

1 JOHN CYRIL BARTON, *Literary Executions: Capital Punishment and American Culture, 1820-1925* (Baltimore, Johns Hopkins UP, 2014), pp. 330.

5 PAUL CHRISTIAN JONES, *Against the Gallows: Antebellum American Writers and the Movement to Abolish Capital Punishment* (Iowa City, U of Iowa P, 2011), pp. 230.

10 From a Western European perspective, the U.S. American death penalty in the twenty-first century often stands as the icon of a penal system characterized by judicial error, racial bias, capitalist exploitation and, not least, by an almost medieval inhumanity—a fatal backwardness that marks America’s difference from Western Europe. This perspective easily occludes that in the nineteenth century, the U.S. was at the forefront of penal reform and the abolition of the death penalty. In fact, the state of Pennsylvania was the first to introduce murder in two degrees, and many other states—in contrast to Western European nations—drastically reduced the number of capital crimes on their statutes; the antebellum period, moreover, saw a privatization of executions throughout the American northeast and a sustained campaign for the abolition of capital punishment led by state and national societies.

20 Historians such as Louis P. Masur, Stuart Banner, Philip English Mackey, and Alan Rogers have documented the activities of this “other” abolitionist movement in the age of reform, yet the role that an imaginative literature played within the battle against capital punishment has been largely overlooked. With *Against the Gallows: Antebellum Writers and the Movement to Abolish Capital Punishment and Literary Executions: Capital Punishment and American Culture, 1820-1925*, Paul Christian Jones and John Cyril Barton, who have both been publishing on the issue in journals throughout the 2000s, have now offered the first monographs to address this neglected body of texts. Yet Jones’s and Barton’s takes on how literature participates in the debate about the death penalty are very different, and in that sense, *Against the Gallows* and *Literary Executions* complement each other well and provide us with a broad understanding of the engagement of literary writing and writers in the discourse about capital punishment in the antebellum period and beyond.

40 Jones, who published his study in 2011, can be said to have opened up the investigation of

nineteenth-century death penalty texts by focusing on a great variety of genres and authors of the 1840s and 1850s—building on Barton’s 2006 call to “understand[...] the American Renaissance in terms of that ‘other’ abolitionist movement.”¹ *Against the Gallows* focuses on explicit anti-gallows writing and seeks to reconstruct “various cases of intriguing cooperation between America’s literary figures [...] and the reformers, politicians, clergymen, and periodical editors who were attempting to end the practice of capital punishment in the nation” (15). Jones employs a refreshingly broad notion of “literary figures,” including in his inquiry writers of popular poetry, of Newgate crime novels, or of women’s popular fiction, and thus elucidates “the connections between antebellum reform and America’s canonical and popular literature” (17).

His account of direct connections and operations between reform movement and literary writing is most convincing in his chapters on anti-gallows poetry and Whitman’s reformist and literary activities. In the early 1840s, John O’Sullivan, best known for his later coinage of the term “Manifest Destiny,” but one of the most vocal anti-gallows legislators and activists in New York State, used his own paper, the *Democratic Review*, as a forum to denounce English poet William Wordsworth for his publication of a series of *pro*-gallows sonnets. At the same time, he published John Greenleaf Whittier’s two *anti*-gallows poems, “Lines” and “The Human Sacrifice,” and promoted Whittier as the ideal American poet who put his poetry in the service of progressive causes. O’Sullivan demanded the same of other writers and, apart from exploiting anti-English sentiment in order to forge a national American literature, had a part in triggering the boom of anti-gallows poetry of the early 1840s. Walt Whitman, then, united the figure of the activist reformer and the writer of reform literature: while publishing articles against the death penalty in the *Brooklyn Eagle* and voicing his anti-death penalty stance in a number of editorials, Whitman also wrote more literary pieces questioning the legitimacy of capital punishment, for instance his brilliant and scathing “A Dialogue” and “Revenge and Requital.” Jones then also shows

¹ Barton, John Cyril, “The Anti-Gallows Movement in Antebellum America,” *REAL: The Yearbook of Research in English and American Literature* 22 (2006): 145-78; 176.

1 how Whitman's anti-gallows politics entered
2 *Leaves of Grass*.

3 *Against the Gallows* offers an overview of
4 the wealth of imaginative writing in opposi-
5 tion to the death penalty—its different argu-
6 ments, authors, and genres. Jones places anti-
7 gallows writing within the broader context of
8 reform writing of the antebellum period, and
9 thus within a body of work that has often been
10 characterized as employing or, more negatively,
11 exploiting sentimentalism in order to effec-
12 tively carry its socio-political message. Hence,
13 his study's central aesthetic inquiry concerns
14 the uses of sympathy and sentimentalism
15 in anti-gallows texts. Fostering the reader's
16 sympathetic feeling towards the condemned
17 was seen as “an essential step toward ending
18 the death penalty in the United States” (21),
19 as Jones demonstrates through his analyses
20 of Newgate novels, Whitman's writings, and
21 E. D. E. N. Southward's novels *The Lost Heir-
22 ess* (1853) and *The Hidden Hand* (1859). More-
23 over, these fictional writings also allowed the
24 reader to imagine a “sympathetic State” (21)
25 and “sympathy in justice” (22). The ideal state
26 and the ideal law that Americans were to en-
27 vision and to strive for were thus humanized;
28 imaginative literature worked against the dis-
29 tance that citizens began to feel to these in-
30 stitutions in a growing nation, and against a
31 dispersion of responsibility in an increasingly
32 abstract penal system.

33 If Jones approaches literary texts about the
34 death penalty from the perspective of antebel-
35 lum reform writing and its uses of sentimen-
36 talism, Barton does so from a perspective on
37 the interconnections of law and literature. *Lit-
38 erary Executions* reads literary texts against
39 a great number of other documents—studies
40 pertaining to criminal law, legal documents,
41 trial transcripts, treatises, and newspaper and
42 journal articles. Broadening Jones's historical
43 focus by including the 1820s and ending with a
44 chapter on Theodore Dreiser's 1925 *An Amer-
45 ican Tragedy*, Barton carefully shows what
46 kind of intervention each literary engagement
47 with the death penalty made at a given histori-
48 cal moment, what arguments it responded to,
49 integrated, and developed, which tropes and
50 narratives it employed—in other words: how
51 these works participated in and shaped the
52 larger public debate, or the “cultural rhetoric
53 of capital punishment” (Introduction). Given
54 this focus on the ways in which literature was
55 part of an open political debate—rather than
56 part of a progressive reform movement—Bar-

57 ton primarily focuses on the novel and its po-
58 tential dialogicity. Like Jones, he reads both
59 popular and canonical texts, but by virtue of
60 his different approach, Barton can also focus
61 on texts that do not function straight forward-
62 ly as vehicles of reform but that display ambiv-
63 alence about the legitimacy and expediency of
64 the death penalty, or even argue in favor of it.

65 Reading “law as literature as well as law in
66 literature” and “literature against law” by way
67 of cross-examinations, Barton is interested
68 in one “legal” and one “literary” question in
69 particular: how do texts revolving around the
70 death penalty construct the citizen-subject
71 vis-à-vis the state in nineteenth- and early
72 twentieth- century America? And how do
73 the legalistic and penal procedures of capital
74 punishment structure literary texts? Barton
75 reads the execution as the cultural locus which
76 for many writers dramatized “the confronta-
77 tion between the citizen-subject and sovereign
78 authority in its starkest terms” (5). As David
79 Garland has recently pointed out, the death
80 penalty in the American context is not and has
81 never been “a top-down display of might, im-
82 posed by an all-powerful state authority that
83 monopolizes violence and reserves to itself
84 the power to kill.”² Instead, in a republic, it
85 is sovereign citizens who put a citizen to death.
86 Barton shows the texts staging this tension: the
87 literary scene of execution allows the citizen-
88 reader to inhabit both positions—that of the
89 criminal and that of sovereign authority—and
90 is used by writers to probe into questions of cit-
91 izenship and social responsibility. One of Bar-
92 ton's prime examples for such a discursive tak-
93 ing on and trying out the roles of condemned
94 man and sovereign occurs at the beginning
95 of James Fenimore Cooper's *The Spy* (1821)
96 when the Wharton siblings heatedly discuss
97 the legitimacy of Major André's execution.

98 *The Spy*, one of the earliest novels that ad-
99 dresses the death penalty in the context of de-
100 bates over its abolition, importantly derives its
101 structure from “the drama of the death pen-
102 alty” and “the scene of execution” (4). Its plot
103 is built around the two near executions of Har-
104 vey Birch and Captain Henry Wharton and,
105 situating itself explicitly in a culture of public
106 debate, the novel opens and also ends with a
107 discussion among members of the Wharton

² David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Cambridge: The Belknap Press of Harvard UP, 2010) 24.

1 family over the historical execution of Major
 2 John André. The impending executions in *The*
 3 *Spy*, then, are the source of two plot structures
 5 that will characterize execution literature,
 as well as film and television, in the decades
 and centuries to come: the body-swap device
 and—even more importantly—the race against
 the clock to prevent the execution. Sylvester
 Judd's first and revised version of the execu-
 tion scene in his novel *Margaret* (1845, 1851)
 10 serves Barton as the most striking example of
 how the contested shift to the privatization of
 executions in the antebellum North manifests
 itself in literature as the question of whether
 or not to show the execution itself—a question
 that has haunted aesthetic engagements with
 the death penalty ever since. Being reprimand-
 15 ed for the “vulgarity” of his execution scene by
 genteel critics, Judd responded by blackening
 the respective paragraph in the 1851 edition
 and thus offered in print a physical reminder
 of the visceral reality of executions, whether
 witnessed by the general public or not.

20 Both Jones and Barton devote a chapter
 of their studies to Herman Melville's *Billy*
Budd, Sailor, a piece that Melville began in
 the mid-1880s and was still revising at the
 time of his death in 1891, a piece that was not
 25 published until 1924—and a story that was set
 in the late eighteenth century, but for which
 Melville took his inspiration from the *Somers*
 mutiny affair of 1842. Although *Billy Budd*
 can, with no exaggeration, be considered one
 of the most frequently discussed texts in law
 and literature, and although H. Bruce Frank-
 30 lin in “Billy Budd and Capital Punishment:
 A Tale of Three Centuries” (1997) seemed
 to have said everything that could be said on
 the topic, both *Against the Gallows* and *Lit-*
erary Executions offer exciting new readings
 of Melville's novella in light of the death pen-
 35 alty. Their different takes on *Billy Budd*, once
 more, illustrate Jones's and Barton's different
 approaches and the insights they yield.

Having argued throughout his study that
 the antebellum period abounded with “cases
 of intriguing cooperation” between anti-
 40 gallows reformers and writers, Jones turns
 this argument around in his chapter on *Billy*
Budd—a chapter which looks beyond the an-
 tebellum period as the central focus of his
 study, but which works to show the degree to
 44 which arguments and tropes of the 1840s and
 1850s pervade the novella. In “Melville's An-
 45 tebellum Silence About the Gallows” (161-
 46 68), Jones argues that Melville, while being

well informed about and sympathetic towards
 the movement to abolish capital punishment,
 “preferred to maintain a deferential silence”
 (166) on the issue of the death penalty due
 to his family relationship with Massachusetts
 Chief Justice Lemuel Shaw, who became
 his father-in-law in 1847. Shaw pronounced
 all capital sentences in the state of Mas-
 sachusetts, twenty-four in the 1840s alone.
 Jones shows, on the one hand, how Melville
 displaced the subject of the death penalty
 “onto other topics” (166) in the antebellum
 period, for instance on questions of corpo-
 real punishment in the anti-flogging chapters
 in *White-Jacket* (1850). On the other hand,
 Jones demonstrates by drawing on Lemuel
 Shaw's rhetorical framings of capital sen-
 tences that Vere's justifications of his actions
 are modelled on Shaw's “well-publicized
 pronouncements of the supremacy of legal
 duty over feeling and sympathy” (166). A
 reading of *Billy Budd* alongside antebellum
 texts discussed in the preceding five chapters
 further shows how much *Billy Budd* is rooted
 in the literary anti-gallows discourse of the
 1840s and 1850s, even while, as Franklin has
 shown, incorporating a great number of con-
 cerns of the 1880s.

Barton situates *Billy Budd* in the work of
 Melville and the political climate of the late
 1880s by drawing on an enormous amount of
 literary and extra-literary contexts—ranging
 from Slidell MacKenzie's accounts of execu-
 tions in Spain of the 1820s and 1830s to H.D.
 Smith's 1888 account of “The Mutiny on the
Somers”—making this chapter the longest,
 and also most complex of his study. He bril-
 liantly shows how the public debate over the
Somers affair inaugurated a new understand-
 ing of state authority, or of the authority be-
 hind death sentences and executions, which
 came to maturity during the Civil War and
 continued to inform political theories of the
 power of the state in the late nineteenth cen-
 tury. Almost as a side effect of following po-
 litical theories on state power in relation to
 civilian and military death sentences from the
 1840s through the Civil War to the late 1880s,
 Barton also offers a history of capital punish-
 ment during the Civil War and the postbel-
 lum period that can be found nowhere else
 in scholarship, not even in Stuart Banner's
 otherwise authoritative *The Death Penalty*,
 which almost exclusively focuses on the shift
 from the concern about the legitimacy of the
 death penalty in the antebellum period to one

1 about the condemned men's physical pain in
2 the postbellum decades.³

3 Barton implicitly and explicitly disagrees
4 with Jones's suggestion that Melville had "al-
5 most nothing to say in his work about the con-
6 troversy over capital punishment" (Jones 161).
7 Indeed, his reading of *White-Jacket*, almost
8 contradicting Jones, shows how Melville dis-
9 cusses capital punishment and references the
10 *Somers* affair in the novel's chapters 13, 14 and
11 20 and reads these in conjunction with the later
12 anti-flogging chapters. Moreover, Barton dem-
13 onstrates that *White-Jacket* must be viewed as
14 an expression of Melville's creed in the 1840s
15 that "a citizen's civil rights are sacrosanct even
16 on a man-of-war" (201), that is even in a state
17 of exception. Melville subscribed to a Demo-
18 cratic understanding of state power and the leg-
19 itimacy of state violence. Read against *White-
20 Jacket*, *Billy Budd* then emerges as a narrative
21 that can neither be easily understood as Mel-
22 ville's "Testament of Resistance" (as Jones
23 does in line with a host of other scholars) nor
24 as his "Testament of Acceptance." Barton's
25 analysis of *White-Jacket* throws into relief the
26 ambivalences of *Billy Budd* and, using the fig-
27 ure of Charles Sumner and Abraham Lincoln
28 as two important points of reference, care-
29 fully develops the different rationales for state
30 violence that Melville had absorbed since the
31 *Somers* case. In an 1843 essay, Sumner, a vocal
32 opponent of the death penalty in civil law, de-
33 fended MacKenzie's military executions on the
34 *Somers*, arguing that curtailing civil rights may
35 be necessary in a state of emergency. Lincoln,
36 suspending *habeas corpus* and authorizing
37 hundreds of military executions, adopted this
38 "emerging Republican justification of capital
39 punishment" (205) and conception of state
40 power. Vere's dilemma, Barton suggests, must

in many ways be read as Lincoln's (222-23). In
Billy Budd, then, Melville, a staunch supporter
of the war, moves far from his "straightforward
Democratic position" in *White-Jacket* to reg-
ister—yet not resolve—the tension between
Democratic and Republican understandings
of state power that trouble the nation as well as
the aging author.

Literary Executions and *Against the Gal-
lows* differ rather fundamentally in the ways
they conceptualize literature—thus asking dif-
ferent questions and suggesting different an-
swers. Whereas Barton sees his job in first con-
structing the debate about capital punishment
from literary and extra-literary texts and then
focusing on the complexities of that debate
that only more literary texts may be able to
give form to, Jones views the debate to a much
larger degree as located in an extra-textual
realm of law, politics, and activism and, hence,
is interested in how literature and its work of
affect enters into and participates in it. It is for
the reader to decide whether *Against the Gal-
lows* or *Literary Executions* might answer her
or his interests better than the other, however,
they are certainly best read in conjunction.
Both monographs open up rather than close an
exciting and still under-studied field of inquiry
into nineteenth-century literary and legal his-
tory. Jones's and Barton's ground-breaking
works will hopefully inspire scholars to be-
gin looking at literary intersections of capital
punishment with questions of race, gender,
and economics, at other contentious penal is-
sues such as life imprisonment or lynching, or
at other aesthetic and ideological modes than
sentimentalism that may be employed in the
service of reforming the justice system.

Gießen, Irvine, Amherst

Birte Christ

44 ³ Stuart Banner, *The Death Penalty: An*
45 *American History* (Cambridge: Harvard UP,
46 2002).