



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 D. Sarat
Grant Program: Summer Seminars and Institutes

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Punishment, Politics, and Culture

I. Introduction

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 then 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” and will “connect the study of the humanities to the current conditions of national life.”

This Seminar will address three questions about punishment 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 see punishment as a set of consequences normally considered unpleasant or painful that 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 various definitions of punishment and assess the strengths and weakness of each of them. 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?** How have issues of punishment figured in our “national story”? What are the arguments that today shape our thinking about punishment?

3. **What are the appropriate limits of punishment?** Do we punish too much and or too

little? Are we too strict or too forgiving? Are there some crimes that are so heinous that they strain our capacity to make judgments or leave us feeling that punishment, no matter how severe, nonetheless is an inadequate response?

These questions provide perennial sources of controversy and lively debate. The Seminar readings are designed to provide a variety of perspectives on punishment as well as to enable an interdisciplinary conversation connecting scholarly concerns with the lives and work of educators and citizens. My aim is to provide participants an opportunity to take a fresh look at some familiar texts and to explore new resources on which they might draw if, and when, they teach about punishment. I want participants to understand the complexity and nuance of a subject which all-too-often is treated in an ideological fashion.

The Seminar 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, 2014 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, highlights the gravity of decisions we make about punishment.

In addition to such cases, there is the stark reality behind any statistical description of the population of America's jails and prisons. As of January, 2014, there were 2,297, 400 people held in Federal or State prisons or 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.

My interest in exploring connections among punishment, politics, and culture is continuous with a long line of commentary dating back to the early nineteenth century. Such commentary shows the importance of humanistic inquiry in addressing contemporary challenges and 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, trans. Francis Lieber. Philadelphia: Carey, Lea & Blanchard, 1833, 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, trans. George Lawrence, 13th edition, 1850, 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] As a result, it captures the attention of students just as it has engaged some of the best thinkers in the humanities.

A number of social theorists have explored the connections of punishment and society. Emile

Durkheim did more than perhaps anyone else to develop a sociological account of punishment and to emphasize the social importance of penal institutions. In his view, those institutions provide concrete instances of the “collective conscience” at work in a process “that both expressed and regenerated society’s values.” [citation from David Garland, Punishment and Modern Society: A Study in Social Theory. Oxford: Clarendon Press, 1990, 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 those were their increased rationalization and connection to other social institutions, such as schools, hospitals, factories.

Today arguments about why we punish and how we punish continue unabated. Some 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 is an important time to be studying punishment in the United States because conservatives and liberals now are joining in a rethinking of America’s system of punishment. They see mass incarceration as wasteful, ineffective, and often unjust. As Jon Utley, publisher of *The American Conservative* put it, “Slowly but certainly, Americans across the political spectrum are beginning to question and reform the criminal-justice system, even rethinking the panic-stricken measures of the past 30 years that led to so much imprisonment, so many ruined lives, and the runaway growth of police powers.” (See <http://www.theamericanconservative.com/articles/why-we-need-criminal-justice-reform>) Even Southern state legislatures are enacting measures to reduce prison populations and

give judges more leeway to sentence below mandatory minimums. This Seminar will consider these developments 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? What is the future of punishment in America?

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 materials 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 their favorite book or story in which punishment plays a key role. As a result, my choice of texts may not satisfy everyone. 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.

Choices of the readings and films included in the Seminar are informed by its purposes as well as the constraints of a four-week program. Readings will include sociological, historical, and literary treatments of punishment as well as readings about legal, political, and cultural issues in America. (See Appendix A) I have included some classics and some important, though lesser known, material, incorporated readings from various humanities disciplines, and balanced perspectives for and against punishment. I have chosen readings that voice many differing political perspectives and will give each of those perspectives a fair hearing.

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 and will last four weeks. In the opening two weeks we will take up the first of the three questions listed on page 1 of this proposal. The first week, **What Is Punishment About? Responsibility, Justice, and Pain**, starts with an article about "zero tolerance" policies. We then step back from this modern issue 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 examines 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 suffering, even apparently undeserved suffering, 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 readings invite 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 (Question 2 on p. 1) and to thinking about the limits of punishment (Question 3 on p. 1). 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 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. Here we will 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. Here we will confront, in its starkest form, questions about the fit between crime and punishment and about whether there are some crimes that are so heinous that no punishment ever seems adequate.

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 and 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 and focus attention on the question of whether capital sentences are imposed in a racially discriminatory manner. Finally, we will use the film Dead Man Walking to examine popular culture treatments of this most serious type of punishment.

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. Conduct of the Seminar. Following the suggestion of a participant in my 2014 Seminar, at the end of each Seminar meeting I will distribute questions for participants to consider as they do their reading for our next session. Participants also will be encouraged to frame questions and raise

issues that reflect their own interests and expertise.

Seminar meetings will be devoted to discussion of the three questions laid out on page 1 of this proposal and the themes indicated in the syllabus included as Appendix A. I will devote roughly equal time and attention to each reading and to laying 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 as suggested by a 2011 participant, I will “offer the opening problem to the entire class...to figure out...” In every session I will give each participant the opportunity to speak, posing questions, formulating hypotheticals, and, where necessary, providing exposition and background. Past participants found this approach to be useful.

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 below). In addition to the regular Seminar meetings, there will be two guest lectures by scholars of punishment, one by a member 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 to the humanities, and reflect on ways they illuminate contemporary issues. In addition, in response to a suggestion from a 2015 participant, I will also offer participants the opportunity to “complete individual writing/projects in response to coursework” and will work with any participant who chooses to do so.

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 week. This will give participants time to settle into the work of the Seminar. This plan for group work worked well in my 2014 and 2015 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.

The experience of working together on group papers has been a very valuable one for most of the participants in previous iterations of this Seminar. 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 participants 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 twice 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 and pressing contemporary issues. 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. Others also have noted the utility of the content of the Seminar for their teaching. As one 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.” (Evaluations, 2011, # 13596). Another participant observed that “Punishment, Politics, and Culture has been an incredible experience...The seminar will have an immediate effect on my teaching of American history in that I now feel empowered to introduce Constitutional jurisprudence into historical moments. Similarly, participating in a seminar of this caliber has inspired me to refocus my classes around debate, argument, and problem solving.” (Evaluations, 2015, # 21019)

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 in 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 2017 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 my ongoing work as both a teacher and a scholar. (See Appendix C) In all of my teaching I bring together law, literature, history, political science, and philosophy. I regularly offer an undergraduate course on punishment and 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, and The Road to Abolition? The Future of Capital Punishment in the United States.

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. (See evaluations of my 2015, 2014, 2012, 2011, 2010, 2006, and 2005 Seminars.) As participant put it, "This seminar was perfectly conceived and executed by the director, Austin Sarat. The curriculum is designed so we might focus our questions around a range of cultural, historical, legal, and literary texts. Every reading assignment was both singularly important and a meaningful addition to the larger conversation and line of thought evoked by the syllabus. In brief, Austin's careful attention to all aspects of the course--intellectual and social--created an ideal learning environment." (Evaluations, 2015, # 21023)

The guest speakers are 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 of criminal responsibility as they inform punishment decisions. 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. One of the 2015 participants described Megan as "amazing." She "anticipated our needs and responded quickly when something unexpected came up." (Evaluations, 2015, #21086).

IV. Selection of Participants

I will advertise the Seminar broadly, using newsletters, listservs, and blogs to reach teachers in public, independent, and religious schools. Following suggestions of my 2014 participants, I will enlist the help of Amherst's Chief Diversity Officer in devising approaches to attract a diverse applicant pool. This worked well in broadening the pool for my 2015 Seminar. 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 2015 attracted considerable interest (76 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*. The library's regular summer hours are Monday through Friday from 8:30 a.m. to 4:30 p.m. These hours have proven to be well suited to the needs of Seminar participants. Study space for participants will be made available in the library. Amherst College will also provide, without charge, computer facilities, including access to personal computers for Seminar participants.

I will 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, 2012, 2014, 2015 participants found it quite satisfactory. A few of the participants in my 2015 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 2017 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 extended 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 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 2017.

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.]

[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); 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); Simmons v. Galvin, No. 08-1569 (July 31, 2009); Brown v. Plata, No. 09-1233 (May 23, 2011).]

[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.]

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 19th 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); 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; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2012); Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (2014); Robert Ferguson, *Inforno: An Anatomy of American Punishment* (2014)]

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

FILM: Dead Man Walking

[A film that focuses on the question of the place of repentance and the pain of the families left behind by capital crimes in our thinking about the death penalty.]

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 during this week 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); 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; Rachel Barkow, “The Court of Life and Death: The Two Tracks of Constitutional Sentencing Law and the Case for Conformity,” 107 *Michigan Law Review* (2009), 1145-1205 Franklin E. Zimring and David T. Johnson, “The Dark at the Top of the Stairs: Four Destructive Influences of Capital Punishment on American Criminal Justice” (November 8, 2011). Available at SSRN: <http://ssrn.com/abstract=1956686>; Bryan Stevenson, *Just Mercy: A Story of Justice and Redemption* (2015); Robert Blecker, *The Death of Punishment: Searching for Justice Among the Worst of the Worst* (2013)]