

## **Legal Studies 170 Crime & Criminal Justice Fall 2010**

Lectures: 9:00-10:00 AM on M, W, F, in 141 McCone Hall

Visiting Professor Richard Perry; email: [rwperry@law.berkeley.edu](mailto:rwperry@law.berkeley.edu) (email is preferred mode)

Office hours: 10:30 to 11:30 on Mondays and Wednesdays in 337E North Addition Boalt Hall

GSI: Nicole Lindahl: email: < [nicolelindahl@gmail.com](mailto:nicolelindahl@gmail.com) >; office hours Weds. 2:30-4:00 in Café Milano, on Bancroft Way

GSI: Roger Michalski: email <[michalski@berkeley.edu](mailto:michalski@berkeley.edu)>; office hours Friday 12:00-2:00 in Café Zeb, Law School Building

**Caveat Lector:** This is a draft syllabus for the fall semester of 2010 only. It is based on six previous summer offerings of this course, as well as on feedback from students and colleagues. This course design will evolve further for future 15-week semesters with the input from this semester's students, so students will be surveyed more than once during the semester. Because the Legal Studies Department also offers distinct core courses focused on policing and on punishment (LS 102 and 160), in order to minimize repetition, this course will spend somewhat less time on those areas of scholarship. Some slight changes in the order of topics and readings, and in the dates of guest speakers late in the semester, may be made as required by the needs of the class. Because this professor will be teaching LS160 in Spring 2010 and LS 109 in Summer 2010, the students will be surveyed as to which classes they have had and which they expect to take and, on the basis of this survey, the professor will revise this syllabus during the first week to minimize redundancy in the LS curriculum across these courses. Readers of this draft syllabus who notice typos or other errors are morally required to email the professor about them.

**Course Description:** This course introduces the classic leading scholarly frameworks for thinking about crime, as well as subsequent evolutions of these frameworks 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.

### **Topical and Thematic Structure of this Fall 2010 Course Offering:**

This course is organized into three main parts. The first part introduces the major classical frameworks for thinking about crime in the West since the 17<sup>th</sup> 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.

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.

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. 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.

**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.

*Classroom expectations:* While in class please turn your cell phone off or if you must monitor it, set it to manner-mode. 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, requires 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.

**Special Needs Due to Disabilities:**

If you have special needs due to disabilities we will make every effort to accommodate them. For information on University policies regarding students with disabilities, and federal and state laws affecting people with disabilities, contact:  
<http://access.berkeley.edu/>

**Evaluation and Grading:**

There will be three tests. The first test will consist of short-essay take-home questions. It will be handed out at the end of the fourth full week of classes, on Friday Oct 1<sup>st</sup>, and it 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.

The second test will be an in-class exam administered at two class meetings, i.e., on Friday Oct. 29<sup>th</sup> and on Wednesday Nov. 3<sup>rd</sup>. This test will somewhat resemble a typical law school exam. It will have both multiple-choice and essay components, so students should bring a green Scantron form and a blue book on those days.

The third and final exam will be a take-home essay exam distributed on bSpace at least one week before the assigned final exam date of Dec. 16<sup>th</sup>. The questions will be designed to draw together concepts and materials from the entire course.

These three tests will each count for 30% of the grade, for a total of 90%. Since the final test will include material from the first 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.

Class participation -- i.e., coming to class already having read the assigned material and then participating in the class discussion -- is required of all students and will count for 10% of the grade. Attendance at weekly sections is strongly expected. 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.

If a student will need to have a test or other course activity rescheduled to an earlier date because of a conflict between the course schedule and a day of religious observance, the student must inform the professor of this conflict before the end of the second week of the semester.

### **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 Nation-State: The Classical Frameworks Introduced and Contrasted**

Week 1: Aug. 27-Sept. 3

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 processes) with particular emphasis on plea-bargaining. Read excerpts from Emile Durkheim on Law and Society.

Week 2: Sept. 6-10 (no class meeting on Sept. 6, Labor Day)

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 Reading for Wednesday: short excerpts from Beccaria *On Crimes and Punishments* and Jeremy Bentham *Principles of Morals and Legislation* (excerpts in Reader I, full text links on bSpace), Contrast Durkheim to Beccaria, Bentham and the 19<sup>th</sup> century Classical School and to later schools of theory on crime, criminology, criminal justice.

Week 3: Sept. 13-17

Discussion of crime and social solidarity, Durkheim's "laws of penal evolution"; functionalism, consensus theory and its critics. Foucault on the "evolution" of punishment, Foucault pp. 3-31. Recommended Foucault pp.32-69.

Week 4: Sept. 20-24

Discussion of readings on class conflict and political economy of crime and criminalization: Wm. Chambliss, E.P. Thompson ; conflict theories; ; in-class discussion of Rusche and Kirchheimer excerpt and Douglas Hay, *Albion's Fatal Tree: Crime and Society in Eighteenth Century England* (1975). Recommended look at the table of contents and Book Four of *Blackstone's Commentaries on the Laws of England* (1765-69) on bSpace.

Possible lecture by GSI Nicole Lindahl.

Week 5: Sept. 27-Oct. 1<sup>st</sup>

Read and discuss selections from Cesare Lombroso's "Criminal Man" and "Criminal Woman" -- discussion of criminal anthropology, atavism, and other theories of innate criminality (also contemporary sociobiology and related conceptions of innate criminality). Recommended: Nicole Rafter *The Criminal Brain: Understanding Biological Theories of Crime* excerpts in Reader I and on bSpace. Review and discuss biological and materialist explanations of crime. First take-home mid-term distributed in class on Friday, Oct. 1<sup>st</sup> to be submitted at the beginning of class on Monday Oct. 4<sup>th</sup>. Recommended: excerpt from Foucault "Abnormal" on bSpace.

## **Part II Weeks 6-10: Critical Law & Society Overview of Substantive Criminal Law**

Week 6: Oct. 4-8

First take-home mid-term to be submitted the beginning of class period on Oct 4<sup>th</sup>. Discuss 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; introduction to *mens rea* and *actus reus*. For Wednesday, 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.

Week 7: Oct. 11-15

Reader II chapter 5 and 6; discuss concepts of prediction, dangerousness, therapeutic versus incapacitative theories. Parties to crime and vicarious liability. Ch. 6. Inchoate and uncompleted crimes, attempt, conspiracy, and solicitation; crimes of speech and community control.

Week 8: Oct. 18-22

Reader II, cases and materials Chs. 7 and 8. 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”

Guest lecture this week by GSI Roger Michalski

Week 9: Oct. 25-29

Reader II, Ch. 9 and 10. 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.

Review of doctrine; first part of second mid-term exam administered during class period on Friday Oct. 29<sup>th</sup> - please make sure to bring a Scantron form, and a #2 pencil. This first part of the mid-term will be reviewed in class on Monday Nov. 1. The second part will be administered on Weds. Nov. 3<sup>rd</sup>; please bring a blue book.

### **Part III Weeks 11-15 Contemporary Developments & Controversies in Crime Policy**

Friday Nov. 5<sup>th</sup>: Intro to debate over defendants and victims in context; mens rea revisited: cultural defenses and gendered violence; re-read Reader II, pp. 154-167; read Estrich and Volpp articles in Reader III for Monday.

Week 11: Nov. 8-12 (Veterans’ Day holiday does not interfere with this class’ schedule)

Cultural defenses: Guest seminar by Boalt Professor Leti Volpp guest lecture; each student is expected to participate in the discussion. Read Sarah Song excerpt in Packet III. The “gay panic” defense; Araujo case; other “particularized” defenses; law & society discussion of emergence of hate crime doctrine; Jenness and related materials in Reader III (possible guest lecture).

Week 12: Nov. 15-19

Plea Bargaining, rational choice, and economic approaches to criminal law; materials on plea bargaining, video excerpt; read Posner, Langbein and Blumberg articles in Reader III, (recommended: Sudnow “Normal Crimes” in Reader I, Zimring & Hawkins ch. 10).

Week 13: Nov. 22-24 (No class on the Friday after Thanksgiving)

Review Foucault on surveillance; “Broken Windows” theory -- the surveillance and control of social spaces; Wilson & Kelling, Mona Lynch, Jerome Skolnick readings. Recommended Mike Davis, Bernard Harcourt excerpts in Reader III. Recommended excerpt from Foucault on

bSpace.

Week 14: Nov. 29-Dec. 3<sup>rd</sup>

Mass Incarceration; read Wacquant and De Giorgi excerpts in Packet III; possible guest lecture by Prof. Alessandro De Giorgi on criminalization of immigration. Risk management and *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.

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 13<sup>th</sup> week so that a reasonable accommodation can be arranged.

**Final Exam Date and Time: Thursday, Dec. 16<sup>th</sup> 7:00-10:00 PM, Location TBA (the time and location are assigned by the campus)**