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Mark Canuel: The Shadow of Death

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INTRODUCTION

Cain's Legacy, Nietzsche's Complaint



There is no formation of the subject without a passionate attachment to subjection.

Judith Butler, *The Psychic Life of Power*

In 1821, Lord Byron wrote a drama in which the central character kills his brother and is sentenced by a judge to a life of hardship. While spurned and cursed even by the members of his own family, the judge grants the young man a lenient but nonetheless conspicuous punishment. When the murderer asks for death in order to “redeem” his dead brother, he is told that his death cannot “heal murder.” Instead, he must bear the sign of his crime everywhere. He must “fulfil [his] days” and—it is hoped—reform his behavior.¹ Perhaps it is already obvious to readers of Romantic literature, but the drama to which I refer is *Cain: A Mystery*: in my transposition of terms, the young man is Cain, murderer of his brother Abel; the judge is the Angel, speaking the law of God. The reading of the drama according to a series of secular analogies, though—interpreting God as legislator, the curse as an alternative to the punishment of death—is not actually my own. By the time Byron wrote this work, the practice of making the Cain and Abel story from Genesis 4 into a legal allegory about the wisdom of opposing the death penalty utterly permeates thought on judicial punishment in Britain. It is thus hard to believe that Byron conceived of his drama without knowing the implications that legal theorists habitually traced out of the story of the world’s first murderer.

No passage from the Bible—or from any other text, in fact—seems as popular among late eighteenth- and early nineteenth-century penal reformers as this one. The punishment for Cain’s terrible offense is not mere retaliation; it is a substantially reduced, yet still severe, sentence. For this reason, British reforming jurists saw it as an ideal for their own version of criminal legislation. In the fourth volume (“Of Public Wrongs”) of his *Commentaries on the Laws of England* (1769), Blackstone uses the story to argue that Cain’s fear of being murdered by others demonstrates the importance of a “sovereign power” over legal punishments—an authority

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that can protect criminals from vengeance.² (It is interesting that we can find comparatively less attention to God's words from verse 15, "Therefore whosoever slayeth Cain, vengeance shall be taken on him sevenfold," which might weaken the authority of liberal views on the issue.³) Other writers are more specific about the lenience demonstrated by the beneficent sovereign power described by Blackstone. Perhaps the best textual evidence we have of *Cain's* relation to the debate about capital punishment is that Byron's friend and physician John William Polidori (best known for his Gothic fantasy *The Vampyre* [1819]) employs Cain allegorically in his essay "On the Punishment of Death"; Byron read and edited the essay, and it was published in 1816.⁴ God's punishment of Cain, Polidori writes, proves "lenity" to be "the best corrector of vice"; the death penalty only reinforces "a spirit worse than the crime itself."⁵ Cain's punishment continues to inspire reformers throughout the early decades of the nineteenth century. In a publication from the Society for the Diffusion of Information on the Subject of Capital Punishments (founded in 1829), J. Sydney Taylor speaks of God's forbearance in punishing Cain; Lord Nugent opposes the death penalty for murder because the "almighty himself" has spoken against it in favor of a "penal and outcast condition."⁶ (God, in other words, favors transportation.) The list of variations on this theme could go on for many pages.

Byron's own version of the Cain and Abel story is a work with multiple layers of political and religious commentary, but, with the evidence I just cited in hand, we need to consider its importance not only as a text that blasphemously flouts the religious conventions of the author's day (as many interpretations suggest), but also as a decisive statement about the combined purposes of legal punishment.⁷ While Byron's Cain may in some ways seem to be the archetypal Satanic outcast—and thus an image of the author himself—he is also the perfect example of an appropriately punished criminal.⁸ And while Byron's God is one who demands a proper rite of sacrifice, he is also finally the upholder of wise and just law.⁹ The drama thus offers a condensed but compelling instance of this book's subject: the Romantic opposition in Great Britain to the widespread use of the death penalty and consequent revision of the aims of legal punishment. The following chapters investigate the preeminence of Romantic writers in defining one of the earliest comprehensive assaults on the death penalty. My central claim is that this movement, while certainly one of the great humanitarian causes of the age, is in fact inseparable from a far more wide-ranging revision of punishment's meaning. Punishment's "meaning," however, can be summed up not as a philosophy or doctrine but rather as a troubling conjunction of contending rationales, recommending a sense of lenience and economy on the one hand, and a sense of severity and rigor on the other. In a flash, all of this becomes visible in *Cain*, as Byron slyly

imports the terms of the death-penalty debate within the Biblical scenario and brings the tensions embedded in reform to life. Cain's wish to "redeem" his brother's life with his own rehearses a classic argument of death-penalty advocates, to this very day. Meanwhile, the reformed punishment imposed by Byron's God—just like that of the ideally reformed British legislator—is more merciful, yet utterly indelible and inflexible. It is a protection and a curse, a guarantee of life and prolonged suffering. (And it is precisely this depiction of God's severity that leads William Blake to answer Byron with *The Ghost of Abel* [1822]; Blake's Jehovah offers a "Covenant of the Forgiveness of Sins" rather than retribution.¹⁰)

In the more expanded discussions that follow, I concentrate on the way that Romantic advocates for reform articulate punishment as a relationship or negotiation between rationales rather than as a perfectly seamless whole. It is this set of moral-political directives, rather than any coherent system or philosophy, that constitutes British Romanticism's contribution—from Romilly's heroic speeches against the death penalty in the last decades of the eighteenth century to Peel's "consolidation" of criminal law in the nineteenth—to the history of criminal law. It is also this set of moral-political directives that constitutes Romanticism's enduring legacy, visible in modern notions of punishment that continue with us in our own age. As Chapter 1, "The Horrors of My Dreams," argues, legal reformers such as Samuel Romilly and Jeremy Bentham insist on the essentially utilitarian notion that punishment can be judged according to its effects: it should economize on pain as much as possible, measuring out only as much penalty as individual reform and public good requires. At the same time, these very writers view such a utilitarian commitment as inseparable from an essentially retributive notion that punishment demands a certain and legible patterning of legal sanctions proportioned to the offender's guilt. One perspective threatens to banish punishment altogether: Bentham, for instance, suggests that the fine of a shilling might in some cases be sufficient to deter someone from murder. The other perspective, upholding the terrifying rigor of inflexible penalties, threatens to undermine the interests of the same political subject it claims to protect. Romantic writers thus establish punishment as a problem or a process: it is a ceaseless negotiation between inseparable but often conflicting perspectives, supported by inseparable but often conflicting justifications.

This book's subject borders on an important line of discussion that has predominated in studies of eighteenth- and nineteenth-century novels and poetry. It might even go without saying that these chapters would not have been written without the work of Michel Foucault, in *Discipline and Punish*, to precede and inspire them. But rather than simply building on his influential claims, my account aims to depart from them in a significant way. In Foucault's celebrated history, penal reforms appear only as

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an interlude between the two more famous descriptions of the “body of the condemned” and the “disciplinary subject.” The eighteenth-century emphasis on the revision of the penal law, in Foucault’s view, only amounts to an ephemeral preoccupation with an abstract “carnival of signs.” The work of eighteenth-century jurists eventuates primarily in a revision of “juridical” apparatuses rather than “political” or institutional structures. Only these institutional structures—so resonantly described in Foucault’s account of panopticism—achieve the privilege of operating at the more intimate level of individual subjects who incorporate the rules of the institutions governing over them.¹¹

It is worth emphasizing, I think, not only that few readers remember Foucault’s account of eighteenth-century jurists at all, but also that he makes this section so forgettable by casting the work of juridical forms in terms that appear more evanescent and temporary than the work of institutional disciplines. Rather than fleeting “signs,” institutions leave “traces” on the subjects organized under their collective regime. Foucault’s appeals to the “trace,” to the “detail,” in his account of institutions eventually operate at a virtually prediscursive level, as if it were merely self-evident that institutional forms would leave marks that were more or less indelible on their subjects.¹² In Foucault’s work and the work inspired by it, the modern subject inevitably looks like a version of the architecture she inhabits, while the same architecture comes to look like an idealized version of her own consciousness. Foucault’s rigorously materialized or empiricized formalism thus makes persons and the environments they occupy into perfect versions of each other, so that the actual work that forms do—architectural, linguistic, and so on—can be ignored.

Political theorists have frequently applied Foucault’s work to account for modern institutional developments in a range of different contexts, all of which are aimed at “achieving total control over the behavior of subjects.”¹³ In the study of Romanticism, moreover, this dimension of Foucault’s argument has influenced some of the most sophisticated and important examples of historical reading. From Clifford Siskin’s *The Historicity of Romantic Discourse* and Alan Liu’s *Wordsworth: The Sense of History* to Deirdre Shauna Lynch’s *The Economy of Character* and Thomas Pfau’s *Wordsworth’s Profession*, discourses and institutions come to be replicated within individuals in order to shape or discipline a normalized interiority.¹⁴ The result is an institutionally modeled British citizen, economic negotiator, proper lady, cultivated humanist, professional writer, or some other analogous formation of the subject. The particular intervention I make in this book—which is in agreement with many aspects of Gillian Rose’s critique of the Foucauldian separation of law and power in her *Dialectic of Nihilism*¹⁵—works against the curious result of this line of argument in Foucault and his interpreters, which is

that important juridical reforms seem not only like events without meaningful effects but also like the basis for a massive theoretical obfuscation of the political, the institutional, or the disciplinary.¹⁶ (Foucault adds confusion by claiming that institutional discipline “replace[d]” generalized punishment, even though the jurists and institutional reformers, like Romilly and Bentham, constitute one single group of reformers at one moment.¹⁷) I see the reform of punishment in different terms: it is a discourse that shapes, and is shaped by, a range of political and literary texts; it is a discourse with decisive importance in its time, and with startling—indeed, disturbing—longevity.

Perhaps it may initially seem interesting enough to note that punishment as a juridical concern has not disappeared in our own day; its sanctions, its fairness, and its applicability to similar crimes inflicted by persons of vastly different capacities or backgrounds continue to provoke debate. This is especially the case with the death penalty, the place of which must be considered not merely as a theatrical exhibition (as in Foucault's account), but as a penalty within a scale of other sanctions, given the stamp of approval by an apparent consensus among moral-political agents in a democratic regime. (At present, even regimes that do not legally allow the death penalty nonetheless exhibit a substantial popular support for capital punishment.¹⁸) My interest in punishment's sustained presence contrasts, then, not only with the work of Foucault, but also with the range of postmodern writing on sovereignty by Giorgio Agamben, Judith Butler, Michael Hardt, and Antonio Negri, among others.¹⁹ Although I find some ground for agreement with this work (and reflect that agreement in quotations or citations from it), the fundamentally deconstructive interest of postmodern theorists in the constitutive inclusions and exclusions of “biopolitics” contrasts with my focus on problems of justice. My concern is not with the ontological foundations of the state, but with its technological means of social order.

The main line of discussion that I pursue in the following chapters does not simply note punishment's persistence, although that may be an ample demonstration of its importance. Instead, my argument focuses on the conspicuous position of the discourse of reformed punishment within a historically specific set of textual productions. In particular, I see a range of political and literary texts as important participants in a collective attempt to render the interlocking (yet contending) justifications of modern penalty into politically persuasive or aesthetically compelling forms. In one sense, taking account of the specific character of the reformers' arguments brings us back still further, past Foucault, to the picture that Friedrich Nietzsche draws of punishment when he complains in *On the Genealogy of Morals* (1887) of “how uncertain, how supplemental, how accidental ‘the meaning’ of punishment is, and how one and the same

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procedure can be employed, interpreted, adapted to ends that differ fundamentally.”²⁰ Nietzsche seems more interesting to me at this moment than Foucault is, since he sees the kind of punishment that Foucault leaves aside as an artificial construction, yet a powerful and lasting one.²¹ But in another sense, the work that I do in this book brings us to a more refined way of *reading through* Nietzsche’s complaint, into the inner logic of texts that are permeated by the differing meanings, supplemental to and inextricable from each other, that stand at the focal point of the *Genealogy*’s critique. If, following Nietzsche, modern regimes of punishment can be defined in terms of their unsettling or jarring mixture of rationales, my claim is that those rationales must be opened to further inquiry in order to grasp their historical importance and analyze the consequences of their continued viability.²²

Penal reform, it turns out, was central to the careers of Romantic writers: Byron, William Hazlitt, Charles Lamb, Percy Shelley, and William Wordsworth were among those who wrote works explicitly devoted to the subject. Besides allowing us to discuss an aspect of Romantic texts that is underrepresented in scholarship on the literature of the period, attention to the abiding interest of late eighteenth- and early nineteenth-century writers in penal law helps us to understand one aspect of the political functions of that faculty of mind that we so frequently associate with Romanticism: the imagination. If works of the period understand punishment not as a theory but as a negotiation or relation between different rationales, “imagination”—its work and its products—comes to be what names and conditions the relation between them. As the example of Hazlitt’s 1812 essay “On the Punishment of Death” shows in the first chapter, imagination can reside within contending justifications for punishment, both utilitarian and retributive; it establishes a sought-after engagement between political subjects and the finely calibrated set of sanctions that help to guide or shape conduct. This is why it is fair to say, I think, that the subject of this book, unlike Foucault’s and those works influenced by him, allows us not merely to see persons and socially organizing forms as mimetic versions of each other, but to see the work that forms do on, and with, persons.

Although I have much to say about the specific role of literary works in framing rationales of punishment, the chapters on those works show how poems and novels have a place in discussions of penalty that differs in substantial ways from that of political argument. While the political texts that I study attempt to bring different penal rationales into a balance or equilibrium, literary works do not necessarily transfer that apparent balance into fictional forms. It would be most accurate to say that they offer vigorously defined perspectives within that balance, from the utilitarian sympathies of Austen’s heroines to the retributive rigor of Shelley’s

Adonais or *The Triumph of Life*. Those perspectives, in turn, become the loci of imaginative power: in *Mansfield Park*, Fanny's quest for sources of "painful solicitude" is inseparable from her status as an engaged reader, perfectly demonstrating the aim of punishment as reform. Shelley's account of the penal sanctions requisite for a "sane polity," by the same token, is inseparable from his defense of those sanctions as an "art" of retribution, endowed with brilliant variations in "shade" and "color." Thus, even as political accounts of penal reform seek to engage the imagination in their defense, the writers of poems and prose fiction work in a complementary fashion. They become attached to the issue of punishment, it may be said, in order to demonstrate a particular dimension of the imagination's power, thereby revealing the priority of fictive constructions within political theory's own domain. The basic function of penality requires the imaginative work at the heart of fictional constructions.²³

Before turning to such instances in Romantic literary production, however, Chapter 2 moves us toward an understanding of the pervasive commitment to penal reform by offering a striking counterexample. In Hannah More's writings, the reform arguments and their implications are frequently viewed with both attraction and repulsion. Enthralled by the possibility of teaching children to plan futures informed by coherent penal regimes, she puts tales in her *Cheap Repository Tracts* (1800) that depict young people appropriately chastened by legal sanctions for their "foolish" and "sinful" conduct. To follow the lessons of the *Tracts* is to be guided away from the punishments of "Tyburn" or "Botany Bay" and toward the blessings of success and security. More's evangelical sympathies simultaneously pull against these lessons, however. In some of her tracts, her messages are simply confused; utilitarian commitments emerge at cross-purposes with the conviction that individuals cannot know the wisdom of Providence. Even so, her novel *Coelebs in Search of a Wife* (1808) achieves a decisive resolution to all such confusion. Although the text is riddled with punishable crime, faith in God ultimately guarantees "compassion" rather than fault, and a cleansed "spirit" rather than guilt. As the agents in her work gradually harden into the confines of Christian allegory, More purges all of the attractions of the realist novel that she at first seems to be writing: the erasure of crime and penalty, making each agent into a replicable model of heavenly virtue, also results in the erasure of character.

In Chapter 3, I explore a range of complex poetic statements on the death penalty that punctuate Wordsworth's career. In his Salisbury Plain poems, Wordsworth speaks out against the cruelty and injustice of official killing—through war, slavery, and capital punishment; his much later *Sonnets upon the Punishment of Death* (1841) adopts an opposing view. It rejects all "show humane" and instead asks legislators to honor God's

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“perfect Intelligence” by imitating His power to destroy human life. Both of these extreme positions are subtly modified, however. Despite the reformist agenda of the earlier poems, Wordsworth imagines scenes of legalized violence that will punish the guilty “Oppressor”; by the same token, the later sonnets support the death penalty, but only insofar as it furthers “social good.” Even this limited support presents a substantial risk for the poet, moreover. Wordsworth implies that executions threaten poetry’s quality as an imaginative entity; the Gothic effects related to the death penalty are suited only for the “grovelling mind.” The sonnet series thus comes to a close by shaking its overtly stated purpose, hoping for a day when the death penalty will actually be abandoned “for lack of use.” Both vantage points, I argue, are informed by the contending forces within Romantic penal reform: forces that oppose the pervasive and indiscriminate use of the death penalty, yet ambivalently allow its retention within a coherent set of sanctions proportioned to the severity of crimes.

Wordsworth’s apparently opposing positions on the death penalty are in fact modifications of each other: a commitment to the value of retributive sanctions, and a commitment to the effect of those sanctions on the repentant criminal and on political subjects more generally. His poetry thus provides an appropriate way to begin discussing works that imaginatively reinforce these supplementary and inextricable positions. As I show in Chapter 4, Jane Austen’s *Mansfield Park* (1814) presents penalty in rigorously utilitarian terms: error and punishment not only reform character but also create it. Although Fanny spends much of her time in the novel in a state of mortification from actual or potential offenses, the chastisement and suffering she endures nevertheless guarantee her visibility and social value; she thus anxiously seeks the very errors and consequent punishments that she supposedly wishes to avoid. Throughout the novel’s series of adventures, Fanny repeatedly insists upon suffering penalties even for actions that are not her fault. Meanwhile, other characters, like Julia or Mary Crawford, disguise their faults or “sins” and any blame for them; their avoidance of fault deprives them of personal “disposition” and threatens to drain them of any distinguishing features. One of Fanny’s final gestures in the novel is particularly revealing: she brings her sister Susan with her to Mansfield not to obtain relief from troubles at home, but to participate in a pleasing “anxiety” and “dread” of penalty. Austen’s insistence on framing penalties as uncompromised benefits to the human subject, I argue, makes *Mansfield Park* an extension of the Gothic novel’s more explicit critique of capital punishment. As in Mary Shelley’s *Frankenstein* (1818), the Gothic novel makes the death penalty resemble a machine or monster indifferent to human concerns. Austen’s fiction also coincides with the critique of the death penalty in the historical novels of Sir Walter Scott. In *The Fortunes of Nigel* (1822), the death penalty

continuously hovers at the borderline between the antique and the modern; the very condition of narrating historical fiction with a "great variety of shading and delineation" requires a distance from the "ancient manners" typified by the arbitrary, unvaried use of capital punishment.

Chapter 5, "Coleridge, Shelley, and the Poetics of Conscience," explores literary representations of conscience, a term that occupies a central position in the reform of penal law. Conscience is traditionally understood in opposition to merely external applications of the law, yet legal theorists such as Martin Madan see it as subversive precisely because it aims to substitute itself for law. Literary texts of the Romantic period make conscience into a particularly supple term that spans these alternatives: it is occasionally a frame of mind resistant to the influences of external sanctions and—most interesting of all—occasionally a terrifying reinforcement of retributive justice itself. In Coleridge's *Osorio* (1797), conscience is "the punishment that cleanses hearts," a punishment that paradoxically emerges inside the political subject initially, but that finally reasserts itself as an indelible external force. Shelley provides an appropriate point of comparison and contrast because he invokes the discourse of conscience, yet eradicates it from any determination by the political subject's judgment. In Shelley's writing, that is, conscience scandalously becomes exercised within and by poetry; poetry accumulates a moral-political force, heaping "shame" and "scorn" on those who cannot comply with its ideals. Opposing the death penalty as a threat to his art's integrity, Shelley's late poems, like *Adonais* (1821) and *The Triumph of Life* (1822), nevertheless make that integrity inseparable from a retributive imposition of shame on virtually any being that comes into contact with his poetry. Constantly associating the rhetorical force of his works with the burning or branding of offenders, Shelley conjures up a disturbing yet potent way of portraying the submission of readers, politicians, critics, and fellow poets.

My final chapter broadens the parameters of the discussion to reveal a previously unrecognized connection between the abolition of the death penalty and the abolition of slavery. Prominent white liberals of the period—Romilly, Thomas Clarkson, William Wilberforce, and others—were advocates of both causes, but the connection goes much deeper than that, since tracts on one abolition continually refer to the other. Death-penalty abolitionists borrow the sympathy offered to black slaves and ask their audiences to apply it to convicted criminals who should be saved from the gallows. Still more important, slavery abolitionists—in a seemingly contradictory direction—imagine the freedom of the slave to be contingent upon a presumed criminality; their suffering under slavery, then, is deemed to be of "unmerited severity" rather than fundamentally unjust. The connection between these two abolitions, I argue, helps to explain

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why authors like Sarah Scott and William Cowper connect the abolition of slavery to a more broadly reformed legal order. Even black abolitionists like Olaudah Equiano make the innocent slave into the exemplary “arraigned and condemned” subject of an ordered system of penalties. Whether in political texts, the graphic arts, or literary works, black slaves are considered potentially free political subjects only by virtue of their punishability: thus “peace for Afric,” as Cowper writes, will be obtained only if “fenc’d with British laws.”

I end this book with a brief coda on debates about, and representations of, capital punishment in America today. Whereas Romantic writing tends to expose contending rationales of punishment, American debate has tended to sever one from the other; an empty formalism defends the death penalty as an instance of retributive justice, whereas opponents of the death penalty criticize it as if all punishment could find its reference point in human utility. I take contemporary American film as a particularly revealing dramatization of this poverty in political discourse. While at once implicitly recognizing the unfairness with which the death penalty is administered, Hollywood films such as *Dead Man Walking* and *The Life of David Gale* typically fall short of explicit critique of capital punishment. In other instances, films like *The Green Mile* even celebrate and sacramentalize the death penalty with more fervor than Wordsworth ever could have done. This is not the fault of the films themselves. The films are instead symptoms of a pervasive inability of political discourse to confront the legacy that structures its own terminology and limits its opportunities for change.