Abstract
Issues of crime and punishment are central to political life, political theory, and utopias from More’s Utopia to the present. Political orders must respond to the nexus of issues surrounding those who threaten or harm others in the society. Once harm has occurred, how should the society and its members react? Unless one inhabits a fantasy world in which every one is perfect and conflict non-existent, threats, harms, and unjust actions will exist, and there needs to be some way for the society and its members to reply. More’s Utopia treats justice, crime, and punishment with a not untypical utopian method (Stillman, 2000). There is a critique of contemporary practice, followed by one or more images of utopian societies in which the practices are different and—at least on the surface—better than those of contemporary society. In part because many utopias include more than one good society, the reader is invited to examine the different alternatives, and thus can sometimes discover questions about the alternatives. In Utopia, contemporary English practices are examined and criticized; the practices of the Polilerites are proposed as one alternative; and Utopian practices are another. An attentive reader can compare, contrast, and evaluate the differing practices of England, the Polilerites, and Utopia in order to develop coherent, just, and humane methods of addressing crime and meting out punishments. Because Hythloday’s presentation of the three systems of punishment contains inconsistencies, the reader can also ask what those dilemmas may say about Hythloday, the societies he presents, and the issue of crime and punishment.

Keywords: crime, justice, More, Polilerites, punishment, utopia.

Resumen
Los temas de crimen y castigo son centrales en la vida y teoría políticas y en las utopías desde la Utopía de Moro hasta el presente. Los órdenes políticos deben responder a los nexos de los problemas que rodean a aquellos que amenazan o perjudican a los otros en la sociedad. ¿Cómo deberían reaccionar la sociedad y sus miembros una vez ha ocurrido el daño? A menos que uno habite un mundo de fantasía en el que todos son perfectos y no existen conflictos, amenazas, daños o acciones injustas, debe existir alguna forma para que la sociedad y sus miembros respondan. La Utopía de Moro trata la justicia, el crimen y el castigo con un método utópico no atípico (Stillman, 2000). Hay una crítica de la práctica contemporánea, seguida por una o más imágenes de sociedades utópicas en las que las prácticas son diferentes y, al menos aparentemente, mejores que aquellas de la sociedad contemporánea. En parte debido a que muchas utopías incluyen más que una buena sociedad, al lector se le invita a examinar las diferentes alternativas y así puede llegar algunas veces a preguntas acerca de estas opciones. En Utopía se examinan y critican prácticas inglesas contemporáneas; se proponen las prácticas de los Polileritas como una alternativa; y las prácticas en Utopía son otra alternativa. Un lector atento puede comparar, contrastar y evaluar las diferentes prácticas de Inglaterra, de los Polileritas y de Utopía con el fin de desarrollar métodos coherentes, justos y humanos para abordar el crimen y asignar castigos. Dado que la presentación que hace Hythloday de los tres sistemas de castigo contiene inconsistencias, el lector también puede preguntar lo que esos dilemas pueden decir acerca de Hythloday, las sociedades que él presenta y los aspectos de crimen y castigo.

Palabras clave: crimen, justicia, Moro, Polileritas, castigo, utopía.
The Critique of England

In More’s *Utopia*, justice, crime, and punishment are raised as serious issues early in the dialogue (2010, pp. 33-46). Hythloday recounts his audience with Cardinal Morton, where those present were discussing the rampant crime occurring in contemporary England, despite the ferocious punishments meted out for stealing: the penalty for theft was death. Hythloday intervenes in the discussion, citing both theoretical and practical reasons why hanging was ineffective to deter theft. Hythloday’s presentation is powerful. He first presents the religious and philosophical reasons against capital punishment for theft. The Bible enjoins us not to kill¹, and he complements it with the idea that human life of itself is valuable and so should not be taken because of a theft, no matter how large or small. Having presented moral arguments, he then presents a long and careful descriptive analysis of how certain recent social and political changes in England have led to the creation of impoverished, socially disconnected individuals for whom stealing has become the only means for survival. His analysis is secular: he does not dismiss poverty as an issue on the grounds that the poor we will always have with us. Nor does he look for the causes of crime in fallen man or in individual irresponsibility. His approach borders on what we today might call sociological.

Hythloday’s analysis is sophisticated and multifaceted (Logan, 1983, pp. 53-63). He addresses the social and psychological effects of war. Soldiers returning from war have no readily available jobs; frequently they are maimed or wounded and so unable to perform their previous jobs; in the army they also received training in how to be affectively violent. So, facing unemployment and starvation, they use the skills the army had taught them. Because he sees that wars may be only occasional, he also addresses what he sees as England’s continuous, structural problems.

¹ Hythloday relies on the Ten Commandments and Jesus’ preaching of love. A more complete reading of the Bible has led others to different conclusions.
A country that fears invasion or that is invading another country (or is defending its right to another country’s crown) needs a standing army, its ranks filled with trained killers. So a State, like England, that is always prepared for war is always training its young men in violence, which in times of need they may employ for their own survival.

A country where the rich and powerful are more concerned with displaying their status and increasing their wealth by any means possible generates unemployable and unemployed people. In England, the many ‘idlers’—servants and courtiers—attached to a nobleman display his conspicuous consumption and lavish praise on him. But they perform no socially useful service (other than bolstering the status of the rich) and learn no social and economic skills (other than fawning) by which they might live on their own; at the whim of the lord, in times of economic crisis, or when a new heir succeeds, they are likely to be tossed out of their jobs and left without the means to earn a living.

In England, the rich are enclosing the commons, driving small farmers into destitution, destroying their independence, and leaving them no legitimate way to earn a living. The ‘crass avarice’ of a few is causing rising prices in necessities (food and clothing) and a decay in farming, so that ‘hideous poverty’ co-exists with ‘wanton luxury’. With their idlers, with their policy of enclosure, the rich are a main cause of unemployment, starvation, and theft. The English aristocracy is not engaged in maintaining social organization and authority; the state of England is out of joint, and one manifestation of the deep-seated structural problems is the inhumaneness and ineffectiveness of the punishments meted out by the courts.

The very limited usefulness of the law More the author, indicates to the reader through the character of the lay lawyer. The lawyer tries to argue that what is being done at present in England is sufficient and that the law—including capital punishment for theft—is adequate. But Hythloday argues that a primarily legal approach to crime is insufficient. Because the sources of crime are to be found in poverty and joblessness, the law cannot address why crime occurs; and because capital punishment—the severe application of severe penalties—is the contemporary legal response, the law is operating outside of both the Biblical commandment not to kill and the secular or sociological analysis indicating that thieves are driven

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2 Later in his life, More seems to have wished that Utopia be kept inaccessible and to have allowed or ordered a few instances of capital punishment for heresy. See Schuster, Marius, & Lusardi (1973, p. 176).
by necessity, that they will starve if they do not steal, and that the death penalty for theft therefore does not deter. Indeed, the problem of crime is primarily social (or social, economic, and political), in which many factors are intertwined. So to ameliorate the problem of crime one needs to improve many different dimensions of society; and to improve punishment the interconnectedness of social and moral life must be considered. As the lawyer prepares, in Cardinal Morton’s presence, to follow the ‘usual method of disputants’ and give a fully articulated legal counter-argument to Hythloday’s presentation, Morton tells him to hold his answer until tomorrow (2010, p. 39) and turns again to Hythloday, asking him “What penalty more beneficial to the commonwealth would you recommend?”

The Practices of the Polylerites

In More’s Utopia as in many utopian texts, criticism of contemporary society provides a beginning point for exploring what can and should be done. Morton’s question leads Hythloday to suggest that the English follow the punishment system of the Polylerites (More, 2010, pp. 40-43).

Hythloday’s description of the Polylerites’ system of punishment seems very straightforward and reasonable. After paying restitution to their victims, convicted criminals –‘slaves’– work at hard labor on public projects or are hired out to private employers at below-market wages. Rather than being bound together in chain gangs, they are marked distinctively: they are dressed alike, with close haircuts, and a clipped ear. A further set of rules aims at preventing conspiracies to escape: it is a capital crime for citizens to give slaves money or weapons, or for slaves to possess them; they cannot cross district lines or talk with slaves in another district; and anyone who informs on a potential plot is rewarded with freedom. Even if no plot exists for a slave to discover and expose, a slave need not give up hope of “some day recovering his freedom through obedience and patience,” because “no year passes in which some are not restored to freedom, recommended by their patient endurance” (More, 2010, p. 43).

This description, narrated by Hythloday and presented as though the Polylerites’ practices make coherent and consistent sense, is worth examining at some length. In an excellent article, Susan Bruce (1996) has pointed out some smooth slippages in Hythloday’s presentation. Having given an eloquent peroration against capital punishment in England because it is contrary to the Old
Testament, the New Testament, and equity and justice, Hythloday defends the Polylerites: their punishment for theft is hard labor, not death. But the Polylerites also proliferate “offenses which can bring the death penalty,” (Bruce, 1996, p. 281) offenses relating to slaves. Hythloday seems not to see or to worry about this new set of capital crimes.

Bruce also points out how Hythloday slips from a relatively straightforward presentation of punishment for crime to “disciplinary practices”; here is where “repression enters this text” (Bruce, 1996, p. 278). Hythloday had argued for more humane practices of punishment on the grounds of equity and justice; but now, describing the Polylerites’ practices, he slides away from equity and justice to discipline, surveillance, and repression: slaves who are obedient and patient can have some hope to be pardoned. Indeed, as soon as slaves are placed under the complete control of their overseers, discipline and repression—not development to the exercise of virtue—seems almost inevitable.

Hythloday or the Polylerites also seem not to notice some of the contradictions or tensions in their practices. Because slaves have their ears clipped in order to identify them as slaves, even reprieved and freed former slaves would have clipped ears, appear to be escaped slaves, and thus (appear to be) individuals with whom free men should not interact in commercial transactions for instance. The physical marking is for life, and so is the appearance of being a slave. On another point: because informing on others leads to freedom, slaves might find it in their self-interest to bear false witness against their fellow slaves and level false accusations.

Finally, it is not clear that the Polylerites’ practices would be effective and useful in England. The Polylerites’ society is less violent than England: because they pay tribute to the Persians for their defense, they do not have a standing army or fight wars, and so do not have soldiers who have learned violence and need sustenance when demobilized, unlike European countries. The Polylerites put their slaves to good use, engaging them in public works or private employ; but the problem in England is that there are not enough jobs, and so the Polylerite practice of hiring out slaves would, if put in place in England, exacerbate unemployment for free non-criminals. When Hythloday recommends the Polylerite practices for England, he seems to overlook these two issues.

Hythloday’s presentation indicates that for him the Polylerites’ system could be applied to England: “I added that I saw no reason why this method might not also be adopted in England, and be more beneficial” (More, 2010, p. 43) than the current English practices. Cardinal Morton, who gives Hythloday a sympathetic
hearing, suggests that he is willing to experiment with some of the practices Hythloday recommends to see their efficacy in England\(^3\). Whereas Hythloday talks of transforming English practices, Morton uses Hythloday’s presentation to explore the possibilities of reforming English practices.

### Utopia: Crime, Justice, and Punishment

The punishment practices of the Polylerites—with their contradictions, tensions, and problems—should prepare the reader for Hythloday’s discussion of the punishment practices of the Utopians. Just as existing countries have different ways of doing things, the reader should also expect imagined countries to differ. In Utopia, those Utopian citizens who “could not restrain themselves from crime” (More, 2010, p. 91) are punished by slavery. But the class of ‘slaves’ is quite heterogeneous: also slaves in Utopia are hardened criminals from other countries, sold or given to the Utopians; foreigners who volunteer to be slaves in Utopia in preference to drudgery at home; and prisoners of war captured by the Utopians themselves.

Because Hythloday reports that there are few laws in Utopia, it is not clear what crimes lead to slavery. He reports that “husbands chastise their wives, and parents discipline their children unless the offence is so monstrous that public punishment would serve public morality” (More, 2010, p. 94) and so lead to punishment “by slavery” (More, 2010, p. 94).\(^4\) So adulterers “are punished by the strictest slavery” (More, 2010, p. 93), as are those who attempt suicide without state permission (More, 2010, p. 92). Those who travel outside the city without permission commit an offense so dire, apparently, that a second offense means slavery (More, 2010, p. 73).\(^5\)

In any event, there seem to be enough slaves to fill occupations explicitly given to slaves: every agricultural household has two slaves, every utopian traveler can claim a slave to drive the wagon and tend the oxen when travelling with permission.

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3 Hythloday complains about how the courtiers are sycophants, always agreeing with what they think Morton thinks; perhaps that is why Hythloday seems not to notice that Morton listened to him and proposed an experimental policy as a result of his audience.

4 The Council decides the seriousness of the crime and thus the legal penalty (More, 2010, pp. 93-94), which seems to leave lots of room for arbitrariness.

5 Religious zealotry is punished not by slavery but by exile (More, 2010, p. 107).
slaves do the hunting and butchering, and slaves do the heavy work at meal-time. Slaves contribute to the economic well-being of Utopia, but do not seem essential to it: Utopia is not a society based on slave labor.

As in his discussion of the Polylerites, Hythloday allows his ethical concerns to slide or be suspended; he forgets his religious, philosophical, and moral objections to capital punishment. It is all right, he says, to punish the “worst offenses” by “slavery”,

[...] since slavery is no less painful than death to the offender. Beside, putting criminals to work is far more advantageous to the state than slaughtering them forthwith. If they rebel and kick against this treatment, unrestrained by prison or fetter, then they are put to death like untamable beasts. (More, 2010, p. 94)

The language suggests that the Utopians—and Hythloday—have slid to thinking of human beings as like animals⁶.

As in his discussion of the Polylerites, Hythloday also allows disciplinary practices and repression to enter into the treatment of slaves. If a marriage partner forgives an adulterous spouse they may live together as slaves; “sometimes the penitence of the one partner and the dutiful persistence of the other move the Governor's compassion and they are freed” (More, 2010, p. 93). Similarly, those who have been “tamed by long misery” may be pardoned. Indeed, Utopia seeks to discourage crime by “giving honors and rewards that can incite citizens to do good deeds” (More, 2010, pp. 94-95), or as the marginal note comments, “Citizens to be animated by rewards for good conduct.”

Just as there seem some tensions or contradictions in the Polylerites’ treatment of slaves, so too with the Utopians’. In what may seem reasonable at first glance, the slaves are set to tasks which citizens should not do: because hunting and butchering are bloodthirsty and demeaning, the Utopians remove these tasks from their citizens and give them to the slaves. The slaves serve as butchers: citizens do not butcher because “such a practice erodes mercy, the finest quality of our nature” (More, 2010, p. 70). The slaves hunt: as Hythloday states, “you should

⁶ In a few pages—in a few minutes of his oral presentation—Hythloday goes on to talk about the Zapolete, hired by the Utopians as mercenaries, as an “abominable and shameful people” (More, 2010, p. 101). The Utopians seem able to be very judgemental, and very demeaning in their judgements, when they wish.
feel pity when you see a poor, weak, timid and innocent hare rent in pieces by a strong, fierce, and cruel dog”; so hunting is “a job unworthy of free citizens,” because the hunter “seeks nothing but pleasure from killing and mangling some poor creature. Utopians think a hunter’s desire to see bloodshed either arises from a cruel disposition or creates one as the effect of constant practice in savage pleasure” (More, 2010, p. 84).

But the advantages of protecting the citizens from being butchers and hunters must come at a cost: the continuing moral degradation of butchering and hunting is visited upon the slaves. Some slaves are serious criminals, and their tasks do not aim to rehabilitate them or make them more virtuous but rather serve only to make them worse human beings. This seems like a risky, even foolhardy policy: the Utopians give criminals—slaves—tasks designed to lessen whatever small stock of mercy, pity, and care for others they may possess: as a marginal note asserts, “By butchering beasts we learn to slaughter men” (More, 2010, p. 70). And then the Utopians insinuate slaves throughout their society and at vulnerable points: slaves work in the kitchens, with the female Utopians preparing the meals; they sometimes drive an ox-cart on which a Utopian is travelling; and two slaves live in each agricultural family unit of about forty adults.

There is also another important ramification to protecting the citizens from bloody work and making the slaves do the butchering: it means that the Utopians hide from themselves what is involved in getting their food to the table. The fruits and vegetables they know and understand well, because all Utopians have to work on agriculture as well as in the city. But the slaughter and processing of live animals for meat is kept under wraps. At some junctures involving violence, Utopia seems constructed on the hiding or the ignoring of important activities.

Finally, Hythloday’s descriptions hide one important dimension of the penalty of slavery for both the Polylerites and the Utopians. He does mention that the Polylerites’ slaves can be whipped for infractions, but he does not mention who does the whipping. Nor does he mention who in Utopia oversees the slaves, chains them, sets them to work, and watches them at night. Who executes the repeat

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7 Similarly, the Utopians when they go to war “bend every effort not to have to fight themselves” (More, 2010, p. 102) and hire the Zapoletes to do their dirty work of killing; so much of the slaughter of war is hidden from the Utopians. Their ideology that legitimates their founding a colony on the “unoccupied and unused land” of the natives also serves to mask the violence, figurative and actual, that the Utopians commit (More, 2010, p. 69).
adulterers? Who, when slaves rebel, puts them “to death like untamable beasts”? Slavery (and capital punishment for crimes committed as a slave) bring with them the need for slave-masters or overseers, the Simon Legrees of the Polylerites and Utopia. But those are hardly tasks conducive to mercy, pity, or virtue, or worthy of a citizen of a good society.

**Conclusion**

Justice, crime, and punishment are central to More’s *Utopia*. They constitute one of the first topics discussed at length in the text, suggesting their importance, and Hythloday’s analysis is cogent. Crimes committed of necessity when the only alternative was starvation, poverty caused by war and enclosure, and cruel punishments justified by lawyers weaving abstract arguments –that is the image Hythloday presents to Cardinal Morton. More’s *Utopia* moves towards ameliorating these issues in the discussion of punishment by the Polylerites and the Utopians. Not that either society has a blueprint to offer England: but their goals are worthwhile—a more humane system of punishment, built around the reduction of crimes of necessity and economic inequality, and enhanced by a society that rather than educating thieves aims to educate to virtue.

At the same time, what Hythloday suggests are clearly not perfect solutions. Of course, utopias rarely offer perfection. Rather they suggest possibilities of improvement. For Hythloday of course, any serious possibility of improvement requires the elimination of private property. With or without the abolition of private property, however, the internal shortcomings visible in the Polylerites’ and Utopians’ practices of punishment suggest that neither could be adopted by most countries as a blueprint or even as an overall general goal.

Nonetheless a reader interested in justice, crime, and punishment can also look to *Utopia* for suggestions for reform: some of the specific practices may well be applicable in specific circumstances and could be applied experimentally, as Cardinal Morton suggests. Most notably, in both societies the punishment for the initial crime is not death but labor. That lesser penalty seems more in accord with both morality and expediency. Both societies also allow for ways of gaining freedom for slaves; although both seem to demand from the slave humble submission to
discipline rather than virtue, the possibility of earning freedom seems a step in the right direction.

Nonetheless, in many ways both societies have serious shortcomings in their practices. Both societies wish to mark the convicted as slaves—by clipping off an ear, by putting in chains. But both wish to put the slaves to work—and hunting or butchering when wearing gold chains seems difficult. Both wish to allow for pardoning slaves—but a clipped ear makes freedom unclear to others, and the character traits developed or enhanced by hunting and butchering do not seem conducive to the slave becoming a contributing free citizen.

The shortcomings extend beyond punishment to other social practices. Engaging in extensive surveillance of slaves to assure that they are following their disciplinary rules, Utopia extends discipline and surveillance beyond the convicts to the society at large. Citizens act in public and so their actions are always monitored. The dining room provides a telling example: the old watch the young, men watch women, and children and pregnant women are off to the side, quiet; and the elders lead the younger in proper conversations. The surveillance of prisoners and of diners finds echoes from the beginning of Hythloday’s description of Utopia, when the reader learns that garden gates do not have locks and so “give admission to anyone, so that nothing at all is private” (More, 2010, p. 62).

Raising questions about Utopia, the tensions in punishment practices also lead to questions about Hythloday. Because his presentations of punishment include such obvious problems, a reader may wish to ask skeptical questions of just about everything Hythloday says—not that everything that he says is wrong or valueless, but that there may be issues, unseen by him, lurking in his descriptions and enthusiasm. Indeed, a reader might also question how well Hythloday has thought through his intellectual positions, including his quasi-Platonic argument that advising rulers is fruitless—because, after all, Cardinal Morton did listen to him.

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8 Especially in the United States, where incarceration rates are high and capital punishment is employed, Utopia has much to suggest. The limits to a purely or primarily legalistic approach to crime; the importance of human life as a value; the need to combine theoretical and practical reason to find a theoretically coherent policy that is useful; the irony of the Polyerites cutting off an ear, as permanent a sign of past crime as are felony convictions in many states which enforce continuing civic and economic disabilities; the irony of the Utopians failure to think of how being a slave affects moral character; and the need to criticize what is and think about its transformation or reform—all these can be seen as ways that Utopia could help inform a discussion of punishment and justice in the U.S.
At the same time, the tensions, problems, and contradictions within each society’s system of punishment, as presented uncritically by Hythloday, suggest how difficult is the nexus of justice, crime, and punishment. Justice, crime, and punishment entail coercion and violence, and so perhaps *Utopia* is suggesting that there will always be problems with punishing justly and effectively. Hythloday’s critique of England looks towards a moral or ethical treatment of human beings, in which capital punishment is forbidden. But at the same time punishment involves coercion: slaves are told what to do, what space to occupy, how to comport themselves. In some ways that coercion in itself involves the exercise of power—involves treating others as objects, as less than human—over others, and especially when that power is backed by capital penalties it involves treating others as “untamable animals.” And, of course, the way to handle animals is to try to tame them, by the powers of surveillance and repression.

At the beginning of his discussion with Cardinal Morton, Hythloday talks about the need for punishment to be both just and practical (More, 2010, p. 34), humane and advantageous (More, 2010, p. 42). But the problems of punishment suggest that it may be difficult or impossible to reconcile justice and effectiveness. The respect for human life demanded by justice may be too readily in tension with the demand for effectiveness, which involves coercion—or surveillance, discipline, and repression. Theoretical reason may be able to come up with moral absolutes, such as respect for human life and demands for effectiveness, which practical reason in some circumstances cannot reconcile.

In other words, the problems, tensions, and issues that surround the Polylerites’ and Utopians’ practices of punishment can inform interpretations of the societies, Hythloday the narrator, and the overall issue of punishment. The societies have flaws in their punishment practices—even if some aspects may nonetheless suggest effective reforms. Hythloday seems not to see some contradictions, perhaps because he is too zealous in his support of the distant countries he has visited. And, finally, justice and effectiveness may be in tension, at least for any nexus of justice, crime,

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9 In foreign affairs the Utopians face a similar tension among justice, effectiveness, and violence. They wish to impose justice in international relations; yet their means of imposing justice, in the final analysis, rests on coercion and violence, which they regard “with utter loathing” but which they enter into frequently. To re-establish justice they may fight a “fierce war” in which “flourishing nations” were “shaken or overthrown” and many killed (More, 2010, p. 98), hardly an effective or expedient result. Violence leads to ambiguous morality in international relations as in issues of crime and punishment.
and punishment that can be imagined in More’s world. The treatments of punishment in *Utopia* lead not to definitive answers nor to closure, but to further sets of questions and further examination of possibilities.

**References**


