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
3. Morality and Crime (26 September) [3-page paper to be handed in]

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)

Julius R. Ruff, *Violence in Early Modern Europe*, pp 73-87 [scan and questions]
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
D. Alan Orr, *Treason and the State: Law, Politics and Ideology in the English Civil War*, pp 1-7, 171-205 [for background on English Civil War, read Levy *Treason* 161-87 as background for Elton, or Williams Tudor Regime, 253-58]


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. Paper discussions (7 November)

Be prepared to discuss your paper topic and the bibliography. Make appointments for individual times on sign-up sheet circulated in Week 7.
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
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
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
Eric S. Janus, Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventive State, pp 93-109
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.

**Class Mechanics:**

All readings will be posted as PDFs on the course website.

Some readings will be done by all, others farmed out to groups of two or three. This will be discussed at the previous class meeting. Since not everyone will have done all the readings, each group will be responsible for summarizing the readings they alone have done in a minute or so, in such a way that others who have not read it will get its gist. The groups who are doing the same reading are encouraged to collaborate before the class meeting so that they can present in unison, supplementing and adding to each other’s contributions.

Each week everyone will write a one page answer to one of the study questions, chosen from the hand-outs to correspond to the readings they have done. This is to be handed in whether you come to class or not. Depending on how the class discussion flows, you may be asked to present what you have written in class informally, in the sense that you will explain the point of the argument you have made in the paper, rather than reading it aloud. The paper for the 3rd week (26 September) is to be 3 pages and develop your argument in more detail. Unlike the other weekly papers, this one will be graded.

In addition, you will write a 10-12 page paper to be presented during one of the last two sessions. It will be due at the last meeting, December 13. The long paper can be on a topic of your choice. Or it can be on the evolution of the concept of police and policing over the past several centuries, making use of the bibliography below and supplementing or replacing it with other readings depending on your particular interest. If you want to write on your own topic, you must be ready to discuss it during the one-on-one meetings on November 7. By then, you must have an idea of your topic and developed a bibliography of what you will read to be able to write on it. Obviously,
you are welcome to solicit my help to get to that point during office hours or other times before that. But you should be ready to go by early November.

Since this is a seminar, preparing for class by doing the reading, thinking about it, writing up your one-page papers and, ABOVE ALL, participating in discussion is crucial. Your grade will be based as follows: class participation (15%), class presentations (10%), weekly papers (20%), 3-page paper (20%), long paper (35%).

THE EVOLUTION OF POLICE AND POLICING

John K. Brackett, Criminal Justice and Crime in Late Renaissance Florence, pp 30-56
J.M. Beattie, Policing and Punishment in London 1660-1750, pp 77-86, 114-34
Ashworth and Zedner 27-50
Eric Monkkonen, Police in Urban America, pp 30-49
Bayley, Patterns of Policing, 3-14, 23-37
Fosdick, European Police Systems, ch 1,