

History of the Prison – Legal Studies 190-004 (Class #30066)

Spring 2022

Wednesday, 3-6 p.m. , 175 Social Science Building (formerly, Barrows)

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Office Hours

Thursday, 9:30 10:30 & 2-3.

Course Design

Arguments over the purposes and practices of punishment have become a familiar feature of current political debate and controversy. The first weeks of semester are devoted to the debates that attended one of the most dramatic transformations in the history of western punishment: the emergence in the early-19th century of the penitentiary as the standard sanction for the treatment of the most serious crimes. We will examine leading reform arguments in support of the penitentiary; antagonistic assessments of the earliest experiments with the penitentiary; and the subsequent proposals to adapt imprisonment to new penal purposes.

In the remaining weeks at the semester, we will consider another and more contemporary episode in the history of punishment. We explore the recent phenomenon of “mass incarceration” in the U.S. along with the extensive changes that have occurred in criminal justice since the 1970s. We conclude with an examination of current calls for prison abolition.

In exploring the history of punishment, our concern goes beyond the important practical question of what public strategy is most effective in responding to crime. Instead, we seek to discuss what a community's penal practices reveal about its system of values and expectations; its conceptions of criminality and related understanding of normal behavior; and its understanding of the morally-acceptable forms of public coercion and force.

Learning Goals

In addition to studying in depth one of the central and most controversial elements of the modern legal order, criminal punishment, the seminar format provides an important set of learning goals. The seminar setting and smaller class size enable students to help determine the set of questions we emphasize through the semester and the issues that receive our closest attention. Our emphasis on collective discussion means that students have greater opportunity to raise questions and bring to the material their distinctive perspectives and insights.

The following learning goals are especially important:

- Your close reading and reaction to many of the most influential treatments of the goals of punishment developed since the late 18th century;
- Your ability to analyze complex legal texts and to develop your analyses in conversation with other students;
- Your understanding of how ideas concerning "humanity" and "fairness" have changed over time in connection with the practice of punishment, and of how arguments over punishment have helped shaped debates concerning the functions of law and power in our society;
- Your understanding of the historical processes by which imprisonment became the central penalty for the treatment of the most serious crime, and of the transformation of the penal system over the past 40 years;

- Your composition of a final paper on a topic of your choosing, drawn from the themes and materials of the seminar. You will receive help in formulating your paper topic and comments on an early draft of the paper itself.

Course Requirements, Expectations, Grading

- *The seminar carries a substantial reading load.* The bulk of the assigned reading comprises primary texts and documents from the history we seek to understand. As we do not rely on a modern scholar to interpret this history for us, the task of interpretation and understanding falls to our discussions at the weekly seminar meetings. The first and most important requirement of the seminar is your careful preparation of all assigned readings and your energetic contribution to seminar discussions. Everyone will be required to participate, and a significant part of your grade is based on the evaluation of your seminar participation and engagement.

- *Contributions to threaded bCourse Discussion.* In advance of class meetings, you are required to contribute to an on-line Forum discussion of the assigned reading on the bcourse site. Your contributions will provide brief responses to specific prompts, respond to the points made by other seminar members, and pose questions for others. These Discussion contributions are due each week by 12:00 p.m. of the seminar meeting. You are expected to read through all of the contributions before our meeting at 3:10 that afternoon. The assignment is designed to help you reflect on the assigned reading and initiate our seminar conversation. (You are allowed one "absence" from the bCourse Discussion during the semester.)

- *End of class meeting reaction comments.* Following most seminar meetings, you will be asked to submit another brief comment about the concluded class. This gives you the chance to reflect on our collective discussion of the assigned materials. You may be asked to describe what you specifically learned from the conversation or to identify the important questions and ideas you would have liked us to discuss.

- *Early office our visit.* I shall hold additional office hours during the first two weeks of the semester and you are required to attend this brief meeting of 10 minutes or less. The purpose of the meeting is simply to help me get to know you a bit better and to learn about your other classes and studies.

Midterm writing assignment. Around the end of the seventh week of the semester, you will have a brief writing assignment (about 4 pages in length) on the assigned course materials. The assignment will give you the opportunity to compare any two or more of the theories concerning imprisonment we consider in the first part of the semester. Further information about the assignment and how best to tackle it will be provided at least two weeks ahead of the deadline.

- *A seminar paper, of about 20 pages in length, is the final class assignment.* Your paper may involve a comparative discussion of two or more of the principal authors we read prior to the mid-term exam. Alternatively, you may use the paper as an opportunity to write about an area of criminal justice history about which you have an established interest or knowledge. Again, later in the semester you will receive detailed information concerning how to choose and plan your paper topic. Time during the final seminar meetings will be devoted to your paper assignments. A brief paper "proposal" (roughly, 1-2 pages in length) is due on March 19. A draft of your paper is due on April 18. The Seminar paper itself is due on May 18.

- *There is no midterm exam or final exam for the class.*

Your final grade will be determined on roughly the following basis:

bCourse discussions, reaction comments and seminar participation - 40%

midterm writing assignment - 20%

seminar paper - 40%

Academic Integrity

Please familiarize yourself with [Berkeley's Academic Integrity policy](#). I treat this policy with utmost seriousness. If you plagiarize, cheat or are otherwise dishonest, you will fail at least the assignments in question (or more likely the course) and I will file an academic dishonesty report. Please contact me should you have any questions about the policy.

Seminar Materials

No books have been ordered for you to purchase. I have tried to select assigned readings that are available online or are available in digital editions through the Berkeley library. Where this is not the case, PDF copies of the assigned material are posted to the bcourse site.

Our approaches to the material

The historical writings you are asked to discuss initially may present some challenge on account of their historical remoteness. Institutions are described and terms are deployed which no longer figure in modern law. On the other hand, many of the aspirations and ideals for criminal justice advanced in these works may seem quite familiar and even obvious.

To help bring this material into focus for the purposes of our seminar discussions, you may find it helpful to consider each assigned reading in light of the following general themes:

- How are the causes and nature of crime understood and depicted? How great and what kind of threat to the social order is crime presented as posing? What is the depiction of the kind of person who commits crime? What kind of situations and conditions are associated with crime? Is the person committing crime perceived as being sinful, diseased, weak, untrained, sub-rational, or super-rational, etc.?
- What are the presented aims of the criminal justice system in general and of punishment in particular? When punishment succeeds, what are the mechanisms of its success – what actually happens to the person who has been punished and to the persons administering the punishment? What are the differences among the alternative claims that punishment should punish, should reform, should educate, should rehabilitate, etc.?
- With what other institutions and practices are the institutions of punishment compared and associated? For example, is the successful prison like a school, like a community, like a family, like a factory, etc.?
- How are the current failures of the institutions of punishment explained and understood? Are previous failures the result of neglect and inattention, or of abuse and mistaken goals? What kind of knowledge and expertise is required to design and operate a successful scheme of punishment? Which social groups command this knowledge and expertise?
- Penal reformers in this period frequently describe their advocated reforms as being more “humane”, more “just”, more “rational”, or less “cruel” than currently existing penal practices. What precise content is being given to these general terms of valorization? In what sense (for example) in incarceration less “cruel” than branding? In what sense is imprisonment more “rational” than penal exile?

Weekly Class Schedule and Topics

January 19 - Seminar introduction and goals

January 26 – Against Public Punishment

Featured reading:

Jonas Hanway, *Solitude in Imprisonment* (1776)

Benjamin Rush, *Essays: Literary, Moral and Philosophical* (1798, 1806)

“An Enquiry into the Effects of Public Punishments”

“On the Punishment of Murder by Death”

February 2 - Surveillance, Labor and Discipline

Featured reading:

Jeremy Bentham, *Panopticon; or, The Inspection House* (1787)

James Mill, "Prisons and Prison Discipline" (1825), Parts I, III, IV.

February 9 - The U.S. Penitentiary: An Experiment Observed (a)

Featured Reading:

Gustave de Beaumont and Alexis de Toqueville, *On the Penitentiary System in the United States and its Application in France* (1833)

February 16 - The U.S. Penitentiary: An Experiment Observed (b)

Featured Reading:

Gustave de Beaumont and Alexis de Toqueville, *On the Penitentiary System in the United States and its Application in France* (1833)

Charles Dickens, *American Notes* (1843), "Philadelphia and its Solitary Prison"

February 23 – Punishment, Penal Welfare and Juvenile Justice

Featured Reading:

National Congress on Penitentiary and Reformatory Discipline, "Declaration of Principles" (1871)

Sophonisba P. Breckinridge and Edith Abbott, *The Delinquent Child and the Home* (1912)

March 2 - The Transformation of Criminal Justice and Mass Incarceration

Featured Reading:

The Challenge of Crime in a Free Society (1967)

David Garland, *The Culture of Control* (2001)

Punishment and Society (2000), "The Meaning of Mass Imprisonment"

Daedalus (2010), "Mass Incarceration"

March 9 – Mass Incarceration, Race and U.S. History

Featured Viewing:

Ava DuVernay, 13th (2016)

March 16 – Rethinking Punishment and Race

Featured Reading:

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010)

James Foreman, "Racial Critiques of Mass Incarceration" (2012)

James Foreman, *Locking Up Our Own* (2017)

March 23 – no class meeting, Spring Break!

March 30 – What Next?

Featured Reading:

Ruth Wilson Gilmore, *Golden Gulag* (2007)

Angela Y. Davis, *Are Prisons Obsolete?* (2003)

Kamala Harris, "Kamala's Plan to Transform the Criminal Justice System" (2018)

April 6 and 13 - individual meetings on seminar papers

April 20 - presentation of paper topics (a)

April 27 - presentation of paper topics (b)