

LEGAL STUDIES 190 – History of Punishment (CCN 51683)

Spring 2016
Monday, 3:00-6:00 p.m. – 238 Kroeber Hall

David Lieberman
445 North, Boalt Hall (Law School)
dliberman@law.berkeley.edu; tel. 510-643-2667

Office Hours
Wednesday, 2:10-3:30

Course Design

Arguments over the purposes and practices of punishment have become a familiar feature of current political debate and controversy. This seminar will consider 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 final weeks of the semester, we will consider another and more contemporary episode in the history of punishment. We will examine the recent phenomenon of “mass incarceration” in the U.S. along with the extensive changes that have occurred in criminal justice since the 1970s.

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 class's seminar format provides an important set of learning goals. The seminar design 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.

Course Requirements and Expectations

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 class discussions.* Everyone will

be required to participate, and a significant part of your grade will be based on the evaluation of your participation in seminar discussions.

Many of you will want to use laptops, tablets and similar devices for reading assigned materials and note taking. *During our meetings, please restrict your use of these devices for these purposes.* If I find the technology is being used for other purposes and inhibits our discussions, we will shift to hard copies and manual note-taking.

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. 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. 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.)

A mid-term exam on the seminar reading will be held in class. The anticipated date of the mid-term is March 14. Several weeks prior to the exam, you will receive full information concerning the mid-term’s coverage.

A seminar paper, of about 15-20 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 April 1. A draft outline and introductory section of your paper is due on April 18. The Seminar paper itself is due on May 13 (the last day of the exam period).

There is no final exam for the class.

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

bCourse discussions and seminar participation - 50%

mid-term exam - 15%

seminar paper - 35%

Seminar Web Site

A bCourses web site for the class [<https://bcourses.berkeley.edu/>] will be used throughout the semester as the primary mechanism for posting announcements and distributing required information. Students enrolled in the class are automatically included in the list of participants who receive email announcements posted to the site. If you have any difficulty gaining access, please notify me by email immediately. I will need your student ID number and your email address *as listed in the campus directory* (<http://directory.berkeley.edu> .)

Seminar Materials

Two books have been ordered which you will need to obtain:

David Garland, *The Culture of Control* (Chicago Univ. Press, 2001)

Norval Morris and David J. Rothman (eds.), *The Oxford History of the Prison* (Oxford Univ. Press, 1995).

All the other assigned reading is available online.

Guide to Reading and Seminar Discussions

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 seen 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) is incarceration less “cruel” than branding? In what sense is imprisonment more “rational” than penal exile?

Reading Assignments and Class Schedule

January 25

Seminar introduction and goals

Oxford History of the Prison, chapter 2 (Spierenburg, “The Body and the State: Early Modern Europe”), pp.44-70 [posted PDF]

February 1

Cesare Beccaria, *On Crimes and Punishments* (1764),

Introduction, chapters 1-3, 5-7, 12, 16, 19, 20, 22, 27, 28, 41, 46, Conclusion.

Online editions:

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=2193&Itemid=27

http://www.constitution.org/cb/crim_pun.htm

For February 9

Oxford History of the Prison, chapter 3 (McGowen, “The Well-Ordered Prison”), pp.71-95.

Benjamin Rush, *Essays: Literary, Moral and Philosophical* (1798, 1806) [posted PDF]

entire book at:

http://books.google.com/books?id=xtUKAAAAIAAJ&printsec=frontcover&dq=benjamin+rush&hl=en&ei=yaQ0TdGkLouusAOO3YmzBQ&sa=X&oi=book_result&ct=result&resnum=3&ved=0CDMQ6AEwAg#v=onepage&q&f=false

“An Enquiry into the Effects of Public Punishments” pp.136-63

“On the Punishment of Murder by Death” pp.164-82

Jonas Hanway, *Solitude in Imprisonment* (1776), pp.3-4, 11-13, 17-19, 28-38, 41-3, 70-4, 103-06. [posted PDF]

February 15 – no class meeting, Presidents Day!

For February 22

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

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1925&Itemid=28

Preface, Letters 1, 2, 5, 6, 8, 9, 14; Postscript Part 2, Section 2 (on “Management”)

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

http://oll.libertyfund.org/index.php?option=com_staticxt&staticfile=show.php%3Ftitle=1766&Itemid=28

Oxford History of the Prison, chapter 4 (Rothman, “Perfecting the Prison”), pp.100-16.

For February 29

Gustave de Beaumont and Alexis de Toqueville, *On the Penitentiary System in the United States and its Application in France* (1833), chapters 1-3, 6-7; Appendix A, “Conversation with Elam Lynds,” pp.161-5. [posted PDF]

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

[posted PDF] entire book at:

http://books.google.com/books?id=_OtKAAAAYAAJ&printsec=frontcover&dq=charles+dickens+american+notes&hl=en&ei=s6k0Td6aMoSssAOdyJyTBg&sa=X&oi=book_result&ct=result&resnum=2&ved=0CC4Q6AEwAQ#v=onepage&q&f=false

For March 7

National Congress on Penitentiary and Reformatory Discipline, "Declaration of Principles" (1871) [posted PDF]

Mary Carpenter, *Reformatory Prison Discipline* (1872), Introduction; chapter 1, pp.1-14; chapter 2, pp.23-32; chapter 3, pp.45-51, 58-66; chapter 4, pp.67-71, 73-7; Chapter 5, pp.90-100; Conclusion, pp.125-9. [posted PDF] entire book at:

http://books.google.com/books?id=bZTk0FrqXy4C&printsec=frontcover&dq=mary+carpenter&hl=en&ei=cq00Tfu7BomosAPZm6naBQ&sa=X&oi=book_result&ct=result&resnum=7&ved=0CEEQ6AEwBg#v=onepage&q&f=false

Oxford History of the Prison, chapter 6 (Rotman, "Failure of Reform"), pp.151-66.

For March 14 – in-class Mid-Term Exam

March 21 – no class meeting, Spring Break!

March 28

Sophonisba P. Breckinridge and Edith Abbott, *The Delinquent Child and the Home* (1912) Introduction, pp.1-8; chapter 1, pp.11-17; chapter 2, pp.18-54; chapter 3, pp.55-69; chapter 4, pp.70-8; chapter 6, pp.105-10, 113-4; chapter 11, pp.170-80.

http://books.google.com/books?id=VyMKAAAIAAJ&printsec=frontcover&dq=delinquent+child+and+the+home&hl=en&ei=9LM0TZWkE4jOsAPU6KizBQ&sa=X&oi=book_result&ct=result&resnum=1&ved=0CC0Q6AEwAA#v=onepage&q&f=false

Oxford History of the Prison, chapter 12 (Schlossman, "Delinquent Children"), pp.325-49.

April 4

The Challenge of Crime in a Free Society (1967), [Report by the President's Commission on Law Enforcement and Administration of Justice], Table of Contents and Summary, pp.i-xi; chapter 1, pp.1-6, 12-15 + ???.

David Garland, *The Culture of Control* (2001), chapter 1, pp.1-2, 6-23; chapter 2, pp.27-9, 34-40, 41-6.

Oxford History of the Prison, chapter 6 (Rotman, "Failure of Reform"), pp.168-75; chapter 7 (O'Brien, "Prison on the Continent"), pp.197-200.

April 11

David Garland, *The Culture of Control* (2001), chapter 3, pp.53-63, 69-73, chapter 4, pp.75-87, 89-94, 96-102.

American Friends Service Committee, *Struggle for Justice. A report on crime and punishment in America* (1971), pp.20-31, 34-47, 83-99.

Robert Martinson, "What Works? Questions and Answers About Prison Reform," *The Public Interest* (1974), pp.22-31, 36-8, 40-4, 48-50.

April 18

David Garland, *The Culture of Control* (2001), chapter 5, pp.103-9, 121-31; chapter 6, pp.139-45, 147-8, 152-8, 163-5; chapter 7, pp.168-73, 174-90; chapter 8, pp. 193-205.

April 25

[mass incarceration; reading TBD]

May 2 - seminar review.