



DIVISION OF EDUCATION PROGRAMS

## Narrative Section of a Successful Application

The attached document contains the grant narrative and selected portions of a previously funded grant application. It is not intended to serve as a model, but to give you a sense of how a successful application may be crafted. Every successful application is different, and each applicant is urged to prepare a proposal that reflects its unique project and aspirations. Prospective applicants should consult the Summer Seminars and Institutes application guidelines at

<http://www.neh.gov/grants/education/summer-seminars-and-institutes>

for instructions. Applicants are also strongly encouraged to consult with the NEH Division of Education Programs staff well before a grant deadline.

Note: The attachment only contains the grant narrative and selected portions, not the entire funded application. In addition, certain portions may have been redacted to protect the privacy interests of an individual and/or to protect confidential commercial and financial information and/or to protect copyrighted materials. The page limit for the narrative description is now **fifteen** double-spaced pages.

Project Title: Punishment, Politics, and Culture

Institution: Amherst College

Project Director: Austin Sarat

Grant Program: Summer Seminars and Institutes

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# **Punishment, Politics, and Culture**

## **I. Intellectual Rationale**

From The Gospel of Matthew to George Bernard Shaw and former Supreme Court Justice William Brennan, many have remarked that how a society punishes reveals its true character. Punishment tells us who we are. The way a society punishes demonstrates its commitment to standards of judgment and justice, its distinctive views of blame and responsibility, its understandings of mercy and forgiveness, and its particular ways of responding to evil. The Seminar I am proposing, **Punishment, Politics, and Culture**, will examine the nature and limits of punishment and its place in the “American story” by addressing three questions that go to the heart of humanistic inquiry.

1. **What is punishment and why do we punish as we do?** Definitions of punishment abound. Most of them define punishment as a set of consequences normally considered unpleasant or painful which are imposed by someone in authority for a violation of norms or rules. Some definitions stress that punishment is a *morally justified* response to wrongdoing. Thus, for Aristotle, the key element of punishment is that it reestablishes proportionality in relation to a crime. Over the course of the Seminar we will survey definitions of punishment and assess their strengths and weakness. In addition, we will link punishment to significant political and ethical issues, e.g., how we define the limits of freedom, and what justifies legal restrictions on our conduct.

2. **What can we learn about politics, law, and culture in the United States from an examination of our practices of punishment?** This question will lead us to inquire about whether America has a distinctive approach to punishment and how issues of punishment have figured in our “national story.” It will spur further inquiries such as: How have political, legal, and cultural contests played out in debates about punishment? What are the arguments that today

shape our thinking about punishment?

**3. What are the appropriate limits of punishment?** Do we punish too much or too little? Are we too strict or too forgiving? What, if any, is the role of mercy? Are there some crimes, like genocide, so heinous that they strain our capacity to make judgments or leave us feeling that punishment, no matter how severe, is an inadequate response?

These questions will open up the subject of the Seminar to people interested in philosophy, history, literary studies, political science, law, and sociology. They provide perennial sources of controversy and lively debate.

This Seminar, earlier versions of which I have offered several times before, will attend to practices of punishment that proceed almost unnoticed in the daily world of crime and justice, and in the work of our social institutions, as well as to instances when punishment galvanizes attention. Examples such as the Obama Administration's announcement in January of this year that it is encouraging schools to abandon zero tolerance policies and the 2013 Massachusetts Supreme Court decision invalidating mandatory life without parole for juveniles invite us to think about the place of individualized treatment versus strict application of rules in systems of punishment and discipline. The 2011 trial and conviction of John Demjanjuk, as an accessory to murder during his time as a guard at the Sobibor concentration camp in Poland, and other high profile trials of persons accused of crimes against humanity, war crimes, or terrorism, invite us to think about how we respond to the most serious forms of human evil. The 2004 execution of Cameron Todd Willingham in Texas, who some contend was innocent, highlighted the gravity of decisions we make about punishment. Finally the impeachment of former President Clinton precipitated a national conversation about morality, truthfulness, and proportionality in punishment.

In addition to such cases, there is the stark reality behind any statistical description of the population of America's jails and prisons. Despite the fact that the total prison population has declined slightly over the last several years during 2012 (the last year for which figures are available), there were more than 2,000,000 people are currently held in Federal or State prisons or in local jails. The United States has the highest documented incarceration rate in the world at 738 persons in prison or jail per 100,000. It is estimated that the United States has 5% of the world's population and approximately 23.6% of the world's prison population. About 10.4% of all black males in the United States between the ages of 25 and 29 were sentenced and in prison, compared to 2.4% of Hispanic males and 1.3% of white males. As a result, any study of punishment in the United States involves a study of race and racial justice as well.

During 2012, almost 700,000 people were released from prison back into society. Renewed interest in what happens to them is reflected in the so-called Second Chance Act, signed into law by President Bush in April, 2008. This legislation authorizes federal grants to government agencies and nonprofit organizations to provide employment assistance, substance abuse treatment, housing, family programming, mentoring, and other services that can help reduce recidivism.

My interest in exploring these issues and the connections among punishment, politics, and culture is continuous with a line of commentary dating back to the early nineteenth century. Such commentary portrays punishment as a key part of the American story, revealing hopes and fears, fissures and conflicts at different moments in our history. Beaumont and Tocqueville illustrated these connections by noting that "there is a spirit of obedience to the law, so generally diffused in the United States, that we meet this characteristic trait even within the prisons..." [Gustave de Beaumont and Alexis de Tocqueville, On the Penitentiary System of the United States and Its Application in France, 92.] In Democracy in America, Tocqueville returned to the

subject of punishment as part of his effort to understand what he called the “tyranny” of democratic republics, noting that “prisons made violence a physical thing, but our contemporary democratic republics have turned it into something as intellectual as the human will it is intended to constrain” [Democracy in America, 255].

Tocqueville and others have suggested that punishment models socially appropriate ways of responding to injury. It “teaches, clarifies, dramatizes and authoritatively enacts some of the most basic moral-political categories and distinctions which help shape our symbolic universe” [David Garland, “Punishment and Culture: The Symbolic Dimension of Criminal Justice,” 11 Studies in Law, Politics & Society (1991), 195]. Emile Durkheim, who did more than perhaps anyone else to develop a sociological account of punishment and to emphasize the importance of penal institutions, argued that those institutions provide concrete instances of the “collective conscience” at work in a process “that both expressed and regenerated society’s values” [Cited in David Garland, Punishment and Modern Society: A Study in Social Theory, 23]. For Durkheim, when a society decides whom and how to punish, it establishes boundaries, creates social solidarities, and vividly marks “we-they” distinctions.

Michel Foucault drew attention to historical transformations in the institutions and practices of punishment. Among the most important of those transformations, Foucault argued, was the increased rationalization of punishment and its connection to other social institutions, such as schools, hospitals, factories. In his view, modern punishment is pervasive and yet relatively invisible, integrated into our daily lives and yet not well understood.

Today arguments about why we punish and how we punish continue unabated. Since the late twentieth century issues of punishment have been crucially important in our national political life. We have moved from Richard Nixon’s “law and order” rhetoric to Bill Clinton’s pledge to represent people who “work hard and play by the rules” and on to George W. Bush’s promise to

bring terrorists to justice and “punish the evil doers.” Some now defend punishment, even severe punishment, as essential in protecting society and defending its values. They believe that it expresses respect for human dignity and allows for atonement and expiation of guilt and contend that the rhetoric of law and order adds clarity to our moral thinking, rightly separating good and evil, victim and villain. Critics respond that we should punish less and forgive more, that punishment is often not the best response to evil. They contend that the problems to which punishment responds are too complicated to be comprehended using stark, moral categories. This Seminar will consider each of these views and ask: When is punishment justified and effective? How does it express our ideas of personal responsibility? Does it contribute to building a morally decent society?

Punishment is sometimes thought of as a technical subject, best left to experts in law or criminology to debate. But I believe that it is not only a proper object for lawyers and criminologists. The subject of punishment has played an important part in literary and cultural life, providing galvanizing stories of humankind’s fall from grace and of our prospects for redemption. One need only name such works as Crime and Punishment, Billy Budd, In Cold Blood, or The Executioner’s Song to be reminded of how thinking about punishment traditionally has been a staple of literature and an object of humanistic inquiry. Moreover, images of crime and punishment figure prominently in popular culture.

The subject of punishment shows up in history, social studies, literature, and other courses taught in schools across the country. Teachers regularly use books in which the fact of punishment, its purposes, or its fairness are central issues. Those topics capture the attention of students just as they have engaged some of the best thinkers in the humanities. Moreover, students often have direct experiences with law enforcement, and they may bring their reactions to those experiences into the classroom. While not every topic or reading in my proposed

Seminar speaks to these curricular and extra-curricular matters, throughout our discussions we will inquire about how issues of punishment encountered in school settings are illuminated by the texts we consider.

## **II. Project Content and Implementation**

**A. The Content of the Seminar.** Almost everyone has a favorite book or story in which punishment plays a key role. Indeed, so rich are the possibilities of this subject that my problem is less one of choosing what to include, than of deciding what *not* to include. Practical considerations, e.g. the length of a book in relation to the time available, necessitate some omissions, like Crime and Punishment.

Seminar readings will include classics in the sociological, historical, or literary treatment of punishment as well as readings about legal, political, and cultural issues in America. (See Appendix A) They will be drawn from several humanities disciplines and will include arguments for and against punishment. They will provide a variety of theoretical and political perspectives on punishment as well as enable an interdisciplinary conversation connecting scholarly concerns with the lives and work of educators and citizens. We will give each of those perspectives a fair hearing. Doing so will help participants understand the complexity and nuance of a subject which is all too often treated in an ideological fashion.

I also will ask participants each week to see an exemplary film about punishment that speaks to that week's themes as they are represented in popular culture. The films will be shown on the night before the session in which they will be discussed.

The Seminar will meet four days a week for two and one half hours each day. It will last five weeks. In the opening two weeks we will take up the first of the three orienting questions listed on pages 1 and 2 of this proposal. The first week, **What Is Punishment About?**

**Responsibility, Justice, and Pain**, starts with an article about the Decatur case and “zero tolerance” policies to introduce those questions. We will step back from such modern controversies to examine definitions of punishment and the linkage of punishment, responsibility, and justice found in selections from Aristotle’s Nicomachean Ethics, Kant’s Science of Right and Lectures on Ethics, and H. L.A. Hart’s Punishment and Responsibility.

Aristotle differentiates punishment from mere revenge: punishment, on his account, is justified because it is inflicted for the sake of the person punished, whereas revenge seeks merely to satisfy the feelings of those who inflict it. Aristotle also provides a classic examination of the nature of responsibility and the assumptions about humans that allow us to hold people responsible for their actions. In Kant’s view, neither a society nor a state can exist without laws. Thus, any person violating the law opposes social order and consequently must be deemed guilty and punished. Unlike Aristotle and Kant, Hart, a mid-twentieth-century analytic philosopher and scholar of jurisprudence, insists that defining punishment must be kept distinct from *justifying* punishment: a definition of punishment is, or ought to be, value-neutral, at least to the extent of not incorporating any norms or principles that tend to justify whatever falls under the definition itself.

These readings provide a springboard to enable us to discuss such questions as: What is the proper relationship between the definition of punishment and its various possible justifications? What about humans allows us to be held responsible for our actions? How do we judge what offenders deserve? What is the place and significance of punishment in our moral lives? These questions will lead to an examination of some examples of punishment, or of a failure to punish, in order to explore how punishment is understood by those to whom it is applied as well as by citizens of the community in which it is applied.

Those examples will be drawn from a broad context: the book of Job, Elaine Scarry's The Body in Pain, Francis v. Resweber, a Supreme Court case on capital punishment, Leo Tolstoy's "The Kreutzer Sonata," and the film Noon Wine. In Job the associations of punishment, even undeserved punishment, and assumptions about guilt are so strong that when someone known for his righteousness is "punished" his neighbors assume that he must be guilty of something. Other reading invites an exploration of the pains of punishment and social judgments that generally accompany it, an exploration continued in Scarry and the court case. Tolstoy's short story and Noon Wine explore the opposite phenomenon, namely instances in which someone who is in fact guilty of a crime is not punished. They suggest that in the absence of punishment there can be no expiation of guilt/sin.

The second week— on the topic **What Does Punishment Say About Those Who Punish?**—turns from those who are punished to those who punish. We will study some of the functions of punishment and ask about the demands that doing justice makes on those responsible for administering punishment. We begin with Herbert Morris's Kantian-inspired article, "Persons and Punishment," in which Morris contends that offenders have a *right* to be punished and that, as a result, society has a *duty* to punish. This contention will be further explored using the film Judgment at Nuremberg and a Supreme Court decision, Robinson v. California, which holds that certain people have a right *not* to be punished even when they are engaged in socially undesirable behavior. In the next session we will discuss the sometimes excruciating "costs" of discharging the duty to punish on those who do so. Here our text will be Herman Melville's Billy Budd. The third session takes up the relationship of punishment and vengeance. We will read an article by George Herbert Mead and several pieces about the proper place of emotion in the calculus of punishment, including a consideration of the rights and roles of victims in criminal sentencing.

Weeks three and four are devoted to asking what we can learn about the United States by thinking about punishment. While the focus of the Seminar is analytic not historical, in week three--**The Place of Punishment in the American Story-I: Selected Episodes**-- we take up three “moments” in the history of punishment in the United States, two from the Antebellum period, one from the present. We begin with Beaumont and Tocqueville’s On the Penitentiary System of the United States and Its Application in France, and Tocqueville’s Democracy in America and use these texts to analyze how the character of the early republic was manifest in its penal institutions and especially how religious belief structured America’s early penitentiaries. Henry David Thoreau’s “Essay on Civil Disobedience” will allow us to reconsider the connection between punishment and American character and also to examine the significance of punishment in the theory and practice of civil disobedience. We next use several legal cases to inquire about punishment in contemporary America. These cases concern the question of what rights prisoners should have, and they open up a conversation about the intersections of race and punishment. Finally, we will look at the Second Chance Act and consider the contemporary role of religion in efforts to rehabilitate and reintegrate prisoners.

Because the United States is one of the few remaining constitutional democracies that continues to employ capital punishment, in week four--**The Place of Punishment in the American Story-II: The Ultimate Punishment**--we concentrate on the death penalty, asking about its justifications and its place in the American legal system. Truman Capote’s In Cold Blood provides a vehicle for examining the kinds of crimes for which capital punishment is prescribed and for considering the fit between crime and punishment. The next two readings-- Albert Camus, “Reflections of the Guillotine” and Walter Berns, For Capital Punishment--are classics in the study of the death penalty. They offer differing responses to the question of whether it is just to take the lives of those who murder. The court cases in the third session of

week four give an overview of the constitutional jurisprudence of capital punishment. Finally, we will use the film The Green Mile to examine popular culture treatments of this most serious type of punishment.

Week 5--**On the Limits of Punishment**--concludes the Seminar by revisiting some of the issues with which we began. When is punishment the just and right response to crime? What is the place of reconciliation, forgiveness, mercy in the future of American punishment? Are there some acts which should not be forgiven and some crimes so heinous that no punishment could ever be adequate? We will discuss the film Dead Man Walking, which explores the relationship of punishment, forgiveness and Christian love, and Martha Nussbaum's essay "Equity and Mercy," in which Nussbaum makes the case that the judge who imposes punishment must first see the world from the point of view of those she would punish. We will then take up Toni Morrison's Beloved, which explores the legacy of slavery and, in particular, whether it is right for others to judge a runaway slave who killed her daughter in order to prevent her from being returned to slavery. We will conclude with Hannah Arendt's Eichmann in Jerusalem. Arendt asks how can we understand and properly respond to what Arendt calls "the banality of evil" that Eichmann represents. In the end, she supports the execution of Eichmann even as she points to its inadequacy as a response to the crimes of the Nazis.

In addition to the required material, I will provide lists of supplementary readings which participants can use for independent exploration (see Appendix A). I plan to send both the syllabus and supplementary reading list to participants well in advance of the Seminar to give them the chance, if they wish, to do some of the longer readings before they arrive. I will stress that this is not required.

**B. Organization of Seminar Sessions.** Seminar meetings will be devoted to discussion

of the three questions laid out on pages 1 and 2 of this proposal and the themes indicated in the syllabus as they appear in each meeting's readings. I will devote roughly equal time and attention to each reading and will lay out the best case for each author as well as the most important criticisms of the things we read. I will begin each session with an opening problem and invite participants to offer their responses to it. As suggested by a 2011 participant, for 2015 I will "offer the opening problem to the entire class at once rather than to individuals in the class...(and) offer the problem to the class to figure out..." Following upon on a suggestion made by a 2012 participant, to allow for variety in the manner in which the seminar addresses the readings, in every session I will give each participant the opportunity to speak, posing questions, formulating hypotheticals, and, where necessary, providing exposition and background. The final session in weeks 2, 3, and 4 will be devoted to presentations of group writing about the materials and the themes discussed during those weeks (See Section C below for an explanation of the group writing process). Week 5 will conclude with a session reviewing and summarizing the Seminar and explicitly talking about how participants can bring what they learned back to their schools.

At the conclusion of each meeting I will distribute questions for participants to consider as they do the reading for our next session. This plan, first suggested by a participant in my 2006 Seminar, worked well when I offered the Seminar in 2010, 2011, and 2012. It helped participants anticipate the direction of conversation in the Seminar. Participants also will be encouraged to frame questions and raise issues that reflect their own interests and expertise.

In addition to the regular Seminar meetings, there will be three guest lectures by scholars of punishment, two by members of the Amherst faculty and one by an expert from outside the College. (See Section III below)

**C. Writing.** Participants will be asked to do different forms of writing. I will ask them to

keep journals in which they record impressions about the subjects and readings under discussion, assess their relevance of the humanities, and reflect on ways they illuminate contemporary issues. In addition, in response to a suggestion from a 2012 participant, I will offer participants the opportunity to work on a short academic paper, on a subject of their choosing, and will work with any participant who chooses to do it.

In weeks 2, 3, and 4 of this Seminar, participants will be broken up into three groups (the membership of the groups will be shifted each week). Responding to evaluations of an earlier iteration of my Seminar, I will not have groups do projects in the first and last weeks. This will give participants time to settle into the work of the Seminar and also allow time for summary and reflection at the Seminar's conclusion. This plan for group work worked well in my 2010, 2011, and 2012 Seminars.

Groups will meet to prepare an analytic paper for the last session of weeks 2, 3, and 4. That paper might (a) deal with one of the three questions around which the Seminar is organized, or (b) respond to an issue framed by our discussion, e.g., why is punishment so important in popular culture? Is punishment essential in any legal order? When should offenses be forgiven instead of punished?

Someone from each group will be designated as reporter for the group and be responsible for preparing the group's paper. This role will be rotated. The three reporters will take primary responsibility for leading the sessions devoted to presenting group work. As participants in earlier Seminars recommended, I will meet with the reporters to provide guidance about what the group writing project should entail and to help them prepare the session they will lead.

The experience of working together on group papers has been a very valuable one for most of the participants in previous Seminars. It allowed them to carry on discussions begun in the Seminar's regular meetings, refine their own interpretations of the readings, expand, in a

somewhat different way, reflections they may have begun in their journals, do some original research if they so desire, and work in smaller groups to deepen their understanding of the texts. I will encourage groups that want to continue to work together on a particular project beyond their “assigned week” to do so.

At the end of the Seminar I will bind group papers together into a Seminar book, a copy of which will be given each participant. Responses to receipt of the book in previous years indicate that they have found it to be a valuable compilation.

**D. Individual Meetings.** I will schedule individual meetings with participants, seeking to meet with every participant at least three times during the course of the Seminar. I will use these occasions to discuss their journals, their ongoing participation, or other subjects they wish to raise.

**E. Anticipated Impact.** My Seminar will offer teachers a chance to engage with material from the humanities that illuminates the three questions which guide our inquiry. It also will give them a chance to take a fresh look at some familiar texts and explore new resources on which they might draw if, and when, they teach about punishment. My hope is that the teachers will come away from the Seminar intellectually invigorated.

Participants in previous versions of this Seminar have found both its pedagogy and content to provide important resources for their teaching. Some have remarked particularly about the way I lead the seminar. As one past participant said, “While it will be difficult to replicate the teaching style I saw here, I plan to find a way to implement similar strategies within my own teaching style.... The effects of this seminar will also extend to my colleagues, as I’ve been in contact with them throughout the summer as ideas come to me.” (Appendix C, 2010, #11318) Another participant in my 2010 Seminar commented as follows:

“I now have a wide variety of ideas for my classroom, and already have developed some curriculum materials. Aside from the engaging readings and seminar discussions, I

was deeply affected by Professor Sarat's seminar method. He started each seminar with a hypothetical question, almost unanswerable, about the major theme of the readings. Then he posed additional questions and dilemmas that deepened my understanding of the concepts/ideas in the readings. I often left the seminar room shaking my head at the complexity of the topics of punishment, pain, guilt, vengeance, justice, prisons, the death penalty, mercy, etc. The experience as a whole was intellectually rigorous, but refreshing, and its impact on my pedagogy will prove wide and deep." (Appendix C, 2010, #11287)

A 2012 participant noted that,

Punishment, Politics, and Culture was the best educational experience I've ever had. Austin Sarat compiled readings that were inquisitive, intriguing, and tested the comprehension of the whole group.... Henceforth, I feel like so much of this will be directly applicable to my teaching. From the pedagogy to some of the topics -- I plan on integrating a myriad of information into my 11th grade American Lit. classroom. There was one specific aspect of the program that stood out to me the most -- Austin's teaching pedagogy....It would help promote full understanding of the topic at hand -- and at the same time -- was something I could easily take and use in my 11th grade classroom. .... Please allow Austin Sarat to keep doing this; he really does a fabulous job." (Appendix C, 2012, #15655)

Another 2012 participant said that

"The seminar "Punishment, Politics, and Culture" was truly incredible. I feel as though the seminar has opened my eyes to the possibilities of teaching and learning in terms of the role of justice and what we owe each other as human beings. In the classroom, I anticipate adding many of the topics that I learned in the seminar as well as the methods that Austin employed; the experience provided a framework for me to begin to address the issues that I care about and the issues that I believe my students will benefit from discussing in the context of our work in literature. Justice, politics, and "how our society punishes and why" are central to literature and society, and I feel that the seminar itself will enhance the work that I do each day with my students....(Appendix C, 2012, #15722)

Other participants in previous Seminars also have noted the utility of the content of the Seminar for their teaching. One of the participants in my 2011 Seminar noted,

"The seminar, Punishment, Politics and Culture will have an immeasurable effect on my teaching and scholarship. The content studies brought new perspective as well as new resources to my attention. The seminar content focus on all aspects of punishment, the punisher and the punishee can be applied to World History, US History I and II as well as current events often culled from the headlines. Content focused punishment's relationship with and effect on morality, culture, law, history and religion....The primary and

supplementary resources were obviously carefully selected to breathe fresh air into a subject that could become somewhat stale over time without fresh perspective. This seminar was an amazing and incredibly valuable experience.” (Appendix C, 2011, # 13596)

Another participant from 2011 said,

“My intellectual development aside, this experience helped reinvigorate my teaching. Austin had a lot to say about the endeavor of teaching and how inspiring it can be. He helped me remember how much imagination is possible in a classroom. I hope to bring more nonfiction into my classroom and our readings this summer will definitely help me do that.” (Appendix C, 2011, #13828)

A participant from 2010 noted that

“As an American Literature teacher, I have been so inspired and challenged by this course. I’m always looking for new windows into texts, and this course has provided me with more than I could have ever imagined. It’s late July, and I’m already looking forward to the start of the school year so that I can talk to my students about the issues we’ve explored in this seminar. As cheesy as it sounds, this course has enriched my understanding of the American experience. Before taking this course, I never considered who and how and why we punish to be particularly relevant to my teaching, but I signed up for this course because I could see the potential. I’m glad that I did. Now it’s hard to imagine how I ever taught American literature without including discussions of American penology. It’s a wonderful problem to leave an experience like this excited, and almost a bit overwhelmed, by all of the different possibilities you see before you. I leave here refreshed, reinvigorated, and resolved to continue to explore these topics with my students, and on my own. (Appendix C, 2010, 11281)

**F. Follow-up.** I will create a website and blog, as well as a Facebook page, so that members of the Seminar can share their continuing reflections on questions of punishment with each other, continue to discuss texts used in our Seminar, exchange ideas about matters that come up after the Seminar, and react to particular curricular issues. Once a year I write a letter to each participant my previous Seminars highlighting new books, articles, and films about punishment that might be of interest to them. My plans for follow-up of the 2015 Seminar involve this same combination of electronic and more traditional forms of correspondence.

### **III. Project Faculty and Staff**

My proposed Seminar is an outgrowth of an earlier Seminar– **Law, Justice and Morality: Readings in Contemporary Jurisprudence** –which I offered several times. That Seminar as well as **Punishment, Politics, and Culture** both connect legal study to venerable themes of humanistic study and examine issues of justice and morality. But, whereas the earlier Seminar worked deductively, starting with broad, abstract, jurisprudential questions, this one uses the fact of punishment as a lens to examine issues of justice in law, politics, and culture.

The proposal to direct this Seminar emerges from my ongoing work as both a teacher and a scholar. (See Appendix D) In the mid-1980s I helped establish Amherst’s Department of Law, Jurisprudence & Social Thought (LJST). This Department offers an undergraduate major that examines the way law combines moral argument, distinct interpretive traditions, and force in historically and culturally specific ways. In all of my teaching I bring together law, literature, history, political science, and philosophy.

I regularly offer a course an undergraduate course on punishment. I have built on the materials and discoveries of that course in designing the Seminar I am proposing, though the structure, pace, and range of materials has been rethought with the interests and needs of teachers centrally in mind.

My recent scholarship focuses on capital punishment and the history of clemency in capital cases. I have written and edited books entitled Gruesome Spectacles: Botched Executions and America’s Death Penalty, Mercy on Trial: What It Means to Stop an Execution, Forgiveness, Mercy, and Clemency, The Road to Abolition? The Future of Capital Punishment in the United States, and Who Deserves to Die? In addition, I have authored several essays on contemporary jurisprudence, teaching law in the liberal arts, and humanistic perspectives in legal education. I also co-edit a series of books, The Amherst Series in Law, Jurisprudence and Social

Thought, some of which take up the kind of issues to be addressed in the Seminar, e.g. Legal Rights: Historical and Philosophical Perspectives, Justice and Injustice in Law and Legal Theory, and Law as Punishment/Law as Regulation.

Several years ago I taught for two summers in a program at Bard College for high school students. Forty students from around the country came, each summer, for an eight-week course of instruction on "The Future of the Constitution." The object of the program was to develop models for integrating teaching about the Constitution into high school curricula. I have also done summer workshops for school teachers from Springfield, Massachusetts.

Each of the N.E.H. Summer Seminars I have directed has been a wonderful experience for me. In addition, I have been very gratified by the responses of the participants. Based on their evaluations, they have found my Seminars to be lively, engaging, and rewarding. Among the reactions of participants in my 2012 seminar were the following: "The experience of participating in "Punishment, Politics and Culture" was no less than life-changing. The material was challenging on many levels, the professor was among the most gifted I have encountered, and the seminar style provided for an intensely intellectual environment that invited higher levels of inquiry and thinking.."; "Energizing. Humbling. Engaging. This seminar has done more for my personal and professional growth than any other form of professional development in my 10 year teaching career."; "Before I applied for this NEH, a colleague who had taken the course said it was the best academic experience she had ever experienced. I can now second that thought. It was simply amazing..." (See Appendix C for evaluations of my 2012, 2011, 2010, 2006, and 2005 Seminars.)

The three guest speakers who will come to the Seminar are each accomplished scholars who will bring different perspectives and expertise to the Seminar. (See Appendix B) Professor

Martha Umphrey, author of Dementia Americana: Narrating Responsibility in the Trials of Harry K. Thaw, will come to the Seminar in week 2 and address issues criminal responsibility as they inform punishment decisions. Professor Thomas Dumm, author of Democracy and Punishment: Disciplinary Origins of the United States, will visit the Seminar in week 3 to discuss the history of punishment in America. In week 4, Professor Richard Moran will present a lecture on the history of the death penalty in the United States.

The administrative work of the Seminar will be handled by Megan Estes, administrator of Amherst's Department of Law, Jurisprudence and Social Thought, who worked on my Seminars in 2010, 2011, and 2012. One of the 2011 participants described Megan as "an amazing woman" whose "capabilities are bottomless" (Appendix C, 2011, #13596). Another observed, "Amherst College could not have been more hospitable, largely due to the expert care Austin's assistant, took of us. Even the smallest problem was taken care of immediately" (Appendix C, 2011, #13765).

#### **IV. Selection of Participants**

I will advertise the Seminar broadly, using newsletters, listservs, and blogs to reach teachers in public, independent, and religious schools. Participants will be selected by a three-person committee consisting of the Director, one school teacher (preferably a participant from one of my earlier Seminars), and a faculty colleague from Amherst College. Each member of the selection committee will read and evaluate each application. Selections will be made at a one day face-to-face meeting. This procedure has worked well in my previous Seminars.

The version of the Seminar I offered in 2012 attracted considerable interest (62 applications for 16 spots). Applicants came from a wide range of academic backgrounds and teaching responsibilities, and from public, independent, and religious schools at the elementary,

middle and high school levels. The Seminar I am now proposing should attract educators from a similarly broad array of backgrounds.

#### **V. Professional Development for Participants**

I will provide each participant with a letter indicating the graduate credit “equivalency” of participation in the Seminar. Past participants have used these letters to obtain in-service credit.

#### **VI. Institutional Context**

Amherst College provides very good support and facilities for an N.E.H. Seminar for School Teachers. Its library of over 1,000,000 volumes contains a large collection of law reviews, of interdisciplinary legal studies journals, and also subscribes to two on-line legal reference services, *Westlaw* and *Lexis-Nexis*. While the library’s regular summer hours are Monday through Friday from 8:30 to 4:30 p.m., I have made special arrangements so that it will stay open five nights a week (from 6 p.m. to 11 p.m.) and on Saturdays and Sundays from 1 p.m. to 8 p.m. during the five weeks of the seminar. Study space for participants will be made available in the library.

In addition to its own library resources, the College, along with Smith, Mt. Holyoke, Hampshire, and the University of Massachusetts, is a member of the Five College Consortium. Seminar participants will have user privileges at each of the Consortium libraries including the University of Massachusetts library. That library has strong collections in law and in fields related to the work of my seminar. Amherst College will also provide, without charge, computer facilities, including access to personal computers for Seminar participants.

Because a few participants in earlier seminars raised concerns about the campus residence in which they were housed, I now arrange for participants to live in a former fraternity house that was renovated in 2009 (The Charles Drew House). Drew House is located directly across the street from the building where the Seminar will meet. It provides spacious single rooms, ample

common areas, and a large, fully equipped kitchen, and my 2010, 2011, and 2012 participants found it quite satisfactory. A few of the participants in my 2012 Seminar noted the absence of central air-conditioning. Drew is not centrally air-conditioned (there is no air-conditioned housing on the Amherst campus) nor is it possible to have air-conditioners in each sleeping room. However, for my 2015 Seminar, the College has agreed to install air-conditioners in the two common rooms. I will make sure that participants know about this arrangement when they choose their accommodations by making it clear in my “Dear Colleague” letter and will encourage them to bring fans for their rooms.

For those who do not wish to live in this house, the College has a substantial stock of housing adjacent to the campus that it rents to faculty, some of which will be available for summer sublet. The Housing Office will be available to assist participants in finding suitable accommodations close to the College.

The Amherst area provides ample recreational and cultural activities including nearby historic sites including the Emily Dickinson homestead, Old Deerfield Village, and Sturbridge Village. Summer theatre is available in nearby Williamstown. Art museums at Amherst and Smith College are open during the summer. The College's large number of tennis courts and outstanding athletic facilities will also be made available without charge.

Each of my earlier Seminars opened with a reception during which the Dean of the Faculty of Amherst College welcomed the participants and the College's President came by to extend good wishes. In addition, during those Seminars I hosted barbecues, organized several trips to films and plays at the local summer theaters, as well as a group meals and bowling. Participants have taken the lead in putting together several social events and weekend trips to Boston, New York, and Montreal. I anticipate a similar program of extra-curricular activities for the Seminar in 2015.



## Appendix A

### Annotated Syllabus

#### WEEK 1. What Is Punishment About? Responsibility, Justice, and Pain.

##### *1. Introduction.*

##### **Henry Giroux, “Zero Tolerance, Part 2,” Z Magazine (February, 2001), 44-48**

[Giroux uses the Decatur case as a starting point to consider the popularity and wisdom of zero tolerance policies in American schools.]

##### *2. Responsibility, Justice, and Punishment*

##### **Aristotle, Nicomachean Ethics, Book III, “The Conditions of Responsibility for Action.”**

[Aristotle discusses the nature of responsibility and the assumptions about humans that allow us to hold people responsible for their actions]

##### **Immanuel Kant, Science of Right and Lectures on Ethics, selections**

[On the nature of desert, retribution, and penal justice, ]

##### **H.L.A. Hart, Punishment and Responsibility, selections**

[Hart provides a useful definition of punishment as well as an analysis of its justifications.]

##### *3. If There is Punishment There Must be Guilt: On the Phenomenology of Pain*

##### **Stephen Mitchell, The Book of Job [selections]**

[How do humans react when someone is subject to “divine punishment”? If someone is punished must he be guilty of something?]

##### **Elaine Scarry, The Body in Pain [selections]**

[Scarry considers the nature of pain and suggests that extreme pain destroys language and our normative commitments.]

##### **Francis v. Resweber, 329 US (1947) 459**

[A United States Supreme Court case holding that someone who was subject to a botched electrocution may be electrocuted a second time]

##### *4. Without Punishment Can There Be Atonement?*

##### **FILM: Noon Wine**

[The story of a man who kills someone, but is acquitted legally. The film shows the reactions of his neighbors and his family all of whom refuse to acquit him. It suggests that without punishment there can be no expiation of sin]

### **Leo Tolstoy, “The Kreutzer Sonata”**

[A man who kills his wife is not subject to legal punishment. This short story describes his explanation for, and understanding of his crime and the way he punishes himself. Tolstoy criticizes the “modern” tendency to deny that persons are responsible for what they do.]

[There will be an extra, evening session during this week with a guest lecture on issues of criminal responsibility as they inform punishment decisions by Professor Martha Umphrey.]

[Supplementary Sources: Adam Kolber, “The Subjective Experience of Punishment,” 109 *Columbia Law Review* (2009), 182; J.C. Merle, “A Kantian Critique of Kant’s Theory of Punishment,” 19 *Law and Philosophy*, (2000). 311-338; Jeffrie Murphy, “Does Kant Have a Theory of Punishment?” *Columbia Law Review* (1987), 509-532; Leo Zaibert, “Punishment, Institutions, and Justifications,” 30 *Studies in Law, Politics, and Society* (2004), 51-83; Jean Paul Sartre, “The Wall”; Daniel Markel, “Are Shaming Punishments Beautifully Retributive? Retributivism and the Implications for the Alternative Sanctions Debate,” 54 *Vanderbilt Law Review* (2001), 2157; Stephen Garvey, “Punishment As Atonement,” 46 *UCLA Law Review*, (1999), 1801; Ronnie Casella, “Zero Tolerance Policy in Schools: Rationale, Consequences, and Alternatives,” *Teachers College Record*, at <http://www.tcrecord.org/Content.asp?contentid=11139>; Henry Giroux, “Zero Tolerance, Part 2” *Z Magazine* (Feb., 2001), 44-48; Russ Skiba and Reece Peterson, “The Dark Side of Zero Tolerance,” 80 *The Phi Delta Kappan* (1999), 372-382; Ted Conover, “In the Land of Guantanamo,” *NY Times*, June 29, 2003; Timothy Kaufman-Osborn, “What the Law Must Not Hear: On Capital Punishment and the Voice of Pain,” in *Pain, Death, and the Law*; *Baze v. Rees*, 553 US 35 (2008) (case on the constitutionality of lethal injection; *Samuel Gross et. Al.*, “Exonerations in the United States 1989-2003,” 95 *Journal of Criminal Law and Criminology* (2005)]

## **WEEK 2. What Does Punishment Say About Those Who Punish?**

### ***1. Is There a Right to Be Punished or a Right Not to be Punished?***

#### **FILM: Judgment at Nuremberg**

[This film highlights the issue of the duty to judge and punish those who claim to be following the law as their justification for committing crimes against humanity.]

#### **Herbert Morris, “Persons and Punishment”**

[Morris argues that those who violate the law have a *right* to be punished. He criticizes theories of rehabilitation and those who advocate mercy or leniency.]

#### **Robinson v. California, 370 US (1962) 660**

[The United States Supreme Court held that it is unconstitutional to punish people for being “addicted” to drugs. Punishment is a legitimate response only to those who willfully and intentionally violate the law. It should not be applied to those who suffer

from an illness even if that illness leads them to do illegal acts.]

## ***2. Is There a Duty to Punish?***

### **Herman Melville, “Billy Budd”**

[We will examine especially Vere’s dilemma and revisit the issues raised in Judgment at Nuremberg.]

## ***3. “Vengeance” and Other Emotions: On the Psychic Life of Punishment***

### **George H. Mead, “The Psychology of Punitive Justice,” 23 *American Journal of Sociology* (1917), 577-602**

[Mead argues that punishing others serves a positive function by helping to create bonds of social solidarity. He emphasizes the psychological dimensions of that process.]

### **William Connolly, *The Ethos of Pluralization* [selections]**

[Connolly analyses and criticizes the role of vengeance in contemporary practices of punishment and discusses the role and rights of victims.]

### **Marc Klass, “Victim Impact Statement”**

[This is an example of a victim impact statement used in a capital case.]

### **Sarah Boxer, “When Emotion Worms Its Way Into Law,” *New York Times* (April 7, 2001), 7**

[Suggests that emotions inevitably play a role in punishment and that it is not wise to try to drain punishment of its emotional content.]

## ***4. Discussion of Group Papers***

[Supplementary Sources: A. John Simmons, “Locke and the Right to Punish,” in Punishment; Friedrich Nietzsche, *Genealogy of Morals*, book 2; Joel Feinberg, “The Expressive Function of Punishment,” in *Doing and Deserving*; H.L.A. Hart, *Punishment and Responsibility*; Michel Foucault, *Discipline and Punish*; David Garland, “Punishment and Culture: The Symbolic Dimensions of Criminal Justice,” 11 *Studies in Law, Politics, and Society* (1991), 191-224; David Garland, *Punishment and Modern Society: A Study in Social Theory*; Markus Dirk Dubber, “The Right to Be Punished: Autonomy and Its Demise in Modern Penal Thought,” 16 *Law and History Review* (1998), 113-146; *E.B. v. Verniero*, 119 F. 3d (1997) 1077; *Kansas v. Hendricks*, 117 S.Ct. (1997) 2072; Dan Kahan, “The Anatomy Of Disgust in Criminal Law,” 99 *Michigan Law Review* (1998), 1621; Martha Nussbaum, “‘Secret Servers of Vice’: Disgust, Bodies, and the Law,” in *The Passions of Law*; Jeffrie Murphy, “Two Cheers for Vindictiveness,” 2 *Punishment and Society* (2000), 131; Robert Solomon, “Justice v. Vengeance: On Law and the Satisfaction of Emotion,” in *The Passions of Law*; Terry Maroney, “Law and Emotion: A Proposed Taxonomy of an Emerging Field,” 30 *Law and Human Behavior* (2006), 119-142; Neil Vidmar, “Retributive Justice: Its Social Context,” in *The Justice Motive in Everyday Life*, M. Ross et. Al., eds. (2001).]

### **WEEK 3. The Place of Punishment in the American Story-I: Selected Episodes.**

#### **FILM: I Am A Fugitive From a Chain Gang**

[This film tells a story of someone unjustly accused, convicted, and punished. It locates the story of punishment in relation to America's attitude toward class difference and its ideal of progress.]

#### **1. *The Prison and the Democratic Dilemma***

**Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System of the United States and Its Application in France*, [selections]**  
**Alexis de Tocqueville, *Democracy in America*, [selections]**

[Both of these readings describe the connection between punishment and American conceptions of freedom and equality in the early 19<sup>th</sup> century.]

#### **2. *Imprisonment as the Badge of Honor for a Just Person***

##### **Henry David Thoreau, "Essay on Civil Disobedience"**

[This reading connects punishment and protest in America, focusing on the essential role of punishment in relation to civil disobedience.]

#### **3. *The Experience of Imprisonment: Race, Rights, and Rehabilitation in American Prisons***

##### **Ruffin v. Commonwealth, 62 Va. 1024 (1871) (5 pages)**

[Case holds that prisoners have no rights and are "slaves of the state."]

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

[Judge Johnson found that prisoners retain all rights except those necessarily forfeited incident to confinement.]

##### **Ewing v. California, 538 U.S. 11 (2003)**

[Considers the constitutionality of "three strikes" legislation and finds that such legislation does not violate prisoner's right against cruel and unusual punishment.]

##### **Sheila Kennedy, "Religion, Rehabilitation, and the Criminal Justice System," in *Sanctioning Religion?: Politics, Law, and Faith-Based Public Services*, David K. Ryden and Jeffrey Polet, editors**

[Describes faith-based rehabilitation programs and their impact]

##### **The Second Chance Act of 2008**

[The Second Chance Act of is federal re-entry legislation designed to ensure the safe and successful return of prisoners to the community.]

#### **4. Discussion of Group Papers.**

[Supplementary Sources: Jonathan Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (2007); Dorothy Roberts, "Criminal Justice and Black Families: The Collateral Damage of Over- Enforcement," 34 UC Davis Law Review (2000-2001); Dorothy Roberts, "The Social and Moral Cost of Mass Incarceration in African American Communities," 56 Stanford Law Review (2004); Fox Butterfield, *All God's Children*; David Rothman, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*; Jonathan Simon and Malcolm Feeley, "True Crime: The New Penology and Public Discourse on Crime," in *Punishment and Social Control*; John Dilulio, "Rehabilitation Revisited," in *No Escape*; *Korematsu v. United States*; David Garland, *The Culture of Control*; James Whitman, *Harsh Justice* (2003); Neely Tucker, "Study Warns of Rising Tide of Released Inmates," *Washington Post* (May 21, 2003); Fox Butterfield, "With Cash Tight, States Reassess Long Jail Terms," *NY Times* (November 10, 2003); Chris Suellentrop, "The Right Has a Jailhouse Conversion," *New York Times Sunday Magazine* (December 24, 2006); David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (2001)]

[There will be an extra, evening session during this week with a guest lecture on the history of punishment in America by Prof. Tom Dumm, Political Science, Amherst College.]

#### **Week 4. The Place of Punishment in the American Story-II: The Ultimate Punishment**

##### **FILM: The Green Mile**

[This film uses capital punishment to tell a story of human goodness and evil as both are manifest on death row.]

##### **1. Does the Punishment Fit the Crime?**

##### **Truman Capote, In Cold Blood**

[A terrible murder, the quest to find the killers, and their punishment.]

##### **2. On the Proper Place of Vengeful Punishment in a Just Society**

##### **Albert Camus, "Reflections of the Guillotine"**

##### **Walter Berns, For Capital Punishment [selections]**

[Camus provides a classic criticism of vengeance. Berns provides one of the best defenses of vengeance and of capital punishment.]

##### **3. Governing Capital Punishment**

**Furman v. Georgia, 408 US 238 (1972) [selections]** [The Supreme Court held the death penalty as "then applied" unconstitutional, emphasizing the arbitrary character of its use.]

**Gregg v. Georgia, 428 US 153 (1976) [selections]** [The Court later upheld capital punishment and laid out guidelines that must be followed if the death penalty is to be constitutionally acceptable.]

**McCleskey v. Georgia, 107 SCt 1756 (1987) [selections]** [The Court refused to find the death penalty unconstitutional based on statistical evidence that it is applied in a racially discriminatory manner.]

#### **4. Discussion of Group Papers**

[There will be an extra, evening session with Professor Richard Moran, Sociology, Mt. Holyoke College, on the history of the death penalty in the United States.]

[Supplementary Sources: Robert Blecker, “The Death Penalty: Where We Are Now,” 46 New York Law School Law Review (2002-2003), 665; Robert Blecker, “Killing Them Softly: Mediations on a Painful Punishment of Death,” 35 Fordham Urban Law Journal (2008), 969; Robert Bork, “Scalia and Capital Punishment,” First Things (October, 2002); Carol S. Steiker and Jordan M. Steiker, “Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment,” 109 Harvard Law Review (1995), 355-438; William McFeely, Proximity to Death; Norman Mailer, Executioner’s Song; Richard Johnson, Death Work; Wendy Lesser, Pictures at an Execution; Frank Zimring, The Contradictions of Capital Punishment; Stuart Banner, The Death Penalty: An American History; Richard Moran, Executioner’s Current: Thomas Edison, George Westinghouse, and the Invention of the Electric Chair; Atkins v. Virginia 536 U.S. 304 (2002); Alex Kotlowitz, “In The Face of Death,” NY Times (July 6, 2003)]

### **Week 5. On the Limits of Punishment**

#### **1. On the Place of Mercy and Forgiveness**

##### **FILM: Dead Man Walking**

[A film that emphasizes the power of love and of genuine repentance.]

**Martha Nussbaum, “Equity and Mercy” 22 Philosophy and Public Affairs (1993), 83-125**

[Explores the pre-requisites of merciful judgment]

#### **2. Unforgivable Acts?**

##### **Toni Morrison, Beloved**

[This novel explores the legacy of slavery and, in particular, whether it was right for a runaway slave to kill her daughter in order to prevent her from being returned to slavery.]

#### **3. Are There Crimes for Which No Punishment Can Be Adequate?**

### **Hannah Arendt, *Eichmann in Jerusalem* [selections]**

[How can we respond to the Holocaust and to what Arendt calls “the banality of evil” that Eichmann represents? In the end, Arendt supports the use of capital punishment even as she points to its inadequacy as a response to the crimes of the Nazis.]

#### ***4. Conclusion and Wrap-Up***

[Supplementary Sources: Austin Sarat, *Mercy on Trial* (2005); Austin Sarat and Nasser Hussain, eds., *Forgiveness, Mercy, and Clemency* (2007); Daniel Markel, “Against Mercy,” 88 *Minnesota Law Review* (2004), 1421; Daniel Markel, “State, Be Not Proud: A Retributivist Defense of the Commutation of Death Row and the Abolition of the Death Penalty,” 40 *Harvard Civil Rights-Civil Liberties Law Review* (2005), 407; John Braithwaite, “A Future Where Punishment Is Marginalized: Realistic or Utopian,” 46 *UCLA Law Review*, (1999), 1727-1750; Jeffrie Murphy and Jean Hampton, *Forgiveness and Mercy*; Michael Sherman and Gordon Hawkins, *Imprisonment in America: Choosing the Future*; Michael Tonry, “Rethinking Unthinkable Punishment Policies in America,” 46 *UCLA Law Review* (1999), 1751; John Braithwaite and Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice*; Alwynn Smart, “Mercy,” in *The Philosophy of Punishment*; J. Angelo Corlett, “Can Terrorism Be Morally Justified?” 10 *Public Affairs Quarterly* (July 1996), 163-184; Roxanne Euben, “Killing (for) Politics: Jihad, Martyrdom, and Political Action,” 30 *Political Theory* (2002) 4-35; George W. Bush, “Address to the Nation on the September 11 Attacks,” “National Day of Prayer and Remembrance Service,” “Address to a Joint Session of Congress,” “Department of Defense Service of Remembrance,” and “Remarks on the U.S.S. Enterprise on Pearl Harbor Day”]