

LEGAL STUDIES 160
PUNISHMENT, CULTURE AND SOCIETY
SPRING 2024

Tu-Th
3:30 pm to 4:49 pm
Physics Building Room 2

Instructors:

Professor Jonathan Simon
592 Simon Hall
jssimon@berkeley.edu
510-643-5169

Simon's Office Hours: Beginning January 22, 2024
Mondays 2:05 to 3:30, in person Room 592 Simon Hall (no reservations needed).
Tuesdays 11:30 to 12:45 (in person or via zoom, please reserve time via [Calendly](#) appointment here)

GSI's:

Todd Neece

toddtneece@berkeley.edu
Discussion Section 101 (Monday 9:00 am-10:00 am; 174 Social Sciences Building)
Discussion Section 104 (Thursday 2:00 pm-3:00 pm; 174 Social Sciences Building)
Todd's Office Hours (by appointment only) will be held in person
Tuesdays 2:15-3:15; Thursdays 12:45-1:45
Todd's in person Office Hours appointments will be held at Caffe Strada (2300 College Avenue @ Bancroft Way) if it is not raining; at Cafe Milano (2522 Bancroft Way) if it is raining. Students should send an email request if they wish to meet via Zoom or on/at an alternative day/time.
[This is the link to Todd's Office Hours appointments sign up sheet.](#)

Margot Lipin

margotlipin@berkeley.edu
Discussion Section 102 (Tuesday 10:00 am-11 am; 71 Evans)
Discussion Section 103 (Wednesday 2:00 pm-3pm ; 4 Evans)
Margot's office hours (by calendly appointment only) in person or on zoom.
In person office hours will be held at Caffe Strada on Thursdays from 1-3 pm.
[Calendly link to sign up for office hours here.](#) Please sign up for office hours by midnight the night before.

COURSE SUMMARY

Punishment may well be a universal human trait some version of which can be found in every society known to history and may be rooted in the evolution of early human groups. Yet it is even more striking that the purposes and means of punishment (the whys and hows), varies across time and space. It is that variation and its possible explanations that will be the main subject of this course. Punishments vary, sometimes dramatically across history in the same place, and in different societies at roughly the same time. For example, physical torture in public was considered an appropriate punishment for murder and many other serious crimes in most European societies from the late Middle Ages on, but would today constitute an egregious violation of constitutional and human rights and indeed a crime by those actually executing or ordering the sentence in most contemporary societies. When prisons were introduced in the late 18th and early 19th centuries in Europe and the Americas, hard physical labor enforced by whipping was considered a humane alternative to mutilation or death. Today it would violate constitutional or human rights charters in much of the world. But what explains penal change and variation? Three branches of classical European social theory which we will meet in Pt. I of this course offer important foundations for developing more historically and empirically grounded accounts: Values, Class (and racial) Domination, and Rationalization (anchored in the works of Emile Durkheim, Karl Marx and Max Weber respectively). If values change, the criminal law and its connection to the desire for punishment may change as well. When new forms of capital emerge as engines of economic growth, the power of punishment to create social control may be redirected and reframed. When authority is reconstituted along new lines of legitimacy, the logic of punishment can come to seem deeply problematic.

Following the introduction, the course will take up four core methods of punishment and their historical development:

1. Introduction: Theorizing penal change
2. The Death Penalty (Capital Punishment)
3. Incarceration and forced removal (Prisons, Jails, transportation and related custodial institutions)
4. Supervision (Probation, Parole, Pretrial release with conditions)
5. Mass incarceration (the coordination of punitive institutions to achieve sustained growth in incarceration).
6. Conclusion: Abolition

In each case we will focus on the United States primarily (with some comparative notes) and look at the full history of penal development from the emergence of the practice to the contemporary period.

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:

Miller, Reuben Jonathan. *Halfway home: Race, punishment, and the afterlife of mass incarceration*. Little, Brown, 2021.

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

Grading will be based on:

Points assigned for the following evaluation tasks (out of a possible 100 points)

Lecture and reading comprehension

Assessment will be through five untimed multiple choice/multiple answer quizzes and two writing assignments. (Total of 85 points)

Section Participation:

The expectation is that you will attend each meeting of the section in person 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). (Total of 15 Points)

Quizzes:

Will be posted for each of the first five parts of the course. Each quiz will be available the week following the conclusion of that part of the course and will remain open until the end of dead week. The quizzes will be based on the lectures and assigned readings during the weeks covered. They will be open notes and open books. The quiz is untimed but should take no more than 30 minutes. (Points: Each quiz is worth 5 points for a maximum total of 25 points).

Assignment 1 - DUE MARCH 1 through upload from the assignment link that will be published along with the specific prompt on February 15. Total points = 25 points. Maximum length = 1000 words.

Assignment 2 - DUE MAY 10 through upload from the assignment link that will be published along with the specific prompt on APRIL 19. Total points: 35 points Maximum Length = 1500 words. This essay will allow you to choose to write on any of the major forms of punishment we have studied during the semester.

Assignments will be graded by your GSI. Contested grades will be reviewed by Professor Simon who reserves the right to raise or lower the grade assessed by the GSI.

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.

Topics and Reading Assignments

Part I. Why do we punish? How do we punish? Explaining variation across states and histories

Tuesday January 16

Assigned reading:

Franz Kafka, [In the Penal Colony](#) (also pdf in files)

Thursday January 18: NO IN PERSON CLASS [VIDEO TAPED LECTURE AVAILABLE ON BCOURSES MEDIA GALLERY]

Assigned readings:

[Simon, Jonathan and Richard Sparks. 2013. "Introduction: Punishment and Society: The Emergence of an Academic Field." Pp. 1-20 in The SAGE Handbook of Punishment & Society, edited by J. Simon and R. Sparks. Los Angeles, CA: Sage Publications, Ltd.](#)

Tuesday January 23

Assigned reading:

[Durkheim, Emile. \[1903\] 1992. "Two Laws of Penal Evolution." Pp. 21-49 in *The Radical Sociology of Durkheim and Mauss*, edited by M. Gane. London; New York: Routledge.](#)

Karr, Steven M. "Now we have forgotten the old Indian law: Choctaw culture and the evolution of corporal punishment." *American Indian Law Review* 23, no. 2 (1998): 409-423. read pp. 409-412

Thursday January 25

Assigned Reading:

[Melossi, Dario. 2013. "Georg Rusche and Otto Kirchheimer: 'Punishment and Social Structure.'" *Social Justice* 40\(1/2 \(131-132\)\):265–84.](#)

[Weber, Max. 1958. "Three Types of Legitimate Rule."](#)

Tuesday January 30

Assigned Reading:

Foucault, Michel. 1978. *Discipline & Punish: the Birth of the Prison*. Pp. 3-23.

Part II: Death, Law & Sovereignty

Thursday February 1

Assigned Reading:

[Banner, Stuart. 2002. "Chapter 1: Terror, Blood and Repentance." Pp. 5-23 in *The Death Penalty: An American History*.](#)

Recommended:

Gatrell, Vic. 1994. "Chapter 3: Carnival or Consent." Pp. 90-105 in *The Hanging Tree: Execution and the English People, 1770-1868*. Oxford ; New York: Oxford University Press.

Banner, Stuart. 2002. "Chapter 2: Hanging Day." in *The Death Penalty*.

Quiz 1 Posted Friday February 2

Tuesday February 6

Assigned Reading:

[Beccaria, Cesare. *An Essay on Crimes and Punishment*, read chapter 6: Of the Proportion Between Crimes and Punishments, and chapter 28: On the Penalty of Death](#)

Thursday February 8

Assigned Reading:

[Banner, Stuart. 2002. "Chapter 6: Into the Jail Yard." Pp. 144-168 in *The Death Penalty: An American History*. Cambridge, Mass: Harvard University Press.](#)

Foucault, Discipline & Punish, pp. 73-82

Tuesday February 13

Assigned Reading:

[McGann, Anthony, and Wayne Sandholtz. 2012. "Patterns of Death Penalty Abolition, 1960-2005: Domestic and International Factors." *International Studies Quarterly* 56\(2\):275-89.](#)

Thursday February 15

Assigned reading:

[Steiker, Carol S., and Jordan M. Steiker. 2016. "Chapter 2: The Supreme Court Steps In." Pp. 38-77 in *Courting Death: The Supreme Court and Capital Punishment*. Cambridge, Massachusetts: The Belknap Press of Harvard University Press.](#)

Austin Sarat, Utah Judge Clears the Way for the First Firing Squad Execution in More Than a Decade 27 DEC 2023

<https://verdict.justia.com/2023/12/27/utah-judge-clears-the-way-for-the-first-firing-squad-execution-in-more-than-a-decade>

Recommended reading:

Steiker, Carol S., and Jordan M. Steiker. 2016. "Chapter 3: The Invisibility of Race in the Constitutional Revolution." Pp. 78-115 in *Courting Death: The Supreme Court and Capital Punishment*. Cambridge, Massachusetts: The Belknap Press of Harvard University Press.

Austin Sarat, Katherine Blumstein, Aubrey Jones, Heather Richard, Madeline Sprung-Keyser, and Robert Weaver. "Botched executions and the struggle to end capital punishment: A twentieth-century story." *Law & Social Inquiry* 38, no. 3 (2013): 694-720.

Part III: Incarceration, Labor & Discipline

Tuesday February 20

Assigned Reading:

[Anderson, Clare. 2016. "Transnational Histories of Penal Transportation: Punishment, Labour and Governance in the British Imperial World, 1788–1939." *Australian Historical Studies* 47\(3\):381–97.](#)

Thursday February 22

Assigned Reading:

Michel Foucault, *Discipline & Punish*, pp. 195-244

Recommended Reading:

Simone Brown, *Dark Matters: On the Surveillance of Blackness* (2015), 1. Notes on Surveillance Studies: Through the Door of No Return

Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom*, Chapter 8, "The Carceral Landscape"

Quiz 2 Posted Friday February 23

Tuesday February 27

Assigned Reading:

[Aguirre, Carlos. 1996. "The Lima Penitentiary and the Modernization of Criminal Justice in 19th Century Peru." Pp. 44-77 in *The Birth of the Penitentiary in Latin America: Essays on Criminology, Prison Reform, and Social Control, 1830-1940*, edited by R. Salvatore and C. Aguirre. Austin: University of Texas Press.](#)

Thursday February 29

Assigned Reading:

[Botsman, Daniel. 2007. "Chapter 6: Restoration and Reform: The Birth of the Prison in Japan." Pp. 141-164 in *Punishment and Power in the Making of Modern Japan*. Princeton, NJ: Princeton University Press.](#)

Assignment 1 Due Friday March 1, 11:59 pm

Tuesday March 5

Assigned Reading:

[Larson, Doran. 2014. "The Life." Pp. 13-53 in *Fourth City: Essays from the Prison in America*. East Lansing: Michigan State University Press.](#)

Thursday March 7

Assigned Reading:

[Larson, Doran. 2014. "Family Life in and From Prison City." Pp. 112-137 in *Fourth City: Essays from the Prison in America*. East Lansing: Michigan State University Press.](#)

Tuesday March 12

Assigned Reading:

[Seeds, Christopher. 2022. "Introduction." Pp. 1-24 in *Death by Prison: The Emergence of Life Without Parole and Perpetual Confinement*. Oakland, California: University of California Press.](#)

Recommended Reading:

Seeds, Christopher. 2022. "Chapter 3: The Phenomenon to be Explained." Pp. 51-68 in *Death by Prison: The Emergence of Life Without Parole and Perpetual Confinement*. Oakland, California: University of California Press.

Thursday March 14

Assigned Reading:

[Reiter, Keramet A. 2012. "Parole, Snitch, or Die: California's Supermax Prisons and Prisoners, 1997-2007." *Punishment & Society* 14\(5\):530-63.](#)

Part IV: Supervision, Deviance and Social Control

Tuesday March 19

Assigned reading:

[Willrich, Michael. 2003. "Chapter 4: Socializing the Law." Pp. 96-115 in *City of Courts: Socializing Justice in Progressive Era Chicago*. Cambridge, UK ; New York: Cambridge University Press.](#)

Thursday March 21

Assigned Reading:

[Ward, Geoff K. 2012. "Chapter 3: Birth of a Juvenile Court." Pp. 77-103 in *The Black Child-Savers: Racial Democracy and Juvenile Justice*. Chicago: The University of Chicago Press.](#)

Quiz 3 Posted Friday March 22

March 26, March 28 SPRING BREAK

Tuesday April 2

Assigned Reading:

[Phelps, Michelle S. "Ending mass probation." *The Future of Children* 28, no. 1 \(2018\): 125-146.](#)

Part V: Mass Incarceration, the Urban Crisis, & the Power to Expel

Thursday April 4

Assigned Reading:

[Alexander, Michelle. 2012. "Chapter 1: The Rebirth of Caste." Pp. 20-57 in *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press.](#)

Quiz 4 Friday April 5

Tuesday April 9

Assigned Reading:

Miller, Reuben Jonathan. 2021. *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. New York: Little, Brown and Company. Read pp. 3-60

Thursday April 11

Assigned Reading:

Miller, Reuben Jonathan. 2021. *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. New York: Little, Brown and Company. Read pp. 61-125

Tuesday April 16

Assigned Reading:

[Gilmore, Ruth Wilson. 2007. "Chapter 3: The Prison Fix." Pp. 87-127 in *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California*. Berkeley: University of California Press.](#)

Thursday April 18

Assigned Reading:

Miller, Reuben Jonathan. 2021. *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. New York: Little, Brown and Company. Read Pp. 129-192.

Tuesday April 23

Assigned Reading:

Miller, Reuben Jonathan. 2021. *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. New York: Little, Brown and Company. Read Pp. 193-236.

Thursday April 25

Assigned Reading:

Miller, Reuben Jonathan. 2021. *Halfway Home: Race, Punishment, and the Afterlife of Mass Incarceration*. New York: Little, Brown and Company. Read Pp. 237-272

Conclusion: Visions of Abolition

Tuesday April 30

Assigned Reading:

[Mathiesen, Thomas. 1986. "The Politics of Abolition." *Contemporary Crises* 10\(1\):81–94.](#)

Thursday May 2

Assigned Reading:

Shelby, Tommie. 2022. *The Idea of Prison Abolition*. Princeton: Princeton University Press.

Read [Introduction, Pp. 1-17](#); and [Chapter 1: Army of the Wronged, Pp. 18-43](#)

Recommended Reading:

Cullors, Patrisse. 2018. "Abolition and reparations: Histories of resistance, transformative justice, and accountability." *Harv. L. Rev.* 132: 1684.

Quiz 5 Posted Friday May 3

Assignment 2 Due Friday May 10, 11:59 pm