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Introduction: Strange Brew-Punishment and Political Ideals

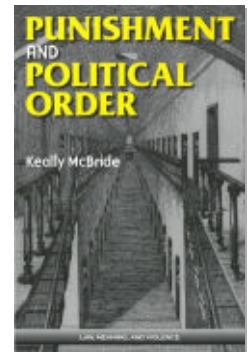
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Introduction

Strange Brew—Punishment and Political Ideals

Though I didn't know it yet, I started writing this book when I moved to Philadelphia, into an apartment that was two blocks away from what appeared to be a medieval castle. The stone walls are dizzyingly high—three or four stories at least—and the front gate, complete with menacing spikes, is flanked by little breaks in the fortress walls that appear to allow shots to be fired from within. The building was Eastern State Penitentiary, the first full-fledged penitentiary in the United States and the object of study by foreign visitors such as Alexis de Tocqueville and Charles Dickens. It was one of the largest and most expensive buildings built in the United States at the time of its completion in 1829, and it takes up eleven acres in the midst of what soon became a lively urban neighborhood. The stone walls are so thick that the expense of tearing it down was enough to deter even the most avid redevelopers.

Today, community groups help provide attractive landscaping around the building, farmer's markets are held in the parking lot, and I even buy my Christmas tree there every year. The colossus is integrated into everyday life. I am reminded of the building's strangeness only by visitors who are both awestruck and confused by the incomprehensible architecture. Were there medieval settlements—in Philadelphia? The expanse of stone was designed to intimidate, and it still succeeds in the task. Yet the fortress has become a familiar part of the landscape, and even its neighbors overlook the intrusive aspect of it. The building personifies state punishment, though in a different way than was intended. The initial recognition may be shocking—remember the first time you understood that some people are put in jail, forever—but then we become accustomed to it. That is, we forget about

the awesome power until we are forced to confront it through a shocking revelation, its direct intrusion in our lives, or the perspective of outsiders. As someone engaged in the study of politics, it is my central task to help bring a new awareness to these aspects of the political landscape that we take as settled or no longer even notice.

A few months after I moved to Philadelphia, I was asked to help organize a group that would think about how to decrease recidivism in those coming out of Philadelphia's current prison system. It was a task force on "reentry" and "reintegration"—was there any way to bring this population out of exile and back into the community? Ex-prisoners, parole officers, victims' rights groups, prison administrators, district attorneys, and criminologists sat around a table and talked once a month. There was a fundamental inability to decide on the basic story. Prisoners' rights advocates saw reintegration as contingent upon everyone understanding their punishment, their incarceration, as unjust. They could look around them and see that the prisons were full of minority males with little economic opportunity. Their incarceration was a reflection of social injustice as much as their individual crime. Why should they want to reintegrate into a political system that victimizes them and violates its own tenets of equality and justice?

The other group, the majority of those sitting around the table, assumed that the ex-offenders had something to prove to everyone else. They needed to amend for their crimes and prove that they had been rehabilitated by their incarceration. They needed to demonstrate a moral conversion before everyone would feel safe welcoming them back into the community. Not surprisingly, a standoff ensued. It was unclear who the victims were, who needed to make amends, and who was culpable. One of the curious dynamics of this group was that those who had experienced incarceration firsthand lacked general credibility. Punishment seems a particularly difficult subject to broach politically because those who are subject to it have no legitimate voice in any public debate in regard to it; and the rest of us take it for granted that it works just fine, particularly since it doesn't influence our daily lives. It is the colossus that we have become accustomed to. For others, however, it becomes the catalyst for radicalization, and the point where the ideals of a polity are most evidently betrayed.

I had been accustomed to think of punishment as an expression of force, a way of tracing the administration of power. Consider the common etymology of the words *execute* and *executive*; the ability to punish

displays where the power of command rests. Michel Foucault's *Discipline and Punish* laid bare the history of punishment to demonstrate the shift in the constitution and exercise of political power; and though his argument is that political power is decentralized, he examines punishment largely as displaying executive capacity. We can be certain that the power to punish expresses ultimate authority and that those who are punished have less power than those who administer it.

Most of the current literature on punishment reflects this basic understanding. Punishment is seen as both an expression of and a tool for consolidating power, and also reflects historical and current racial and socioeconomic inequalities. This straightforward view of the relationship between power and punishment was challenged by my experiences teaching standard courses in the history of political thought. In the midst of utopian treatises, discussions of justice, and debates about the troubling division between thought and action I kept stumbling into yet another discussion of punishment. Why was this brutal, unpleasant intruder lurking in utopian visions and idealistic political constructions?

This book began as the answer to that question, and it contains many discussions about the role that punishment plays in various works of political theory. But like all works of political theory, this one is also concerned with the world outside of its pages. The primary purpose of this text is to look at punishment as a central problem of political order. Sociologists, legal scholars, and criminologists study penal regimes: the discipline of political science, with notable exceptions, has ceded this ground.¹ This is a terrible mistake: as I will demonstrate, punishment is both a uniquely revealing lens into how political regimes work as well as a central problem for political administration that requires careful negotiation of the stated ideals of a polity in the exercise of power.

One of the most consistently complex problems facing political theorists is understanding where power comes from. We have rightfully become increasingly dissatisfied with visions that focus only upon the state or even its figureheads. Yet understanding how behavior, law, institutions, perception, and ideals all work together in creating a political system is difficult to conceptualize. Examining punishment allows us to see the intersection of all of these different elements.

More than that, punishment allows us to see political order in dynamic fashion. To claim that consent, perception, display, and recognition play a role in the maintenance of political order is to say that rela-

tionships form the basis of political order. Relationships may sound like a static element, but they change repeatedly: consent isn't established just once, and perceptions aren't cemented in a moment of time; instead they change, break down, are reaffirmed or altered. How is it that regimes lose legitimacy even if their institutions remain in place? How is our support of a political order brought into question? These questions are just as important as examining how the status quo is maintained. Perception as a component of political order is difficult to account for on its own—like studying how a mirror distorts objects without being able to study the reflected object. Examining punishment allows us to understand how the perception of the public itself confers political legitimacy and sovereignty; only a legitimate entity can punish, all others abuse.

My other point, that punishment is a problem for political regimes, relates to this first one. Unjust punishments have served as a catalyst for uprisings at more than one point in recent history, and it is no accident that prisoners often become martyrs and then leaders as in the cases of Václav Havel and Nelson Mandela. For a state to punish does not seem remarkable—after all, it has that power. For a state to punish over a long period of time and not generate resistance to that expression of its power is a much more difficult, and rare, feat. It can only do so through a complex negotiation of idealism and force, which is why punishment, even though it is a universal attribute of regimes, is simultaneously one of their most difficult tasks. This fraught relationship between idealism and pragmatism in state punishment requires a more extensive introduction.

Political Idealism and Punishment

Most famously, both Aristotle and John Locke maintained that political order is distinct from other kinds of human collectivities. What separates the polis from other kinds of associations is a matter of considerable contention, but for the purpose of this argument I agree that it is distinct. The polis is marked by a juxtaposition of idealistic or normative elements with the problems of administration. It is impossible to find a regime entirely without norms, though it is all too easy to see regimes that fail to act according to these stated norms. Conversely, governmental administration could never be driven by ideals to the exclusion of practical considerations. Hence, one aspect of political order is the need to relate political ideals to the administration of a population.

State punishment exclusively reveals this interaction between ideal and pragmatic in political orders. First, it is the gap between normative and material that causes punishment. Punishment is administered only when an ideal fails to be realized, whether that is obedience to the king, laws, or social norms. State punishment is an attempt to reconcile disorderly realities or citizens with the ideal order. Though punishment rarely, if ever, produces ideal behavior or citizens, punishing those behaviors that fall outside of the norm reaffirms the state's commitment to that ideal. The effects of punishment are certainly embedded in the bodies and spirits of those subjected to it, but the rationale behind the practice displays an allegiance with an ethereal vision.

Second, punishment invites examination of whether the exercise of state power is actually bounded by its declared ideals. Weber's famous dictum that the state is defined by a monopoly of legitimate violence is important here.² The state is allowed a unique prerogative to capture, hold, even kill or maim its citizens. What makes such essentially brutal acts *legitimate*? The answer to this question is different in every regime; however, all states punish in the name of an ideal. Practices of punishment that continually contradict the stated ideals of a regime can ultimately lead to political destabilization. This is not an empirical study of exactly when such a tipping point occurs; however, one of my tasks is to reveal the fraught relationship between ideals and the administration of painful sanctions as one of the most difficult and central aspects of political order.

The claim that punishment is related to the idealistic claims of a political order should invite skepticism. After all, today punishment appears most frequently to be a violation of ideals of justice. To someone who is alarmed by the new severity in the penal code and administration of criminality in the United States, this sounds like an especially dubious theme to propose at this particular juncture. In the United States in the past twenty months we have debated whether it is right to execute persons who committed crimes when they were juveniles or mentally impaired, we have looked at pictures of prisoners being sexually molested, abused, and even killed by U.S. military police, and we have discovered secret prisons around the world intended to make our enemies disappear forever. While it may be an expression of the sheer power of the United States to engage in these activities, it is difficult to envision them as a reflection of our political ideals.

When a state punishes, its ideals are on display and at stake. To think of punishment as an ugly necessity that has no relation to the more

lofty aspirations of justice leads to an ever more egregious and potentially destabilizing exercise of the state's prerogative to administer pain to those subject to it.³ Just as a state should enter warfare and condone the sacrifice of its soldiers with trepidation, a state also needs to pay meticulous attention to its practices of punishment or risk its authority. Recently, the understanding of how integrally related punishment is to the stated ideals of a polity has been lost. We may not realize or understand that punishment is an expression of our ideals, but it nonetheless remains such.

As this seems a particularly untimely argument to make, a brief examination of past understandings of the relationship of punishment and justice is in order. The Greek words *timē* (honor) and *poinē* (punish) come from the same Indo-European root.⁴ Implicit in the Greek understanding of both of these words is a reciprocal relationship, that every action demands a reply, a belief evident in Aristotle. An unjust action violates the proportional; therefore punishment is required in order to reassert the proportionality of justice. "As the unjust in this sense is inequality, the judge tries to restore the equilibrium. When one man has killed and the other been killed, the doing and the suffering are unevenly divided; by inflicting a loss on the offender, the judge tries to take away his gain and restore the equilibrium." It is crucial that the loss of proportionality not be perpetuated by the punishment; there is not a simplistic reversal whereby the judge subverts the offender as he or she had subverted the sufferer. "The only difference the law considers is that brought about by the damage: it treats the parties as equals."⁵ State punishment cannot create victims.

Punishment is the infliction of pain. But for Aristotle, it is also the assertion of goodness. Because it is necessary in response to an infraction, and because it is done with the intention of reasserting balance, it is the source of goodness. It is preferable for a society never to punish, and a state that punishes without absolute necessity is no longer just. The measure of a just punishment is that it reestablishes proportionality in response to a crime. Even if the punishment itself is an equivalent action, such as capital punishment in the case of murder, if it is done out of necessity and in the interests of equality, it meets the standards of the good.

Hegel also elaborated a theory of punishment along these lines, through the distinction between revenge and punishment. Revenge is the natural right of the injured to inflict pain upon the perpetrator. In

Hegelian terms, the right of revenge is pursued out of a position of particularity; it has a personal dimension, which then reasserts the rights of the particular person who has been wronged at the expense of the universal. When punishment is levied in court, however, particularity of revenge is replaced by the universality of injured right.

Instead of the injured party, the injured universal now comes on the scene, and this has its proper actuality in the court of law. It takes over the pursuit and avenging of crime, and this pursuit consequently ceases to be the subjective and contingent retribution of revenge and is transformed into the genuine reconciliation of right with itself . . . by the annulment of the crime, the law is restored, and its authority is thereby actualized.⁶

The reassertion of the power of universality over the particularity of injury or crime establishes the rule of law again. By punishing infractions in the name of its universality rather than in the name of a specific victim, the law is able to reassert its own dominance and the value of the universal over the particular, again and again.⁷ The necessity of punishment may seem to indicate a lapse in the power of the law, but in the act of punishing, the law is reaffirmed. It is crucial to understand that the power of the law is not reaffirmed through its ability to expel members from the social body, or inflict pain, but rather because the values of universality and right are upheld in the process of punishment.

Hegel is clear that the assertion of the law through punishment is not achieved at the expense of the criminal who is punished. The prosecuted do not lose their rights or membership in the state through their punishment. Instead, Hegel argues that the punishment itself is a reflection of the criminal's rights, and ultimately an embodiment of his will. Only a free, rational person can undergo punishment. Through punishment, the state reaffirms that the criminal is a responsible agent.

The injury which falls on the criminal is not merely *implicitly* just—as just, it is *eo ipso* his implicit will, an embodiment of his freedom, his right; on the contrary, it is also a right *established* within the criminal himself, i.e. in his objectively embodied will, in his action. The reason for this is that his action is the action of a rational being and this implies that it is something universal and that by doing it the

criminal has laid down a law which he has explicitly recognized in his action and under which in consequence he should be brought as his right.⁸

It is the criminal's right to be punished since rights derive from our existence as universal beings. Hegel also explicitly links the pain of punishment with the reassertion of justice. He argues that the person being punished has endured a sort of psychic split. As part of the universal, in repudiating the universal by breaking the law, she has rejected a part of herself. Philippe Nonet has explored Hegel's argument and asserts that the pain of punishment heals the split within the offender. Pain literally brings the offender back to the truth of universalism.⁹ Hence, it is the relationship to the universality of the state and the law that creates punishment: all other retributive pain that derives from a particular relationship or injury is revenge.

What both Aristotle's and Hegel's descriptions of punishment have in common is that punishment is the reluctant office of the law and state. The state serves as the instrument of legality here; it cannot punish with the intent of enforcing or asserting its own power. Only if it meets the criteria of necessity and judiciousness can the state punish with impunity. Punishment then emerges as one of the crucial ways to measure the rule of law. How we punish reveals whether a society adheres to the rule of law. It is not the punishment itself that reasserts the rule of law, but rather the process used to determine whether a punishment is needed and what it shall be.

This notion that punishment needs to be dispassionate in order to be just is reflected in U.S. jurisprudence. For instance, in *Coppedge v. United States* the Court observed, "The methods we employ in the enforcement of our criminal law have aptly been called the measures by which the quality of our civilization may be judged."¹⁰ Recognizing that the impulse for revenge may be strong, the law must stand in opposition to these impulses to reassert both the rule of law and the right accorded to all individuals. In *McCleskey v. Kemp* Justice Brennan's dissenting opinion observes, "Those whom we would banish from society or from the human community itself often speak in too faint a voice to be heard above society's demand for punishment. It is the particular role of the courts to hear those voices, for the Constitution declares that the majoritarian chorus may not alone dictate the conditions of social life."¹¹ The law must stand outside the impulse for revenge and engage

only in judicious punishment if the rule of law is to persist. Note that these arguments admit that the thirst for revenge is real and strong, yet they share the faith that the law can substitute for these passions and restore universal right. A law that punishes to reassert right, not to instill fear of the sovereign or to express the outrage of the people, is considered the clearest indication of the ability of law to constrain and govern political power.

But others, following in the tradition of Nietzsche, assert that state-administered punishment is merely the codification and formalization of the right of revenge. State punishment is an extension of the group cohesion that results from an expression of the natural desire for revenge. One dominant theme in punishment literature examines how the process of punishment is used as a tool of social cohesion. Which groups are exorcised and punished? What society criminalizes is often a method of governing the boundaries of membership. As soon as someone strays outside of accepted behavioral norms, punishment is wielded to increase compliance. But being able to punish is also a privilege of belonging in the group itself.

In Shirley Jackson's story "The Lottery," village members all gather together excitedly for what initially appears to be a sort of festival or raffle. One woman is randomly selected, and the rest of the village then stones her. Social cohesion is built through the active prosecution and exclusion of others—the rewards of group membership become crystal clear at such a moment. Those who punish are reaffirmed as members of the community. The power of the community is expressed when it punishes; the members of the community bond through their imposition of pain upon outsiders. In Jackson's story, there is no need for a crime, either real or imagined; it is the practice itself that breeds cohesion. "The Lottery" starkly conveys this message, but the same story is told by studies that show those who are most fearful of crime are least susceptible to it. The impulse to punish or exclude need not be rooted in any specific experience of victimization.

Any school playground in the world would reveal the cohesion of social groups through punishment and exclusion; punishment is necessary for the existence of the group, not because of the inevitability of crime. However, this example of the schoolyard suggests an important distinction between punishment conducted by social groups and the state. Unlike schoolchildren, the modern state does not punish simply because it can—rather, it must punish in the name of a value or ideal.

While group cohesion certainly can result from and even be the key motivation behind state punishment, I find the relationship between the act of punishing and the stated ideal most intriguing. The juxtaposition between pursuing a greater good and administering some sort of pain is improbable, difficult, and revealing.

Punishment and Political Order is not attempting to displace the sociological analysis of punishment but to supplement it. Social dynamics unquestionably impact the practices of state punishment. However, so do the stated ideals of a polity. I propose that practices of punishment force institutional powers and social groups to contend with political ideals. Punishment is where the ideals of a polity come to be dramatically situated in close proximity with the realities of governance, and thereby it provides the most difficult case in the expression of political order. Can a state appear just, even as it administers pain?

The answer to this question depends upon two different components. The first is the perception of those within the political order. There is no empirical distinction between the exercise of tyranny and the administration of punishment; it is entirely a matter of perception. Punishment seems to provide a strong catalyst for reflection upon the government; it draws attention to the exclusive prerogatives of state power, and to the vulnerabilities of citizens before this power. For this reason, dissatisfaction, dissent, or mere discomfort with a regime can frequently appear or be mobilized around practices of punishment. Punishment can cause fissures within the polity to grow, or it can create martyrs, solidifying a perception of betrayal by the state. A central theme throughout the chapters that follow is exploring the cultivation and evolution of these perceptions around state punishment as an integral element in political order—and its undoing.

It is simple to say that a polity is committed to justice; the difficulty comes in whether it is able to demonstrate that commitment to justice even in the administration of pain. If a regime cannot offer some rationale—whether that be service to God, impartial courts, the light of reason, or the necessity of power—and thereby convincingly assert that the administration of pain serves justice, state punishment becomes simply the exercise of brutality by one person over another with less power. No wonder the question of punishment plays such a prominent role in political theories throughout history: if punishment is mere opportunism, then political ideals can be nothing other than a flimsy scrim masking oppression. Can the exercise of state power, even at its most extreme, serve an ideal?

Political order offers the possibility that human beings can construct an earthly system that redeems our existence. One common aspect of all religious orders is that they offer an understanding of suffering as redemption. As soon as states punish in their own name, not that of God, then they have taken on a task of great magnitude. Political orders that administer suffering in the form of punishment must also promise redemption from this pain through the realization of a greater ideal (explored more fully in chapters 1, 2, and 7, this volume). This study has forced me to consider whether political orders have established an impossible task for themselves: can an earthly order really redeem human suffering? Is the punishment done in the name of worldly ideals too difficult to justify? While it is often argued that the desire to limit state power is what created liberalism and its emphasis upon the sanctity of individual rights and bodies, all liberal regimes make exceptions in the case of punishment. Justifying punishment by relating it to some kind of idealism is a dynamic in all political orders. Punishment demands the most precise balance between serving an ideal and serving power.

Studying both the history and present exercise of state punishment suggests that most regimes are not up to this difficult task. The prerogatives of power hold an irresistible allure, and I doubt very much whether any instance of state punishment is completely devoted to ideals of justice. In fact, I have come to wonder whether the pivotal role that punishment must play in secular political systems is one of the most enduring weaknesses in any modern regime. To administer pain in the name of worldly ideals requires the sort of discipline and justification that could never be achieved consistently. Consider, for example, the juxtaposition of Aristotle's claim that the state must punish to reassert the good with his knowledge of the trial of Socrates. You could argue that Aristotle was defining an ideal as a response to this travesty of justice; on the other hand, you could argue that just punishment is an impossible standard to uphold. Though the rewards, redemption, and punishments of the afterlife are impossible to discern, judge, and debate, the costs, pain, and problems of earthly punishment are readily available for us to question. Secular states must be able to punish in their own name, but this fact is nonetheless the Achilles' heel of any regime. Punishment provides the foundations of political order, but they are invariably Manichaeian.

The seven chapters that follow move from the largest theoretical issues of politics and order to more specific case studies in contempo-

rary American politics while pursuing two central themes. The first is punishment as a central problem for a political regime: how can a state, charged with the protection of a people, administer pain? Many of the most distinctive features of modern political governance have been developed in managing this paradoxical prerogative. The definition of sovereignty, the stated relationship between idealism and pragmatism in the administration of a regime, and the movement of redemption into the political realm are three methods that have allowed states to legitimate practices of punishment.

The second unifying theme in my discussion is the ever-shifting relationship between a regime and a given population that makes up the most essential element in any political order. Punishment uniquely reveals this dynamic element of political order. While state punishment normally demonstrates the ability of a regime to administer a population, it can at times also be destabilizing, creating resistance to and critique of a regime. Many studies of punishment have concentrated on the first dynamic, but they have neglected the potential for change that can arise as a result of punishment that is perceived as illegitimate.

Chapter 1, "The Whip of Utopia: On Punishment and Political Vision," introduces both themes through utopian and dystopian political visions. Sir Thomas More's *Utopia* is framed by discussions of penal practices in sixteenth-century England, leading into a comparison with the more pragmatic Utopians who enslave their criminals to do necessary public works. More helps us to understand how punishment serves as a means by which to understand the constant negotiation between the needs of political administration and the aims of justice. Franz Kafka's "In the Penal Colony" presents a decidedly dystopian vision of punishment, relating it to the pursuit of ideals as well. Both More's and Kafka's works present instances of punishment to stimulate a response in their readers, displaying the crucial elements of audience and perception in the development of just punishment and political regimes.

The second chapter, "'Man's Life Is but a Prison': Human Reason, Secular Political Order, and the Punishments of God," explores the movement of suffering and redemption from the religious realm into the political one through *The Book of Job* and Hobbes's *Leviathan*. In the Bible, human suffering was explained as a punishment from God, thus bestowing a logic to pain as well as offering the hope that such pain will be redemptive. Hobbes takes up the challenge of Job and creates a state

that will make human suffering conformable to human logic. However, this shift means that state punishments also need to provide the hope of redemption, something that is exceedingly difficult to achieve. Hence, punishment both demonstrates and provides the catalyst for the secularization of human order but displays how unstable the foundations of this order can be.

In chapter 3, "Earthly Divinity: Punishment and the Requirements of Sovereignty," I investigate the development of modern conceptions of sovereignty. The odd combination of immanence and transcendence in the modern state can be viewed in light of state punishment, and in fact, this combination is one of the central ways of legitimating such punishment. The connections with the previous chapter are apparent, as sovereignty is a trace element of the divine that survives in secular political regimes.

Chapter 4, "Severing the Sanguinary Empire: Punishment and Early American Democratic Idealism," explores the early American republic and the role that punishment played in the struggle to break from England's colonial empire and in the definition of the new state. This chapter demonstrates the potential relationship between idealism and punishment most clearly—a connection which seems exceptionally weak today. The contrast between this early democratic idealism and the subject of chapter 5, "Punishment in Liberal Regimes," which explores classical liberal political thought and the contemporary penal regime in the United States, could not be more stark. Here I look at liberal exceptionalism in terms of the punishment that is at the foundations of liberal thought. Punishment has always served a particularly important role in the development of liberal principles such as responsibility and personhood. The social contract regime, based upon notions that are simultaneously concrete yet ethereal, requires punishment to make itself tangible. Understanding these elements in liberal political thought in part helps to explain what penal practices accomplish today in the United States, and why it is difficult to critique them on purely economic, racially unjust, or utilitarian grounds.

Chapter 6, "Hitched to the Post: Prison Labor, Choice, and Citizenship," continues my study of contemporary U.S. penal practices but links them to neoliberal economics. One of the most important and compelling strains of political analysis of punishment emphasizes its economic function. While I generally agree that there is a crucial political economic component, I present the cases of prison labor in an era of

deindustrialization to argue that the connection is not always straightforward. Prison labor is not utilized to extract labor—in fact, it is generally spectacularly unproductive—but rather is a mechanism for enforcing the presumptions of neoliberalism. Though focused on different aspects of current politics, both chapters 5 and 6 help explain the relationship between penal practices and liberal ideals of individuality, contract, and freedom in the United States. Though the penal system is anything but egalitarian, nor does it promote individual liberties, it needs to be viewed in relation to liberal idealism, not as a deviation from it.

Finally, chapter 7, “Punishment and the Spiral of Disorder,” is an exploration of punishment as a destabilizing force in contemporary U.S. international politics. This conclusion is more suggestive than comprehensive, as this topic deserves a full-length exploration. I include this discussion to examine how punishment can play a crucial role in international as well as domestic regimes, and also as a sober reminder that an unjust penal regime can reach over oceans and touch the lives of citizens of other regimes. The exposure of prisoner abuse in Abu Ghraib, the continuing discussions of prisoner treatment in Guantánamo Bay and Afghanistan, and the revelation of secret prisons in Eastern Europe have catalyzed world opinion against the U.S. government, as would be predicted by the arguments in the rest of the book. The dynamics of perception and the awareness first introduced in chapter 1 become especially important here. Perhaps the most revealing perspective one can gain on practices of punishment is from the eyes of an outsider. Would you want such practices to become emblematic of your regime? The fictional scenarios spun by More and Kafka have come to fruition, as punishment has come to represent the regime of the United States in an unfavorable light. Partly out of discomfort with this fact, American support of the country’s missions abroad and the aims of the War on Terror measurably waned with the publicizing of the abuse. Illegitimate use of the power to punish can backfire, leading to a depletion of legitimacy and hence the power of command.

Let me conclude with one final reason to rescue the relationship between political idealism and punishment. After all, we have no way to evaluate the ethics or inherent justice of systems of punishment if we do not remember that punishment is supposed to be an expression of justice, not merely power. When we focus on institutional practices of punishment, or sociological accounts of punishment and membership,

we look at punishment as a practice of power. While it is certainly that, it is also linked to the ideals inherent in a political order. This book addresses the lacunae in the literature by presenting the central role that punishment plays in different seminal works of political theory. I do so not to replace the other readings of punishment that are more familiar but to complement them. For this reason, this text, while dwelling primarily upon these works of political theory, will also bring in these sociological, economic, and historical studies of punishment. Seeing how theories of punishment relate to practices of punishment reveals a central dialectic in politics—the struggle between ideal and real. And to bring up these idealistic foundations of punishment is not to fit a flowered glove over an iron fist but to have a firmer understanding of exactly what we betray when we engage in practices of punishment that are inherently unjust.

