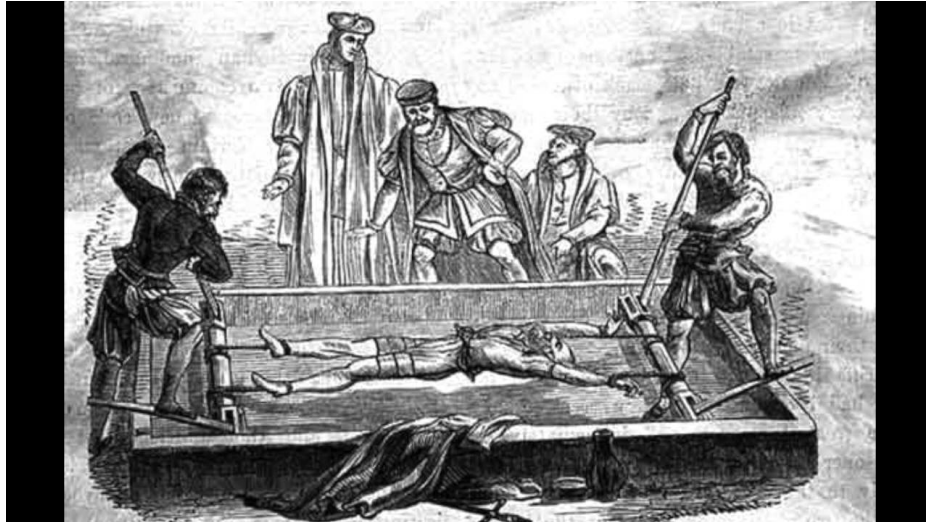


University of Wisconsin - Madison
History/Legal Studies 426: History of Punishment
Mosse Humanities 1217
MWF: 11am-11:50am



Dr. Charlotte Whatley

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Office location: Mosse Humanities 5269

Office hours: Wednesday 1pm – 3pm

At various times in medieval England, it was both legal and illegal to murder another person, depending on the circumstances of the killing. Punishment for assault or theft could mean the loss of a hand, or the loss of one's life. Medieval and Early Modern legal practices often look quite foreign at first glance; to those societies, however, they made perfect sense – at least most of the time. This class seeks to reorient the study of crime away from the margins, and instead center law and criminality at the core of making and unmaking of society. We will explore the origins and development of punishment. What was accepted? What was condemned? What were the processes by which a convicted criminal experienced punishment? We will explore medieval and early modern understandings of emotion and defense, as well as the complex relationship that people living in a variety of places and times had with ideas like justice, mercy, and legality. As we move through the course, we will build on this knowledge to help us understand the complexities driving of modern conversations regarding punishment and its role in modern society, with particular emphasis on the secular need for retribution and the spiritual desire for reflection and rehabilitation.

For legal studies students, this course will help to historicize and contextualize legal procedures and their development. For students of history, this course will build your knowledge of why it matters to appreciate how law works in history: meanings that can be derived from close readings of legal texts, uses of and methods for legal sources, and ways of thinking about law and legal traditions and their role in making history. By the end of this course, students will have gained a foundational knowledge of the development of punishment in western society. As a class group,

we will engage in lively discussion to strengthen speaking skills and increase students' confidence as historians, while encouraging active listening. Both together and individually, we will be reading and analyzing primary documents and secondary texts to improve analytical skills. Most of all, however, we will be working to expand students' capacity for critical thinking, encourage students to question what they read, and teach them the skills to begin to discover their own answers.

Course Outcomes

In this course students will:

- Cultivate an understanding of the history of punishment, and the crimes that incurred them, in the pre-modern world and how such punishments have developed over time;
- Investigate the intended and unintended consequences such developments had on the societies in which they occurred;
- Develop their ability to critically analyze secondary and primary source materials, including identifying the purposes, limitations, authorities, and biases of given sources;
- Expand their capacity for critical thinking and for developing historical and ethical questions based on their engagement with historical sources;
- Build on their skills as historians by using these sources to craft original, evidence-based historical arguments;
- Communicate effectively these arguments both orally and in writing.

Credit Hours

This class meets for three, 50-minute class periods each week over the fall/spring semester and carries the expectation that students will work on course learning activities (reading, writing, problem sets, studying, etc) for about 2 hours out of the classroom for every class period. The syllabus includes additional information about meeting times and expectations for student work.

Requisites: Sophomore Standing

Course Designation:

Breadth – Humanities

Level – Intermediate

L&S Credit – Counts as Liberal Arts and Science Credit in L&S

Grad 50% -- Counts toward 50% graduate coursework requirement

Repeatable for Credit: No

Books

There are no books to buy for this class. All reading assignments will be provided for you in the form of PDF files on the UW Canvas Course page.

Assignments

Your grade will be based on a combination of factors, including attendance, a secondary source response paper, a primary source analysis, and two exams. Secondary source articles should be read by the Monday of the week they are assigned, while primary source documents should be

read before the Friday of the assigned week in preparation for discussion. **Assignments are due by the due date; late work is subject to a penalty of 3 pts per day from the due date unless the student has made other arrangements with the professor. If you are in need of an extension on an assignment, please get in touch at least 24 hours prior to the due date.**

Please see the percentage breakdown and assignment explanations below.

- I. Attendance and Participation: **30%**
- II. Midterm: **25%**
- III. Primary Source Analysis: **10%**
- IV. Secondary Source Analysis **10%**
- V. Final Exam: **25%**

Attendance and participation: 30%

You are expected to attend lectures, however you will receive two free absences – no questions asked. If you are ill or have an emergency that might go outside of the two free absences, please get in touch with me. You are also expected to be respectful to those around you, which means that you should not be on your phones, and if you are using tablets or laptops, you should be using them only for notetaking. Please note that participation in class will be an important part of your grade as well. Friday class sessions will be reserved for discussion of the readings, particularly any primary source documents for the week. You will be expected to come to class having read the readings; each week there will be directed questions posted for you to consider for discussion, but please also be prepared to discuss the readings broadly in the context of the lectures as well.

Primary Source Analysis (750 words): 10%

In this assignment, you will choose one of the groups of primary source documents listed on Canvas to analyze. When examining the documents, think about these major questions: Who wrote this document, and why? What was their intended goal? What can this document tell us about its creator? What can it tell us about the period in which it was written? Should we take this document at face-value? Why or why not? How can we use this document to think about history? The goal of this assignment is to help you begin to think critically about source materials. Once it has been completed, you will have sharpened your skills in analysis and interpretation and will begin to understand a key aspect of historical research: learning how to evaluate sources.

Secondary Source Review (750 words): 10%

In the secondary source review, you will choose one of the articles listed below, read it in its entirety, evaluate it, and write a 750-word (~3 pages) article analysis. The review should consist of a brief summary of the author's thesis and argument, examine the author's sources and how they used them, and finally evaluate, based on your examination, whether you believe the claim that the author is making. Be sure to use specific examples from the text to back up your arguments. This assignment is meant to encourage you to begin to critically analyze secondary source materials. This has many uses, from building arguments to developing research questions. More importantly, as with your primary source analysis, it will deepen your abilities to question arguments, not because you disagree with them, but on the basis of the research and documentation on which they are built.

Midterm exam: 25%

The mid-term will consist of six short-answer identification questions (from which you will choose three to complete) along with a long form essay question.

Final exam: 25%

The final exam will be a cumulative exam consisting of eight short-answer identification questions (from which you will choose five to complete), as well as an essay question.

Grading scale: A 94-100 AB 88-93 B 84-87 BC 78-83 C 70-77 D 60-69 F 0-59

Academic Integrity and Plagiarism

The University of Wisconsin takes plagiarism and academic honesty very seriously and has outlined specific expectations and policies regarding student integrity and academic misconduct. You should be familiar with these policies and be aware that they will be enforced. When writing your papers for the course, please be particularly careful not to present original ideas you find in books or on the web as your own. Cutting and pasting texts verbatim from other sources is unacceptable, as is misattribution, unattributed paraphrasing, or the appropriation of ideas without attribution. If you are not familiar with the University policies, please see:

<http://students.wisc.edu/saja/pdf/UWS14.pdf>

Reading Schedule**1/22: What is Punishment?**Readings:

Chaucer, Geoffrey. "The Wife of Bath's Tale." In *The Canterbury Tales*. Translated by Nevill Coghill. New York: Penguin, 2003.

1/27: Realities of Punishment in AntiquityReadings:

Allen, Danielle S., *The World of Prometheus: The Politics of Punishing in Democratic Athens*. Princeton: Princeton University Press, 2002; 197-242.

Geltner, Guy. "Punishing Bodies." In *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present*, 29-47. Amsterdam: Amsterdam University Press, 2014.

Aeschylus. *Prometheus Bound*. Oxford: Oxford University Press, 1975.

2/3: The Turn to Christian DisciplineReadings:

Shoemaker, Karl. "Authority, Intercession, and Penance." In *Sanctuary and Crime in the Middle Ages, 400-1500*. New York: Fordham University Press, 2011; 9-28.

Geltner, Guy. "Punishing Bodies." In *Flogging Others: Corporal Punishment and Cultural Identity from Antiquity to the Present*, 47-62. Amsterdam: Amsterdam University Press, 2014.

Thorpe, Lewis, trans. *Gregory of Tours: The History of the Franks* New York: Penguin Books, 1974; 428-430, 500-503.

2/10: Blood feud in Medieval Northern Europe

Readings:

Hyams, Paul R. "Understanding Feud and Friendship." In *Rancor and Reconciliation in Medieval England*. Ithaca: Cornell University Press, 2003.

Miller, William Ian. *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland*. Chicago: University of Chicago Press, 1990; 259-300.

Njal's Saga 35-45, 132-145

2/17: Punishment in the Church: Excommunication, Anathema, and Interdict

Readings:

Little, Lester K. *Benedictine Maledictions: Liturgical Cursing in Romanesque France*. Ithaca: Cornell, 1993. 17-51.

Vodola, Elisabeth. *Excommunication in the Middle Ages*. Berkeley: University of California Press, 1986; 44-69.

The Unjust Excommunication Cases of Frieselle and Abel (English Plea Rolls)

2/24: Sanctuary and other Post-Crime actions

Readings:

Shoemaker, Karl. "Sanctuary in the Century After the Norman Conquest." In *Sanctuary and Crime in the Middle Ages, 400-1500*. New York: Fordham University Press, 2011; 95-111.

Hurnard, Naomi D. "Procedure." In *The King's Pardon for Homicide Before A.D.1307*. Oxford: Clarendon Press, 1997; 31-67.

Tyssington Legal Documents

Primary Source Analysis Due Friday 10/11

3/3: Outlaws and Outlawry

Readings:

Sartore, Melissa. *Outlawry, Governance, and Law in Medieval England*. (UW-Madison, PhD 2010), 152-199.

Spraggs, Gillian. *Outlaws & Highwaymen: The Cult of the Robber in England from the Middle Ages to the Nineteenth Century*. London: Pimlico, 2001. 24-36, 147-198.

Bulwer-Lytton, Edward. *Paul Clifford*

3/10: Judicial Torture

Readings:

Geary, Patrick. "Judicial Violence and Torture in the Carolingian Empire." In *Law and the Illicit in Medieval Europe*, edited by Ruth Mazo Karras, Joel Kaye, and Anne E. Matter, 79-88. Philadelphia: University of Pennsylvania Press, 2008.

Hanson, Elizabeth. "Torture and Truth in Renaissance England." *Representations*, no. 34 (1991): 53-84.

Midterm Exam (in class) Friday 3/14

3/17: Mitigating Punishment in the Criminal Trial

Readings:

Kamali, Elizabeth Papp. "The Devil's Daughter of Hell Fire: Anger's Role in Medieval English Felony Cases." *Law and History Review* 35, no. 1 (2017): 155-200.

Davis, Natalie Zemon. *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth Century France*. Stanford: Stanford University Press, 1987. 77-114.

Case documents from Gaol Delivery Rolls/Kings Bench

SPRING BREAK 3/22-3/30

3/31: Tolerable and Intolerable Criminality

Readings:

Herrup, Cynthia B. *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England*. 1-11, 165-206.

Hay, C. Douglas. "Property, Authority, and the Criminal Law." In *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England [Revised Edition]*. Edited by Hay, C. Douglas, Peter Linebaugh, John G. Rule, E. P. Thompson, and Cal Winslow, 17-64. New York: Random House, 1975.

English Crime and Execution Broadside (18th and 19th century newspapers)

4/7: Imprisonment in Early Modern Europe

Readings:

Spierenberg, Pieter. "The Body and the State: Early Modern Europe." In *The Oxford History of the Prison*. Oxford: Oxford University Press, 1995. 50-77.

Grover, Kelly. *The Gaol: The Story of Newgate – London's Most Notorious Prison*. London: John Murray Publishers, 2008. 3-43.

Wilde, Oscar. *The Ballad of Reading Gaol*.

Secondary Source Analysis Due Friday 4/11

4/14: Transportation

Readings:

Morgan, Kenneth. "English and American Attitudes Towards Convict Transportation, 1718-1775." *History* 72, no. 236 (1987): 416-431.

Shore, Heather. "Transportation, Penal Ideology, and the Experience of Juvenile Offenders in England and Australia in the Early Nineteenth Century." *Crime, Histoire & Sociétés* 6, no. 2 (2002): 81-102.

Digital Panopticon Project on Transportation

4/21: Penitentiaries

Readings:

Rothman, David J. "Perfecting the Prison: United States, 1789-1865." In *The Oxford History of the Prison*. Edited by Norval Morris and David J. Rothman, 100-116. Oxford: Oxford University Press, 1995.

Foucault, Michel. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books, 1995. 135-309.

4/28: Death Penalty

Readings:

Shoemaker, Karl. "The Medieval Origins of the Supreme Court's Prohibition on Executing the Insane." In *Who Deserves to Die?: Constructing the Executable Subject*, eds. Austin Sarat and Karl Shoemaker, 23-39. Amherst: University of Massachusetts Press, 2011.

Meyer, Linda. "The Meaning of Death: Last Words, Last Meals." In *Who Deserves to Die?: Constructing the Executable Subject*, eds. Austin Sarat and Karl Shoemaker, 176-209. Amherst: University of Massachusetts Press, 2011.

Final Exam will take place during the last class meeting, 5/2