Notes

Introduction

1. Marie Gottschalk, Mary Katzenstein, Stuart Scheingold, Bill Lyons, Jonathan Simon, David Garland, and Thomas Dumm have all conducted skillful and timely research into punishment and its politics. Political scientists have also extensively studied crime and “law and order” political behavior and electoral strategies. While these strategies may create support for the penal regime, these studies do not focus on the punishments that occur as a result of them. Disenfranchisement is also a new focus of concern among political scientists in the increasingly tight electoral map.


3. Here I have deliberately avoiding using the phrase “the state’s subjects” because recent events demonstrate that one does not need to be a citizen or member of a polity to suffer punishment at the hands of its state.

4. My thanks to Daniel Tompkins for pointing this out.


7. Whether the law actually does this is of course a matter of debate. Some have argued that revenge has always lurked inside the law. Others argue that recent changes in victims’ rights have reintroduced the element of revenge in the law (Culbert 2001). For a complete discussion, see Roger Berkowitz, “Revenge and Justice,” Journal of Law, Culture, and the Humanities 1, no. 3 (2005).

8. Hegel, 70.


Chapter 1


11. More, 100.


13. More, 44.


21. Arnold Weinstein, “Kafka’s Writing Machine: Metamorphosis in the

22. James Madison expressed frustration with this fact in Federalist 37: “But no language is so copious as to supply words and phrases for every complex idea, or so correct as not to include many, equivocally denoting different ideas. . . . When the Almighty himself condescends to address mankind in their own language, his meaning, luminous though it must be, is rendered dim and doubtful, by the cloudy medium through which it is communicated.”


28. Peter Neumeyer (1971) examines a book that Kafka wrote was central to his life in 1914, Oskar Weber’s Der Zuckerbaron, which recounts the life and adventures of a former German officer in South America. Strangely, the book closes with the officer imagining his own grave and inscription upon it, which is reminiscent of the ending of “In the Penal Colony.” Anthony D. Northev conducted research into the activities of Kafka’s uncles in colonial enterprises in “Kafka and Foreign Lands: The Life Stories of His Uncles,” Journal of the Kafka Society of America 10, no. 1–2 (1986): 68–79.


30. Franz Kafka, “Jackals and Arabs,” in The Complete Stories, ed. Nahum Glatzer, 407–10 (New York: Schocken, 1971). In this story, a “Northern European” traveling in what seems to be Egypt is recruited by a group of Jackals to prove his superior status by killing the Arabs for them. The Jackals seem to represent the settlers; the Arabs the native population; and the traveler once again represents the confused homeland trying to determine who is good and who is bad in an unfamiliar territory.

Chapter 2

4. This reading is informed by Stephen Mitchell’s excellent introduction to his translation.
12. Hobbes, Leviathan, 76. Additional citations to this work are given in the text.

Chapter 3


2. Hardt and Negri, 84.


6. Austin, 194.


Chapter 4

2. The Society for Political Enquiries could be considered the first American Political Science Association. The members met at Benjamin Franklin’s house to discuss the science of law, government, and the connection between political institutions and public morality. Members could write papers, submit them to the president and vice president for approval, and then present them for discussion at meetings. Thomas Paine wrote the charter from which the preceding passage is taken. The society is still intact today. Early documents are housed at the American Philosophical Society, Philadelphia.
6. Rusche and Kirschheimer, 55.
7. Rusche and Kirschheimer, 53.
10. Different crimes were given different categorizations according to religious doctrine, an element of the criminal law remaining from the Middle Ages.
12. Smith, *Colonists in Bondage*.
18. According to one national, Rob Gordon, transport never happened to Namibia because “water was even scarcer than gin.”
22. The pamphlet is in the archives of the American Philosophical Society, with the handwritten message “To Caleb Lownes—From Jeremy Bentham.”
28. Beccaria, 68.
32. Teeters, 21.
33. Today this is Washington Square Park, a lovely spot in the middle of the historical tourist destinations of colonial Philadelphia.
36. Teeters, 27.
41. Reprinted in Teeters.

**Chapter 5**


Chapter 6

15. Lichtenstein, 13.
16. Lichtenstein, 30.
23. Morgan Reynolds and Knut Rostad, “Creating Factories behind Bars,” National Center for Policy Analysis, Brief 354, 2001 (available at http://www.ncpa.org/pub/ba/ba354/). In spring 2006, it was suggested during the debate about immigration reform and labor shortages that convicts in California’s penal system could take over the labor requirements for agriculture in the state.


31. Simon, 265.


34. See Parenti, Lockdown America, and Joseph Hallinan, Going Up the River: Travels in a Prison Nation (New York: Random House, 2001) for vivid accounts of nightmarish conditions in supermax facilities today.


39. Both Dayan and Hallinan describe this practice.


Chapter 7


2. Arendt, 144.

3. Arendt, 144.

4. Arendt, 152.

6. Arendt, 151.


8. This position appears to be at the bottom of recent U.S. policies. Jane Mayer examined the philosophical outlook of David Addington, Vice President Cheney’s Chief of Staff and one of the legal minds behind administration policies. He believes that legality is secondary to executive authority and therefore all executive actions are beyond question. See Jane Mayer, “The Hidden Power,” *New Yorker* 82, no. 20 (2006): 44–55.

9. The *New York Times* published an article on March 19, 2006, revealing practices of abuse at Camp Nama, a location near the Baghdad airport where even more egregious acts were committed against detainees. It seems that this list could keep growing, as human rights organizations are interviewing those who have been detained. They claim that there are dozens of places in Iraq—thus far without names—where U.S. soldiers have been abusing, killing, and raping detainees.


12. Greenberg and Dratel, 484.

13. Greenberg and Dratel, 466.


15. This is Giorgio Agamben’s argument in *State of Exception*.

16. UN, “Situation of Detainees.” In response to this report, Vice President Cheney declared that it was “an embarrassment to the United Nations.” February 16, 2006.


