

Legal Studies 190WI: Crime and Punishment in America: Theory and Practice

Seminar meeting: Tuesdays, 9-11am

Spring 2021

Prof. Christopher Kutz

ckutz@berkeley.edu

Zoom Office:

<https://berkeley.zoom.us/j/94686839890?pwd=UFVKbWg5ZnhUYXI0NlptU3hTQ3BzUT09>

Office hours: Generally, Thursdays, 10:30-12:30; or by appointment.

Anna Zaret

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Zoom Office: <https://berkeley.zoom.us/j/4183917059> (Meeting ID: 418 391 7059)

Office hours: Tuesdays, 11:10am – 1:10pm; or by appointment

Zoom Seminar Room:

<https://berkeley.zoom.us/j/95309015612?pwd=cWVaWmc5QVdsNm85bll3Z3cxVGVvUT09>

Meeting ID: 953 0901 5612

Passcode: 570406

Zoom Workshop Room:

<https://berkeley.zoom.us/j/91484583512?pwd=SVhmRjRrQXJiN1lXWXdpbFR6Wk56dz09>

Description and learning goals: This seminar will look at the theory and modern practice of criminal punishment in the United States: we will read and discuss materials from philosophy, history, law, anthropology, and sociology to discuss under what conditions state punishment could be justified, and how the American modern practice of mass incarceration and capital punishment do or do not meet those conditions. The substantive goal for this seminar is to give you an understanding of the problems of what is widely agreed -- across the political spectrum -- to be the human rights disaster of American penal policy, and enable you to engage in the project of its reform. A second, and equally important, goal is to help you learn or improve skills in careful classroom discussion of common texts, some popular and some academic, skill in interpreting complex materials, and practice in writing argumentative, conceptual papers. In non-pandemic times, the seminar would involve field trips to San Quentin State Prison and the Oakland criminal courts. Given likely and evolving conditions preventing direct visits, we will work to find substitute virtual experiences.

Your grade will be based on the following factors:

- **Weekly Writing Assignments (WWAs) = 10%** (Graded on check plus, check, check minus scale). You will receive an A if all assignments are handed in on time and show genuine effort. You will find all WWAs on the “Discussions” tab on bCourses. These will include:
 - **Discussion Posts:** These are short writing assignments that will ask you to engage with the weekly assigned reading materials or to begin working on your writing assignments. Details for each post will be in the weekly Discussion tab.
 - **Courtroom E-Visit & Observation Report:** 300-500 words describing what you observed and learned “in court”)
 - Two **Paper Complete Drafts** (for Analytical Papers I and II)
 - Two **Peer Editing Sessions** (for Analytical Papers I and II)
 - **Editorial Argument Presentation**
- **Analytical Paper I** (4-6 pages)= 25%
- **Analytical Paper II** (6-8)= 35%
- **Editorial Argument** (750-1100 words) = 20%
- **Attendance / Active Participation** = 10%

Important Due Dates:

All work is to be turned in to the relevant Assignment or Discussions tab on bCourses. **All WWAs are to be turned in by 11:59pm on Sunday for the following week.** Analytical Paper I is due by 11:59pm on Sunday, **Feb. 28**; Analytical Paper II by midnight Sunday, April 10; and the Editorial on **April 22**.

Zoom-room rules:

This course succeeds when, and only when, we engage each other in the material assigned and in the thoughts and comments we present to each other over the course of the seminar. I therefore expect you to attend every class session, unless you have a valid excuse, and to participate actively in class. You are responsible for having read and having accessible during class the assigned readings each week. Unexcused absences will affect your grade and more than three absences will result in your being dropped from the class.

I strongly encourage you to have your camera on during class, unless environmental circumstances genuinely make that difficult, as well as your audio (if there are not audible distractions). And please try to balance your laptop or camera on something stable, so the image does not jostle. This helps create an ambiance of presence.

I of course will accommodate conflicts with religious holidays and other commitments, per Berkeley’s schedule conflicts policy:
http://academic-senate.berkeley.edu/sites/default/files/committees/cep/guidelines_acadshedconflicts_final_2014.pdf.

Academic integrity:

Please be aware of Berkeley's Code of Student Conduct policies concerning academic integrity, especially plagiarism. Plagiarism consists of presenting the work of someone else as your own, without proper acknowledgement; or presenting your own work, submitted for another course, without my prior agreement. My default policy for plagiarism is to give an F for the course and to report the case to the Student Conduct office. I am happy to discuss when use of material constitutes plagiarism in more detail.

Recommended books for purchase

Bryan Stevenson, *Just Mercy*

Michel Foucault, *Discipline and Punish*

James Forman, Jr, *Locking Up our Own*

All materials, including background readings, will be available on Bcourses website or otherwise online.

Week 1 (Jan. 19): Introductory meeting: Why Punish?

Questions to consider: How should we think about the factors favoring or counting against punishment in this case? What does it tell us about the nature and point of punishment?

Reading: To be given in class.

Week 2 (Jan. 26): Philosophical Foundations of Punishment I.

Questions to consider: Why does punishment present a philosophical problem? What are the fundamental values concerned in legitimating punishment as an institution? Is the problem of justifying punishment one of morality or politics?

Reading:

(1) Cesare Beccaria, *On Crimes and Punishments* (1764): Introduction, chapters 1-3, 5-7, 12, 14, 16-17, 19, 20, 27-29, 40-41, 45-46, Conclusion.

(2) Excerpts from Immanuel Kant; Joel Feinberg.

WWA (Due Jan. 24): Write a short post introducing yourself, and explaining what experiences or things you have read have prompted your interest in the subject of this class.

Week 3 (Feb. 2) Philosophical Foundations II: Nietzsche and Foucault

Questions to Consider: What does Nietzsche think is the relation between punishment and moral responsibility? How does Foucault transform Nietzsche's story into an account of political power? More generally, how do we combine these skeptical approaches to punishment with the arguments we read last week?

Readings:

(1). Friedrich Nietzsche, *On the Genealogy of Moral*: **Required.:** Second Essay, Sections (not pages!) 1-14, 21-22. **Suggested:** Editor's Introduction; First Essay, Secs. 1-3, 7-11.

(2). Michel Foucault, *Discipline and Punish*, pp. 3-31, 104-13.

Note: Nietzsche, while certainly an anti-Semite in some ways typical of 19th century Germany, is not as anti-Semitic as some of these passages might suggest: when he refers to "Jewish" priests and "Jewish" religions, he means to be folding Christianity within his critique as well. That is, he is a scathing critic of Judeo-Christian morality in general.

WWA (Due Jan. 31): Write 300-500 words reacting to the weekly assigned reading materials. You should discuss what struck you about the readings and raise questions for discussion. You may, for example, talk about what you found compelling, insightful, confusing, or dissatisfying about the readings (but your response should do more than summarize the readings). You may choose to focus on one of the assigned readings or respond to multiple.

Post to your group (A or B) and respond to one other student in the group (responses may be posted on Monday).

Week 4 (Feb. 9) Justice and Mercy:

Questions to consider: What is the relation between the demands of justice and a response to human weakness? What is the difference between an excuse and a justification? What are the lessons Stevenson learned about himself, and the aims and goals of the justice system, in representing people who have committed serious crimes? How did the two experiences of Dwayne Betts life affect his ideas of justices.

Reading:

(1). Dwayne Betts, "Kamala Harris and me"; peruse [selected poems](#) by Betts, including at least: "[Blood History](#)," "[When I think of Tamir Rice While Driving](#)," and "[House of Unending](#)."

Read [here](#) for background of Dwayne Betts.

(2). Bryan Stevenson, *Just Mercy*, Introduction.

WWA (Due Feb. 7): Write about some experience you or someone you care about has had with the criminal justice system. Also develop and post a question to ask Mr. Betts.

Seminar guest: Dwayne Betts.

Courtroom E-visit: Self-scheduled e-visit to a courtroom, to be accomplished between Week 5 and 7. You should spend at least 2 hours observing parts of the criminal process. Instructions will be forthcoming. Make sure to take notes as you observe.

Week 5 (Feb. 16): The structure of crime and the criminal process

Questions to consider: How does the analytical structure of a crime – particularly its division into a conduct and a mental component – affect the way we think crime should be punished? What are the most important roles of jurors in the criminal justice system?

Reading:

- (1). Excerpts from Kadish, etc., *Criminal Law*;
- (2). William Finnegan, “Doubt,” *The New Yorker*.

WWA (due Feb. 14): Write 300-500 word post exploring what will be your core argument for Paper 1. You may also include questions or concerns about the argument you are thinking of making.

Workshop (on Feb, 18): Small Group Discussions of Analytical Paper #1 Arguments, in 2 groups.

Week 6 (Feb. 23): Race and Incarceration: The New Jim Crow?

Questions to consider: How does the War on Drugs relate to Mass Incarceration? What are the benefits and problems of the Alexander lens? How do Forman and Pfaff complicate Alexander’s argument?

Reading:

- (1). Michelle Alexander, *The New Jim Crow*, Introduction, Chs. 1.
- (2). John Pfaff, “Decarceration’s Blindspots”
- (3). James Forman, *Locking up our Own*, Intro., Chs. 1, 5, Epilogue;

WWA (due Feb. 21): Full draft of Paper #1: Post a GoogleDoc link to a complete draft of Paper 1 on the class discussion board. You will be assigned partners for peer review.

Note: When you submit your final draft, you must include an informal memorandum explaining what changes you have made in relation to comments by instructors and peers, and on your own accord. Make sure to explain what you are proud of in the paper, what you learned, and what you think requires further work.

Workshop (on Feb. 25): Peer Editing of Analytical Paper #1.

Analytical Paper I due by midnight, Feb. 28.

Week 7 (Mar. 2): Incarceration II: Class and gender

Questions to consider: How does the sociology of criminal punishment intersect with the sociology of poverty? What are the strengths and limitations of approaching problems of crime through the lens of economics? How does the perspective of gender complicate, or otherwise intersect with, the analysis of mass incarceration?

Reading: Western, *Punishment and Inequality in America*, Introduction, Chs. 1-3, 7; Loïc Wacquant, "Class, race & hyperincarceration in revanchist America," *Daedalus*, 74-90; Michelle Goodwin *Policing the Womb* (excerpts).

[No WWA this week]

Week 8 (Mar. 9): The Process is the Punishment:

Malcolm Feeley, *The Process is the Punishment*, Intro, ch. 7

Jennifer Earl, review of Malcolm Feeley (30 years on), *The Process is the Punishment*.

Primer on California's Criminal Justice

System: <http://www.lao.ca.gov/reports/2013/crim/criminal-justice-primer/criminal-justice-primer-011713.aspx>

Guest speaker: Professor Feeley.

WWA (due March 7): Post your Courtroom E-Visit Observation Report (300-500 words about what you observed and learned "in court") and develop and post a question for Prof. Feeley.

Week 9 (Mar. 16th): The modern DA, and Prison in the perspective of history

First hour is History: Questions: What are the differences between the origin of the penitentiary and the current system of mass incarceration?

Reading: (1) Charles Dickens, *American Notes*, Chapter 7: Philadelphia, And Its Solitary Prison (1842);

(2) 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;

(3). David Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice*, Prologue & ch. 2.

Optional: Foucault, *Discipline and Punish*, pp. 231-256

Second Hour: meeting with SF District Attorney Chesa Boudin

Read: Background of Chesa Boudin

WWA (due Mar. 14): Write 300-500 words reacting to the weekly assigned reading materials. You should discuss what struck you about the readings and raise questions for discussion. You may, for example, talk about what you found compelling, insightful, confusing, or dissatisfying about the readings (but your response should do more than summarize the readings). You may choose to focus on one of the assigned readings or respond to multiple.

Post to your group (A or B) and respond to one other student in the group (responses may be posted on Monday).

All: Please prepare a question for DA Boudin.

Week 10 (Mar. 23): Spring Break

Week 11 (Mar. 30): Prison conditions in time. A case study in history: The Attica Uprising

Questions to consider: What explains the significance of the Attica uprising at the time of the events, and its continuing significance today?

Reading: Heather Armstrong, *Blood in the Water* (excerpts).

WWA (due March 28): Write 300-500 word post exploring what will be your core argument for Paper 1. You may also include questions or concerns about the argument you are thinking of making. Post your response here before class.

Workshop (on April 1): Small Group Discussions of Analytical Paper #2 Arguments, in 2 groups.

Week 12 (Apr. 6): Mass Incarceration on Trial

Questions to consider: Are US constitutional norms adequate as a basis for regulating prison conditions? What is the role of courts in running prison systems?

Reading:

- (1). *Brown v. Plata* (excerpts);
- (2). Jonathan Simon, *Mass Incarceration on Trial* (selections).
- (3). Atul Gawande, "Solitary Confinement," *New Yorker*.
- (4). Speech by Thelton Henderson

WWA (due April 4): Full draft of Paper #2: Post a GoogleDoc link to a complete draft of Analytical Paper #2 on the class discussion board. You will be assigned partners for peer review.

Prepare a question for Judge Henderson.

Note: When you submit your final draft, you must include an informal memorandum explaining what changes you have made in relation to comments by instructors and peers, and on your own accord. Make sure to explain what you are proud of in the paper, what you learned, and what you think requires further work.

Special Guest: Judge Thelton Henderson

Workshop (on April 8): Peer Editing of Analytical Paper #2.

Paper II due by midnight Sunday, Apr. 11.

Week 13 (Apr. 13): Prison, Resistance, and abolition

Reading: excerpts from George Jackson, *Soledad Brother*; Angela Davis, *Are Prisons Obsolete?*, excerpts; Alexandra McLeod, "Prison Abolition and Grounded Justice," pp. 1158-1199 only; Jessica Benko, "The Radical Humaneness of Norway's Halden Prison," *NY Times Magazine* (March 26, 2015).

WWA (due April 11): Post an outline of your Editorial Argument.

Week 14 (Apr. 20): The Death Penalty and its dénouement

Questions: What role does the death penalty play in the moral narrative of American punishment? How firmly embedded is the death penalty in American culture?

Reading:

- (1). David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (excerpts);
- (2). *Glossip v. Gross* (excerpts) (bCourses),
- (3). Stevenson, *Just Mercy*, chs. 11-16.

Editorial due by midnight, April 23.

Week 15 (Apr. 27): Topic TBD -- possibly predictive policing