspective onto the common assumptions and practices of all cultures involved. Conquest in the name of civilization is a difficult proposition to maintain, as is administration of pain in the name of enlightenment—particularly before an audience. It is abundantly clear in Kafka's short story "Jackals and Arabs" that he was aware of the difficult relationship between the triad of European values and dignitaries from home, the conduct of colonial settlers who presumably reflect those same values, and the natives.<sup>30</sup>

Kafka's machine in the colony speaks to all of these dynamics: the potentially catalyzing spectacle of punishment, the arrival of "civilization" in the colonies, and the political opportunities and risks afforded by the audience. The result shocks us into a new consciousness about the claims of enlightenment and the political administrations under its banner. The elements of the machine perfectly embody the qualities of European civilization: its mechanisms adapt to different bodies to serve justice equally well to all; it is transparent and impartial, and denies the ability to seek revenge by those in power by taking the ability to punish and putting it in nonhuman hands. And, as I have already noted, it realizes the sentence with perfect efficiency and mimesis: the sentence, no more no less, *is* the punishment. Our own mechanisms of justice only aspire to such dispassionate administration and such clear effect.<sup>31</sup>

In a fashion typical of Kafka, he neatly subverts all of our expectations and standard narratives about progress. The passing of the regime from the old Commandant, one based on faith, into the realm of

the new Commandant is quickly assumed to be progressive as the machine has fallen into disfavor. But the faith of the old Commandant was not religious, it was earthly: he had faith in engineering and human understanding. The typical colonial narrative is also reversed—rather than finding the settlers have “gone native,” the explorer finds that the most vehement advocates of the principles of the homeland are in the periphery. The explorer ultimately refuses to condemn the machine publicly and to adopt the task of redeeming those hidden away in the penal colony. The characters in the story are so disorienting to the reader that Kafka leaves the machine as the only fixed point: we realize with horror that the Harrow is more civilized than the population it was created to enlighten. But such a position is untenable: how can a torture device reflect the values of humanism in any scenario?

We don’t like the machine, particularly since it amplifies our desire for the engineering of perfect justice to such effect. But we are left with the feeling that the penal colony won’t necessarily be a better place without it. The machine stands for the hope of earthly redemption before death—at any price. Denied any easy answers to the predicaments of the penal colony, the explorer leaves. And so today, denied any easy answers about what exactly is achieved in punishment and whether it truly embodies our social values, we chose to turn away as well. Why go out of the way to view what is hidden? Punishment was once a public affair; citizens even visited penitentiaries to view the scales of justice at work. Today executions, incarceration, censorship are all topics of public debate, but the actual administration of punishment is something that we would prefer not to see.

What we need to carry away from Kafka’s story is how impossible it is to find solid ground in terms of punishment and its purpose, idealism, and practice. However, the absence of secure footing in the negotiation between relinquishing and pursuing ideals does not change the fact that being an audience or witness nonetheless changes the dynamics of punishment and its relationship to justice. But this is one of the more intractable problems of political regimes, that their accountability rests upon the willingness of others to witness the execution of its ideals. Those who have the choice to leave or ignore state punishment rarely persist in this responsibility. Those who are forced to feel or administer the law lack the perspective and moral authority of an audience.