

# Notes

## *Introduction*

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

2. Max Weber, “Politics as a Vocation,” in *From Max Weber* (New York: Taylor and Francis, 1948).

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

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

5. Aristotle, *Nicomachean Ethics*, trans. Martin Oswald (Indianapolis: Bobbs-Merrill, 1962), 121.

6. G. F. W. Hegel, *Philosophy of Right*, trans. T. M. Knox (Oxford: Oxford University Press, 1952), 141.

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

8. Hegel, 70.

9. Philippe Nonet, “Sanction,” *Cumberland Law Review* 25 (1995).

10. *Coppedge v. United States*, 369 U.S. 438.

11. *McCleskey v. Kemp*, 107 S. Ct. 1756 (1987).

## Chapter 1

1. Judith Shklar, "The Political Theory of Utopia: From Melancholy to Nostalgia," in *Political Thought and Political Thinkers*, ed. Stanley Hoffman, 164, 165 (Chicago: University of Chicago Press, 1998).
2. Corey Robin, *Fear: The History of a Political Idea* (Oxford: Oxford University Press, 2004), 104.
3. George Kateb, "The Adequacy of the Canon," *Political Theory* 30, no. 4 (2002): 495.
4. I write about this issue extensively in *Collective Dreams: Political Imagination and Community* (University Park: Pennsylvania State University Press, 2005). See especially chap. 1, "The Politics of Imagination," and chap. 6, "Social Imagineering: Utopian Vision as Commodity Fetish."
5. Thomas More, *Utopia*, trans. Clarence H. Miller (New Haven: Yale University Press, 2001), 15.
6. Quentin Skinner, *The Foundation of Modern Political Thought* (Cambridge: Cambridge University Press, 1978), 218.
7. More, 19.
8. More, 25.
9. George M. Logan, *The Meaning of More's "Utopia"* (Princeton: Princeton University Press, 1983); "The Argument of Utopia," in *Interpreting Thomas More's "Utopia,"* ed. John C. Olin (New York: Fordham University Press, 1989).
10. More, 95-96.
11. More, 100.
12. Shlomo Avineri, "War and Slavery in More's *Utopia*," *International Journal of Social History* 7 (1962): 288.
13. More, 44.
14. H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Oxford University Press, 1968), 23.
15. See Logan 1989, Skinner 1978, and Avineri 1962.
16. Gustav Janouch, *Conversations with Kafka*, trans. Goronwy Rees (New York: Praeger, 1953), 35.
17. Jane Bennett, "Kafka, Genealogy, and the Spiritualization of Politics," *Journal of Politics* 56, no. 3 (August 1994): 653.
18. Franz Kafka, "In the Penal Colony," *The Complete Stories* (New York: Schocken, 1971), 150. Quotations for this work are cited in the text.
19. Peter Neumeyer, "Franz Kafka, Sugar Baron," *Modern Fiction Studies* 17, no. 1 (Spring 1971): 11.
20. Walter Benjamin, *Illuminations*, ed. Hannah Arendt (New York: Harcourt Brace Jovanovich, 1969).
21. Arnold Weinstein, "Kafka's Writing Machine: Metamorphosis in the

Penal Colony," in *Critical Essays on Franz Kafka*, ed. Ruth V. Gross, 120–49 at 124 (Boston: G. K. Hall, 1990).

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

23. Sander Gilman, *Franz Kafka* (London: Reaktion Books, 2005).

24. Wilhelm Emrich, *Franz Kafka: A Critical Study of His Writings*, trans. Sheema Zeben Buehne (New York: Frederick Ungar, 1968).

25. Paul Peters, "Witness to the Execution: Kafka and Colonialism," *Monatshefte* 93, no. 4 (2001): 403.

26. Evelyn Torton Beck, *Kafka and the Yiddish Theater* (Madison: University of Wisconsin Press, 1971), and Erwin R. Steinberg, "The Judgment in Kafka's 'In the Penal Colony,'" *Journal of Modern Literature* 5, no. 3 (1976), see Jewish themes, and in Steinberg's case, formal failings, in the story. Martin Greenberg, *The Terror of Art: Kafka and Modern Literature* (New York: Basic Books, 1968) and Heinz Politzer, *Franz Kafka: Parable and Paradox* (Ithaca: Cornell University Press, 1966) see more Christian symbolism in the text.

27. Margaret Kohn, "Kafka's Critique of Colonialism," *Theory and Event* 8, no. 3 (2005); Karen Piper, "The Language of the Machine: A Postcolonial Reading of Kafka," *Journal of the Kafka Society of America* 20, no. 1–2 (1996): 42–54; Peters, "Witness to the Execution."

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

29. Stephen A. Toth, "Colonisation or Incarceration?" *Journal of Pacific History* 34, no. 1 (June 1999).

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

31. On January 26, 2006, Joshua Marquis, vice president of the National District Attorneys Association, published an editorial in the *New York Times* calculating a success rate of accurate convictions in the U.S. justice system at 99.973 percent. He comments, “Most industries would like to claim such a record of efficiency.”

### Chapter 2

1. Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Walter Kaufman and R. J. Hollingdale (New York: Vintage, 1989), 67.

2. Thomas Hobbes, *Leviathan*, ed. Richard Tuck (Cambridge: Cambridge University Press, 1996), 93.

3. *The Book of Job*, trans. Stephen Mitchell (New York: Harper Perennial, 1992). Quotations for this work are cited in the text.

4. This reading is informed by Stephen Mitchell’s excellent introduction to his translation.

5. See Aloysius Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (New York: Cambridge University Press, 1992); A. E. Taylor, “The Ethical Doctrine of Hobbes,” in *Hobbes; Studies, by Leo Strauss [and others]*, ed. K. Brown (Cambridge: Harvard University Press, 1965); and Howard Warrender, *The Political Philosophy of Hobbes: His Theory of Obligation* (Oxford: Oxford University Press, 1957).

6. Arguments for Hobbes’s nonbelief can be found in Quentin Skinner, *The Foundation of Modern Political Thought* (Cambridge: Cambridge University Press, 1978); Paul D. Cooke, *Hobbes and Christianity: Reassessing the Bible in Leviathan* (Lanham: Rowman and Littlefield, 1996), and his article “An Antidote to the Current Fashion of Regarding Hobbes as a Sincere Theist” in *Piety and Humanity*, ed. D. Kries, 79–108 (Lanham: Rowman and Littlefield, 1997), and also in Greg Forster, “Divine Law and Human Law in Hobbes’s *Leviathan*,” *History of Political Thought* 24:2003.

7. Deborah Baumgold, *Hobbes’s Political Theory* (Cambridge: Cambridge University Press, 1988), 120.

8. W. H. Greenleaf, “A Note on Hobbes and the Book of Job,” *Anales de la Catedra Francisco Suarez* 14 (1974): 11–34 at 14.

9. Greenleaf, “A Note on Hobbes,” 33–34.

10. R. J. Halliday, Timothy Kenyon, and Andrew Reeve, “Hobbes’s Belief in God,” *Political Studies* 31 (1983): 433.

11. Michael Oakeshott, Introduction, *Leviathan* (Oxford: Basil Blackwell, 1946), xx.

12. Hobbes, *Leviathan*, 76. Additional citations to this work are given in the text.

13. Mitchell, *Book of Job*, 14.

14. Richard Tuck, *Philosophy and Government, 1572–1651* (Cambridge: Cambridge University Press, 1993), 279–314.
15. Tuck, *Philosophy and Government*, 286.
16. See D. S. T. Clark, *Vanities of the Eye: Vision in European Cultural Debate, 1425–1680* (Oxford: Oxford University Press, 2007).
17. Albert Camus, *The Myth of Sisyphus and Other Essays* (New York: Random House, 1955), 89–90.
18. Camus, *Myth of Sisyphus*, 91.

### Chapter 3

1. Giorgio Agamben looks at sovereignty and the growth of power in *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford: Stanford University Press, 1998), and at the state of emergency and sovereignty in contemporary politics in *State of Exception*, trans. Kevin Attell (Chicago: University of Chicago Press, 2005). Michael Hardt and Antonio Negri examine the evolution of sovereignty in *Empire* (Cambridge: Cambridge University Press, 2000). Michel Foucault's recently translated and published lectures, "*Society Must Be Defended*": *Lectures at the Collège de France, 1975–1976*, trans. David Macey, ed. Mauro Bertani and Alessandro Fontana (New York: Picador Press, 2003), also contain an extended discussion of political sovereignty, though his earlier published work "Governmentality" in *The Foucault Effect: Studies in Governmentality*, ed. Graham Burchell, Colin Gordon, and Peter Miller (London: Harvester Wheatsheaf, 1991) and *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1977) also examine the topic. There has also been a renewed interest in the work of Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, trans. George Schwab (Cambridge: MIT Press, 1985), and Walter Benjamin's "Critique of Violence," in *Reflections: Essays, Aphorisms, and Autobiographical Writings*, ed. Peter Demetz and trans. Edmund Jephcott (New York: Schocken, 1978), both of which were key texts in earlier debates about the character of sovereignty and law.

2. Hardt and Negri, 84.
3. Plowden, 212a, 1816, cited in Ernst H. Kantorowicz's *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton: Princeton University Press, 1957), 7.
4. Foucault, "Governmentality," 95.
5. John Austin, *Province of Jurisprudence Determined* (New York: Humanities Press, 1965), 301.
6. Austin, 194.
7. Charles Merriam, *History of the Theory of Sovereignty since Rousseau* (New York: Garland, 1972), 149.

8. Foucault, "Governmentality," 91.
9. R. W. K. Hinton, "Bodin and the Retreat into Legalism," *Proceedings of the International Conference on Bodin in München*, ed. Horst Denzer, 310 (Munich: C. H. Beck, 1973).
10. Bodin, *On Sovereignty*, ed. and trans. Julian Franklin, 23 (Cambridge: Cambridge University Press, 1992).
11. Foucault, "Society Must Be Defended," 37.
12. Foucault, "Society Must Be Defended," 17.
13. Schmitt, 36.
14. Schmitt, 12.
15. Schmitt, 13.
16. Foucault, *Discipline and Punish*, 48.
17. Foucault, "Governmentality," 103.
18. See Robert Gordon, "Popular Justice," in *Companion to the Anthropology of Politics*, ed. D. Nugent and J. Vincent (Malden: Blackwells, 2004), and Jean Comaroff and John Comaroff, "Criminal Obsessions, After Foucault: Postcoloniality, Policing, and the Metaphysics of Disorder" *Critical Inquiry* 30, no. 4 (2004): 800–825.
19. Albert Camus, *The Myth of Sisyphus and Other Essays* (New York: Random House, 1955), 175.
20. Henry David Thoreau, "Civil Disobedience," in *Political Thought in the United States: A Documentary History*, ed. Lynn Tower Sargent, 214 (New York: New York University Press, 1997).

#### Chapter 4

1. *Roper v. Simmons*, 543 U.S. 551 (2005).
2. The Society for Political Enquiries could be considered the first American Political Science Association. The members met at Benjamin Franklin's house to discuss the science of law, government, and the connection between political institutions and public morality. Members could write papers, submit them to the president and vice president for approval, and then present them for discussion at meetings. Thomas Paine wrote the charter from which the preceding passage is taken. The society is still intact today. Early documents are housed at the American Philosophical Society, Philadelphia.
3. George Rusche and Otto Kirschheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939).
4. William Bradford, "An Inquiry How Far the Punishment of Death Is Necessary in Pennsylvania," *American Philosophical Society Archives*, 1793, 5.
5. Thomas Jefferson, *The Life and Selected Writings of Thomas Jefferson*, ed. Adrienne Koch and William Peden, 488, 491 (New York: Random House, 1944).
6. Rusche and Kirschheimer, 55.

7. Rusche and Kirschheimer, 53.
8. A. E. Smith, *Colonists in Bondage: White Servitude and Convict Labour in America, 1607–1776* (Baltimore: Clearfield, 2000).
9. Transportation Act 1717. *Statutes at Large, from Magna Charta to 1761*, vol. 5, carefully collated and revised by Danby Pickering (Cambridge, 1762).
10. Different crimes were given different categorizations according to religious doctrine, an element of the criminal law remaining from the Middle Ages.
11. Roger A. Ekrich, *Bound for America: The Transportation of British Convicts to the Colonies, 1718–1775* (Oxford: Clarendon, 1987).
12. Smith, *Colonists in Bondage*.
13. Benjamin Balak and Jonathan M. Lave, “The Dismal Science of Punishment: The Legal-Economy of Convict Transportation to the American Colonies,” manuscript, 2002.
14. Balak and Lave, “Dismal Science.”
15. Jeremy Bentham, “A Comparative View of the System of Penal Colonization in New South Wales and the Home Penitentiary System,” pamphlet presented to the Lord Chancellor (American Philosophical Library, 1802); and Balak and Lave, “Dismal Science.”
16. Smith, *Colonists in Bondage*.
17. Lord Beauchamp, “Recommendations for the Disposal of Convicts,” *Commons Journal* 40:1161–64.
18. According to one national, Rob Gordon, transport never happened to Namibia because “water was even scarcer than gin.”
19. “Pitt Government’s Plan for Botany Bay Settlement” 1786.
20. Bentham 1802, 38.
21. Bentham 1802, 6.
22. The pamphlet is in the archives of the American Philosophical Society, with the handwritten message “To Caleb Lownes—From Jeremy Bentham.”
23. Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge: Harvard University Press, 1967).
24. James Heath, *Eighteenth Century Penal Theory* (Oxford: Oxford University Press, 1963).
25. Cesare Beccaria, *On Crimes and Punishments and Other Writings*, ed. Richard Bellamy and trans. Richard Davies (Cambridge: Cambridge University Press, 1995), 70–71.
26. See the introductory essay by Richard Bellamy in Beccaria, *On Crimes and Punishments*, and Adolph Caso, *America’s Italian Founding Fathers* (Boston: Brandon Press, 1975).
27. Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1977), 110.
28. Beccaria, 68.

29. Beccaria, 87.
30. Beccaria, 69.
31. Negley Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1793–1835* (Pennsylvania Prison Society, 1955), and Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760–1835* (Chapel Hill: University of North Carolina Press, 1996) have published the most complete historical studies of the Walnut Street Jail.
32. Teeters, 21.
33. Today this is Washington Square Park, a lovely spot in the middle of the historical tourist destinations of colonial Philadelphia.
34. Bradford, 20.
35. Pennsylvania Constitution of 1776.
36. Teeters, 27.
37. Rush, “An Inquiry into the Effects of Public Punishments Upon Criminals and Society.” Delivered at the Society for Political Enquiries, 1787, American Philosophical Society Library, 14.
38. Robert J. Turnbull, “A Visit to the Philadelphia Prison” (Philadelphia: Budd and Betram, 1796), 50.
39. Turnbull, 48.
40. Turnbull, 58–59.
41. Reprinted in Teeters.

### Chapter 5

1. Bruce Western, *Punishment and Inequality in America*, chap. 1 (New York: Russell Sage Foundation, 2006).
2. Western, *Punishment and Inequality in America*, Marie Gottschalk, *The Prison and the Gallows* (Cambridge: Cambridge University Press, 2006), David Garland, and Loic Wocquant are just a few of the researchers who make comprehensive arguments about the source of the incarceration boom.
3. See Herbert Morris, “Persons and Punishment,” in *Monist* 52, no. 4 (1968): 475–501, for the classic articulation of this argument.
4. C. S. Nino, “A Consensual Theory of Punishment,” *Philosophy and Public Affairs* 12 (1983): 289–306. Critics of this argument include T. Honderich, *Punishment: The Supposed Justifications* (New York: Penguin, 1988), and L. Alexander, “Consent, Punishment, and Proportionality,” *Philosophy and Public Affairs* 15 (1986): 178–82.
5. See W. D. Ross, *The Right and the Good* (Oxford: Clarendon, 1965), 56–64.
6. Two excellent sources that reflect more recent debates about the philosophical justifications of punishment in a liberal framework are R. A. Duff and David Garland, Introduction, in *A Reader on Punishment* (Oxford: Oxford University Press, 1994), and a collection edited by Matt Matravers, *Punishment and Political Theory* (Oxford: Hart, 1999).



7. Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988); Jennifer Pitts, *The Turn to Empire* (Princeton: Princeton University Press, 2005); and Uday Singh Mehta, *Liberalism and Empire: A Study in Nineteenth Century British Liberal Thought* (Chicago: University of Chicago Press, 1999).
8. John Locke, *An Essay Concerning Human Understanding* (New York: Dover, 1959), 467.
9. Locke, *Essay*, 459.
10. Locke, *Essay*, 463n2.
11. Locke, *Essay*, 461.
12. H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Oxford University Press, 1968), 46.
13. Hugo Grotius, *De Jure Belli ac Pacis*, trans. Francis W. Kelsey (Oxford: Clarendon, 1925), 465.
14. Locke, *Essay*, 474.
15. Locke, *Two Treatises of Government*, ed. Peter Laslett, 271 (Cambridge: Cambridge University Press, 1988).
16. Locke, *Two Treatises*, 272.
17. Hugo Grotius, *De Jure Praedae Commentarius*, trans. G. L. Williams and Walter Zeydel (Oxford: Clarendon, 1950), 91–92.
18. Locke, *Two Treatises*, 273.
19. Grotius, *De Jure Belli*, 468–69.
20. Locke, *Two Treatises*, 272.
21. Locke, “A Second Letter Concerning Toleration” from *The Works of John Locke in Nine Volumes*, vol. 5, 100. 12th ed. (London: Rivington, 1824).
22. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).
23. Grotius, *De Jure Praedae Commentarius*, 94.
24. Locke, *Second Treatise*, 401.
25. Locke, *Second Treatise*, 400.
26. See Roger Berkowitz, ed., “Revenge and Justice,” *Journal of Law, Culture, and Humanities* 1, no. 3 (2005), and Jennifer L. Culbert, “The Sacred Name of Pain: The Role of Victim Impact Evidence in Death Penalty Sentencing Decisions,” in *Pain, Death, and the Law*, ed. Austin Sarat (Ann Arbor: University of Michigan Press, 2001), for examples of this argument. Others argue that victims’ rights groups have succeeded in reintroducing the principle of revenge into American courts. Certainly forms of community justice would be vulnerable to the impulse for revenge, though evidence is mixed as to whether this actually occurs.
27. Locke, *Second Treatise*, 415.
28. Jeremy Bentham, *A Fragment on Government*, ed. J. H. Burns and H. L. A. Hart (Cambridge: Cambridge University Press, 1988), 52.
29. Wilfred Harrison; “Introduction,” in Jeremy Bentham, *A Fragment on Government and An Introduction to the Principles of Morals and Legislation*, ed. Wilfred Harrison (Oxford: B. Blackwell, 1967), xvii.

30. Bentham, *Fragment*, 52.
31. Bentham, *Fragment*, 108, emphasis in original.
32. Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J. H. Burns and H. L. A. Hart, 11 (Oxford: Clarendon, 1996).
33. H. L. A. Hart, *Essays on Bentham: Jurisprudence and Political Theory* (Oxford: Oxford University Press, 1982), and Philip Schofield, "Political and Religious Radicalism in the Thought of Jeremy Bentham," *History of Political Thought* 20, no. 2 (1000): 272–91.
34. Jeremy Bentham, "Fragment on Ontology," *The Works of Jeremy Bentham*, ed. John Bowring, vol. 8, 197 (Edinburgh: William Tait, 1843).
35. Bentham, "Ontology."
36. Bentham, "Ontology," 210–11.
37. Bentham, "Ontology," 206.
38. Bentham, *Fragment*, 11.
39. David Garland, *The Culture of Control* (Chicago: University of Chicago Press, 2001). See especially chapter 8.
40. Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge: Cambridge University Press, 2006). See her introduction and chapters 5, 6, and 7 for her new analysis of the role of interest groups in recent mass incarceration in the United States.

### Chapter 6

1. John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988).
2. Nancy Hirschmann, "Liberal Conservatism, Once and Again," *Constellations* 9, no. 3 (2002): 340.
3. Locke, *Two Treatises*, 322–23.
4. Judith Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1991).
5. Alice Kessler-Harris, *In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in Twentieth Century America* (Oxford: Oxford University Press, 2001), 4.
6. Kessler-Harris, *In Pursuit of Equity*, 4.
7. See Nancy Fraser and Linda Gordon, "'A Genealogy of 'Dependency': Tracing a Keyword of the U.S. Welfare State," in Nancy Fraser, *Justice Interruptus* (New York: Routledge, 1997); Gwendolyn Mink, *Welfare's End* (Ithaca: Cornell University Press, 1998); and Frank Munger, "Dependency by Law: Welfare and Identity in the Lives of Poor Women," in *Lives in the Law*, ed. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Ann Arbor: University of Michigan Press, 2002), 83–121. Debates about immigration in 2006 suggest that we may be entering a new era, when work and citizenship are not tied together.

8. Jonathan Simon and Malcolm Feeley, “True Crime: The New Penology and the Public Discourse on Crime,” in *Punishment and Social Control*, ed. T. Blomberg and S. Cohen (New York: Aldine de Gruyter, 1995), 150.

9. David Garland, *The Culture of Control* (Chicago: University of Chicago Press, 2001), 47.

10. *Ruffin v. The Commonwealth*, 62 Va. 1024. Nov. 1871.

11. Joan Dayan, “Held in the Body of the State,” in *History, Memory, and the Law*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1999).

12. See Christopher Uggen and Jeff Manza, “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States,” *American Sociological Review* 67 (2002): 777–803. They present the different franchise restrictions currently in place and speculate how re-enfranchisement could change electoral politics.

13. Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996).

14. Stanley Engerman, “The Economic Response to Emancipation and Some Economic Aspects of the Meaning of Freedom,” in *The Meaning of Freedom*, ed. F. McGlynn (Pittsburgh: University of Pittsburgh Press, 1992), 49–68.

15. Lichtenstein, 13.

16. Lichtenstein, 30.

17. Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party* (New York: Oxford University Press, 1970), 46.

18. Morgan Reynolds, “The Economic Impact of Prison Labor,” National Center for Policy Analysis, 1997; Christian Parenti, “Making Prison Pay,” *Nation* 262, no. 4 (1996): 11–14.

19. Bureau of Prisons, Official Information, 2002.

20. Christian Parenti, *Lockdown America: Police and Prisons in the Age of Crisis* (New York: Verso, 1999), 232.

21. Parenti, *Lockdown America*, 233.

22. Philadelphia Prison System Annual Report, 2001, 15.

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

24. Reynolds and Rostad, “Creating Factories behind Bars.”

25. House Judiciary Committee, Subcommittee on Crime, “Prison Industry Reform Legislation,” 105th Cong., 2d sess., June 25, 1998, 63.

26. Troy Duster, “Postindustrialism and Youth Unemployment in the US,” in *Poverty, Inequality, and the Future of Social Policy: Western States in the New*

*World Order*, ed. K. McFate, R. Lawson, and W. J. Wilson, 474 (New York: Russell Sage Foundation, 1995).

27. See Duster, "Postindustrialism and Youth Unemployment," and also Saskia Sassen, *Globalization and Its Discontents* (New York: Free Press, 1998), for arguments about the fate of minorities and patterns of deindustrialization.

28. Philadelphia Prison System Fiscal Year Report 2001.

29. Bruce Western and Katherine Beckett, "How Unregulated Is the U.S. Labor Market? The Penal System as a Labor Market Institution," *American Journal of Sociology* 104, no. 4 (1999): 1030–60. See also Western's *Punishment and Inequality in America* (New York: Sage, 2006).

30. Jonathan Simon, *Poor Discipline* (Chicago: University of Chicago Press, 1993), 164.

31. Simon, 265.

32. Alexis de Tocqueville and Gustave de Beaumont, *The Penitentiary System in the United States and Its Application in France* (New York: Augustus Kelley, 1970), 57.

33. Thomas Dumm, *Democracy and Punishment: The Disciplinary Origins of the United States* (Madison: University of Wisconsin Press, 1987).

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

35. David Theo Goldberg, "Surplus Value: The Political Economy of Prisons and Policing," in *States of Confinement: Policing, Detentions, and Prisons*, ed. Joy James, 215 (New York: St. Martin's, 2000).

36. Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1977), 208.

37. Parenti, "Making Prison Pay."

38. David Steves, "As Many Oregonians Lose Work, Prisons Add Inmate Jobs," *Register Guard*, December 24, 2001.

39. Both Dayan and Hallinan describe this practice.

40. Albert Camus, "The Myth of Sisyphus," in *The Myth of Sisyphus and Other Essays* (New York: Random House, 1955), 89–90.

41. Tocqueville and Beaumont, 157.

## Chapter 7

1. Arendt, "On Violence," in *Crises of the Republic* (New York: Harcourt Brace Jovanovich, 1973), 155.

2. Arendt, 144.

3. Arendt, 144.

4. Arendt, 152.

5. Friedrich Nietzsche, *On the Genealogy of Morals*, trans. Walter Kaufman and R. J. Hollingdale (New York: Vintage, 1989), 72.

6. Arendt, 151.

7. Emma Goldman, "Prisons: A Social Crime and Failure," in *Anarchism and Other Essays* (New York: Dover Publications, 1969), 109–26.

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

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

10. "China Hits Back at US Criticism," BBC News International Version, March 9, 2006.

11. Karen Greenberg and Joshua Dratel, eds., *The Torture Papers: The Road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005), 520.

12. Greenberg and Dratel, 484.

13. Greenberg and Dratel, 466.

14. United Nations, Economic and Social Council, Commission on Human Rights, "Situation of Detainees at Guantanamo Bay," report released February 15, 2006.

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

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

17. BBC, "Guantanamo Interview: Full Transcript." March 3, 2006. <http://news.bbc.co.uk/2/hi/americas/4770390.stm>.

18. Niccolò Machiavelli; *The Prince and the Discourses* (New York: Modern Library, 1950), 27.

19. *New York Times*, May 12, 2005.

20. *New York Times*, June 22, 2004.