

Punishment, Culture and Society
Legal Studies 160

Mondays and Wednesdays

4:00 – 5:30

2 LeConte

Syllabus Final edition

Instructor:

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Office Hours:

Mondays 10:30-12:30
Tuesdays 2:00-3:30

Description:

California's current fiscal crisis has made visible for the first time in a generation how expansive our use of punishment is today here, and throughout the United States. The California prison population has grown more than six fold since the 1970s, a pattern fairly average for the United States as a whole in the same time period. While other regions of the world are also incarcerating more, the US is the world leader, imprisoning nearly a quarter of the world's overall prison population. Today, the high fiscal and social cost of incarceration has created a crisis that threatens the governability of the state over the long run. This course will explore the origins, consequences, and alternatives to our present system of "mass incarceration." In order to understand our present practices better, we will situate them in terms of the fundamental purposes of punishment, the historical record of penal development from the early modern period through the present, and through focused comparisons with penal practices in other nations and regions.

Learning Objectives:

Students should be equipped to participate as engaged citizens (either alone or on behalf of organizations) in the pressing public debate about the future of punishment in California and the United States. To be so equipped means that students should be able to identify the marks and distinctive characteristics of the specific institutions that influence the field of penal practice today, including courts, legislatures and executives, correctional officials, economic interests, and citizen groups, as well as the rationales or purposes of punishment that are available from our broader cultural toolkit (ranging from economics to evangelical Christianity) said to be advanced by these institutions. Finally, to be effective advocates for themselves or others, the student should be able to deploy a broad range of empirical and analytical skills, as well as historical and comparative examples, to determine how current penal practices or proposed reforms line up with the purposes of punishment and the broader objectives of citizens, institutions, and society as a whole.

Evaluations and Assignments:

Midterm examination: 30 percent

Paper (rough draft and final): 50 percent

Section participation and assignments: 20 percent

Student Responsibilities:

Attendance: Students are expected to attend all lectures and section meetings having already prepared any readings or assignments. If you are unable to attend due to illness of yourself or a dependent you need not contact the Professor or GSI unless you will be absent for more than a week in which case you should be prepared to offer medical verification of the problem. During the first two weeks of classes, however, when we will be taking attendance in order to permit students on the waiting list to add the class, you must contact us on the same day of any absence.

Classroom expectations: While in class please turn your cell phone off or if you must monitor it, set it to manner-mode. If your laptop has wireless access you may use it to access information relevant to the discussion but please do not read emails, newspapers, or other non-class related materials during class. The topics of this course include many subjects on which strong feelings and emotions may be generated. Students are encouraged to speak up with questions and comments, and to respond to points raised by other students. The maintenance of an effective discussion space in class, however, requires all of us to act with respect for and sensitivity toward everyone else in the room.

Plagiarism: According to the College of Letters and Sciences:

All written work submitted for a course, except for acknowledged quotations, must be expressed in the student's own words. It must also be constructed upon a plan of the student's own devising. Work copied without acknowledgement from a book, from another student's paper, from the internet, or from any other source is plagiarized. Plagiarism can range from wholesale copying of passages from another's work to using the views, opinions, and insights of another without acknowledgement, to paraphrasing another person's original phrases without acknowledgement.

The submission of such work will, under University rules, render the offending student subject to an F grade for the work in question or for the entire course, at the discretion of the instructor, and will also make the student liable for referral to the SJA.

Special Needs due to Disabilities:

If you have special needs due to disabilities we will make every effort to accommodate them. For information on University policies regarding students with disabilities, and federal and state laws affecting people with disabilities, contact:

<http://access.berkeley.edu/>

Readings:

All readings will be available online through our bspace course website (this should appear as an option in your active sites when you sign on to bspace. If you are like me and prefer to acquire the actual books (either to own or borrow), below are list of recommended books from which many assignments are drawn. Most of these are available in paperback and used editions online and some may be found at local bookstores (University Press Books and Moe's are both possibilities). Each of these authors has also published journal articles that you can access easily through the digital library (jstor is a particularly good source although not for the most current articles; consult your GSI or a librarian if you have any questions about accessing such articles).

Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002)

Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920--1955* (Ann Arbor: University of Michigan Press, 1996)

Michael Cavadino and James Dignan, *Penal Systems: A Comparative Approach* (London: Sage, 2006)

Eric Cummins, *The Rise and Fall of California's Radical Prisoner Movement* (Stanford University Press, 1994)

Michel Foucault, *Discipline and Punish: the Birth of the Prison*, trans. Alan Sheridan (New York: Pantheon, 1977)

David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: University of Chicago Press, 2001)

David Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: University of Chicago Press, 1990)

Ruth W. Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007)

Marie Gottschalk, *The Prison and the Gallows: The Politics of Mass Incarceration in America* (Cambridge University Press 2006)

Candace Kruttschnitt & Rosemary Gartner, *Marking Time in the Golden State: Women's Imprisonment in California* (Cambridge, UK: Cambridge University Press, 2005)

John Irwin, *Prisons in Turmoil* (Boston: Little Brown, 1980)

John Irwin, *The Warehouse Prison: Disposal of the New Dangerous Class* (Boston: Roxbury, 2005)

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

Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (University of North Carolina Press, 1996)

Jonathan Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford 2007)

Bruce Western, *Punishment and Inequality* (London: Sage, 2006)

Franklin Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford 2003)

General Themes [CAPS]; Lecture Topics and Assignments: Confirmed for classes 1-13, tentative after that

Each numbered lecture is one class

DO WE HAVE A PRISON “CRISIS” IN THE US/CALIFORNIA?

1. *America’s Punishment Boom an Overview*

- Bruce Western and Becky Pettit, *Beyond Crime and Punishment: Prisons and Inequality, Contexts* (Fall 2002), pp. 37-43
- John Irwin, *The Warehouse Prison*, Introduction

Recommended:

- Caltv Interview with Professor Simon
- Higher Education v. Prisons, Sac. Bee.

2. *California and the Crisis of Mass Imprisonment: Causes of the Crisis, Prospects for Change*

- Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (2007), Introduction pp. 5-29

Recommended:

- *Coleman v. Schwarzenegger; Plata v. Schwarzenegger* Three-Judge Court, Opinion and Order, 2009, pp. 6-11, 22-25, 37-43, 54-82

WHY DO WE PUNISH? WHAT IS THE POWER TO PUNISH AND WHO EXERCISES IT?

3. *Jan. 27. The rationales of punishment*
 - Hayward v. Marshall, 9th Circuit (2008)
 - Carol J. Williams, When California Denies a Murderer Parole, Should it Need a Reason? LA Times (2009)
4. *Feb. 1. Punishment and community*
 - Durkheim, The Division of Labor in Society, pp. 31-67

Recommended:

- William Miller, Choosing the Avenger: Some Aspects of the Bloodfeud in Medieval Iceland and England, (1983), pp. 159-165, 175-194
5. *Feb. 3. Punishment and Power*
 - Michel Foucault, Discipline & Punish: The Birth of the Prison (1976), pp. 3-31

HOW DID THE PRISON BECOME OUR CENTRAL WAY OF PUNISHING?

6. *Feb. 8. Capital punishment in Europe and North America in the age of Absolutism*
 - Michel Foucault, Discipline & Punish: The Birth of the Prison (1976) pp. 32-69
7. *Feb. 10. The Critique of Capital Punishment and the Birth of the prison*
 - Cesare Beccaria, Of Crimes and Punishment (1764); ch. 6, pp. 21-23; ch.12, pp. 34-42; ch. 15-16, pp. 49-61; ch. 19-20, pp. 65-70; ch. 23, pp. 73-76
 - Jeremy Bentham, Panopticon or the Inspection House (1787), Letters I-IX, <http://cartome.org/panopticon2.htm>

Recommended:

- Michel Foucault, Discipline & Punish: the Birth of the Prison (1976), pp. 200-209

February 15: No Class

8. *Feb. 17. The birth of abolitionism*
 - David Brion Davis, "The Movement to Abolish Capital Punishment in America, 1787-1861," *The American Historical Review* (1957), Vol. 63, Issue 1, pp. 23-46

WHAT EXPLAINS THE INCOMPLETE ABOLITION OF CAPITAL PUNISHMENT GLOBALLY?

9. Feb. 22. *The American death penalty since World War II*
- Franklin Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford 2003), pp. 3-15
 - Stuart Banner, *The Death Penalty: An American History* (Cambridge, MA: Harvard University Press, 2002), pp. 275-299

Recommended:

- David Grann, Cameron Todd Willingham, Texas, and the Death Penalty, *The New Yorker*, September 7, 2009 (link on bpsace)

10. Feb. 24. *Three contemporary issues: Racism, Deterrence and the Method of Execution*

- Austin Sarat, *When the State Kills: Capital Punishment and the American Condition* (Princeton: Princeton University Press, 2001), pp. 60-84
- John J. Donohue III, "The impact of the death penalty on murder," *Criminology & Public Policy*, Vol. 8, pp. 795-801
- McCleskey v. Kemp, 481 U.S. 279 (1987), excerpts

11. March 1. *The modern abolition movement globally*

- Franklin Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford 2003), pp. 16-41

12. March 3. *The death penalty in Asia*

- David Johnson and Franklin Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford University Press, 2009), pp. 15-42

13. March 8. Midterm NO PODCAST

WHY IS THE PRISON SO UBIQUITOUS AND ENDURING?

14. March 10. *The penitentiary project: Cherry Hill v. Auburn* [Ashley Rubin]
- Gustave de Beaumont and Alexis de Tocqueville, *On the Penitentiary System in the United States and Its Application in France*, trans. Francis Lieber, Ch. 2: 19-27.
 - Charles Dickens, *American Notes, Chapter 7: Philadelphia, And Its Solitary Prison*, (online version: <http://www.online-literature.com/dickens/americannotes/8/>) {originally published 1842}

15. *March 15. The prison and labor in the 19th century*
- George Rusche and Otto Kirchheimer, *Punishment and Social Structure* (Columbia University Press, 1939), pp. 3-7, 114-127
 - Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1996), pp. 17-36
16. *March 17. The penitentiary in the 20th century*
- Charles Bright, *The Powers that Punish: Prison and Politics in the Era of the "Big House," 1920---1955* (Ann Arbor: University of Michigan Press, 1996), 70-104
 - John Irwin, *Prisons in Turmoil* (Boston: Little Brown, 1980), 37-60
17. *March 29. Mass imprisonment*
- David Garland, "Mass Imprisonment an Introduction" (2001), 1-4
 - John Irwin, *Prisons in Turmoil* (Boston: Little Brown, 1980), 181-213
18. *March 31. "Supermax prison" [Keramet Reiter]*
- Atul Gawande, *Hell Hole*, *The New Yorker* (2009)
 - Lorna Rhodes, "Changing the Subject: Conversation in Supermax," *Cultural Anthropology*. (2005) *Please focus especially on pp. 395-402 of this reading.
19. *April 5. Women in Mass Incarceration*
- Candace Kruttschnitt & Rosemary Gartner, *Marking Time in the Golden State: Women's Imprisonment in California* (Cambridge, UK: Cambridge University Press, 2005), pp. 8-38
 - Jane Dorotik, "Doris", pp. 1-5
- Recommended:
- Barbara Owen, *"In the Mix": Struggle and Survival in a Women's Prison* (SUNY Press, 1998)
20. *April 7. Lifers: Prison as a Death Sentence*
- John Irwin, *Lifers: Seeking Redemption in Prison* (Routledge, 2009), pp. 109-126
 - Dirk Van Zyl Smit and Sonia Snacken, *European Penal Policy and Principal* (Oxford University Press, 2008) pp. 328-335
21. *April 12. Prisons in Russia and China*
- Laura Piacentini, *Penal Identities in Russian Prison Colonies*, *Punishment & Society*, Vol. 6:131-147
 - China: The end of a Taboo, in Marie Guerin, trans., *International Accounts of Contemporary Imprisonment*, pp. 45-54

WHAT CAUSED (Causes) MASS INCARCERATION?

22. April 14. Cultural or Racial Backlash against Social Change?

- Thomas Tyler and Robert Boeckman, Three Strikes and You Are Out, but Why? The Psychology of Public Support for Punishing Rule Breakers, *Law and Society Review*, Vol.31: 237-265 (concentrate on 237-244, 255-261)
- Loic Wacquant, "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh, Punishment and Society, Vol. 3:95-134 (concentrate on 95-103)

Recommended

- Vesla M. Weaver, Frontlash: Race and the Development of Punitive Crime Policy, *Studies in American Political Development*, 21 (Fall 2007), 230 – 265.

23. April 19. Capitalism: Neoliberalism and the Prison industrial complex?

- Ruth W. Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (Berkeley: University of California Press, 2007), pp.55-86
- Loic Wacquant, Punishing the Poor: The Neoliberal Government of Social Insecurity (Polity: 2009), xi-xxii

24. April 21. The Politics of Crime Fear and Mistrust of Government?

- Joshua Page, *The Toughest Beat* (forthcoming, Oxford University Press); Chapter 4: Power by Proxy: The Strategic Alliance Between Prison Officers and Crime Victims.
- Jonathan Simon, American Nightmare: How Forty Years of Governing through Crime Have Reshaped American Democracy, *Criminal Justice Matters*, 75:1,16-18.

25. April 26. Reentry: Leaving the Warehouse Prison (and coming back) [Nicole Lindahl]

- James Austin, Prisoner Reentry: Current Trends, Practices, and Issues by, *Crime and Delinquency* 47(3): 314-334
- A Stigma that Never Fades, *The Economist* (8/8/02)

HOW DO WE EXIT MASS INCARCERATION? WHAT LIES BEYOND?

26. April 28. Punishment and Human Rights

- Dirk Van Zyl Smit and Andrew Ashworth, "Disproportionate Sentences as Human Rights Violations," *Modern Law Review*, Vol. 67:1-20

----- *No Assigned Reading after this point*

27. *May 3. Life after Prison*

Special Guest:

Jason Bell, Exec. Dir. of Project Rebound at San Francisco State University

28. *May 5. Working Prison: Correctional Officers and Their Vision*

Special Guest:

Chuck Alexander, Exec. Vice President, California Correctional Peace Officers Association

29. *May 10: Punishment and Public Safety in California: A 21st Century Agenda*

Special Guests:

Sujatha Baliga, Esq., Restorative Justice Adviser, *Community Works West*

Megan Comfort, PhD. Professor of Medicine, UCSF, author of *Doing Time*

Together: Love and Family in the Shadow of the Prison (University of Chicago Press, 2008)

Zachary Norris, Esq., Dir. *Books Not Bars* (An Ella Baker Center Campaign)