

Legal Studies 170 Crime & Criminal Justice Fall 2011

Lectures: 11:00-12:30 AM on Tuesday & Thursdays in 105 Northgate Hall

Professor Richard Perry; email: rwperry@law.berkeley.edu (email is preferred mode)
Office hours: 9:30 to 10:30 on Tuesdays and Thursdays and 11:00 – 12:00 on Fridays in 337E North Addition Boalt Hall

GSI: Nicole Lindahl: email: < nicolelindahl@gmail.com >; office hours Thursdays from 12:30-2pm in Café Milano, on Bancroft Way

GSI: Christina Stevens: email <stevenscl@gmail.com> ; office hours Wednesday 12:30-2:00 in the LS/JSP Building at 2240 Piedmont.

Course Description:

This course introduces the classical scholarly frameworks for thinking about crime, and their evolution into current debates. It examines the scope and nature of crime in the United States from a comparative and interdisciplinary perspective, as well as the uses and limits of the criminal justice system. Further topics will include the massive expansion of the U.S. prison system in recent years and its relation to crime rates, critical analyses of different theories of the causes of crime, strategies for preventing and controlling crime, the death penalty, gun control, white collar crime, and crime in family settings. The course will introduce concepts of criminal law and the main elements of the criminal justice system, including police, courts, and corrections. It will consider the main institutional features, problems, and critiques of the processes through which suspects are apprehended, tried, sentenced, and punished. Past and current trends and policy questions will be discussed. Since U.C. Berkeley is now, and has long been, one of the world's leading centers for the study of law and society, the work of both past and current Berkeley scholars at will be highlighted in particular.

Topical and Thematic Structure of this Fall 2011 Course Offering:

This course is organized into three main parts:

Weeks 1-5

The first part introduces the major classical frameworks for thinking about crime in the West since the 17th century foundations of the modern state. It examines central texts and thinkers, and surveys key concepts and debates. It discusses the emergence and major shifts in core institutions of criminal justice -- courts, policing, corrections -- and the socio-political implications of these developments.

Weeks 6-9

Building upon this historical foundation, the second part of the course goes on to examine core concepts and doctrines of substantive Anglo-American criminal law in a critical law & society fashion. It considers these concepts from an interdisciplinary and comparative perspective.

Weeks 10-15

The third and final part of the course will focus on leading recent developments in criminal law and justice policy, in the shifting empirical facts of crime and criminal justice in the U.S. and elsewhere, and will consider new contemporary theoretical frameworks for understanding these recent developments.

Required Readings:

Copies of books will be put on reserve in Moffitt Library. The campus bookstore has announced that these books are available to be rented at a reduced cost.

- i. Michel Foucault, 1977. *Discipline and Punish: The Birth of the Prison*.
- ii. Jonathan Simon 2007 *Governing through Crime*.
- iii. LS 170 Reader, in three packets, available at Copy Central on Bancroft Way. Reader packet II should be brought to class, because we will work through the cases and doctrines in class discussion. The materials from Readers I and III will also be made available on bSpace.
- iv. Various supplementary hand-outs, especially on current cases and topical controversies, will be distributed in class for discussion. These will be considered part of the required readings.

Recommended:

- i. Franklin Zimring & Gordon Hawkins, 1997. *Crime is Not the Problem: Lethal Violence in America*. Passages will be made available on bSpace for in-class discussion.
- ii. Loic Wacquant, 2009. *Punishing the Poor: The Neo-liberal Government of Social Insecurity*

Student Responsibilities:

Attendance: Students are expected to attend all lectures and section meetings having already prepared any readings or assignments. If you are unable to attend due to illness of yourself or a dependent you need not contact the Professor or GSI unless you will be absent for more than a week in which case you should be prepared to offer medical verification of the problem. During the first two weeks of classes, however, when we will be taking attendance in order to permit students on the waiting list to add the class, you must contact us on the same day of any absence.

CAVEAT: If you should find that you must miss a test due to serious illness or other comparable circumstance, you must email your GSI before the testing period to notify her of your situation. The GSI will discuss your circumstances with the professor and an effort will be made to assist you. However, a student who misses a test and only contacts the GSI days after the testing date is not likely to be allowed to sit for a make-up test – except in very rare cases, such an accommodation would clearly be unfair to the rest of the class.

University Regulations on Specific Scheduling Accommodations:

DSP ACCOMMODATIONS:

If you have specific needs due to documented disabilities we will make every effort to accommodate them, with the assistance and advice of the Disabled Students Office. For information on University policies regarding students with disabilities, and federal and state laws affecting people with disabilities, contact: <http://access.berkeley.edu/> Please convey your DSP letter to your GSI early in the semester (i.e. during the first two weeks) to make arrangements.

ACCOMMODATION OF RELIGIOUS CREED

In compliance with Education code, Section 92640(a), it is the official policy of the University of California at Berkeley to permit any student to undergo a test or examination, without penalty, at a time when that activity would not violate the student's religious creed, unless administering the examination at an alternative time would impose an undue hardship that could not reasonably have been avoided. Requests to accommodate a student's religious creed by scheduling tests or examinations at alternative times should be submitted directly to the faculty member responsible for administering the examination by the second week of the semester.

Reasonable common sense, judgment and the pursuit of mutual goodwill should result in the positive resolution of scheduling conflicts. The regular campus appeals process applies if a mutually satisfactory arrangement cannot be achieved.

CONFLICTS BETWEEN EXTRACURRICULAR ACTIVITIES AND ACADEMIC REQUIREMENTS

The Academic Senate has established Guidelines Concerning Scheduling Conflicts with Academic Requirements to address the issue of conflicts that arise between extracurricular activities and academic requirements. They specifically concern the schedules of student athletes, student musicians, those with out-of-town interviews, and other students with activities (e.g., classes missed as the result of religious holy days) that compete with academic obligations. The guidelines assign responsibilities as follows:

-It is the student's responsibility to notify the instructor(s) in writing by the second week of the semester of any potential conflict(s) and to recommend a solution, with the understanding that an earlier deadline or date of examination may be the most practicable solution.

-It is the student's responsibility to inform him/herself about material missed because of an absence, whether or not he/she has been formally excused.

Classroom expectations: While in class please turn your cell phone off. If your laptop has wireless access you may use it to access information relevant to the discussion but please do not read emails, newspapers, or other non-class related materials during class. The topics of this

course include many subjects on which strong feelings and emotions may be generated. Students are encouraged to speak up with questions and comments, and to respond to points raised by other students. The maintenance of an effective discussion space in class, however, obliges all of us to act with respect for and sensitivity toward everyone else in the room.

Plagiarism: According to the College of Letters and Sciences:

All written work submitted for a course, except for acknowledged quotations, must be expressed in the student's own words. It must also be constructed upon a plan of the student's own devising. Work copied without acknowledgement from a book, from another student's paper, from the internet, or from any other source is plagiarized. Plagiarism can range from wholesale copying of passages from another's work to using the views, opinions, and insights of another without acknowledgement, to paraphrasing another person's original phrases without acknowledgement.

The submission of such work will, under University rules, render the offending student subject to an F grade for the work in question or for the entire course, at the discretion of the instructor, and will also make the student liable for referral to the SJA.

Evaluation and Grading:

<p>Handed out Sept. 29; due Oct. 4th.</p>	<p><u>1st midterm:</u> Short-essay, take-home. Must be submitted at the beginning of class the following Monday. It should be typed, in standard form: double-spaced, 12-point font, and one-inch margins.</p>	<p>30% of final grade</p>
<p>Oct. 27th multiple choice part and Nov. 1st essay part.</p>	<p><u>2nd midterm:</u> In-class exam administered. This test will resemble a shortened version of a typical law school exam. It will have both multiple-choice and essay components, so students should bring a green Scantron form.</p>	<p>30% of final grade</p>
<p>Handed out Dec.1; due December 14th</p>	<p>Take-home essay exam. Distributed on bSpace at least one week before the assigned final exam date. The questions will be designed to draw together concepts and materials from the entire course. Since the final test will include material from the first</p>	<p>30% of final grade</p>

	two sections of the course, if the grade on the final test is higher than those on the first two tests, the third final and test MAY be weighted more heavily in the student's favor.	
	<u>Class Participation:</u> Coming to class already having read the assigned material and then participating in the class discussion -- is required of all students. Attendance at weekly sections is required. Short written assignments designed to enhance students' understanding of key concepts may be required in the GSI's section meetings and included in the final course grade.	10% of final grade
		100%

NOTE: This is the department's policy on grading.

Course Outline:

List of Topics and Readings:

(Students should expect minor adjustments to this schedule from day to day, in accordance with the pace of class discussion; the scheduling of guest lecturers is also an evolving process)

Part I

Weeks 1-5: On Concepts of Crime, Law, and the Development of the Modern State: The Classical Frameworks Introduced and Contrasted

Week 1: Aug. 25

Introduction to the course and to the instructors. Introduction to key terms and concepts in the study of crime, law, criminology, and criminal justice. View the 2003 documentary film, *Capturing the Friedmans*; discuss of this case study as example both of panics and of processes of crime and the criminal justice system in the U.S. ("due process" and other social processes) with particular emphasis on plea-bargaining.

Week 2: Aug. 30-Sept. 1

The Friedmans discussion continued: Crime and the social world: tracing the path from Hobbes' *Leviathan* to the US Bureau of Justice Statistics Criminal Justice Flow-chart. Enlightenment

rationalization and reform of criminal law and penalty, nineteenth century evolutionism, positivism, and to the emergence of modern criminology. Contrast Durkheim to Beccaria, Bentham and the 19th century Classical School and to later schools of theory on crime, criminology, criminal justice.

Read for Week 2-3: Excerpts from Emile Durkheim on Law and Society. Beccaria, *On Crimes and Punishments*; Jeremy Bentham *Principles of Morals and Legislation* (excerpts in Reader I, full text links on bSpace);

Week 3: Sept. 6-8

Discussion of crime and social solidarity, Durkheim's "laws of penal evolution"; functionalism, consensus theory and its critics. Foucault on the "evolution" of punishment.

Read for Week 3: Foucault pp. 3-31.

Recommended: Foucault pp.32-69. Zimring and Hawkins Ch. 1.

Week 4: Sept. 13-15

Discussion of readings on class conflict and political economy of crime and criminalization.

Read for Week 4: Wm. Chambliss; E.P. Thompson; Rusche and Kirchheimer excerpt; Douglas Hay, *Albion's Fatal Tree: Crime and Society in Eighteenth Century England* (1975).

Recommended: Table of contents and Book Four of *Blackstone's Commentaries on the Laws of England* (1765-69) on bSpace.

Week 5: Sept. 20-22

Discussion of criminal anthropology, atavism, and other theories of innate criminality (also contemporary sociobiology and related conceptions of innate criminality). Review and discuss biological and materialist explanations of crime.

Read for Week 5: Selections from Cesare Lombroso's "Criminal Man" and "Criminal Woman".

Recommended: Nicole Rafter *The Criminal Brain: Understanding Biological Theories of Crime* excerpts in Reader I and on bSpace; excerpt from Foucault "Abnormal" on bSpace.

Week 6: Sept. 27-29

Packer's "Two Models" and Wechsler's Model Penal Code; Index Crimes (in-class discussion of Zimring and Hawkins on crime and categorical contagion); grading of crimes. Review-discussion of the construction of criminal subject.

Read for Week 6:

TAKE-HOME MIDTERM TEST HANDED OUT THURSDAY, SEPT. 29; DUE ON TUESDAY, Oct. 4.

Part II Weeks 7-11: Critical Law & Society Overview of Substantive Criminal Law

Week 7: Oct. 4-6

Discuss concepts of prediction, dangerousness, therapeutic versus incapacitative theories. Parties to crime and vicarious liability. Inchoate and uncompleted crimes, attempt, conspiracy, and solicitation; crimes of speech and community control.

Read for Week 7: Introduction to *mens rea* and *actus reus*. For Tuesday, read through chapter 4 of Reader II (through Reader II p. 33). Discuss *general* Anglo-American criminal law doctrines: elements of crime (*corpus delicti*), mental state, act/status, omissions, and causation Reader II chapters 5 and 6.

Week 8: Oct. 11-13

Defenses -- justification; self-defense and defense of others, choice of evils; excuses: insanity, age, duress, mistake, consent, diminished capacity, "battered women's" and other "syndrome defenses".

Read for Week 8: Reader II chapters 7 and 8, cases and materials.

Week 9: Oct. 18-20

Crimes against Person; Homicide doctrine, culpability and dangerousness: levels of mens rea, strict liability and special circumstances. Review of criminal law doctrines; discussion of recent shifts in doctrine. Homicide discussion continued and generalized to other crimes against persons; felony murder rule; discussion of deterrence and dangerousness.

Read for Week 9: Reader II, Ch. 9 and 10.

Review of doctrine; first part of second mid-term exam administered during class period on Thursday Oct. 27th - please make sure to bring a Scantron form, and a #2 pencil. The second part of the mid-term will be given in class on Tuesday Nov. 1st -- please bring a blue book.

IN-CLASS MIDTERM EXAM OCT. 27th and NOV. 1st

Part III Weeks 10-15 Contemporary Developments & Controversies in Crime Policy

Week 10: NOV 3rd:

Introduction to debates over defendants and victims in social context; mens rea revisited: cultural defenses and other new defences – raced and gendered violence.

Read for Week 10: Estrich and Volpp articles in Reader III, re-read Reader II, pages 154-167.

Week 11: Nov. 1-3

Cultural defenses; the “gay panic” defense; Araujo case; other “particularized” defenses; law & society discussion of emergence of hate crime doctrine. Probable guest lecture by Prof. Leti Volpp.

Read for Week 11: Sarah Song excerpt in Packet III; related materials in Reader III.

Week 12: Nov. 8-10

Plea Bargaining, rational choice, and psychological and economic approaches to criminal law; materials on plea bargaining, video excerpt. Possible presentation by Christina Stevens

Read for Week 12: Posner, Langbein and Blumberg articles in Reader III.

Recommended: Sudnow “Normal Crimes” in Reader I; Zimring & Hawkins Chapter 10

Week 13: Nov. 15-17

Review Foucault on surveillance; “Broken Windows” theory -- the surveillance and control of social spaces.

Read for Week 13: Wilson & Kelling, Mona Lynch, Jerome Skolnick readings.

Recommended: Mike Davis, Bernard Harcourt excerpts in Reader III; excerpt from Foucault on bSpace.

Week 14: Nov. 22 SHORT WEEK DUE TO THANKSGIVING. Tentative Guest Lecture by Prof. Jonathan Simon: *Governing through Crime* (connections drawn to culture of Mass Incarceration).

Read for Week 14: *Governing through Crime*, chapters 1, 3, 8;

Recommended Prof. Jonathan Simon recorded lecture linked on bSpace. Recommended: Teresa Caldeira “City of Walls” and Garland “culture of control” excerpts in Reader vol. III.

Week 15: Nov. 29-Dec. 1 Cultures of Control – Likely presentation by Nicole Lindahl.

Readings: Garland and Wacquant in Reader III.

Course review/summary and discussion of take-home final exam, to be distributed on bSpace at least one week before university final exam date of, to be submitted at the final exam location chosen by the campus registrar. Students unable to meet this exam schedule should notify the professor by the 13th week so that a reasonable accommodation can be arranged.

FINAL EXAM DUE WEDNESDAY, DEC. 14.

Final Exam Date and Time: Wednesday, Dec. 14th 8:00-11:00 AM, Location TBA (the time and location are assigned by the campus)