Crime and Punishment in Western History

Peter Baldwin (peterbaldwin@nyu.edu)
Center for European and Mediterranean Studies, NYU, Fall 2017
Mondays, 3:30-6:00, 285 Mercer St, 7th floor
Office Hours: Mondays 2.45-3.45, 20 Cooper Square, Room 612, or by appointment

After defending against external enemies, punishing misdeeds at home is arguably the state’s primary function. How it did so has changed dramatically over the course of the West’s development. At first, it was the family’s duty to take vengeance on those who harmed its members. Even as feuds were beaten back by a slowly emerging state, individual citizens remained the ones who accused and prosecuted miscreants. Only gradually, with the development of law as the rules by which all citizens must abide did crime – as their violation – emerge. And only by the early modern era did it fall to the state to enforce that law. Punishment, in turn, has also evolved. Death, mutilation, exile: those were the tools at the disposal of the early state. The modern prison emerged only when the authorities accumulated the resources to keep the incarcerated immobile and maintained. In our own day, the focus of punishment has shifted from the state’s external application of force to the internal restraints we are raised and educated to impose on ourselves. The dramatic fall in everyday violence in the 20C raises the question of whether punishment is becoming obsolete. Topics to be covered include: feud and its end, the emergence of law, treason as the ultimate crime, murder and its decline, torture, the development of the prison, the death penalty, and thought crimes.

1. Introduction (12 September 2016)

Jeremy Bentham, An Introduction to the Principles of Morals and Legislation, pp 170-77

2. Why Does the State Punish? (19 September)

∞ Herbert L. Packer, The Limits of the Criminal Sanction, pp 9-16, 35-61
Gerald Dworkin and David Blumenfeld, “Punishment for Intentions,” Mind, 75, 299 (1966), pp 396-404 [move this to policing the soul?]
3. Morality and Crime (26 September)

∞ Leon Shaskolsky Sheleff, “Morality, Criminal Law and Politics,” *Tel Aviv University Studies in Law*, 2 (1976), pp 190-228
Patrick Devlin, “Morals and the Criminal Law,” in *The Enforcement of Morals*, pp 1-25
Stuart P. Green, “Why It’s a Crime to Tear the Tag off a Mattress: Overcriminalization and the Moral Content of Regulatory Offenses,” *Emory Law Journal*, 46 (1997), pp 1535-80 (not entire article)
Thomas C. Grey, *The Legal Enforcement of Morality*, pp 157-71

4. Crime outside the Law: Vengeance, Feud and Dueling (3 October)

∞ Steven Pinker, *The Better Angels of our Nature: The Decline of Violence in History and its Causes*, pp 47-56
∞ Hubert Treston, *Poine: A Study in Ancient Greek Bloodfeud*, pp 1-11, 21-28
∞ William Ian Miller, *Bloodtaking and Peacemaking*, 179-210
 Alan Harding, *Medieval Law and the Foundations of the State*, 69-87
Julius Goebel, Jr., *Felony and Misdemeanor*, pp 25-44, 62-81
Pieter Spierenburg, *A History of Murder*, pp 43-64

10 October: Fall Recess, no class, but an excellent time to ponder your paper topics.

5. The First Real Crime: The State as Victim (17 October)

∞ Treston, *Poine*, 138-54
∞ (Read the Background Information to Understand the Readings by Elton and Orr handout too)
6. How Crimes Are Proven: Ordeals, Torture and Jury (24 October)

∞ Robert Bartlett, *Trial by Fire and Water*, pp 13-33, 70-102, 135-43
∞ Thomas Andrew Green, *Verdict According to Conscience*, pp 3-27
∞ David Garland, *Peculiar Institution*, pp 272-80

7. Ideological Crimes: From Heresy to Politics (31 October)


8. The Rise and Fall of Public Punishment (7 November)

*Paul Friedland, *Seeing Justice Done*, 29-52, 119-265
Pieter Spierenburg, *The Spectacle of Suffering*, pp 183-207
V.A.C. Gatrell, *The Hanging Tree*, pp 225-41
David D. Cooper, *The Lesson of the Scaffold*

9. **Death and its Discontents** (14 November)

∞ Pinker, *Better Angels*, pp 149-53
∞ Garland, *Peculiar Institution*, pp 70-126
∞ Richard Evans, *Rituals of Retribution: Capital Punishment in Germany*, pp 805-34 (834-71)
∞ Zimring, *Contradictions of American Capital Punishment*, pp 16-41

10. **The Decline of Violence (but not of Crime)** (21 November)

∞ Spierenburg, *Murder*, pp 165-81
Schwerhoff, Criminalized Violence, critique of Elias?
∞ David Garland, *The Culture of Control*, pp 1-20, 89-102, 139-65
∞ Loïc Wacquant, *Punishing the Poor*, pp 113-35
∞ Douglas Husak, *Overcriminalization: The Limits of the Criminal Law*, pp 3-32 [cut this down?]
Julian V. Roberts et al., *Penal Populism and Public Opinion*, pp 61-70

11. **Policing the Soul** (28 November)

∞ Walter Ullmann, *The Medieval Idea of Law as Represented by Lucas de Penna*, pp 142-58
∞ Jean Floud and Warren Young, *Dangerousness and Criminal Justice*, pp 20-32, 38-46
Keisha April, “Cartoons Aren't Real People Too: Does the Regulation of Virtual Child Pornography Violate the First Amendment and Criminalize Subversive Thought?” *Cardozo Journal of Law and Gender*, 19 (2012), pp 241-64 (not entire article)

12. *America as Outlier* (5 December)

∞ Pinker, *Better Angels*, pp 91-106
∞ James Q. Whitman, *Harsh Punishment: Criminal Punishment and the Widening Divide between America and Europe*, pp 3-17, 41-64
∞ Peter Baldwin, *The Narcissism of Minor Differences*, pp 74-90
Stuart Banner, *The Death Penalty*, pp 267-84

Weeks 13 (12 December) and 14 (13 December, running a Monday schedule) are for paper presentations. The second of these will be used if we need the time.

Books marked with an * you will need either to read on reserve in the library or get your own copy. They are often available used for little money on Amazon or AbeBooks.com. Other readings will be posted as pdfs on the course website.

Readings marked with ∞ are to be read by all. Other readings will be farmed out.