

LEGAL STUDIES 160  
PUNISHMENT, CULTURE AND SOCIETY  
FALL 20223

M-W-F  
10:10 am to 10:59 am  
Physics Building Room 2

Instructors:

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Simon's Office Hours: Mondays 11:15-12:45; Tuesdays 2:30 to 3:30; Fridays  
11:15-12:15 (via [Calendly](#) appointment here)

GSI's:

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**COURSE SUMMARY**

This course considers punishment as a cultural, social and historical phenomenon. Most of our attention will be to practices, institutions, and ideas that developed in Europe from the twelfth-century to the present (the carceral state). After considering some basic questions of definition and location (does punishment exist in the brain, in language, in institutions?), we will examine six historical "arcs" of transformation and growth in the idea of punishment and the carceral state which have continued to spread geographically across time with colonialism and global governmental transfers.

*Introduction. Punishment Defined*

How do we distinguish punishment from other non-penal legal sanctions, and from other non-legal sanctions? Is punishment a universal human characteristic or does it vary in form and content across cultures and histories? In three introductory lectures I will suggest that although it may well be universal with roots in evolutionary biology, the will to punish is among the most culturally specific of human practices and under the conditions of western political and economic formation has evolved into a powerful engine of mass punishment. The introduction will also consider three broad theoretical frameworks that we will return to throughout the course (and elaborate on) to understand penal change.

### *Arc I. Sovereignty (12<sup>th</sup> Century - )*

During the late middle-ages, a legal revolution in the meaning of political authority spread across Europe. One of the key features of the new legal states that came into existence was the centralization of punishment for more serious crimes in the hands of state authorities and under the authority of state law. This period saw a loss of more traditional ways of resolving conflicts including reparation and compensation which the west then shared with traditional indigenous cultures around the world. This period also saw the emergence of new institutions of punishment including courts, public prosecutors, jails and public torture based executions. It is to this period, we owe one of our most enduring myths of punitiveness, the idea that failure to punish crime leads to a crisis of state authority. Crime creates a debt, and a sovereignty that fails to collect through punishment, risks the political equivalent of bankruptcy.

### *Arc II. Discipline (16<sup>th</sup> Century - )*

During the early modern period, as European society recovered from the plagues and began to respond to the beginnings of commodification of land (the enclosure movement), a whole series of legal developments aimed at addressing the perceived problem of landless wandering people with no means of employment, sometimes called vagrants. By the 18<sup>th</sup> century, the response to rapid growth in and urbanization of this population as capitalism progressed, began to include forms of disciplinary control over the unemployed like work houses. By the end of the century, the perceived threat of idleness had been linked more generally to crime and the field of legal punishment began to be colonized by the disciplinary logic of the work-house. The most enduring change to the western mode of punishment was the development of the cellular prison, often organized around forced labor and the emergence of uniformed police forces capable of surveilling the working population and enforcing both law and norms of productivity. It is to this period we owe a second enduring myth of punitiveness, that crime arises inevitably from the idleness of the poor which must be strictly circumscribed by punitive labor (or laborious punishment) and moralizing police.

### *Arc III. Eugenics (19<sup>th</sup> Century - )*

As the 19<sup>th</sup> century ended, the most advanced capitalist societies in the world faced expanding pressures from increasingly large and immiserated laboring classes. In the United States this was intensified by mass immigration and the perception by many elites that immigration was both radicalizing the US working class and adding a racially inferior element to the American population that had been dominated by western European immigrants before the late 19<sup>th</sup> century. At this time new scientific ideas about heredity, race, crime, and mental illness became enormously popular across the world, and especially in the US with its multi-racial but hierarchical society. The idea that problems like crime could be better solved by adroit use of government authority to avoid the reproduction of persons assumed to carry hereditary sources of criminality and mental illness was widely accepted and found its most horrendous expression in the eugenic sterilization imposed thousands of mostly poor white women between the wars (and continued against mostly women of color after 1960). Criminal justice institutions were transformed to make them into tools for eugenic management of the male population through the exercise of “expert” discretion to isolate the “dangerous”. While the ideology of eugenics has

been largely repudiated and scientifically rejected, it continues to influence criminal justice through institutions like Probation, the Juvenile Court, Parole, and the Indeterminate Sentence. It is to this era that we owe a third enduring myth of punitiveness, that a certain minority among the poor create the most crimes and that police and prosecutors can be trusted to effectively identify and remove them from society.

#### *Arc IV. Expulsion (20<sup>th</sup> century - )*

Beginning in the 1960s, the transformation of the US economy away from manufacturing and toward services, information, financial products and technology began to impact America's largest cities leading to displacement of jobs and middle-class families, the spread of blight through central areas (broken windows) and the emergence of urban street crime as a perceived threat to the viability of cities seeking to survive in the post-industrial economy. As part of a larger global pattern of expelling unexploitable populations, the penal system in the US underwent a number of transformations including the wide extension of prison as a response to low level crimes, the turn away from individualized methods aimed rehabilitation toward group control methods of sorting and incapacitation (what some call the "new penology") and aggressive use of police to criminalize poverty and disorder.

#### *Arc V. Racial Formation (16<sup>th</sup> century - )*

The idea of race in modern western societies is inextricably tied up with forms of carcerality from slavery through mass incarceration. At the same time, punishment has been raced from as far back as we can trace it in the United States. From the beginning of settlement in North America by European empires, and the practices of indigenous removal and enslavement they brought with them as technologies of power, public safety has been defined and implemented through racial classifications. Centuries later these classifications live on in large part through the operation of the carceral state.

#### *Arc VI. Abolition (18<sup>th</sup> century to the present)*

Calls and movements to abolish some or more rarely all forms of state punishment have emerged at various times since the 18th century. The death penalty and torture were common features of punishment that came under scrutiny and abolition beginning then. Close links were drawn between the cruelty of these punishments and that of slavery, the original focus of abolition discourse. Although the prison was in some respects an alternative to replace the death penalty and torture, as soon as evidence emerged that it might actually be a version of both, calls for prison abolition have emerged as well with peaks in the 1850s, the 1970s and today.

### **Learning Objectives**

By the end of the course students will be familiar with the origins and development of the major institutions that exercise the power to punish in modern societies. In addition, students will have learned a tool kit of social scientific concepts useful in probing the significance of penal change (or continuity) over long periods of history and in contemporary society.

### **Required Textbooks:**

Please acquire the following book in any edition (a copy will be placed on reserve):

**Hernández, Kelly Lytle. *City of inmates: Conquest, rebellion, and the rise of human caging in Los Angeles, 1771–1965*. UNC Press Books, 2017.**

All other required readings\* will be available in PDF form on the bCourses [website](#).

\*Note the topics and readings assignments for each class will be circulated in a separate document

### **Student Participation and Evaluation**

Lectures will be recorded to support students who must miss class due to illness or other excused absence. Otherwise students are expected, when not ill or otherwise reasonably excused, to attend every class and section meeting having done the assigned reading in advance. During lectures, students will be regularly asked to break out into small groups to discuss the themes of the class and then to share insights gathered in these exercises with the whole class.

Assessment will be through 7 biweekly multiple choice/multiple answer quizzes ( and two essays that take the place of a midterm and final for this class and participation in weekly section meetings (beginning in week 2). (Points adding up to 100)

*Section Participation:* The expectation is that you will attend each meeting of the section in person (unless it is necessary to switch to zoom due to health concerns), fully prepared with the readings assigned up to the day of your section and regularly contribute to the discussions (while respectfully following the contributions of your colleagues). Your absence is excused if you have a health or personal situation that necessitates your absence (this is on the honors system, an explanation to your GSI will be due). (Points from 1-15)

*Quizzes:* Will be posted the week following each of 7 two week sections of the course and will remain open for the remainder of the semester (but you may only take each one once). Each quiz will be based on the lectures and assigned readings during the weeks. The quizzes will be open note and open book. You may take up to 23 hours to complete each quiz but it should take no more than 30 minutes of normal test taking time (and however much you might expand that for a DSP). (Points: Each quiz is worth 1-5 points for a maximum total of 35 points).

*Essay 1* - DUE FEBRUARY 21 (through upload from the Essay 1 Assignment Link that will be published in due course). Choose any one of the chapters 1-6 (not the introduction or conclusion) in Kelly Lytle-Hernandez's book, *City of Inmates* and address one of the following two topics in an essay of < 750 words: (1-20 Points). This must be your own original work.

1. How do the dynamics discussed in the chapter affect people from your background (in however many ways you define that) in the present?

2. How do the dynamics discussed in the chapter show up in the operation of the carceral state in California (or wherever you are from if you want) in the present?

Whichever you choose, your essay should:

- Summarize the main points you take away from the chapter you have chosen (40%)
- Following (but critically) Durkheim's essay, "Two Laws of Penal Evolution", explain whether considering prompt 1 or 2 you think the overall story is one of change, continuity, or some of both (and why). (30%)
- Your story should include sources of evidence on which you base your view. This can include your own experiences, that of people you know, as well as events documented in credible sources of news or from reports by government agencies or public interest NGOs. (30%)

*Essay 2* - DUE MAY 8 (through upload from the Essay 2 Assignment link that will be published in due course). Write an essay of < 1250 words on one of the following major themes of the course (1-30):

1. SOVEREIGNTY
2. DISCIPLINE
3. EUGENICS
4. EXPULSION
5. RACE FORMATION
6. ABOLITION

Whichever you choose, your essay should include the both of the following:

- A. As you look at a contemporary penal event (for example an execution, a change in sentencing law, a prison uprising) in terms of this theme (for example, sovereignty) do you see a story of continuity or change, or a mix of both, and if change, of what kind and direction. Please point to evidence drawing on at least one scholarly article or book chapter that supports this claim. (40 percent)
- B. Offer possible explanations for the nature and direction of change drawing on and providing supportive citations (or short quotes) from two of the following authors we have read in this course: Durkheim, Foucault, Melossi, Gilmore, Lytle-Hernandez or W. E. B. DuBois to explain the continuity or change you observe. (30 percent each).

### **Inclusion**

This class is dedicated to providing a safe, productive and accessible environment for all students. If anything in class or section makes it not that way for you (or others you observe) please let me know as soon as possible. If you have accommodation needs please contact the

Disabled Students Program office at <https://dsp.berkeley.edu/> . The DSP program will then instruct us in ways that fully protect your equality and privacy rights.