

PUNISHMENT, POLITICS AND CULTURE

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Office Hours

Tuesday 200-330 and Thursday 200-330

Other than war, punishment is the most dramatic manifestation of state power. Whom a society punishes and how it punishes are key political questions as well as indicators of its character. This course considers connections between punishment and politics in the contemporary United States. We will ask whether we punish too much and too severely, or too little and too leniently. We will consider the politicization and racialization punishment and examine particular modalities through which the state dispenses its penal power. Among the questions to be discussed are: Does punishment express our noblest aspirations for justice or our basest desires for vengeance? Can it ever be an adequate expression of, or response to, the pain of the victims of crime? When is it appropriate to forgive rather than punish? Throughout we will try to understand the meaning of punishment by examining the way it is represented in politics and popular culture.

Books for the course are available at the Amherst Bookstore.

Stephen Mitchell, The Book of Job

James Whitman, Harsh Justice

Herman Melville, Billy Budd

Fox Butterfield, All God's Children

Austin Sarat, When the State Kills: Capital Punishment and the American Condition

Austin Sarat, Mercy on Trial: What It Means to Stop an Execution

Other readings are available on the course website on CMS.

Please note that there are several films on e-reserve.

I. INTRODUCTION: PUNISHMENT AND PAIN

1. *Introduction (January 25)*

Francis v. Resweber, 329 US (1947) 459
“Ohio Plans to Try Again as Execution Goes Wrong,” New York Times (September 2009)

FILM: Noon Wine

2. *The Phenomonology of Suffering: If There Is Punishment There Must Be Guilt, But Without Punishment Can There Be Innocence? (February 1)*

Stephen Mitchell, The Book of Job (P)
Elaine Scarry, “The Structure of Torture,” in The Body in Pain, 27-59

3. *Punishment and the Constitution of Culture (February 8)*

George H. Mead, “The Psychology of Punitive Justice,” 23 American Journal of Sociology (1917), 577-602
James Whitman, Harsh Justice, Introduction, Chapter 1, 2, 3, 5, Conclusion (P)
David Garland, “Punishment and Culture: The Symbolic Dimensions of Criminal Justice,” 11 Studies in Law, Politics, and Society (1991), 191-224

II. PUTTING PAIN TO WORK

4. *What Makes Pain Punitive? And What Does Punishment Say About Those Who Punish?- I (February 15)*

Herman Melville, Billy Budd (P)
Herbert Morris, “Persons and Punishment”
Robinson v. California, 370 US (1962) 660

5. *What Makes Pain Punitive? And What Does Punishment Say About Those Who Punish?- II (February 22)*

Dan Kahan, “The Anatomy Of Disgust in Criminal Law,” 99 Michigan Law Review (1998), 1621
William Connolly, “The Desire to Punish,” in The Ethos of Pluralization, 41-49, 58-74
Marc Klass, “Victim Impact Statement”

Austin Sarat, "The Return of Revenge: Hearing the Voice of the Victim in Capital Trials," Social and Legal Studies

III. THE PAINS OF PUNISHMENT

FILM: Sling Blade

6. *Imprisonment and Indignity-I (February 29)*

Ruffin v. Commonwealth, 62 Va. (1871) 1024

Pugh v. Locke, 406 F. Supp. (1976) 318-337

Fox Butterfield, All God's Children (P)

FILM: Shawshank Redemption

7. *Imprisonment and Indignity-II (March 7)*

Rhodes v. Chapman, 452 US (1981) 337-377

Wilson v. Seiter, 111 S. Ct. (1991) 2321-2331

Simmons v. Galvin, No. 08-1569 (July 31, 2009)

Brown v. Plata, No. 09-1233 (May 23, 2011), (Kennedy, 1-8, 12-24, 26-33, 41-48, 51-52 and Scalia 1-12, 14-16)

8. *The Violence of Imprisonment: Is the State of Nature Inside Law? (March 14)*

United States v. Bailey, 444 US (1980) 394-436

Hudson v. McMillan, 503 US (1992) 1-12, 17-29

Farmer v. Brennan, 511 US (1994) 825-858

IV. COMPETING IMPULSES: SEVERITY AND ITS LIMITS

FILM: I Am a Fugitive From a Chain Gang

9. *Mandatory Sentences, Chain Gangs, and Solitary Confinement and The American Way of Punishment (March 28)*

Harmelin v. Michigan, 501 US (1991) 957-966, 975-996, 1009-1027

Joan Dayan, "Held in the Body of the State: Prisons, Memory, and the Law"

Fox Butterfield, "With Cash Tight, States Reassess Long Jail Terms," NY Times (November 10, 2003)

Atul Gawande, "Hellhole: The United States Holds Tens of Thousands of Inmates in Solitary Confinement: Is This Torture?" The New Yorker (March 30, 2009)

David Cole, "Turning the Corner on Mass Incarceration?" 9 Ohio State Journal of Criminal Law (2011), 27-51

10. "Three Strikes And You Are Out," Extending the Sphere of Control and The American Way of Punishment (April 4)

Erving v. California, No. 01-6978 (2003) (O'Connor and Breyer)
E.B. v. Verniero, 119 F. 3d (1997) 1077-1082, 1087-1090, 1092-1093, 1096-1105, 1112-
Kansas v. Hendricks, 117 S.Ct. (1997) 2072-2099

FILM-Pierrepoint, The Last Hangman

11. Execution Politics: America and the Future of Capital Punishment-I (April 11)

William Connolly, "The Will, Capital Punishment, and Culture War"
Austin Sarat, When the State Kills: Capital Punishment and the American Condition (P)

FILM: Dead Man Walking

12. Execution Politics: America and the Future of Capital Punishment -II (April 18)

Atkins v. Virginia 536 U.S. 304 (2002) (Stevens, Scalia)
Alex Kotlowitz, "In The Face of Death," NY Times (July 6, 2003)
Rachel Barkow, "The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Conformity," 107 Michigan Law Review (2009), 1145-1205
Franklin E. Zimring and David T. Johnson, "The Dark at the Top of the Stairs: Four Destructive Influences of Capital Punishment on American Criminal Justice" (November 8, 2011). Available at SSRN: <http://ssrn.com/abstract=1956686>

V. BEYOND PAIN?

13. Beyond Severity: New Attitudes Toward Punishment (April 25)

Adam Kolber, "The Subjective Experience of Punishment," 109 Columbia Law Review (2009), 182-236
Martha Nussbaum, "Equity and Mercy"
Austin Sarat, Mercy on Trial: What It Means to Stop an Execution (P)

14. Conclusion (May 2)