

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.”<sup>1</sup> *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

<sup>1</sup> 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.”<sup>2</sup> 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

<sup>2</sup> 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  
 45 1850s pervade the novella. In “Melville's An-  
 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.<sup>3</sup>

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