

Pain and Death: Transnational Perspectives

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Nikolaus Wachsmann, *Hitler's Prisons: Legal Terror in Nazi Germany*.
New Haven, CT: Yale University Press, 2004.

Michael J. Pfeifer, *Rough Justice: Lynching and American Society, 1874–1947*.
Urbana: University of Illinois Press, 2004.

Diana Paton, *No Bond but the Law: Punishment, Race, and Gender in Jamaican
State Formation, 1780–1870*. Durham, NC: Duke University Press, 2004.

Carlos Aguirre, *The Criminals of Lima and Their Worlds, 1850–1935*.
Durham, NC: Duke University Press, 2005.

Clare Anderson, *Legible Bodies: Race, Criminality, and Colonialism in
South Asia*. Oxford: Berg, 2004.

As supporters of the U.S.-led global war on terror attempt to etch definitive lines between state-sanctioned and state-authored violence and the violence perpetrated by (non-Western, non-Christian) individuals, groups, or rogue states, we find ourselves in a historical moment in which leaders of democracies alternately condemn and justify pain and death. Terrorists and terror lie beyond the pale of morality and

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legality, we are told—they are reprehensible and incomprehensible to modern, civilized society; at the same time, U.S. government memos on antiterrorism since 9/11 confirm self-proclaimed civilized societies' capacity to concoct new justifications for torture. If this recent burst of legalized brutality signals a recursion to earlier modes and rationales of punishment, to what, precisely, might we be turning?

Each of the books reviewed here offers well-grounded and reasoned responses to that question. Drawing on evidence of policing and punishment in Jamaica, South Asia, Peru, the United States, and Germany, and spanning from the late eighteenth to the late twentieth century, they contribute significantly to their respective national and regional historiographies of punishment; read as a group, however, they enable readers who specialize in particular forms of punishment—or narrower periods, or exclusively national frames of reference—to think more broadly and critically about what it means to speak of modern punishment. Although they study arguably incommensurable punishments in radically different societies and jurisdictions, the authors share three aims: to analyze how certain forms of punishment emerged and disappeared in the context of modernity; to examine why and how certain groups of citizens and noncitizens were singled out for the penal stick's sharpest blows; and to trace how punishment and state formation (colonial, national, imperial) were intertwined. Thus emancipationists' outrage over slave owners' whipping of slaves in Jamaica condemned one (barbaric) form of punishment while solidifying the representation of the penitentiary as a civilized alternative, suitable for a colony evolving toward a free labor society. Similarly, the diagnostic and identificatory measurement of criminals' bodies, or more precisely, of body parts, arose in the late nineteenth century as a matter of official policy in states as distinct as authoritarian Peru and Britain's South Asian colonies. As each of the authors illustrates, stabilizing populations of marginal peoples through rational, scientific, and bureaucratic measures constituted keystones of governance; yet this distinctly modern political aspiration involved deploying, not outlawing, painful, exclusionary, and deadly means of punishment. Sometimes selective or sanitized, other times broad and bloody, the infliction of bodily punishment was the rule, rather than the exception in modern states.

Wachsmann's exhaustively researched 538-page history of Nazi imprisonment confronts both popular memory and a historiography dominated by the bleak image of the concentration camp and Nazi genocidal policies. He turns instead to the long-neglected field of ordinary punishment—the prisons and prison camps that received inmates convicted in the courts, not swept up in Gestapo raids. This penal realm was technically legal, but it was deeply implicated in Nazi terror, he argues. While German historiography has portrayed the Nazi period as a time in which a gulf emerged and widened between the normative state (bound by law and administered through the courts and prisons) and the prerogative state (bound by the dictator's wishes and carried out by the SS), Wachsmann uncovers considerable

complicity (3). “How normative was the Normative State?” he asks, being at once interrogative and accusatory (380). His answer, and the book’s argument, is that it incorporated elements of the prerogative state from the earliest days of the Nazi regime, extending even into the Weimar period. By the 1940s Nazi politics fully dictated legal policy and practice (382).

Wachsmann briefly touches on “Hitler’s willing executioners,” but he provides considerable room to condemn Justice Ministry officials, judges, state and party agencies, and prison wardens and guards, all functionaries in the state apparatus of punishment. Individual citizens did denounce their neighbors and coworkers, yet state actors, particularly legal officials, “were ultimately much more important in the creation and perpetuation of Nazi terror than the general population” (387). If the standard postwar historiographical orientation has been to let the legal fraternity off the hook for the development of Nazi-style punishment, Wachsmann hooks them back on. Here he follows the judges at Nuremburg, who ruled that legal actors “had played an important part in the extermination policy of the party and state, sometimes even breaking criminal Nazi laws to participate more fully in the atrocities” (343). Nuremburg judges uncloaked their Nazi counterparts as treacherous criminals in disguise: “The dagger of the assassin was concealed beneath the robe of the jurist” (343).

Wachsmann shows how differently penal policy might have developed had the Weimar penal reform’s progressive elements been realized rather than railroaded in the 1930s and 1940s. German penal policy in the Weimar Republic was as modern as that of any Western state, and some of its prisons were models of progressive penology, staffed by social workers, educators, and recreation leaders who worked toward the goals of inmate rehabilitation and responsible citizenship. Equally significant was Germany’s wealth of highly trained legal talent (in marked contrast to their small numbers in Lima, Jamaica, or the rural United States). But the tradition-bound legal fraternity was never enthusiastic about Weimar penal ideals, Wachsmann argues, and many warmly welcomed the rise of the Nazis, who vowed to replace the flabbiness of Weimar reforms with the firmness of Nazi punishment, one feature of which was Hitler’s declared intent to eradicate “asocials” and the “work-shy.” Nazi ruthlessness reassured an anxious public, rather than responded to an immediate crisis in governance, as was the case in the post-Civil War United States, or after emancipation in Jamaica, or following decolonization in Peru, or after the colonial “mutiny” in India: it emerged in and through a “classically modern” state, well populated with scientists, medical experts, and jurists (29). Indeed, one of Wachsmann’s more disturbing insights is that the medicalization of deviance and the notions of asociality and incorrigibility—all of which gained murderous force in the Nazi period—are traceable in liberal Weimar penal theory and practice.

Hitler’s leap to power elevated crime control and punishment to the top of the political agenda. The unfettered power of the SS, Hitler’s chief weapon against

so-called community aliens, is well documented, but historians' knowledge of Nazi criminal justice policy remains comparatively sketchy. Wachsmann meticulously fills in the gap. Where 1923 prison guidelines had instructed guards to treat inmates in a "humane manner," for example, 1934 prison regulations expressly declared that imprisonment was to be a "painful event" (81). Changes in sentencing laws, particularly the 1933 Law against Dangerous Habitual Criminals and on Preventive and Rehabilitative Measures, stretched the legal capacity to criminalize and to impose lengthier prison sentences (70). Consequently, the German prison population exploded (from a daily average of approximately sixty-three thousand prisoners in 1932 to double that figure by 1937 (55, 71). Surprisingly, until 1943, Germany's penal institutions incarcerated significantly more prisoners than did SS concentration camps (395). This would never have occurred, Wachsmann charges, without the cooperation of judges and prison officials (71).

That Nazis persecuted and ultimately set out to annihilate despised ethnic, religious, and political opponents as enemies of the state provides an extreme expression, arguably the most extreme expression, of a wider tendency in modern penal regimes to manage the marginal through isolation. None of the books reviewed here presents a picture of punishment meted out equitably, or solely on the basis of individual offending. Group membership mattered everywhere: in British-ruled South Asia huge swathes of the population were legally defined as habitual criminals in the 1871 Criminal Tribes Act; in the late nineteenth and early twentieth centuries in the United States, not just African Americans but Mexicans, Sicilians, Chinese, and Native Americans were the community outsiders most likely to be lynched; in Jamaica, a recognizably modern court and penal system evolved first to support and later to replace the private punishment of blacks under slavery; and in Peru, groups considered unwilling or unable to keep pace with the country's modernizing agenda—primarily Indians and blacks—were most likely to be locked up in Lima's state-of-the-art penitentiary. Wachsmann reminds readers that racialized and medicalized notions of criminality and deviance were widely shared and little disputed in penal circles, and that well into the twentieth century. As late as 1935, for instance, Germany could successfully host the International Prison and Penitentiary Congress and attract three hundred officials from fifty countries (370).

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Compared to Nazi Germany's elaborate state organization of punishment, the mobbed lynching of individuals seems to have nothing to do with modern statecraft. But in Michael J. Pfeifer's book it does. Rough justice, he contends, was a popular means to preserve premodern penal practices and values against modernizing moves toward legal and humanitarian reform. Until the mid-nineteenth century, political leaders and jurists routinely defended judicially imposed public executions as the *sine qua non* of specific and general deterrence. As the penitentiary movement took

hold, and as elite concerns about crowd decorum and volatility grew, however, state after state revised their penal codes to outlaw public execution, and several, starting with Michigan, abolished the death penalty itself. These transitions in penal politics, culture, and values took root first in the urban Northeast; the South, the Midwest and the West Coast lagged behind—there “Yankee” innovations were eyed not with envy but suspicion. Beyond the Northeast, and as late as the mid-twentieth century, “popular sovereignty wedded to collective violence proved an intoxicating, elastic, and highly instrumentalist ideology” (12).

Examining lynching in national scope allows Pfeifer to plot the geographical and temporal raggedness of Americans’ movement away from collective violence in a country, unlike the other jurisdictions reviewed here, in which states rather than a national or imperial power devised and administered penal policy. Pennsylvania and New York led the world in penitentiary innovation (Philadelphia Prison, Sing Sing, and Auburn became must-see stops on the nineteenth-century penal circuit) but other states, such as Wyoming and Iowa, retained and defended traditional self-help methods of combating crime and dealing with outsiders—sometimes whites, but overwhelmingly poor people of color. In the agriculturally based South, the Enlightenment principle of legal rationality struck most as sentimental and culturally alien. Thus lynching was more than racism in its cruelest guise or a Southern substitute for slavery: seen within its national frame, it expressed “a postbellum revolt against due process” (9). In the Northeast, lynchings were extraordinarily rare, not because justice reigned there, but because “authorities crafted, instead a prolific, technocratized death penalty” and because urban professional police forces assumed “the functions of racialized retributive justice” (10). Same victims, same outcome; different tactics, procedures, personnel, and audiences. Pfeifer’s account of U.S. penal practice’s bifurcated character could easily fit the German dual-state concept in regional terms: one modern, the other countermodern, an expression of penal modernity’s tensions and contradictions mapped across U.S. states.

Pfeifer is at his best when examining the micropolitics of lynching, and at his most provocative when connecting vigilantism (still glorified in Westerns of all genres) to the mob murders of blacks (now universally condemned outside of Klan or neo-Nazi circles). Pfeifer takes the romance out of Western rough justice by painting posses and vigilante groups in a light as unsympathetic as that typically reserved for Southern lynchers. On the Western frontier, local vigilance committees, often headed by prominent citizens, operated in a gray zone of legality. Backed by local newspaper editors, most successfully claimed they carried the requisite communal and moral authority to inflict lethal violence. Western vigilantes’ targets were drawn from a variety of ethnic groups, including native-born whites. They were cattle rustlers, wife murderers, bandits, perverts, strangers, “scum” (104). Hung high on trees and telegraph poles, they were no less victims of rough justice, Pfeifer argues, than the black men and occasionally women who died at the hands of

Southern lynchers. In both contexts, lynching was a violent local ordering procedure that rejected formal procedural justice. As the *New Orleans Picayune* defiantly proclaimed after a mob lynched eleven Sicilians whom the courts had failed to convict, “the people of this city” had taken “into their own hands the sword of justice” (23).

Lynchers of the late nineteenth and early twentieth centuries insisted (and many of today’s death penalty advocates continue to insist) that violence, the swifter the better, was necessary to preserve white supremacy and to safeguard the law-abiding community against the chaos of crime. Impatient with the slowness of due process, the expense of legal proceedings, and the softhearted safeguarding of defendants, rough justice advocates tarred sovereign authority as weak. Yet criminal court and death penalty registers confirm that justice was typically most toothless when it came to punishing lynchers. Despite their claim that authorities coddled criminals, the courts were far less fussy than lynchers alleged about protecting communally despised defendants’ rights to a fair trial, or as averse to executing them once convicted. Indeed, legal executions were conducted in almost every state where lynchings occurred; more significantly, Pfeifer argues, lynching supplemented rather than substituted for state-sanctioned violence. In Mississippi, for example, execution rates significantly outnumbered lynching rates (in one parish a ratio of twelve to one between 1890 and 1920) (73). The communities that could not count on police and prosecutors to punish criminals were composed of poor people of color, not power-wielding whites. This leads Pfeifer to suspend his moral judgment when he describes several lynchings of blacks by fellow blacks, a practice he describes as “a natural solution for especially aggravated intraracial homicides and rapes” (120). A paragraph later, he comes close to exonerating black lynchers: because “criminal justice systems existed to serve the legal interests of whites [blacks] sometimes found in lynching a solution to the dilemma of jurisprudence posed by crime within the black community” (120).

Why did lynching decline across the entire United States by the mid-twentieth century? According to Pfeifer, the answer lies in the character of punishment’s modernization. The modern death penalty, administered in technocratic, nonparticipatory style and drained of its spontaneous expressiveness, provided a tolerable alternative to lynching because it continued to deliver arbitrary, racially discriminatory justice. “Regularized and sanitized punishment” began to take hold by the mid-twentieth century, by which point local leaders throughout the nation understood that the modern death penalty could provide a tool better suited to maintain order, ensure a reliable labor supply, and attract investment and settlement (150). Formal legality made capital justice more civilized while failing to make it just, as numerous criminological studies and legal judgements (particularly the Supreme Court’s 1972 *Furman v. Georgia* decision, which declared the death penalty unconstitutional) have confirmed. To capital punishment’s racial biases Pfeifer adds racist

police brutality: while lynching finally declined by the mid twentieth-century, U.S. justice remained rough as police forces replaced mobs and posses on the front lines of racist justice.

Pfeifer does not ask why lynching became so significant a practice in the postabolition United States while it failed to feature so prominently in other nations and colonies, yet had he done so his argument—that the modern death penalty and due process offered lynching enthusiasts a palatable compromise—would be less persuasive. Jurisdictions without lynching histories made exactly the same moves toward formal legal proceedings and the sanitization of (still painful and lethal) punishment. Anxieties over popular retributive justice influenced such administrative changes in Britain and Western Europe, for example, but historians such as Randal McGowan and Richard Evans provide far more complex and convincing arguments to explain those shifts. And as Aguirre, Paton, and Anderson show, lynching did not become a ritualized, semisanctioned form of capital punishment in every country where slavery was abolished. More significantly, they suggest that penal modernity arguably rooted more firmly and earlier in Jamaica, Peru, and South Asia than it did in the United States.

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Beginning in the late eighteenth century, and picking up momentum in the early nineteenth century, antislavery campaigners saw colonies like Jamaica as exemplars of all that was barbaric and uncivilized about slavery and its notorious reliance on whipping. Utilitarian and evangelical penitentiary advocates offered a similar and complementary argument: the most effective and humane mode of punishment was incarceration, not physical pain (5). In a Foucauldian reading, the prison promised to punish better, not less, and in Marxist terms, technologies of mass imprisonment disciplined wage laborers. Diana Paton takes these now dominant readings of penal modernization and examines them in light of Jamaica's sluggish transition from slavery to freedom. As she rightly observes, "neither the Marxist nor Foucauldian approach to the rise of the prison fully explains it in a slave society" (26). If the absence of liberty was the hallmark of modern punishment, prisons would seem to be superfluous: slaves could not lose rights they were already denied. Nevertheless, workhouses, jails, and houses of correction appeared in Jamaica as early as the 1770s, and the colony's first penitentiary incorporated advanced prison plans in 1845, well before most U.S. states and many European jurisdictions marshaled the necessary resources to build their own penitentiaries. Why bother?

In her wonderfully rich and well-written account, Paton explores this question by linking Jamaican penal history to imperial governance and to penal practices within and beyond the empire. Unlike Pfeifer, she expressly approaches penal history from a transnational perspective. In Jamaica, Paton shows, debates over punishment and slavery in the late eighteenth and early nineteenth centuries circulated

within and contributed to ideas that defined the age of emancipation in the Atlantic intellectual and political world. Grounded in postcolonial historiography, she observes that the island colony's internal political and cultural dynamics produced a penal system that could hardly be described as premodern. On the contrary, "the construction of the state in nineteenth-century Britain drew on techniques of centralization and supervision that had been earlier developed for use in the empire" (15). London had plenty of colonial matters on its mind in the mid nineteenth century, but Jamaica, Paton argues, was frequently uppermost when it came to designing and drawing on penal techniques. Thus she usefully compares and connects the colony to "other colonial societies, other societies undergoing emancipatory processes, and other societies where punishment has been extensively studied, such as Britain, France, and the United States" (3).

While each of the authors blurs predictable moral distinctions and challenges conventional periodization, Paton's argument relies on those tactics. In her powerful and clever opening, she returns to the 1838 parade that celebrated the end of slavery and the dawn of Jamaica's "bright liberal future." The banner that waved "No Bond but the Law" quickly became a bittersweet statement, according to Paton: "If there was 'no bond *but* the law,' then the law was a form of bondage. This would become most apparent in the systems of punishment constructed in the wake of emancipation" (2). Her study could easily have characterized emancipation as a turn either for the better or the worse, or treated abolition as a convenient marker between penal tradition and penal modernity; instead, Paton unearths the *pre*-emancipation roots of Jamaica's modern state punishment and approaches 1838 as one transition point amid numerous other significant shifts in the colony's penal development.

No Bond but the Law explicitly links punishment to the complexities of state formation. By approaching governance as a process, Paton dims the contrast between representative colonial governance (under the oversight of English governors) and direct rule (after the Jamaican Assembly voted itself out of existence in the aftermath of the 1865 Morant Bay rebellion). Even prior to slavery's abolition, punishment was a field of negotiation and contestation between plantation owners, local elites, and imperial representatives, all struggling to construct and maintain a productive, prosperous colony (needless to say, for white property owners). State-administered punishment predated emancipation, operating as an indirect form of government aid for slave owners. For example, in 1801, whites in Port Royal petitioned the Jamaican assembly for a "'place of confinement'" to combat the town's "infestation" by runaway slaves (27). The solidification of a "creole state" was part of a much broader initiative, however, inspired by elite planters' desire "to achieve a less precarious form of rule" (28). Other "characteristically modern institutions" (schools, hospitals, military barracks) dotted the landscape simultaneously, as slaveholders reluctantly accepted "some limits on their individual autonomy and power over slaves in return for a more effective local state" (29). As the tide of influential

opinion turned against slavery in the early nineteenth century, the scope of state punishment expanded, sometimes leaving white elites' hunger for control unsated, even though, on balance, the criminal justice system upheld planter dominance. Once slavery was abolished, the Jamaican Assembly supplied a range of penal responses to punish freed slaves whom masters could no longer whip into working. Thus the colonial state translated "struggles that had been clearly recognizable as power struggles between masters and slaves, into the idiom of the law" (54). Jamaica's penitentiary and chain of local jails became the most visible symbols of state sovereignty in a postemancipation society founded from its inception on extensive imprisonment, hard labor, and flogging, a form of punishment that persisted (for men) until 1998 (143).

Jamaica's postemancipation penal system buttressed class-based racist rule (more efficiently than it did in the postslavery United States), but the character of racism altered as the island's economy moved away from its slavery foundations. Penitentiary advocates had confidently predicted that penal discipline could instill discipline and reform any criminal, but the failures and scandals of penal rehabilitation in Jamaica hardened social scientific theories that linked criminality to race. Anderson and Aguirre document similar shifts in South Asia and Peru, where penal administrators in colonies and early republics endeavoring to establish state control over indigenous peoples and those formerly enslaved attributed incapacities of government to the moral failings and racial inferiority of the punished. Prison authorities read refusal to reform (in effect, failing to adopt proper work habits and a demonstrable sense of subordinate status) as evidence that colonial subjects, in Jamaica and throughout the empire, were inadequately equipped to behave rationally. As Paton concludes, Jamaica's "utopian effort to 'reform' was replaced with . . . new forms of racism [which] associated 'the Negro' or 'our peasantry' with criminality, implicitly defining the non-elite population as a whole as criminal" (122).

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Carlos Aguirre's pathbreaking study of state punishment in Peru, a new republic burdened with a history of colonization and slavery, is similarly a history of unfulfilled promise. The birth of the republic (1824), the end of slavery (1854), and the abolition of the death penalty (1856) signaled a new era of democracy based on the rule of law and equal citizenship rights for all. Yet as Aguirre shows, "despotic and exclusionary political and social systems" soon emerged as fears of urban disorder prompted calls for "more intrusive and effective state policies" (20). Aguirre sets himself apart from the other historians under review by voicing the despair and anger of those who suffered most, and writing passionately about the postcolonial criminal justice system's "absolute disdain for human life and dignity," as well as its "indifference and malice, if not open brutality" (13). Peru's illiberal climate emerged (and persists) not because the country was backward or failed to modernize. Aguirre argues, along with a

growing rank of postcolonial scholars, that modernization beyond the metropole assumed distinct local forms, incorporating universal features (most obviously the police forces and penal structures that replicated European and North American innovations) and grafting them onto cultural practices and political patterns that differed from those in liberal democracies. In Peruvian culture, where domestic relations between patrons and servants, husbands and wives, parents and children were “despotic, coercive,” and where whipping and beating routinely reinforced hierarchies, there was little scope for therapeutic strands of modern crime control to develop (9). The police were uniformed and governed by central authority, but they retained the use of torture and even extrajudicial execution. Only occasionally did such violence provoke public outrage. When an editor condemned police brutality in 1890, for example, he boldly connected it to the general belief that “‘authority is more respected when it is more feared’” (78).

Setting postcolonial Peru on the path to modernity and developing the republic’s penal system were closely linked agendas, particularly in the showcase capital of Lima. This conjuncture crystallized the authoritarian nature of Peruvian modernity, Aguirre argues. The city’s “very first modern building” and “‘the first monument of the Republic’” (95) was its penitentiary, planned in 1853 and opened in 1862 (91). Not an exact replica of Jeremy Bentham’s model, it came close in its size (315 cells, plus workshops and basement dungeons), its use of prison uniforms, its scheduled work regime, and its capacity for surveillance and discipline. Locals dubbed it *el panóptico* (91). Although the penitentiary (and by 1910, the penal colony, El Frontón) incarcerated large numbers of violent criminals and convicted murderers, Aguirre emphasizes that the modern penal system fulfilled successive regimes’ ambitions to control and, if necessary, exterminate those “either left behind by the modernization drive or [those who] refused to be apart of it” (7). Not only was this drive fundamentally exclusionary but it also incorporated and reproduced colonial hierarchies, including a “quasi-slave plantation” at El Frontón (106). “In a society in which racism and authoritarianism were much more prevalent than egalitarianism and human rights, the way prisoners were treated was not bound to become a source of widespread concern” (86). If modern punishment is characterized generally by a tension between rehabilitation and reintegration, on the one hand, and retribution and deterrence, on the other, Peru’s postindependence authoritarian governments wrenched it toward the latter (86).

Aguirre’s study offers more than a *plus ça change* tale of punishment, however. Between the mid-nineteenth century and the twentieth century, theories of criminality and race changed significantly as anthropologists and criminologists studied prisoners to test hypotheses about criminal characters and characteristics. Peru’s prisons never became “laboratories of virtue,” but they did provide “laboratories for the production of knowledge about the criminal” (98). Peru, along with many other advanced nations, adopted Bertillonage in the late nineteenth century

and began to collect fingerprints (shortly after India introduced fingerprinting at the turn of the twentieth century). The country was equally quick to investigate the physical and psychological makeup of prisoners, a distinctly modern means to measure criminal propensities. Augusto B. Leguía, who rose to power in 1919, promised his people a rational model of government, but he modernized Peruvian style, that is by wedding “authoritarian administration and a set of experts eager to apply scientific solutions” (97). Although scientists’, doctors’, and jurists’ grandiose research programs failed to develop as they did in Weimar and Nazi Germany, instruments such as the *Cartilla Criminológica* provided new means to classify inmates, to track disciplinary violations, and to determine fitness for parole.

More significantly, declared but unfulfilled aspirations to apply the tenets of scientific criminology produced an unanticipated effect in Peru: it inspired prisoners to protest the conditions of their incarceration. Prison authorities of the 1920s attempted to impose virtues of “hygiene, discipline, industriousness, and, more generally, the ideas behind prison reform efforts” (such as rewards for good behavior) (199). What the inmates absorbed, however, were the ideals of progressive penology, which inspired their protests for “humane treatment, a healthy environment, and the elimination of corporal punishment” (199). In a remarkable collective letter of protest, written by Lima’s penitentiary inmates, prisoners warned the director general of prisons: “Every modern system you would like to implement will be corrupted by the weeds” unless the evils of prison administration were uprooted (210). El Frontón prisoners also adopted the discourse of welfarist criminology in their letter to President Leguía. These men demanded a new conditional release provision that would allow them “to resurface in a climate of readaptation, bringing us closer to the social milieu from which our ill fortune removed us” (210). The prisoners did not get what they asked for, but Aguirre claims that they did by the 1930s develop “organizational and ideological maturity and the foundation for collective action” (212). Thus the prison experience followed a distinct historical trajectory in Peru, modernizing by interweaving its colonial past, its postcolonial political convulsions, and local authoritarian culture with Western models of penal innovation and progressive penal ideals.

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Anderson, like Paton, suggests that this modern ambition to devise technological means to render the criminal legible and consequently manageable was pursued most vigorously in settings far from Europe and North America. For instance, a rolling roster of devices, including tattoos, anthropometric measurements, costuming, photography, and fingerprinting was deployed in South Asia, from the mid-nineteenth century to the mid-twentieth century, to address colonial authorities’ incapacity to “read” native criminality. The project to render colonial subjects’ bodies legible was, Anderson argues, “central to the process of centralised state

building” (2). Like Wachsmann’s asocials, Pfeifer’s scum, Paton’s former slaves, and Aguirre’s excluded, the colonials that the British found most inscrutable were the rootless and shiftless, people who literally and figuratively could not be pinned down. *Godna*, a type of tattoo devised to detail the bearer’s crimes, characteristics, and sentence, was one such technology to fix identity. No clearer penal sign or surveillance strategy could be imagined; however, it proved surprisingly unstable: tattooists were unreliable; ink smudged and faded; bearers might wear a headdress that covered the tattoos; released prisoners faced difficulty in finding jobs or marriage partners, thereby increasing the likelihood of pursuing crime and itinerancy. Never universally imposed, *godna* was universally outlawed in 1849 as colonial officials decided that it “clashed with broader claims about colonialism as a ‘civilising process’” (41). Without penal tattoos to mark bodies, interpreting “physiognomic and cultural signs” depended increasingly on the reading of corporeal signs: faces, body shapes, and dressing, and the whorls and ridges of fingerprints.

Anderson’s command of cultural studies equips her to analyze penal semiotics. In this respect her study stands out, not only from the others under discussion (with Paton the only exception) but from the persistent tendency for criminal historiography to stick closely to the methods of social, political, and economic history. Anderson’s application of textural analysis, for example, illuminates how imposing discipline through dress was one of the prime technologies of modern punishment. In South Asia prisoners were clothed in ways that signified their unfree status and differentiated them from other prisoners, both as individuals (inmate numbers) and as members of inmate categories (based on crime, gender, caste, etc.). In the Straits Settlements, Burma, the Andaman Islands, and the Indian subcontinent, “convict uniforms had developed to provide a nuanced visual display of the penal hierarchy” (102). At the same time, ethnographers and police authorities interpreted certain indigenous styles of dress as indices of criminality. And prison reformers dressed up inmates in styles intended to display their successful transformation into compliant, productive subjects (102–3). In Anderson’s analysis, clothing emerges as a “cultural space” for “the negotiation of power relationships” (102). Yet as in Jamaica, colonial penal practices failed to measure up to colonial governing ambitions. In South Asia, efforts to standardize dress violated deeply held religious and caste-based markers of status. Any move to interfere with dress (or, indeed, hairstyles, beards, footwear, diet, or personal hygiene) “could and did lead to episodes of prison unrest” (111). Lack of uniformity also assumed racial dimensions. When on rare occasions Eurasians, Europeans, and British women received criminal sentences, prison authorities determined that dressing them as “natives” was inappropriate. Not only were they given separate accommodation, different jobs, and distinct food rations but they were also supplied with different fabrics fashioned in European style (120).

Anderson’s book falls squarely into the new post-Marxist scholarship on

empire that sees colonization as “unfinished business” (to use Antoinette Burton’s phrase) rather than as a *fait accompli* (2). This argument is difficult to sustain in light of evidence of an extensive, cross-colony penal system that combined jails, penitentiaries, penal settlements, and convict transportation, and which resulted in the incarceration of South Asians by the tens of thousands. Some of them were convicted of *thuggee*, a crime the British invented in 1826 to punish people suspected of gang membership. Vague definitions of the offense failed to prevent courts from sentencing almost a thousand convicts to life imprisonment and a further fifteen hundred to transportation between 1826 and 1841 (5). More enduring was the social scientific and medical observation and examination of convicted criminals, which produced colonial readings of the Indian social body. Like Aguirre’s Peruvian penologists, Anderson’s colonial criminologists and ethnographers conflated criminality with indigeneity, itinerancy, and poverty (196). But when she assesses the colonial ambition to read the colonized with confidence, Anderson rightly sees an unfulfilled utopian dream of empire. If the colonial project at large was beset by slippages (a term she uses repeatedly) one of its foundation blocks—state punishment—was riven with fracture lines (193).

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Anderson, as well as Paton, subjects penal history to a gendered analysis, not because either of these scholars focus on the punishment of women, but because they show that understandings of sexual difference drove modern penal rationales and practices. It no longer goes without saying that the imposition of state punishment (and rival rough justice) has been felt most keenly by men and that women were punished in smaller numbers and in different styles and places. As Wachsmann states in his introduction, “gender is clearly an important aspect of the history of punishment” (12). But what historians go on to say, and to what extent they interrogate gender, still varies greatly. Class and race are core issues in each of these works, but only Paton and Anderson sustain an analysis of sexual difference and connect it to their readings of colonial governance. For example, Paton traces the 1838–39 crisis between Britain and Jamaica over colonial elites’ autonomy to the imperial scandal over Jamaican women’s torture on treadmills and their whipping within houses of correction: “The desire to protect women from flogging in penal institutions became both the primary motivation for and the crucial symbol of the need for imperial intervention in Jamaican legislative autonomy” (84). Similarly, Anderson argues that shared “anxiety about posing the [female] body for the taking of photographs or anthropometric measurements . . . limited the ambit of colonial knowledge over female prisoners and convicts” (8). Because fingerprinting provided a less intimate means for police officers to extract data, it introduced far wider “strategies and procedures of identification” (8).

The gendered identity of the penal norm—the male prisoner or lynching victim (not to forget the prison guard and typical lyncher)—is finally beginning to attract critical attention as well. Aguirre is strong in this regard when he explores the multiple masculine identities that emerged within Peruvian prisons. The penitentiary created “human congregates,” but male prisoners sorted themselves and others into their own categories, largely through performances of masculinity. “While *faites*, for instance, were both feared and admired and strove to defend their conceptions of honor, respectability, and masculinity, *rateros* were constructed as pitiful, pathetic, and even effeminate characters of the Lima underworld” (111). Prison governors, conscious that such distinctions created “potential sources of solidarity and tension,” worked with and against prisoners’ gendered identities (111). Attacking normative, heterosexual masculinity is an enduring staple of punishment that modern prison administrators not only failed to eradicate but continue to exploit. In fact, several modern states turned emasculation, like execution, into a clinical practice. In Nazi Germany, the 1933 Habitual Criminals Law allowed courts to order *Entmannung* (literally, emasculation) for “‘dangerous sex criminals.’” Close to two thousand men were surgically castrated in the 1930s and early 1940s (141); criminologists disagreed over the operation’s effectiveness as a preventive measure, but they did agree that castrated inmates were “tired and depressed and . . . irritable because they were mocked by the other prisoners” (143). In pervasive ways that criminal justice historians are only beginning to explore—in prison architecture, in prisoners’ dress, in work assignments, in therapies and clinical interventions—modern punishment is fundamentally a gender-encoded practice.

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Considered together, these books raise intriguing lines of inquiry about penal modernity’s character. Is it credible to argue that Lima’s penal system was more modern than Louisiana’s? That the Untermeßen prison in Germany, where executions reached mass proportions by 1944, was less modern than Kingston’s penitentiary in 1844? It is tempting to answer in the affirmative, and to think about modern punishment in quantitative terms (less pain and fewer executions, more precision and restraint). But to capture penal modernity’s contradictory character requires switching the analytical axis to quality. Moving beyond the metropolises of penal innovation and incorporating colonial penal modernities is one step in this direction. As Aguirre, Paton, and Anderson demonstrate, it deparochializes criminal justice historiography’s West-centrism and challenges the argument that recent tough-on-crime and torturous antiterrorism moves represent a radical turn backward to premodernity. Indeed, when it comes to punishment, we have never, as moderns, not inflicted pain and death.