PUNISHMENT

AND

WHATEVER HAPPENED TO REWARD AND MERCY?

8 CLASSES

The aim of these classes is not only to reflect on various conceptions of the nature, purpose and justification of punishment as was particularly topical for much of the middle to late C20th in Anglo-Saxon philosophy departments, but to consider why it is that we have tended to forget what were its various customary philosophical and theological twins, reward, mercy, forgiveness and pardon. And to do this not only thinking about the Western tradition. Ours continues to be a very punitive culture globally, but it seems to have ceased to be a forgiving one, though the subject of forgiveness has shown some sign of conceptual recovery, e.g. Derrida *Forgiveness* (1999) and the practice of Presidential and other executive pardons makes the headlines from time to time. What is more since the end of Apartheid reconciliation is also receiving increasing philosophical attention. Over the course of the eight classes we will consider how a greater focus on ideas of mercy, clemency and pardon as well as conceptions of punishment and rewards can enrich our understanding of some of the canonical figures of Western Political Thought such as Plato, Hobbes and Nietzsche, together with casting some light on the nature of contemporary political culture, but extending beyond the Western tradition.

Though there will be a topic or period set for each of the eight weeks as well as some reading, it is hoped that students will share insights on the subjects of punishment, reward, clemency and cognate subjects **from their own research**, **and have a SIGNIFICANT input into the form the classes will take each week.**

What follows is a preliminary outline of the topics for the six classes, but it is important that we remain flexible and see where the discussions are taking us**. Do however cover the reading suggested for the first class and be prepared to speak to it.**

GENERAL READING

Christopher Bennett, *The Apology Ritual: A Philosophical Theory of* Punishment, Cambridge, 2010

Leo Zaibert, *Rethinking Punishment*, 2018

Charles L. Griswold, Forgiveness: A Philosophical Exploration (2007)

On freewill and punishment: Sam Harris

<https://www.youtube.com/watch?v=_FanhvXO9Pk>

<http://plato.stanford.edu/entries/forgiveness/>

<http://plato.stanford.edu/entries/punishment/>

<http://plato.stanford.edu/entries/legal-punishment/>

<http://plato.stanford.edu/entries/justice-retributive/>

<http://plato.stanford.edu/entries/criminal-law/>

<http://plato.stanford.edu/entries/heaven-hell/>

<http://plato.stanford.edu/entries/reconciliation/>

**Suggestion for questions to consider:**

**Do the theorists you are studying discuss punishment? Does their account of it provide an insight into their political thought?**

**Do they address the issue(s) of pardon? Clemency? Forgiveness? Forgetting? Reconciliation? If so, how? If not, why not?**

**What place do punishment and mercy occupy in various political theories?**

**What consideration, if any, is given to reward by different political theorists?**

**Do these questions raise questions of methodology?**

**Can states be merciful or can they only be punitive?**

**Does the rule of law set limits to clemency and rewards?**

**What about non-Western culture? What do they teach?**

DIVINE AND HUMAN PUNISHMENT, REWARDS, AND FORGIVENESS IN THUCYDIDES, PLATO AND ARISTOTLE

I

**What a sensation of freedom it is to feel, as we freed spirits feel, that we are *not* harnessed up to a system of ‘end’! Likewise, that the concepts of ‘reward’ and ‘punishment’ do not have their seat in the nature of existence! Likewise, that the good or evil action is to be called good or evil not in itself but only from the perspective of what favours self-preservation among the particular kinds of human community!** Nietzsche, *Writings from the Late* Notebooks, ed. Rudiger Bittner, CUP, 2003, Notebook 2, autumn 1885, autumn 1886 [206]

Thucydides, ‘The Revolt of Mytilene’ in *The Peloponnesian War*.

Plato’s *Laws* Book 4 and esp. 9.

Aristotle’s *Nicomachean Ethics* Book III 1-3.

Seneca, *To Nero, On Mercy (Ad Neronem, De Clementia)*

Joseph Albo, from *The Book of the Principles*, in *Medieval Jewish Philosophical Writings*, Charles Manekin (ed.), CUP, 2007, 236- 252, esp. 250-251 (see also Hasdai Crescas, p. 223).

Allen, Danielle, S. *The World of Prometheus: The Politics of Punishing in Democratic Athens* (2002)

Charles L. Griswold, *Forgiveness: A Philosophical Exploration* (2007), esp. Prologue and Ch. 1.

T. J. Saunders *Plato’s Penal Code* (1991), Ch. 5.

<https://aeon.co/essays/there-s-no-emotion-we-ought-to-think-harder-about-than-anger>.

II

HOBBES AND LOCKE

ON PUNISHMENT AND MERCY

Hobbes, *Leviathan*, esp. Ch. 17 and 18

Hobbes, *Elements of Laws* XVI

Locke, *Two Treatises of Government*, esp. *Second Treatise* Ch. 2, 7, 8, 11, 16, 18.

Locke, *Essay on Human Understanding* 1.3.6-13

Heyd, David. “Hobbes on Capital Punishment.” History of Philosophy Quarterly, vol. 8, no. 2, 1991, pp. 119–134. [www.jstor.org/stable/27743969](http://www.jstor.org/stable/27743969).

Calvert, Brian. “Locke on Punishment and the Death Penalty.” Philosophy, vol. 68, no. 264, 1993, pp. 211–229. [www.jstor.org/stable/3751163](http://www.jstor.org/stable/3751163)

Nozick, Robert, *Philosophical Explanations* (1981), Part 4, Ch. 3 ‘Retributive punishment’

<http://skepdic.ru/wp-content/uploads/2013/05/Nozick.pdf>

Walker, Nigel. “Nozick's Revenge.” *Philosophy*, vol. 70, no. 274, 1995, pp. 581–586. [www.jstor.org/stable/3751085](http://www.jstor.org/stable/3751085)

III

THE EIGHTEENTH CENTURY

Beccaria, Cesare, 1764, *On Crimes and Punishments*, Richard Bellamy ed., trans. Richard Davies, CUP, 1995, OR tr. David Young, Indianapolis: Hackett, 1986 OR <http://oll.libertyfund.org/titles/beccaria-an-essay-on-crimes-and-punishments>

Butler, Joseph, 1723, Sermons VIII and IX, “Sermon Upon Resentment and forgiveness”, available in various editions, also <http://anglicanhistory.org/butler/rolls/08.html>

(See the entry on Butler or the section on forgiveness in Garrett, Aaron, "Joseph Butler's Moral Philosophy", The Stanford Encyclopedia of Philosophy(Winter 2014 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2014/entries/butler-moral/> )

Dr Johnson ‘On Forgiving Early’ (I will forward but available in various formats)

Rousseau, J.J., *The Social Contract*

(see amongst other possible discussion <http://stanford.universitypressscholarship.com/view/10.11126/stanford/9780804771702.001.0001/upso-9780804771702-chapter-3> )

IV

KANT, TOCQUEVILLE and HEGEL

KANT

The first was *the Metaphysics of Morals*, Part I: *Metaphysical Elements of Justice* (1797), specifically, section E. The Penal Law and the Law of Pardon. However, as we know Kant's conception of punishment is perhaps expounded upon in his earlier writings, particularly *The Philosophy of Law: An Exposition of the Fundamental Principles of Jurisprudence as the Science of Right* (1796) and excerpts from *The Science of Right* (1790).

The only issue is that I can't seem to find a PDF version of the *Philosophy of Law* (1796) by him, however do have Part I of the *Metaphysics of Morals* (1797) and an excerpt from the *Science of Right* (1790)

TOCQUEVILLE

Tocqueville reading co-written with Gustave de Beaumont, *On the Penitentiary System in the United States and its Application in France.* <https://archive.org/details/onpenitentiarysy00beauuoft>

and here: <https://babel.hathitrust.org/cgi/pt?id=pst.000001152418;view=1up;seq=6>

Let's limit the reading to:

Preface

Part I: chapters II (except Section II on 'Administration') and III (43pp)

Part II: chapters I and II (24pp)

There is an Appendix on Penal Colonies of 19 pages

HEGEL

*On The Scientific Ways of Treating Natural Law*, in *Political Writings*, Lawrence Dickey and H.B. Nisbet, trans. H. B. Nisbet, CUP, 1999. Hegel uses punishment as an example (possibly his favourite) to clarify points of property, law etc. see esp. pp. 139, 166-168.

*Elements of the Philosophy of Right*, Allen W. Wood ed., trans. H. B. Nisbet, CUP, 1991, esp. pp. 122-132, 250-261, 325-6, 419-422.

Steinberger, Peter.1983.Hegel on Crime and Punishment. <http://www.jstor.org/stable/pdf/1957562.pdf?refreqid=search%3Ad501f8b243a3edfa0a5d6d0fe982c05b>

<http://onlinelibrary.wiley.com/doi/10.1002/9781444354256.ch4/pdf>

<http://www.journals.uchicago.edu/doi/pdfplus/10.1086/intejethi.7.1.2375378>

V

NIETZSCHE, BLOCH and FOUCAULT

NIETZSCHE

Nietzsche, *On the Genealogy of Morality*, *Beyond Good and Evil*

Christopher Janaway Guilt, Bad Conscience, and Self‐Punishment [http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199279692.001.0001/acprof-9780199279692-chapter-8](http://www.oxfordscholarship.com/view/10.1093/acprof%3Aoso/9780199279692.001.0001/acprof-9780199279692-chapter-8)

BLOCH

Bloch, Ernst, ‘Penal Law, Tragedy, and the Real Negation of Crime’, in *Natural Law and Human Dignity* trans. Dennis J. Schmidt, MIT Press, 244-265.

FOUCAULT

 I wanted to focus on two lectures Foucault gave at the Collège de France in the Birth of Biopolitics lecture series (1978-1979) and less so his earlier work, *Discipline and Punish (*1975).  Specifically chapters 9 and 10 of the volume, lectures:

* 14 March 1979, Lecture, *Birth of Biopolitics* (2008) pp.215-237
* 21 March 1979, Lecture, *Birth of Biopolitics* (2008) pp.238-265

A pdf of the lectures can be found here: <https://1000littlehammers.files.wordpress.com/2010/02/birth_of_biopolitics.pdf>

Gary Becker in "Crime and Punishment, an Economic Approach" *The Journal of Political Economy*, Vol. 76, No. 2. (Mar. - Apr., 1968), pp. 169-217. <http://links.jstor.org/sici?sici=0022-3808%28196803%2F04%2976%3A2%3C169%3ACAPAEA%3E2.0.CO%3B2-I>

VI

Pardon: the Rule of Men not Laws?

Obama's Harvard Law review article titled: "The President's Role in Advancing Criminal Justice Reform". Summary: Presidencies can exert substantial influence over the direction of the U.S. criminal justice system. Those privileged to serve as President and in senior roles in the executive branch have an obligation to use that influence to enhance the fairness and effectiveness of the justice system at all phases. How we treat citizens who make mistakes (even serious mistakes), pay their debt to society, and deserve forgiveness reflects who we are as a people and reveals a lot about our character and commitment to our founding principles. And how we police our communities and the kinds of problems we ask our criminal justice system to solve can have a profound impact on the extent of trust in law enforcement and significant implications for public safety. <https://ia801501.us.archive.org/3/items/edu.harvard.hlra.130.Harv.L.Rev.811/811-866-Online-Final.pdf>

**James Putnam Goodrich, (February 18, 1864 – August 15, 1940), a Republican, was the 29th Governor of Indiana from 1917 to 1921** "Use and Abuse of the Power to Pardon" by James P. Goodrich<http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1737&context=jclc>

Noah A. Messing, A New Power?: Civil Offenses and Presidential Clemency [forthcoming in BUFF. L. REV. (Aug. 2016)] [file:///C:/Users/st240/Downloads/SSRN-id2754845.pdf](file:///C%3A/Users/st240/Downloads/SSRN-id2754845.pdf)

Paul Rosenzweig, Reflections on the Atrophying Pardon Power, 102 J. Crim. L. & Criminology 593 (2013). <http://scholarlycommons.law.northwestern.edu/jclc/vol102/iss3/4>

C20TH DISCUSSIONS OF MERCY AND FORGIVENESS

Allais, Lucy. “Wiping the Slate Clean: The Heart of Forgiveness,” Philosophy and Public Affairs, 36 (1) (2008), 33–68.

Arendt, Hannah, Eichmann in *Jerusalem*

Moore, Kathleen Dean, Pardons: Justice, mercy and the Public Interest (Oxford, 1989)

Kekes, John. “Blame versus Forgiveness,” The Monist, 92 (4) (2009), 488–507

Kendall, R.T. *Total Forgiveness*

Merkel, Dan. “Against Mercy,” Minnesota Law Review, 88 (2004), 1421-

Murphy, J.G. & Hampton, *Forgiveness and Mercy* (Cambridge, 1988)

Pope John Paul II, *Forgiveness*

Tasioulas, John. “Mercy,” Proceedings of the Aristotelian Society, 103 (2) (2003): 101-132.

Tuckness, Alex and John M. Parrish,  *The Decline of Mercy in Public Life* (CUP, 2014)

VII

ISLAM AND PUNISHMENT

Ghassemi, G. Criminal Punishment in Islamic Societies: Empirical Study of Attitudes to Criminal Sentencing in Iran. Eur J Crim Policy Res 15, 159–180 (2009). <https://doi.org/10.1007/s10610-008-9095-2>

Ismail, Siti Zubaidah. "The Modern Interpretation of the Diyat Formula for the Quantum of Damages: The Case of Homicide and Personal Injuries." Arab Law Quarterly 26, no. 3 (2012): 361-79. [www.jstor.org/stable/23235577](http://www.jstor.org/stable/23235577).

Peters, R. (2006). Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-First Century (Themes in Islamic Law). Cambridge: Cambridge University Press. doi:10.1017/CBO9780511610677

Siddiqui Mona, Crime and Punishment in Islamic Law (review of) BY RUDOLPH PETERS, Journal of Islamic Studies, Volume 18, Issue 2, May 2007, Pages 244–246, <https://doi.org/10.1093/jis/etm004>

Ghassemi, G. Criminal Punishment in Islamic Societies: Empirical Study of Attitudes to Criminal Sentencing in Iran. Eur J Crim Policy Res 15, 159–180 (2009). <https://doi.org/10.1007/s10610-008-9095-2>

Kamali Mohammad Hashim, Crime and Punishment in Islamic Law: A Fresh Interpretation, Oxford: Oxford University Press, 2019.

Pascoe, Daniel, Is Diya a form of clemency?, <https://www.bu.edu/ilj/files/2016/04/BIN104_crop.pdf>

Sharia Law and the Death Penalty: Would abolition of the death penalty be unfaithful to the message of Islam? <https://cdn.penalreform.org/wp-content/uploads/2015/07/Sharia-law-and-the-death-penalty.pdf>

Schabas W.A., Islam and the Death Penalty, William and Mary Bill of Rights Law Journal 9:1 (2000) 230.

VIII

PUNISHMENT AND MERCY

IN VARIOUS PARTS OF THE WORLD

Cottino, Amedeo, Crime prevention and control: Western beliefs vs. traditional legal practices, International Review of the Red Cross, Volume 90 Number 870 June 2008, <https://international-review.icrc.org/sites/default/files/irrc-870_6.pdf>

Kleinfeld Joshua, Two Cultures of Punishment, Stanford Law Review, May 2016 vol. 68, <http://www.stanfordlawreview.org/wp-content/uploads/sites/3/2016/06/68_Kleinfeld_-_Stan._L._Rev._933.pdf>

Clamp, Kerry, Restorative Justice in Transitional Setting, Routledge, 2016.

Kugler Matthew B., Friederike Funk, Judith Braun, Mario Gollwitzer, Aaron C. Kay, and John M. Darley, Differences in Punitiveness Across Three Cultures: A Test of American Exceptionalism in Justice Attitudes, 103 J. Crim. L. & Criminology 1071 (2013). <https://scholarlycommons.law.northwestern.edu/jclc/vol103/iss4/2>

McWhinney Edward, Western and Non-Western Legal Cultures and the International Court of Justice, 65 WASH. U. L. Q. 873 (1987). Available at: <https://openscholarship.wustl.edu/law_lawreview/vol65/iss4/18>

Novak A. (2014) Capital Punishment in Precolonial African Society. In: The Death Penalty in Africa: Foundations and Future Prospects. Palgrave Pivot, New York

Short, Lindsay (2014) "Tradition versus Power: When Indigenous Customs and State Laws Conflict," Chicago Journal of International Law: Vol. 15: No. 1, Article 16. Available at: <https://chicagounbound.uchicago.edu/cjil/vol15/iss1/16>

The Justice System and Aboriginal People, The Aboriginal Justice Implementation Commission <http://www.ajic.mb.ca/volumel/chapter2.html>