

# Imaging Punishment

## *An Introduction*

CHARLES J. OGLETREE, JR., AND AUSTIN SARAT

From the Gospel of Matthew<sup>1</sup> to George Bernard Shaw<sup>2</sup> and former Supreme Court Justice William Brennan,<sup>3</sup> many have remarked that how a society punishes reveals its true character. Punishment tells us who we are.<sup>4</sup> 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.<sup>5</sup>

The practices of punishment are all around us, mainly proceeding unnoticed in the daily world of crime and justice and in the work of our social institutions. But occasionally, they galvanize attention and remind us of punishment's importance as a mirror of our political, legal, and cultural values. Thus, the 1998 execution of Karla Faye Tucker in Texas led many to think about the significance of repentance and whether someone whose character seems to change dramatically nonetheless should be executed.<sup>6</sup> In the fall of 1999, the expulsion of seven African American students from Eisenhower High in Decatur, Illinois, after a fight at a football game, was required by the school district's "zero-tolerance" policy. Because of the intervention of the Reverend Jesse Jackson, what otherwise might have been a little-noticed incident of school discipline became the focus of a well-publicized conversation about whom we punish, how we punish, and why we punish as we do.<sup>7</sup> The controversy surrounding the impeachment of former President Clinton was a kind of national seminar on morality, truthfulness, and proportionality.<sup>8</sup> High-profile trials of persons accused of crimes against humanity, from World War II to the present, ask us to think about how we respond to the most serious forms of human evil.<sup>9</sup>

In addition to such events, there is the stark reality of the population of our jails and prisons. Despite the fact that the total prison population has declined slightly since 2010, at the end of that year, more than 2,300,000 people were held in federal or state prisons or in local jails.<sup>10</sup> The United States still 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 percent of the world's population and almost 23.6 percent of the world's prison population.<sup>11</sup> About 10.4 percent of all black males in the United States between the ages of twenty-five and twenty-nine were sentenced and in prison, compared to 2.4 percent of Hispanic males and 1.3 percent of white males.

*Punishment in Popular Culture* examines the cultural images that undergird and critique America's distinctive approach to punishment. It analyzes punishment as a set of images, as a marvelous spectacle of condemnation. It recognizes that the semiotics of punishment is all around us, not just in the architecture of the prison or the speech made by a judge as she sends someone to a penal colony, but in both "high" and "popular" culture iconography—in novels, television, and film. Punishment has traditionally been one of the great subjects of cultural production, suggesting the powerful allure of the fall and of our prospects for redemption. But perhaps the word "our" is inaccurate here. Émile Durkheim and George Herbert Mead, among others, remind us that it is through practices of punishment that cultural boundaries are drawn, that solidarity is created through acts of marking difference between self and other, that these processes proceed through dis-identification as much as imagined connection.<sup>12</sup>

This book explores the presence of punishment as a subject in American popular culture.<sup>13</sup> Following David Garland, we see punishment and culture connected in two ways: culture gives punishment meaning and legitimacy, and shapes its practice through cultural "sensibilities" and "mentalities."<sup>14</sup> According to Garland, punishment is a social institution "composed of the interlinked processes of law-making, conviction, sentencing, and the administration of penalties. It involves discursive frameworks of authority and condemnation, ritual procedures of imposing punishment, a repertoire of penal sanctions, institutions and agencies for the enforcement of sanctions and a rhetoric of symbols, figures, and images by means of which the penal process is represented

to its various audiences.”<sup>15</sup> Reviewing a century of socio-legal theorizing on punishment, Garland concludes that most theorists have neglected the role of culture in punishment. However, as he points out, punishment is not only shaped by cultural processes, but is itself a cultural agent. He reminds us that we should attend to the “cultural role” of legal practices and to their ability to “create social meaning and thus shape social worlds,” and that among those practices none is more important than how we punish.<sup>16</sup>

Punishment, Garland tells us, “helps shape the overarching culture and contribute[s] to the generation and regeneration of its terms.”<sup>17</sup> Punishment is a set of signifying practices that “teaches, clarifies, dramatizes and authoritatively enacts some of the most basic moral-political categories and distinctions which help shape our symbolic universe.”<sup>18</sup> Punishment teaches us how to think about categories like intention, responsibility, and injury, and it models the socially appropriate ways of responding to injury done to us. Moreover, it exemplifies relations of power and reminds us of the pervasiveness of vulnerability and pain. Most powerfully, “penalty highlights the characteristics of the normal self by policing its failures and pathologies and spelling out more precisely what one is expected minimally to be.”<sup>19</sup>

Penalty, for Garland, is a complex cultural process. Ideas about guilt, shame, retribution, and just punishment are reflected, for example, in sentencing schemes, prison conditions, legislative proposals, election campaigns, movie plots, and attitudes toward prison labor. There is no simple causation at work; instead, culture and institutions are mutually interdependent. *Punishment in Popular Culture* takes up Garland’s argument by situating the cultural lives of punishment in the mass-mediated images made available in our living rooms and in movie theaters.

This book explores the “cultural lives” of the institutions and processes of punishment in the United States and extends the scholarship of Nicole Rafter,<sup>20</sup> Michelle Brown,<sup>21</sup> and Alison Young<sup>22</sup> in focusing on punishment’s cultural lives, and of Richard Sherwin,<sup>23</sup> Jessica Silbey<sup>24</sup> and others in seeking to contribute to scholarship on legal processes in film and television.<sup>25</sup> By “cultural lives,” we mean punishment’s embeddedness in discourses and symbolic practices in specific times and places. After centuries in which various forms of punishment have been a completely normal and self-evident part of legal and political

arrangements, they have taken on a life of their own in various arenas, one that goes far beyond the limits of the formal penal sphere. While it is undoubtedly important to consider political and socioeconomic factors that shape the existence of punishment across geographic and social spaces, it is its cultural life that deserves more attention.

The proliferation of images of law and politics and processes like punishment on television and in film is a phenomenon of enormous significance.<sup>26</sup> Mass-mediated images are as powerful, pervasive, and important as are other early twenty-first century social forces—including globalization, neocolonialism, and human rights—in shaping and transforming political and legal life. While we know relatively little about *how* images of law and politics on television and in film are consumed by their viewers or about the impact of viewing those images on popular expectations and attitudes regarding law, we do know that popular culture has “invaded” law and reshaped some of its most fundamental processes. As Sherwin puts it, “Legal meanings are flattening out as they yield to the compelling visual logic of film and TV images and the market forces that fuel their production. In consequence, the customary balance among disparate forms of knowledge, discourse, and power is under great strain, and is at risk of breaking down.”<sup>27</sup>

Television and film draw on law for their aesthetic, narrative form, and way of positioning their viewers. “Anglo-American movies are . . . trial-like to begin with,” writes Carol Clover.<sup>28</sup> Clover argues that films are trial-like in that “the plot structures and narrative procedures of the Anglo-American trial film shape even plots that never step into a courtroom; . . . such trial-derived forms constitute the most distinctive share of Anglo-American entertainment.”<sup>29</sup>

The connection between the narrative conventions of the mass media and law has been highlighted recently by David Black.<sup>30</sup> Black calls our attention to what he sees as the “narrative overdetermination” of the film-law relationship. “The [real] courtroom was *already* an arena or theater of narrative construction and consumption and so was the movie theater. The representation of court proceedings in film, therefore, brought about a doubling up, or thickening, of, narrative space and functionality.”<sup>31</sup> Black’s study of law in film reveals that “films about law are stories about the process of storytelling, or narratives about

narrative.”<sup>32</sup> When we turn to legal processes in film, special attention, Black suggests, must be paid to their narrative connections and disconnections, as the challenge of scholarship is to chart law and film as narrative regimes “‘in parallel.’”<sup>33</sup>

This book examines the moving image as a domain in which power operates independently of law’s formal institutions. It seeks to make sense of what happens when mass-mediated images of legal processes like punishment saturate our culture. As Samuel Weber observes, “the ‘world’ itself has become a ‘picture’ whose ultimate function is to establish and confirm the centrality of man as the being capable of depiction.”<sup>34</sup> In this age of the world as picture, the proliferation of images in film and on television of legal processes like punishment and on television has altered and expanded the sphere of legal life itself. “Where else,” Sherwin asks, “can one go but the screen? It is where people look these days for reality. . . . Turning our attention to the recurring images and scenarios that millions of people see daily projected on TV and silver screens across the nation . . . is no idle diversion.”<sup>35</sup>

The moving image, whether seen in one’s living room or the neighborhood movie theater, also reminds us of the contingencies of our legal and social arrangements. Moving images are not just mirrors in which we see legal and social realities reflected in some more or less distorted way. Instead they always project alternative realities that are made different by their invention and by the editing and framing on which the moving image depends. This is not to argue that viewers always escape the pull of realism that television and film generally seeks to convey. Nonetheless, the moving image attunes us to the “might-have-beens” that have shaped our worlds and the “might-bes” against which those worlds can be judged and toward which they might be pointed. Thus Anthony Chase notes that film’s modes of visualization are “constantly transforming the way we see the law,” and he claims that “no technical apparatus can do more to unblindfold justice than the movie camera.”<sup>36</sup>

This “unblindfolding” is particularly important in the domain of American punishment. America, as is widely known, has been on a several decades’ old incarceration boom. As noted above, we continue to lock up more people for longer periods of time than most other nations, as well as to use the death penalty and to racialize punishment in ways that are quite remarkable. How are these facts of American penal life

reflected in, encouraged through, or critiqued by the portraits of punishment that Americans regularly encounter on television and in film? What are the conventions of genre that help to familiarize those portraits and connect them to broader political and cultural themes? In its cultural lives, can punishment claim a secure basis in morality? Or do television and film help to undermine its moral claims? How are developments in the broader political economy reflected in the ways punishment appears in mass culture? And finally, how are images of punishment received by their audiences?

While the work collected in our book does not purport to provide a comprehensive overview, these are the questions that *Punishment in Popular Culture* addresses. Our book thematizes issues of genre, morality, political economy, and reception in its analyses and brings together distinguished scholars of punishment and experts in media studies in an unusual juxtaposition of disciplines and perspectives.

In Part I, on “The Popularity of Punishment,” two of our contributors turn to popular culture to explain the appeal and attractiveness of punishment to the American imagination.<sup>37</sup> The first chapter, by Lary May, begins with the familiar observation about the dramatic rise in punitiveness in late-twentieth-century America and contends that turning to popular movies offers a fresh explanation of why this political shift occurred. In his chapter, May concentrates on a body of crime films that emerged in the early 1970s and lasted in one form or another until the early 1990s. In many ways these films gave expression to a new political culture, with its ideology, symbols, and language, which assaulted the liberal state and its laws and policies.

Most of the writers, featured players, and even directors of what May calls “backlash films” were promoters of the Republican Party and its right wing. Their films included Clint Eastwood’s five *Dirty Harry* movies, Charles Bronson’s eight *Death Wish* movies, and Chuck Norris’s movies on the same theme, *Good Guys Wear Black*, *Missing in Action*, and *Code of Silence*. They expressed in vivid form a narrative at once hostile to liberalism and tough on crime, while promising a rebirth of security and middle-class virtue in the wake of defeat in Vietnam, the rise of youthful countercultures, and the eruption of race riots in major American cities, all of which sparked a pervasive desire for law and order.

For May, the story begins with the Cold War, which brought with it a capitalist fervor that ensured that the United States remained firmly anticommunist, as well as antisocialist. May notes that the suburban, domestic life that government policy encouraged was disrupted by the turmoil of the 1960s, with riots at home and Vietnam abroad serving as loud rejections of traditional middle-class values. This social and military disarray under democratic presidents made Americans receptive to the patriotic law and order rhetoric of Richard Nixon and Ronald Reagan. Americans lost faith in Great Society liberalism, turning from the welfare state in favor of neoliberalism.

May believes this loss of faith is reflected in backlash films. The stars of the films were older Republicans who shared the background of many of their fans. Clint Eastwood, Sylvester Stallone, and Charles Bronson were all white men, over forty years old, from working- and middle-class backgrounds. The actors and filmmakers were openly political, seeing their films as affirmations of Nixon's "Silent Majority" and the strength of American values.

*Dirty Harry* and *Death Wish* show individuals stretching the boundaries of state-sanctioned violence to enforce the law against representatives of the counterculture of the late 1960s and early 1970s. The criminals in the films often imitated real counterculture criminals like Charles Manson and the Symbionese Liberation Army. *Good Guys Wear Black* presents a story of liberal subversion within the U.S. State Department and a former military man who must purge the government of traitors and halt a domestic killing spree.

These backlash films, and others like them, consistently portrayed authority and punishment as sources of an American rebirth, themes closely associated with the hopeful Reagan era. This was a rebirth of patriotism, conservatism, and pride in American values. The films and their stars were politicized as *Dirty Harry* inspired permissive self-defense laws, and the military used the success of Rambo to recruit young soldiers. May argues that backlash films provided the language for the neoliberal shift in American politics that was realized under Reagan's presidency and the wars on crime and drugs. The films offered an imagining that could be used to purge America of those ideas and people responsible for the failures of the Vietnam era: welfare, rehabilitation, liberals. In backlash films, the enemy has come home and must

be destroyed or contained. May concludes by suggesting that only in the context of a fear of defeat can we make sense of the popularity of the backlash films as well as the rise of a new ethos of punishment that was without international parallel or historical precedent.

The next chapter, by Aurora Wallace, offers a close reading of the National Geographic Channel's *Locked Up Abroad*, which chronicles the conditions in prison systems outside the United States. The series, now in its sixth season, provides a docudrama view of inhumane prison systems, arbitrary and capricious legal enforcement, corruption, and testimonials of individual suffering by several dozen Westerners visiting or living abroad. The series, Wallace contends, revels in the salacious depiction of debauchery before arrest and of torture after. Replete with the reality television mainstays of first-person address, melodramatic reenactments of past events, and suspense-building editing and music, it promotes, she suggests, complacency about the American penal system by suggesting that for all of its faults, it is much better by comparison.

The people featured in *Locked Up Abroad* are consistently the young and reckless who take on the role of criminals while in a state of desperation and with little knowledge that they are doing so. Wallace argues that the descriptions of their partying and drug use serve to create a sense that the subjects deserve their fate. Moreover, she suggests that the presentation of foreign prison systems as dirty, dangerous, and unjust reinforces American exceptionalism. She notes that the series never considers what would have happened to these same people had they been caught for identical crimes in the United States.

The series adopts a definite neoliberal message by showing the victims making the most of their time in prison, learning their lessons, and seizing their inner strength and self-sufficiency. The subjects consistently report being better people for having done time in prison abroad. This reaffirms the neoliberal ethic of assigning agency to individuals, letting them learn for their mistakes and guide their own path toward self-improvement. Oddly, *Locked Up Abroad* seems to show foreign prison systems rehabilitating prisoners, yet leaving them with greater appreciation of the United States. She documents the effect of the series' American exceptionalist tone by citing Netflix reviewers who write about how the show brings them to a deeper appreciation of America and its criminal justice system.

The next part turns from using popular culture to explain the popularity of punishment to offer three examples of popular culture's distinctive critiques of the institutions and practices of punishment in the United States. Kristin Whissel's chapter examines what she labels "the Classical-era Hollywood prison film." Whissel contends that scholars and critics have often approached this kind of film as a subgenre of the crime drama, the gangster film, or film noir and, as a result, critiqued it in terms of the lack of "realism" of its depiction of prison life. In contrast to such approaches, she analyzes the "spectacle of punishment" in prison films through the generic lens of the decidedly antirealist tradition of the melodrama.

Her chapter approaches the prison film through melodrama in order to answer the following questions: How does the melodramatic imagination inform and re-form the spectacular representation of penality and punishment in Classical Hollywood cinema and to what effect? How, in turn, does the prison film's "spectacle of punishment" exploit the generic conventions of the melodrama and to what end? Whissel shows how the generic conventions of melodrama have been consistently mobilized within the prison film in order to transform punishment into an astonishing spectacle and, in the process, to uncover and make legible the moral grounds and ethical stakes of different types and approaches to punishment.

Melodrama, like the prison, Whissel contends, is the product of the modern era. By showing men enclosed and repressed in prison, the prison film achieves the same ends as melodrama, showing the power within each man and representing the meaning of power and punishment in a larger sense. Like the melodrama, the prison film must be regarded as a genre that is preoccupied with "nightmare states, with clausturation and thwarted escape, with innocence buried alive and unable to voice its claim to recognition" and that organizes its narratives around "moral polarization and schematization; extreme states of being, situations, actions; inflated and extravagant expressions; dark plottings, suspense, and breathtaking peripety."

Whissel focuses specifically on two films, *I Am a Fugitive from a Chain Gang* and *Brute Force*. Starting with *I Am a Fugitive*, she explores the techniques that the film uses to dramatize the life of Jim Allen in his time on the chain gang. The use of sound connects the judge's gavel

to the application of leg irons, and the constant pounding of sledgehammers provides background noise to reinforce the endless feeling of the sentence. The film also stylizes the daily beatings of prisoners by having them take place off screen (with the sounds still audible) or using low-key lighting to dramatize the scene. These dramatizations serve to emphasize the extreme violence of the prison system. The radical seclusion of the camp, existing outside society spatially and morally, is used in the film to emphasize the legal sovereignty of the prison system and the dangers that come with such sovereignty. The film closes with Jim Allen escaped and on the run, forced to turn to theft to survive, thereby demonstrating the prison system has not reformed him, but has rather forced him into a criminal life that he had never before inhabited.

From here Whissel turns her attention to *Brute Force*. That film is preoccupied with the space of prison, using lighting and unique camera angles to survey the castle-like exterior of the prison. It features an argument between the state corrections board representative and the warden in which the characters offer competing accounts of the role of punishment (the warden's is rehabilitation, the state official's matches the classical account). The film's antagonist, the tyrannical Captain Munsey, seeks to impose a "brute force" style of punishment on the prisoners, using the prison's enclosed and regulated space to abuse prisoners in ways not dictated by law. The film functions, Whissel argues, as a caution about such rule. The brutal deaths that befall the inmates who attempt to oppose the powerful Munsey are dramatized in order to call attention to fundamental moral questions at the heart of the film. Whissel argues that, in the tradition of melodrama, the film forgoes realism in an attempt to expose the moral crises that underlie the system of law, order, and punishment. In the end, she considers *I Am a Fugitive* and *Brute Force* together in suggesting that popular culture representations of the sovereign power to punish will step outside the law.

The next chapter turns from the question of power and its abuse to examine representations of breakdowns in the moral justifications of punishment. In this chapter, Kristin Henning draws on punishment theory to provide a framework for analysing the television program *The Wire*, with its narrative of moral deficits in contemporary criminal punishments. In the fifth season of the highly acclaimed HBO series, Felicia

“Snoop” Pearson proclaims that “deserve ain’t got nothing to do with it,” as she tries to educate a wayward soldier, Michael Lee, on the protocol of execution in Marlo Stanfield’s Baltimore-based drug organization. While a morally sound theory of retribution would argue that punishment may only be directed at wrongs and has little or nothing to do with personal or social gains, Snoop and other streetwise soldiers in *The Wire* suggest that punishment has a natural and necessary role to play in dispensing with those who are no longer valued in the organization. In the criminal enterprise, “punishment” serves the utilitarian interest of maintaining order and control by cutting off anyone who threatens the success of the drug trade or who, like Michael himself, routinely challenges or violates the organizational hierarchy by failing to do what he is told.

Although Snoop’s comments explain punishment among criminals, the dialogue between Michael and Snoop, Henning argues, serves as a metaphor for the operation of state punishment. Throughout the series, street killings and other punishments meted out by drug dealers and criminals parody state-sanctioned punishments authorized by criminal justice policies such as the so-called “War on Drugs.” In that context, Snoop’s comments suggest that contemporary punishments often fail to satisfy the very basic requirements of pure Kantian retributivism, which recognizes wrongdoing as a necessary precursor to punishment and strenuously opposes the subservience of one group to the purposes of another. In addition, *The Wire* complicates a conception of the state as a removed moral executor of the public’s retributivist sentiments by showing how political interests of government officials influence the state’s crime priorities, decisions on whether to continue certain investigations, and determinations about extent of punishment. Henning points out intersections between *The Wire*’s critique of the political motivations of punishment and other scholars’ arguments about capitalist and racist motivations for punishment of poor minorities, with the War on Drugs doing much of the work.

Henning also shows how *The Wire* calls into question consequentialist justifications for punishment. Consequentialists value the existence of punishment only insofar as it improves the net quality of life for all in society. *The Wire* demonstrates that increasing enforcement and

severity of punishment has done little to reduce crime and that on the contrary, it has caused significant harm to disadvantaged communities in the process.

*The Wire* series presents a grim picture of present-day American criminal justice and those trapped in its grip in the inner city. Documenting what Jeffrey Fagan and Tracey Meares call a “paradox of punishment,” *The Wire*, Henning argues, provides a vivid and complex narrative to amplify what we know empirically—that contemporary crime-control policies and punishments, such as mass incarceration, have not been effective as either a specific or a general deterrent to crime. Whatever deterrent effect contemporary punishments may have is undermined in poor, urban communities by the impact of concentrated poverty, residential isolation, and social disorganization caused by failing state institutions. While *The Wire*, Henning notes, may not break any new ground in exposing corruption, it certainly deviates from the typical police procedural by challenging the popular perception that police misconduct can be overlooked as long as the “bad guys” are caught and receive the punishments they purportedly “deserve.”

The final chapter in this part takes up the question of how ideas about the rehabilitation of prisoners were represented in the popular imagination after the importance of rehabilitation declined in the penal field. Here Daniel LaChance looks, in particular, at three examples of popular culture’s representation of punishment from the 1990s, when punitive policies were reaching their apogee: the films *The Shawshank Redemption* and *American History X* and the television program *Oz*. Each depicted white men crippled with a psychological sense of impotence that led them to construct protective barriers between the world and themselves. Those barriers led, in one way or another, to their incarceration. The sanctioned and unsanctioned bodily violence they experience behind bars makes them spiritually vulnerable, but that vulnerability, LaChance contends, proves crucial to their eventual redemption. In the shadow of their physical violation, they form a psychologically intimate relationship with another man that transforms them, in the end, into autonomous, moral, democratic subjects.

LaChance discusses how nineteenth-century working-class white men used their whiteness to distinguish themselves as more disciplined workers and thus more valuable to the developing capitalist economy.

The sense of dignity and self-control in the image of the suffering white man is central, he notes, to the protagonists of many prison films. LaChance believes there was a split in prison films in the 1970s such that while some continued the hopeful narrative of the suffering inmate, others embraced the injustice that pervades the system with a more nihilistic approach. The three examples considered in this chapter all show white men struggling for control, but LaChance argues that only in accepting their own vulnerability and casting off their white entitlement do the white men ultimately find liberation.

In LaChance's view, popular culture offers a critique not only of the racialization of punishment, but also of the mainstream search of autonomy. Thus, in *American History X*, the main character, Derek Vinyard, abandons his white supremacist sentiments because a rape causes him to realize the futility of his attempts to control his world. In both *Oz* and *American History X*, the state is complicit in sexual violence—but in both cases, it is that violence that brings about rehabilitation. LaChance reads the representation of the brutality of imprisonment as both destructive and liberating, but does not see the latter as redeeming the former.

*Shawshank Redemption's* main character, Andy Dufrense, is also raped in an act of white-on-white crime. His rape reaffirms his mental fortitude, partly by playing into the prison movie theme of the stoic, suffering white inmate. Only in confessing his coldness to his prison friend, Red, does Andy replace his individualism with a close friendship with Red. Andy learns the value of vulnerability and is freed.

Tobias Beecher in *Oz* is a white middle-class lawyer who quickly becomes prey for the other inmates. Losing control of his life in prison, he comes to realize he lacked control of his life outside prison. LaChance argues that Beecher's relationships with his former white-supremacist abuser, the leader of the prison's Muslim brotherhood, and his lover, Chris Keller, all complicate traditional notions of the liberal self by asserting that fully controlling and determining one's path in the world is ultimately an impossible task. LaChance argues that the series ends in an endorsement of peace, which requires giving up control.

The peace that LaChance argues is endorsed in the closing moments of *Oz* is, however, not a transcendent type. Instead, it is a coming to terms with personal insecurity, vulnerability to others, and unclear

values. Moreover, this peace is racialized. Like Henning, LaChance sees popular culture as offering sympathetic understanding of the role race plays in criminals' antisocial choices. While *The Wire* looks at the problems of inner-city black men and helps its viewers understand how those conditions might precipitate criminality, LaChance's analysis complicates the 1990s narrative of villainous criminals being tucked away for the safety of society. In depicting the ultimately salutary effects of bodily violence on prisoners, the three works he analyzes fuse a desire for rehabilitation with a suspicion of state-administered, disciplinary forms of social control. In the context of the neoliberal politics of the 1990s, LaChance concludes, popular culture critiqued a libertarian cultural fantasy that a democratic state could promote personal wellbeing while simultaneously diminishing its affirmative obligations to the health and welfare of its citizens.

The three chapters in Part III ask about the reception and impact of the images and critiques of the kind discussed in the previous sections. Focusing on the reception of scenes of execution in American film, the first of these chapters begins with a discussion of a single such scene from a turn of the twentieth-century film, *The Execution of Mary Stuart*. This film, barely a minute long, shows an executioner holding the axe with which he will behead Mary and staring directly at the audience. This device of direct address, the authors argue, poses questions about why viewers are watching the violent scene and offers a general template through which to examine scenes in American film.

Austin Sarat and his coauthors then go on to discuss three common motifs in scenes of execution, which structure the viewing experience: first, spectators are often made to share the experience of viewing an execution with an on-screen audience; second, scenes often show the process of execution in minute detail, sometimes even placing the audience in the position of executioner; third, scenes often position the audience in the place of the executed. In regard to each of these motifs, the authors deploy Lacan's concept of "the gaze" to make sense of what it means to watch scenes of execution. This concept helps frame the way in which viewers become invested in film.

This chapter highlights the theatricality often found in film's scenes of execution. These scenes bring the viewer to question his or her relationship to execution: Is it something to be enjoyed like a performance?

This is the same question that is raised by photos from Abu Ghraib, as Amy Adler argues in the next chapter. In both cases, viewers are invited to examine their own feelings of taking sadistic pleasure in another's pain.

Film's unique ability to bring viewers up-close to executions allows the viewer's gaze to become all-encompassing and privileged. Films like *The Mother and the Law*, *Angels with Dirty Faces*, and *I Want to Live!* show, in great detail, the machinery of death. *Dead Man Walking* places the viewer in a notably omniscient position, directly above the scene of execution. Focusing on how films provide viewers with the chance to watch executions closely, the chapter asks whether viewers identify with those who are executed or whether they imagine their own deaths.

Sarat and his coauthors end by suggesting that viewing scenes of execution on film raises questions of responsibility. In watching these scenes, viewers take on not only the role of spectator, but also potentially that of witnesses complicit in their country's use of execution. The chapter closes by arguing that such scenes challenge viewers to come to terms with their role in the system of state killing.

The next chapter by chapter by Amy Adler is also interested in reception. Adler uses Freudian theory to examine the reception of images of torture associated with American handling of Iraqi prisoners at Abu Ghraib. While the Supreme Court has come to insist on a radical distinction between representations of sex, on the one hand, and of violence, on the other, as a matter of Constitutional law, according to Adler, never have the two been more deeply intertwined not just in popular entertainment, but also in certain practices of punishment. Adler adopts the phrase "torture porn" in exploring not only representations of torture and humiliation in popular culture, but also the ways in which popular culture has shaped practices of punishment.

She opens with a discussion of the public reaction to the photos of torture at Abu Ghraib prison and notes that those who wrote about the issue were repeatedly struck by the smiling faces of the torturers. While the torturers' smiles implicated them in a twisted enjoyment of torture, Adler argues that their smiling faces also implicate the viewer. She notes that enjoying the punishment of others is a source of pleasure in both the Abu Ghraib photographs and reality television and points out that much like spectators of a brutal reality show, the torturers seem entertained by

the torture in the photographs. While she adds that entertainment is only one of many explanations contributing to the interest taken in the Abu Ghraib scenes, she seeks to find a common cultural cause of the entertainment value placed on torture both in reality television and at Abu Ghraib by focusing on reality television's move from real-life documenting of criminal behavior to games in which torture techniques like solitary confinement and sleep deprivation play major roles.

In regard to both Abu Ghraib and reality television, Adler argues that viewers come to identify at different moments with both the torture victims and the torturer. Drawing on Sigmund Freud's 1919 essay "A Child Is Being Beaten," Adler conceptualizes the experience of viewing torture as occurring in three distinct stages.

The first is played out when Americans take sadistic pleasure in seeing soldiers torture suspected terrorists in the photos. What we enjoy is seeing a soldier (our father) beating a terrorist (a child we hate). Adler argues that the underlying dynamic in the pictures is also quite familiar to American audiences who watch similar torture scenes on reality television and that as third-party observers, viewers take pleasure in observing a horrible event.

The second stage involves a complex combination of pleasure and shame, such that a picture of a smiling person in a photo not only elicits a smile from the viewer, but also shame for this response to a photo that depicts a gruesome torture scene. Additionally, Adler points out that in simply looking at the prison photographs there may be a sense in which viewers contribute to the torture by further objectifying and humiliating the prisoners. Adler argues that Lynndie England's apparent enjoyment in the Abu Ghraib photos and her smiling face bring audiences to question the pleasure they too may get out of torture.

The final stage involves personal removal from the scene of torture—a process that according to Adler was assisted by media outlets' blurring of the torture photographs. Here viewers leave behind any complicity they might feel in the incident and become simple observers. In this stage viewers deny any enjoyment previously derived from viewing the photos and attribute the actions to a few bad soldiers. Ultimately, through her analysis of the similarities between "torture porn" in popular entertainment and the visual materials produced at Abu Ghraib,

Adler suggests that there is a mutually constitutive relationship between popular culture and punishment.

Our book concludes with a chapter by Brandon L. Garrett, examining the reception of images of justice and punishment and of visual images in trials of the innocent. While Garrett's contribution departs from the previous chapters' focus on television and film, he is interested in the ways popular culture conditions the reception of evidence that appears to demonstrate or act out events visually for the jury. Focusing on criminal trials of people later exonerated by DNA tests, Garrett looks at how a variety of visuals played out in those trials, including photographs and videos of lineups and interrogations; forensic exhibits showing fingerprints or hairs or bite marks; representations of the crime scene, the victim's body, and objects found at the scene; images of weapons and pictures of the defendant. Noting how such visuals are frequently reproduced outside the courtroom and fixated upon as physical proof of who committed a crime and how it was committed, Garrett describes how some of them could become terribly prejudicial and powerful precisely because of their cultural meaning. Popularly held conceptions of lineups, for example, treat eyewitness memory as like a photograph that can be recalled when it is tested—but that widely held view is wrong. Eyewitness memory is dynamic and fragile. Wanted postings and composites distributed in the media may contribute to the perception that we can readily “see” the right person to punish—and today social media may aggravate the problem. Popular conceptions of forensics, criticized as a “CSI-effect” by the very prosecutors who rely on them, may distort the meaning of the forensics that jurors hear about and see—in ways that similarly reinforce uncritical acceptance of our system of punishment. Eyes can deceive and so, of course, can photographs and video—as they did in the wrongful conviction cases discussed by Garrett, who also shows how contaminated features remained out of view until years later, when by happenstance, DNA proved innocence and these images took on a very different meaning entirely.

Garrett notes how important visuals are to the criminal justice system and trials. Use of photos of criminals and crime scenes and of other forensic evidence all cause criminal trials to be irreducible to a simple written transcript. These images affect court outcomes, but have only

recently been studied and are seldom regulated by judges. As a result, prejudicial visual evidence is often admitted in criminal trials, with the source of prejudice derived in part from what jurors learn through popular culture's stories of crime and punishment.

Garrett warns that while such things as videotaping of confessions might improve the quality of evidence gleaned from police procedures, no set of images can produce fixed and certain meaning. Processes of reception are always complex and uncertain, but never more so than when they are shaped by a popular culture in ways that may be impossible for legal actors to fully understand or control.

This warning about the power of images offers an apt template for thinking about the cultural life of punishment and its representations in popular culture. At this time, scholars have only just begun to map that vast terrain. Taken together, the work collected here suggests that this effort may indeed be timely, fruitful, and important.

#### NOTES

1. See Matthew 25:31–46, found at <http://www.unc.edu/~megw/Matthew.html>.
2. George Bernard Shaw, "Capital Punishment," *Atlantic Monthly* (June 1948), found at <http://www.theatlantic.com/past/docs/unbound/flashbks/death/dpenschaw.htm>.
3. *Furman v. Georgia*, 408 U.S. 238, 305 (1972). Justice Brennan concurring.
4. Joel Feinberg, "The Expressive Function of Punishment," 49 *Monist* (1965), 397.
5. The argument developed here is elaborated in Austin Sarat, "Examining Assumptions: An Introduction to Punishment, Imagination, and Possibility," in *The Punitive Imagination: Law, Justice, and Responsibility*, Austin Sarat, ed. (Tuscaloosa: University of Alabama Press, 2014).
6. Beverly Lowry, *Crossed Over: A Murder, a Memoir* (New York: Vintage Books, 2002).
7. Flynn McRoberts, "Jackson Fights Expulsion of Black Decatur Youths," *Chicago Tribune*, November 8, 1999, found at [http://articles.chicagotribune.com/1999-11-08/news/9911080250\\_1\\_zero-tolerance-policies-eisenhower-high-school-decatur-school-board](http://articles.chicagotribune.com/1999-11-08/news/9911080250_1_zero-tolerance-policies-eisenhower-high-school-decatur-school-board).
8. Ben G. Bishin, Donald Stevens, and Charles Wilson, "Character Counts? Honesty and Fairness in Election 2000," 70 *Public Opinion Quarterly* (Summer 2006), 235.
9. Lawrence Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (New Haven, Conn.: Yale University Press, 2005), and Lawrence Douglas, "Ivan the Recumbent or Demanjanjuk in Munich: Enduring the 'Last Great Nazi War-Crimes Trial,'" *Harpers* (March 2012), found at <http://harpers.org/archive/2012/03/ivan-the-recumbent-or-demanjanjuk-in-munich/>.

10. Paul Guerino, Paige M. Harrison, and William J. Sabol, "Prisoners in 2010" (Washington, DC: Bureau of Justice Statistics, December 2011).
11. Adam Liptak, "U.S. Prison Population Dwarfs That of Other Nations," *New York Times*, April 23, 2008, found at <http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all>.
12. See Emile Durkheim, *The Division of Labor in Society*, trans. W. D. Halls (New York: Free Press, 1984 [1893]), and George Herbert Mead, "The Psychology of Punitive Justice," 23 *American Journal of Sociology* (1918), 577.
13. This argument is developed in Austin Sarat and Christian Boulanger, "Putting Culture into the Picture: Toward a Comparative Analysis of State Killing," in Austin Sarat and Christian Boulanger, eds., *The Cultural Lives of Capital Punishment: Comparative Perspectives* (Stanford, CA: Stanford University Press, 2005).
14. David Garland, *Punishment and Modern Society: A Study in Social Theory* (Oxford, UK: Clarendon Press, 1990).
15. *Ibid.*, 17.
16. David Garland, "Punishment and Culture: The Symbolic Dimensions of Criminal Justice," 11 *Studies in Law, Politics, and Society* (1991), 191.
17. Garland, *Punishment and Modern Society: A Study in Social Theory*, 248.
18. *Ibid.*, 252.
19. Garland, "Punishment and Culture: The Symbolic Dimensions of Criminal Justice," 210.
20. Nicole Rafter, *Shots in the Mirror: Crime Films and Society* (New York: Oxford University Press, 2000).
21. Michelle Brown, *The Culture of Punishment: Prison, Society, and Spectacle* (New York: New York University Press, 2009).
22. Alison Young, *The Scene of Violence: Cinema, Crime, Affect* (London: Routledge-Cavendish, 2009).
23. Richard Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago: University of Chicago Press, 2002).
24. See Jessica M. Silbey, "Images in/of Law," 57 *New York Law School Law Review* (2012), 171.
25. See Austin Sarat, ed., *Imagining Legality: Where Law Meets Popular Culture* (Tuscaloosa: University of Alabama Press, 2011).
26. This argument is developed in Austin Sarat, "Imagining the Law of the Father: Loss, Dread, and Mourning in *The Sweet Hereafter*," 34 *Law & Society Review* (2000), 3, and in Austin Sarat, "What Popular Culture Does for, and to, Law: An Introduction," in *Imagining Legality*.
27. Sherwin, *When Law Goes Pop*, 4–5.
28. Carol Clover, "Law and the Order of Popular Culture," in Austin Sarat and Thomas Kearns, eds., *Law in the Domains of Culture* (Ann Arbor: University of Michigan Press, 1998), 99.
29. *Ibid.*, 99–100.

30. David Black, *Law in Film: Resonance and Representation* (Urbana: University of Illinois Press, 1999).

31. *Ibid.*, 2.

32. *Ibid.*

33. *Ibid.*, 36.

34. *Ibid.*, 34.

35. Richard Sherwin, "Picturing Justice: Images of Law and Lawyers in the Visual Media," 30 *University of San Francisco Law Review* (1996), 894, 896.

36. Anthony Chase, *Movies on Trial: The Legal System on the Silver Screen* (New York: The New Press, 2002), 181.

37. The summaries that follow draw, in part, on abstracts provided by the chapter authors.