

Punishment before Penology

BA Seminar in History

Punishment is a special form of communication, a way of establishing social boundaries and of negotiating cultural identities. As such it is at once an agent and a product of social, legal and political processes. Political, military and religious elites in particular have theorized about it and, when they felt it was necessary, mobilized resources to enshrine their ideas about it in policy and practice. Yet other than being routinely dealt with in legal, philosophical and sacred texts, punishment and penal sites have left many further traces: they are visible in architecture, depicted in plastic art and portrayed in prose fiction, poetry, theatre, film and other media, all of which afford a complex view of how punishment was designed, its execution performed and its meaning established. In this course we will examine a vast array of such evidence from different historical eras to explore these facets, especially for the period preceding the Enlightenment, when penology—the systematic theorizing about punishment—was allegedly born. We will critically examine this assumption and also focus on the fortunes of particular penal modalities, including corporal punishment, incarceration, and shaming, and observe their ebb and flow under different political, economic and social circumstances.

General Outline

1. Introduction I: Punishment and History
2. Introduction II: Taxonomy and Sources
3. Ancient Civilizations I: Mesopotamia, Egypt, and Asia Minor
4. Ancient Civilizations II: Greece and Rome
5. Judaism
6. Islam
7. Christianity
8. European Customary Law
9. Presentations
10. The Prison
11. Gender
12. Rituals of Punishment
13. Class tour to Prison Gate Museum in Den Haag
14. Conclusion: Modernity and the Rationalization of Punishment?

Evaluation: The specific composition for the final grade and the relative weight of its individual components will be decided upon by the class. As a general rule, students will be evaluated according to class participation, presentations and a final paper. There is no final exam for this class. Presentations: Each week different students will be asked to present the readings and prepare to run a discussion about them, based on and departing from the questions set for each text in the syllabus and on the basis of the lecture. Each student is however responsible for preparing these texts independently and being conversant in them during the discussion. In week 9 students will present their (in-progress) research project before the class for feedback. Final paper: Consisting of up to 5,000 words, this original essay will be based on primary sources originating from any region or period and including any genre, textual or non. Its purpose is to interrogate original texts, images, remains, etc., that can illuminate the history of punishment from a new perspective.

Weekly Topics and Readings

Texts are either freely available online, on the course website (), or on reserve shelf*

1. Introduction I: Punishment and History

Durkheim, "Two Laws of Penal Evolution"*

Hirst, "The Concept of Punishment"*

Shoemaker, "The Problem of Pain in Punishment: Historical Perspectives"*

s.v. "Punishment" in the *SEoP*: plato.stanford.edu/entries/punishment/

2. Introduction II: Taxonomy and Sources

Two Florentine sentences*

Definitions of punishments in *Encyclopedia of Crime and Punishment**

Pennington, "Medieval Law"*

Smail, "Aspects of Procedural Documentation"*

3. Ancient Civilizations I: Mesopotamia, Egypt, and Asia Minor

*Laws of Ur-Nammu**

Hammurabi's Code of Law, nos. 1-34, 53-59, 108-110, 115-17, 127, 129-32, 142-43, 153-57, 192-267, 282: eawc.evansville.edu/anthology/hammurabi.htm

The Hittite Laws, 1-69*

Riemschneider, "Prison and Punishment in Early Anatolia"*

VerSteeg, *Law in Ancient Egypt*, 151-86*

4. Ancient Civilizations II: Greece and Rome

Aristotle, *Athenian Constitution*, nos. 45-69: classics.mit.edu/Aristotle/athenian_const.html

Plato, *The Laws*, Book IX, esp. §17*; also at: classics.mit.edu/Plato/laws.html

The Twelve Tables: http://www.constitution.org/sps/sps01_1.htm

Justinian, *Digest* 48.19 (*De poenis*)*

Robinson, *Penal Practice and Penal Policy*, 158-97*

Saunders, *Plato's Penal Code*, 88-136* (optional)

5. Judaism

Babylonian Talmud, Tractate Sanhderin 1,4, 6-7, 9-10; and Makkot: <http://www.sacred-texts.com/jud/tsa/index.htm>; <http://www.sacred-texts.com/jud/t09/mac06.htm>

Maimonides, *Mishneh Torah*, Sefer Shoftim, Sanhedrin 17-19*

Goldin, *Hebrew Criminal Law*, 11-58*

Jacobs, "Punishment"*

Steinmetz, *Punishment and Freedom*, 69-105 (optional)*

6. Islam

Al-Mawardi, *The Ordinances of Government*, 238-42, 251-259*

Ibn Rushd, *The Distinguished Jurist's Primer*, 521-530*

Peters, *Crime and Punishment in Islamic Law*, 6-68*

7. Christianity

St. Benedict, *Rule for Monks*, chs. 1, 5-7, 23-30, 42-46: <http://www.osb.org/rb/text/toc.html>

*Roman Penitential of Halitgar**
Corpus of Canon Law (selection)*
Geltner, "*Detrusio*"*
Helmholz, R. H., "Crime, Compurgation and the Courts"*

8. European Customary Law
Hibernensis, 26 and 46*
The Etablissements de Saint Louis, 26-31*
The Lombard Laws (selection)*
Bellamy, *Crime and Public Order*, 162-198*
Dean, *Crime in Medieval Europe*, 118-43*

9. Presentations Marathon
Rotating schedule to be set

10. The Prison
Medieval prison poetry*
Selection of primary sources*
Peters, "Prison before the Prison"*
Geltner, "Coping in Medieval Prisons"*
Spierenburg, *The Prison Experience*, 12-38*

11. Gender
Selection of primary sources*
Witchcraft trial*
Chesney-Lind, "Women and Crime"*
Feeley and Little, "The Vanishing Female"*
Geltner, "A Cell of their Own"*
Hanawalt, "The Female Felon in Fourteenth-Century England"*

12. Rituals of Punishment
Selection of primary sources*
Cohen, "To Die a Criminal"*
Foucault, *Discipline and Punish*, 32-69*
Ruggiero, "Constructing Civic Morality, Deconstructing the Body"*
Spierenburg, *The Spectacle of Suffering*, 43-80, 243-247*

13. Class tour to The Prison Gate Museum, The Hague
Conclusion: The Rationalization of Punishment?
Beccaria, *On Crimes and Punishments*; also at: www.constitution.org/cb/crim_pun.htm
Garland, "The Rationalization of Punishment"*

General Bibliography

Primary

NB: Some of the translated texts below were chosen for access rather than quality. You are strongly encouraged, whenever possible, to consult editions in the original languages or more recent translations that are not yet available on-line.

Al-Mawardi, *The Ordinances of Government (Al-Aḥkām al-sultāniyya w'al-Wilāyāt al-Dīniyya)*, trans. W.H. Wahba (Reading, 1996)

Aristotle, *The Athenian Constitution*, trans. F. G. Kenyon:

classics.mit.edu/Aristotle/athenian_const.html

Babylonian Talmud, Tractates Sanhderin and Makkot, trans. I. Epstein (London 1961); or:

trans. M. L. Rodkinson: <http://www.sacred-texts.com/jud/tsa/index.htm>;

<http://www.sacred-texts.com/jud/t09/mac06.htm>

Beccaria, C., *On Crimes and Punishments*, ed. R. Bellamy (Cambridge 1995); or: trans. E. D.

Ingraham: www.constitution.org/cb/crim_pun.htm

Benedict, *Rule for Monks*: <http://www.osb.org/rb/text/toc.html>

Bernard Gui, *Inquisitor's Manual*, trans. D. Burr:

www.fordham.edu/Halsall/source/bernardgui-inq.asp

Corpus iuris canonici: <https://colbycanonlaw.wordpress.com/2009/09/24/liber-extra-decretalists/>

Crime and Punishment in Ancient China: T'ang-Yin-Pi-Shih, trans. R. H. van Gulik, 2nd ed. (Bangkok: Orchid Press, 2007)

Hammurabi's Code of Law, trans. L. W. King:

eawc.evansville.edu/anthology/hammurabi.htm

Ibn Rushd, *The Distinguished Jurist's Primer (Bidāyat al-mujtahid)*, trans. B I.A.K. Nyazee (Reading, 1996)

Justinian, *Digest*, trans. S. P. Scott (Cincinnati 1932) : [http://webu2.upmf-](http://webu2.upmf-grenoble.fr/Haiti/Cours/Ak/Anglica/digest_Scott.htm)

[grenoble.fr/Haiti/Cours/Ak/Anglica/digest_Scott.htm](http://webu2.upmf-grenoble.fr/Haiti/Cours/Ak/Anglica/digest_Scott.htm)

Law Collections from Mesopotamia and Asia Minor, ed. M. T. Roth (Atlanta, GA 1995)

Medieval Handbooks of Penance, trans. J. T. McNeill and H. M. Gamer (New York 1938)

Plato, *The Laws*, trans. T. J. Saunders (London 1970); or: trans. B. Jowett:

classics.mit.edu/Plato/laws.html

The Etablissements de Saint Louis, ed. and trans. F.R.P. Akehurst (Philadelphia 1996)

The Hibernensis, ed. and trans. R. Flechner (Dublin [forthcoming])

The Hittite Laws, ed. E. Neufeld (London 1951)

The Laws of the Hittites: A Critical Edition, ed. H. A. Hoffner, Jr. (Leiden 1997)

The Lombard Laws, ed. K. Fisher Drew (Philadelphia 1973)

The Twelve Tables: www.constitution.org/sps/sps01_1.htm

Secondary

Acton, H. B. (ed.), *The Philosophy of Punishment* (London 1973)

Belknap, J., *The Invisible Woman: Gender, Crime, and Justice*, 2nd ed. (Belmont, CA 2001)

Bellamy, J. G. *Crime and Public Order in England in the Later Middle Ages* (London 1973)

Chazelle, C., et al. (ed.), *Why The Middle Ages Matter: Medieval Light on Modern Injustice* (London 2011)

Chesney-Lind, M., "Women and Crime: The Female Offender," *Signs: Journal of Women in Culture and Society* 12 (1986): 78-96

- Cohn, Jr., S. K., "Women in the Streets, Women in the Courts, in Early Renaissance Florence," in *Women in the Streets: Essays on Sex and Power in Renaissance Italy* (Baltimore and London 1996)
- Dean, T., *Crime in Medieval Europe, 1200-1550* (Harlow 2001)
- Diamond, A. S., *Primitive Law Past and Present* (London 1971)
- Doongaji, D., *Crime and Punishment in Ancient Hindu Society* (Jawahar Nagar 1986)
- Duff, A. and D. Garland (eds.), *A Reader on Punishment* (Oxford 1994)
- Durkheim, E., "Two Laws of Penal Evolution," trans., T. A. Jones and A. T. Scull, in *The Radical Sociology of Durkheim and Mauss*, ed. M. Gane (London and New York 1992) 21-49
- Encyclopedia of Crime and Punishment*, gen. ed. D. Levinson, 4 vols. (Thousand Oaks, CA 2002)
- Feeley, M. M. and D. L. Little, "The Vanishing Female: The Decline of Women in the Criminal Process, 1687-1912," *Law & Society Review* 25 (1991): 719-57
- Foucault, M., *Discipline and Punish: The Birth of the Prison*, trans. A. Sheridan (New York 1977)
- Frymer, T. S., "The Nugal-Hymn and the Ekur-Prison," *Journal of the Economic and Social History of the Orient* 20 (1976): 78-89
- Garland, D., "The Rationalization of Punishment," in *Theatres of Power: Social Control and Criminality in Historical Perspective*, ed. H. Pihlajamäki (Helsinki 1991), 96-115
- Geltner, G., "Detrusio: Penal Cloistering in the Middle Ages," *Revue Bénédictine* 118 (2008): 89-108
- , *The Medieval Prison: A Social History* (Princeton 2008)
- , "Coping in Medieval Prisons," *Continuity and Change* 23 (2008): 151-71
- , "A Cell of their Own: The Incarceration of Women in Late Medieval Italy," *Signs* _____
- , *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present* (Amsterdam 2014)
- Given, J., *Inquisition and Medieval Society: Power, Discipline, and Resistance in Languedoc* (Ithaca, NY 1997)
- Goldin, H. E., *Hebrew Criminal Law and Procedure. Mishnah: Sanhedrin—Makkot* (New York 1952)
- Halsted, J. B., "Nietzsche and the Challenge to the Principles Supporting the Administration of American Criminal Corrections," *Journal of Police and Criminal Psychology* 7 (1991): 38-44
- Hanawalt, B., "The Female Felon in Fourteenth-Century England," *Viator* 5 (1974): 253-68
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- Hulsewé, A. F. P., *Remnants of Han Law* (Leiden: Brill, 1955)
- Jacob, W. and M. Zemer (eds.), *Crime and Punishment in Jewish Law: Essays and Responsa* (New York 1999)
- Jones, A.H.M., *Criminal Courts of the Roman Republic and Principate* (Oxford 1972)
- Lahiri, T., *Crime and Punishment in Ancient India* (New Delhi 1986)
- Lorton, D., "The Treatment of Criminals in Ancient Egypt," *Journal of the Economic and Social History of the Orient* 20 (1976): 2-64
- Mackenzie, M.M., *Plato on Punishment* (Berkeley 1981)
- Morris, A., *Women, Crime and Criminal Justice* (Oxford 1987)

- Morris, N., and D. J. Rothman (eds.), *The Oxford History of the Prison* (Oxford and New York 1998)
- Nijdam, H., *Lichaam, eer en recht in middeleeuws Friesland : een studie naar de Oudfriese boeteregisters* (Hilversum 2008)
- Pennington, K., "Pro peccatis patrum puniri: A Moral and Legal Problem of the Inquisition," *Church History* 47 (1978): 137-54
- , "Medieval Law," in *Medieval Studies: An Introduction*, ed. J. M. Powell, 2nd ed. (Syracuse 1992), 333-52
- Peters, E., *Inquisition* (Berkeley and Los Angeles 1989)
- Peters, R., *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century* (Cambridge 2005)
- Riemschneider, K. K., "Prison and Punishment in Early Anatolia," *Journal of the Economic and Social History of the Orient* 20 (1976): 114-26
- Robinson, O.F., *Penal Practice and Penal Policy in Ancient Rome* (London and New York 2007)
- Ruggiero, G., "Constructing Civic Morality, Deconstructing the Body: Civic Rituals of Punishment in Renaissance Venice," in: J. Chiffolleau, L. Martines and A. P. Bagliani (eds.), *Riti e rituali nelle società medievali* (Spoleto 1994), 175-190
- Saunders, T. J., *Plato's Penal Code: Tradition, Controversy, and Reform in Greek Penology* (Oxford 1991)
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- , "The Problem of Pain in Punishment: A Historical Perspective," in *Pain, Death, and the Law*, ed. Austin Sarat (Ann Arbor, MI 2001), 15-41
- Smail, D. L., "Aspects of Procedural Documentation in Marseille (14th-15th Centuries)," in Susanne Lepsius and Thomas Wetzstein (eds.), *Als die Welt in die Akten kam. Prozeßschriftgut im europäischen Mittelalter* (Frankfurt 2008), 139-69.
- Smith, P., *Punishment and culture* (Chicago 2008)
- Spierenburg, P., *The Spectacle of Suffering. Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge 1984)
- , *The Prison Experience* (Amsterdam 2007)
- Steinmetz, D., *Punishment and Freedom: The Rabbinic Construction of Criminal Law* (Philadelphia 2008)
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- VerSteeg, R., *Law in Ancient Egypt* (Durham, NC 2002)

Further Reading (to begin research for final papers)

History of Prisons: <http://www.falk-bretschneider.eu/biblio/biblio-index.htm>

Translated sources in criminal law: arapaho.nsuok.edu/~dreveskr/cjhr.html-ssi