Index

Abortion, 5
Abuse, victims of, 128–31
Adam and Eve, 72
African-Americans, 116–17
Agency, 73, 80
AIDS, 73n. 6, 139, 156
Alienation, 4
Almojera, Belle, 44, 46
American colonies, 15, 52
Anesthesia, 75
Anger, 130–31
Aquinas, Thomas, 29–31, 33
Arendt, Hannah, 120, 125, 159n. 56
Ascetic ideal, 134
Augustine, 30
Autonomy, 130
Baay, William, 47
Baldus study, 116
Beatitudes, 34
Beccaria, Bonesana Cesare Marchese Di, 37–39
Bedau, Hugo, 51
Beezer, Justice, 58–61, 63
Behaviorism, 91
Bendor, Chaterine, 117, 132
Benevolence, 19
Bentham, Jeremy, 39–40, 121–22, 143–46
Berger, Vivian, 131
Bern, Walter, 130
Biomedical research, 74, 76–77, 90–92
Blackmun, Harry, 68–69
Blackstone, William, 37–39
Blanchard, Arlene, 47
Blanchot, Maurice, 1
Body: Augustine on, 30; Foucault on, 24–25; invisible, of the condemned, 53–57; in pain, 57–66; Pascal on, 72; political technology of, 25; and the power of law, 43; referential instability of, 101; sentimentalized, 5; and the soul, relation of, 30, 32. See also Pain; Pleasure
Body in Pain (Scarry), 10, 93–101, 120–21, 124–26
Booth, John, 105–13
Booth v. Maryland, 103, 104n. 3, 105–13, 120n. 37, 127–29
Bourgeois class, 22
Bronstein, Irvine, 105
Bronstein, Rose, 105
Burton, Justice, 56–57
Bush, Jeb, 81, 82
Butterworth, Robert, 43
California, 61–63
Campbell v. Wood, 11, 57–59, 63–64, 66, 69
Camus, Albert, 115, 126
Cancer, 139, 156
Capitalism, 22
Capital punishment: and the body in pain, 57–66; as a hidden reality, 51–52; Kaufman-Osborn on, 11–13, 71–102; and modernist pain, 72–78; Sarat on, 10–11, 43–70; Shoemaker on, 9–10, 15–42; and victim impact evidence, 12–13, 103–39
Carpenter, Mary, 38
Cartesianism, 80, 95
Catholicism, 72–73, 140
Christ, 28, 72, 151. See also Christianity
Christianity, 10, 18, 37; opposition of, to specific forms of punishment, 28; and right-to-die cases, 140, 151, 152–54; Shoemaker on, 20–21, 28–30, 32; and the use of the word pain, 98–99. See also Christ; Theology
Christie, Nils, 27–28, 35
Christopher, Charisse, 106–7
Christopher, Nicholas, 106–7, 129
Civilization, notion of, 68
Cognitive styles, 16, 22–24, 26
Commercial Advertiser, 79
Commodity, pain as a, 27–28
Compassion, 55
Comprehensive doctrines, 104
Conroy, Claire, 140–42, 145–46, 159
Constitution: and capital punishment, 58, 60–61; Eighth Amendment, 55n. 63, 59–60, 103–13; and electrocution, 53–55; Fourteenth Amendment, 54n. 57; and methods of hanging, 58–60; and victim impact evidence, 107–10, 112, 121
Constructivism, 97
Contract law doctrine, 23
Corporal punishment, 39–40
Cosmology, 79
Courage, 21
Cover, Robert, 1–2, 7, 71, 96
Crucifixion, 72
Culbert, Jennifer L., 12–14, 103–32
Damiens, 78–79, 101–2
Dante, 10, 17, 28–29, 30–34
Davis, Allen Lee, 63–64, 81–92, 101
Death penalty: and the body in pain, 57–66; as a hidden reality, 51–52; Kaufman-Osborn on, 11–13, 71–102; and modernist pain, 72–78; Sarat on, 10–11, 43–70; Shoemaker on, 9–10, 15–42; and victim impact evidence, 12–13, 103–39
Decency, standards of, 59, 87
Declaration of Independence, 121
Derteau, Michel de, 43
Dickens, Charles, 36
Dictionnaire de théologie, 72, 98
Disaggregation of the act of killing, 85–86
Discipline and Punish (Foucault), 24–25, 78
Divine Comedy (Dante), 28–29, 32. See also Dante
Dix, Dorothy, 40
Durkheim, Émile, 25–26
Eighth Amendment, 55n. 63, 59–60, 103–13. See also Constitution
Electrocution: Hyde on, 67–68; Kaufman-Osborn on, 81–92; and the politicization of pain, 101; and the Provenzano opinion, 63–64; Sarat on, 10, 44–45, 48–49, 52, 55–57, 63–69; Shaw on, 63–65, 69
Elias, Norbert, 20
Empathy, 5, 68
Enlightenment, 19–20, 23–24, 26, 28, 32, 38–41
Epistemology: Foucault on, 26; Kaufman-Osborn on, 78, 85; and right-to-die cases, 146, 158; Sarat on, 66; Shoemaker on, 16, 26
Essentialism, 95–96
Ethics, 20. See also Morality
Etiology, 74
Etymology, 98
Euthanasia, 5, 148–49. See also Right-to-die cases
Euthanasia: or, Medical Treatment in Aid of an Easy Death (Munk), 148–49
Evidence, victim impact, 12–13, 103–39; and Booth v. Maryland, 103,
Index

104n. 3, 105–13, 120n. 37, 127–29; and the cause of pain, 126–31; definition of, 103; and irrefutable pain, 124–26; and *Payne v. Tennessee*, 103–9, 113, 117, 119, 123, 125, 127, 129–35; and *South Carolina v. Gathers*, 103, 104n. 3, 105, 106; and the victims’ rights movement, 111–13
Evil, 10, 17–19, 30; Bentham on, 39; and right-to-die cases, 149; theological views of, 72–73

*Fierro v. Gomez*, 58, 61, 66, 69

Firing squads, 52, 53

Fitzpatrick, Peter, 5–6, 8, 54n. 53

Florida Corrections Commission, 45

Florida State Prison, 44, 48, 88

Florida Supreme Court, 44, 58, 81–83, 87

*Fort Lauderdale Sun-Sentinel*, 45

Foucault, Michel, 16, 24–26, 35, 49–50, 53, 78

Fourteenth Amendment, 54n. 57. See also Constitution

*Francis v. Resweber*, 54–58, 66

Franklin, Benjamin, 39

*Furman v. Georgia*, 111

Garland, David, 20, 25

Gathers, Demetrius, 106, 108, 110

*Gay Science* (Nietzsche), 92

*Glucksberg v. Vaccio*, 156n. 53

God, 29, 31, 79, 126; and Purgatory, 31; rational concepts of, 151; retribution of, 73; and right-to-die cases, 151

*Gregg v. Georgia*, 83, 114, 117

Guillotine, 60, 64, 115

Guilty mind, notion of, 126–31

Hanaway, Jonas, 38

*Handbook of Pain Assessment* (Turk and Melzack), 75, 90

Handler, Justice, 145

Hanging: constitutionality of, 58–59; methods of, 58–59; Sarat on, 48, 52, 58–59, 66

Haskell, Thomas, 16, 21–24, 26, 35

Hawkins, Gordon, 114–15

Haynes, Richard, 106

Heart disease, 139

Hegel, G. W. F., 10, 17–18, 32–34

Hegemony, 102

Hell, 151. See also Purgatory

Hierarchy, 4, 48, 68–69

Hillman, Harold, 93n. 42

*Human Condition, The* (Arendt), 120

Humanitarianism, 16, 20–24, 26

Hume, David, 121, 133

Hyde, Alan, 5–6, 8, 67–68, 80, 86

Idealism, 10

Ideology, 100, 118

Illich, Ivan, 74

International Association for the Study of Pain, 75–76

Jansenism, 72

Justice, theories of, 104, 122

Kaufman-Osborn, Timothy, 11–13, 71–102

Kemmler, William, 43, 58

Kennedy, Anthony, 115

King, Rodney, 84

Kleinman, Arthur, 7–8, 78

Kleinman, Joan, 7–8

Laquer, Thomas, 23n. 16

Lavi, Shai, 13–14, 137–60

Legitimacy, crises of, 67


Locke, John, 50

*Lockett v. Ohio*, 118n. 34

Louisiana, 54–57, 83

*Louisiana ex rel. Francis v. Resweber*, 83
MADD (Mothers Against Drunk Driving), 111
Madow, Michael, 51–52, 79
Marcus, Sharon, 11–12
Marshall, Thurgood, 108–11
Mayer, Karl, 78
McCleskey v. Zant, 115, 119
McElvaine, Charles, 79–80
McGill-Melzack Pain Questionnaire, 77–78
McNeill, John, 88
McVeigh, Timothy, 47
Medicalization: of pain, 79–81, 144–45; of state killing, 52–53
Medina, Pedro, 43, 45–46, 48, 70
Melzack, Ronald, 75–78
Metaphysics, 37–38, 151, 152–55
Middle Ages, 19, 21, 28–29
Minow, Martha, 118–19, 123
Modernism, 72–78
Modernity, 137–41
Morality, 20–21, 70; and the Enlightenment, 20; and victim impact evidence, 12–13, 108–9, 113–14, 121–23, 133
Morris, David, 97–98
Morris, Eugene, 82
Morton, William, 73
Munk, William, 148–50, 152–53
National Organization for Victim Assistance (NOVA), 111
National Victim Center, 111, 124n. 48
National Victims’ Constitutional Amendment Network (NVCAN), 111n. 16
Near-death experiences, 149
Neo-Cartesianism, 80
Newman, Graeme, 27–28, 35
New York State, 52
Nietzsche, Friedrich, 25, 92, 119, 134–35
Nihilism, 115
Objectivism, 77, 87

O’Connor, Sandra Day, 107, 141
“Official story,” of law, 2–4
O. J. Simpson trial, 113n. 19
Oklahoma City bombing, 47, 53, 70
Olivecrona, Karl, 2–3
On the Genealogy of Morality (Nietzsche), 134–35
Osler, William, 150

Pain: in the balance, 131–33; Benthamite model of, 39–40, 121–22, 143–46; calculus of, 141–47, 154–56, 160; cause of, 126–31; efforts to “read,” as part of the jurisprudence of death, 10–11; etymology of the word, 98–99; as a fact of legal life, 1–14; Foucault on, 25–26; irrefutable, 123–26; Kaufman-Osborn on, 11–13, 71–102; and language, separation of, 7; medicalization of, 79–81, 144–45; modernist, 72–78; modern problem of, emergence of, 147–54; naturalistic notion of, 7; particular, 120–23; political, 92–102; problem of, in punishment, 9–10, 15–42; rebuttable, 78–92; and right-to-die cases, 13–14, 137–60; sacred name of, 103–39; silence of, 65; syndrome, notion of, 152–53; universal, 120–23; and victim impact evidence, 103–39; Wittgenstein on, 72.

See also Body

Paley, William, 38
Paradigms, 114
Pascal, Blaise, 72, 95
Passion, narrative of, 72
Patel, Marilyn Hall, 61–63
Payne, Pervis T., 106–7
Payne v. Tennessee, 103–9, 113, 117, 119, 123, 125, 127, 129–35
Penance, notion of, 18
Penitentiary, history of, 36–39
Philosophical Investigations (Wittgenstein), 72
Index

Physician-assisted suicide, 13. See also Right-to-die cases
Pleasure, 20, 49; notions of, and right-to-die cases, 143, 145, 158; and pain as opposites, 143, 145; the performance of torture with, 49
Pluralism, 117, 131
Police brutality, 5
Positivism, 78
Poverty, 128
Power, 16, 78–79; Foucault on, 36; pedagogy, 49–50. See also Sovereignty
“Prayer to Ask God for the Good Use of Sickness” (Pascal), 72
Price, Donald, 90–91
Privacy, 145
Privatism, 77
Progress, scientific, 69–70
Protestants, 151
Provenzano v. Moore, 11, 58, 63, 66, 69, 81–82, 90
Providence, notion of, 72
Purgatory, 29–31, 34. See also Hell
Quakers, 39
Quince, Justice, 87
Quinlan, Karen, 141–42, 158–59
Rape, 11–12
Rawls, John, 122
Reed, Stanley, 54–56
Reinhardt, Stephen, 59–61, 63, 64
Rehnquist, William, 109–10, 127, 132
Repentence, 37
Representationalism, 97
Rey, Roselyne, 98
Reynolds, James, 79
Right-to-die cases, 13, 137–60; and the calculus of pain, 141–47, 154–56, 160; and modernity, 137–41
Rousseau, Jean-Jacques, 118n. 33
Rush, Benjamin, 39–40
San Quentin, 61
Sarat, Austin, 1–14, 43–70
Savage, notion of, 68
Scalia, Anthony, 68–69, 127–29
Scarry, Elaine, 7, 10–11, 13, 65–66, 93–101; Body in Pain, 10, 93–101, 120–21, 124–26; and irrefutable pain, 124–26; and the universality of pain, 120–21; and victim impact evidence, 120–22, 124–26
Scholasticism, 32
Schweizer, Albert, 153
Scientific progress, notion of, 69–70
Sedation, terminal, 156–58
Senea, 147
Sensory receptors, 74
Shaw, Leander, 63–65, 69, 87–91
Shoemaker, Karl, 9–10, 15–42
Simon, James, 109
Simon, Jonathan 1n. 2
SLAM (Society’s League Against Molesters), 111
Slavery, 22–23, 134
Sleep, 149–50
Smith, Adam, 43
Soul, 10, 79; Augustine on, 30; Pascal on, 72; relation of, to the good, 17–18; and right-to-die cases, 147–48; Shoemaker on, 16–18, 29–30, 40–41
Souter, David, 129–30
South Carolina v. Gathers, 103, 104n. 3, 105, 106–10
Sovereignty, 25, 49–50, 54, 61, 68, 69–70, 78–79. See also Power
Spaeth, Harold J., 100n. 11
Spierenburg, Pieter, 16, 19–23, 35
Stare decisis, principle of, 107, 108, 110–11
Stevens, John, 117, 132
Stoics, 147
Subjectivism, 87, 93–95, 146
Subjectivity, 81
Sublimation, 72
Suicide, 13, 29. See also Right-to-die cases
Superintendent of Belchertown State School v. Saikewicz, 154–56

Talbert, Philip, 103n. 1
Technology: and conceptions of pain, 74; execution, 10–11, 44–53; political, of the body, 25; silence of, 48–53
Theology, 72–73, 98. See also Christianity
Tilley, Cory, 82
Tissue damage, notion of, 75
Tocqueville, Alexis de, 36
Torture, 49, 99–100
Treatise on Human Nature (Hume), 133–34
Truth, 31, 97
Tucker, Karla Faye, 46n. 15
Turk, Dennis, 75–77

Utilitarianism, 121–22
Vasquez, Warden, 61
Victim impact evidence, 12–13, 103–39; and Booth v. Maryland, 103, 104n. 3, 105–13, 120n. 37, 127–29; and the cause of pain, 126–31; definition of, 103; and irrefutable pain, 124–26; and Payne v. Tennessee, 103–9, 113, 117, 119, 123, 125, 127, 129–35; and South Carolina v. Gathers, 103, 104n. 3, 105, 106; and the victims’ rights movement, 111–13
Victims’ Assistance Legal Organization, 111
Victims’ Bill of Rights Constitutional Amendment, 112
“Violence and the Word” (Cover), 1–2

Weber, Max, 3n. 11
Weiler, Katherine, 81
Weiler, Kristine, 81
Weiler, Nancy, 81
Weisberg, Robert, 114
Wellhausen, Steve, 91
Whipping, 39–40
White, Byron, 108
Wikswo, John, 90
Williams, Samuel D., 148
Wittgenstein, Ludwig, 72, 97
Woodson v. North Carolina, 126n. 50
World War II, 115

Zeno, 147
Zimring, Franklin, 114–15