

Berkeley Law

University of California

Legal Studies 160: Punishment, Culture and Society

Instructor:

Professor Jonathan Simon
592 Simon Hall
Tel: 510-643-5169
jsimon@law.berkeley.edu

Office Hours:

Mondays 10 am to 12 Noon

Description:

The desire to punish seems to be a universal human trait with deep psychological, moral, and practical foundations. At the same time, practices and meanings associated with punishments vary enormously across time and place. Whatever is true of punitive practices in social institutions (such as families, schools, monasteries, and militaries), punishment as a legal institution is a part of state power; and, like other aspects of the legal order, it addresses multiple concerns and audiences. In particular, "mass incarceration" — the profound enlargement of U.S. prison systems since the 1970s, and its concentration on economically marginal racial and ethnic minorities — requires attention to politics, social structures, and cultural meanings.

This course explores the roots of penal change in advanced economic countries since the 18th century, with attention to California's penal crisis in the early 21st century and comparisons with trends in the rest of North America, Europe, Asia, and South America.

Learning Objectives:

Students should be equipped to engage effectively as citizens and advocates (alone or on behalf of organizations) in public debates about the future of punishment in California and the United States. This means that students should be:

- Able to identify distinctive characteristics of specific institutions that influence penal practice — including courts, legislatures and executives, correctional officials, economic interests, and citizen groups;
- Knowledgeable about rationales of punishment that are available in our broader cultural toolkit (ranging from economics to evangelical Christianity);
- Equipped with historically informed perspectives on how our current penal practices developed and what alternatives might be possible;
- Prepared to deploy a broad range of empirical, historical, and comparative research in assessing claims made on behalf of current practices and proposed alternatives.

Evaluations and Assignments:

Students will be evaluated through three dimensions with the following weights.

- Examinations (in class midterm and final): 40 percent
- Term paper (first draft and final draft): 40 percent
- Section participation and assignments: 20 percent

The term paper will require research and analysis of some contemporary practice, event, or proposal involving punishment in the U.S., with a comparative or historical dimension. Details will be distributed after the third week of class.

The in-class examination will take place on March 6. The final exam will be on Monday May 7, 11:30am. Both exams will be closed book/closed note, and some combination of multiple choice or short answer questions.

Student Responsibilities:

Attendance:

- Students are expected to attend all lectures and section meetings having already prepared any readings or assignments.
- Generally, if you cannot 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 such cases, please notify your GSI and be prepared to offer medical verification.
- During the first two weeks of classes, however, when we will be taking attendance in order to permit wait-listed students to add the class, you must contact us on the same day of any absence.

Classroom expectations:

- During class, please silence your phones. You may use laptops to access information relevant to the discussion, but please do not use email or read other unrelated materials.
- This course covers topics that may generate strong emotions. You are encouraged to voice questions and comments, as well as responses to other students' viewpoints; however, in order to maintain an effective discussion space, it is essential that we all act with respect and sensitivity toward everyone else in the room.

Plagiarism:

- As original written work is a substantial part of the final grade, each student is expected to take proactive steps to avoid any plagiarism in their written work. Failure to do will result in a significant reduction in grade, or in serious enough cases, a non-credit grade.

According to a publication on the Cal website (emphasis in original)
(http://students.berkeley.edu/files/osl/Student_Judicial_Affairs/Understanding%20Plagiarism.pdf):

Plagiarism means using another's work without giving credit. You must put others' words in quotation marks and cite your source(s). Citation must also be given when using others' ideas, even when those ideas are paraphrased into your

own words.

“Work” includes original ideas, strategies, research, art, graphics, computer programs, music and other creative expression. The work may consist of writing, charts, pictures, graphs, diagrams, data, websites, or other communication or recording media, and may include sentences, phrases, innovative terminology, formatting or other representations.

The term “source” includes published works (books, magazines, newspapers, websites, plays, movies, photos, paintings, and textbooks) and unpublished sources (class lectures or notes, handouts, speeches, other students’ papers, or material from a research service).

Using words, ideas, computer code, or any work by someone else without giving proper credit is plagiarism. Any time you use information from a source, you must cite it.

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/index.html>

Lecture Topics and Reading Assignments

Assigned reading: **On Mass Incarceration**, *Daedalus*, Vol. 139, No. 3, Summer 2010 (available at the campus bookstores)

All other readings are available on the web (via library proxy server) or on bspace.

(Each unit will be covered typically in 1 lecture although sometimes we will carry on to the next lecture).

I. INTRODUCTION: CALIFORNIA PENALTY IN CRISIS

1. Must we treat prisoners humanely?

In 2011, some two centuries after prisons became the enlightened standard in the West for punishing serious crime while respecting human rights, prisons in California — one of the world's richest and most technologically advanced states — were deemed so overcrowded and so lacking in adequate health care as to deny the human dignity of prisoners.

Jonathan Simon, "Editorial: Mass Incarceration on Trial," *Punishment & Society* Vol. 13(3)251, <http://pun.sagepub.com/content/13/3/251.full.pdf+html>

Brown v. Plata, Supreme Court No. 09-1233, May 23 2011, majority opinion by Justice Kennedy, pages 1-13, <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf>

Recommended:

Joan Petersilia, "Beyond the Prison Bubble," *NIJ Journal*, no. 268 (2011), <http://www.ncjrs.gov/pdffiles1/nij/235893.pdf>

California Department of Corrections and Rehabilitation, The Three Judge Panel and California Inmate Reduction (May 23, 2011), (bspace)

2. Can we execute people humanely?

In California today, it is constitutional to impose the death sentence for aggravated murder. However, no one has been executed since 2006, due to litigation over the method of lethal injection. Although the U.S. Supreme Court has never held a modern execution method to be "cruel and unusual," and other states have carried out executions in the past year, it is likely that California will continue its *de facto* moratorium despite having 700+ prisoners on death row. It is also possible that, if the stay on lethal injections is lifted, within the next year California will be executing as many as two prisoners a week to clear a backlog of exhausted appeals. More generally, the death penalty in the United States seems to be declining despite no existential legal threat.

Death Penalty Information Center, The Death Penalty in 2011: Year End Report, http://www.deathpenaltyinfo.org/documents/2011_Year_End.pdf

ACLU, The Time Line of Legal Chaos in the State's Rush to Execute Albert Brown (2011) (bspace)

Recommended:

Sims v. California Department of Corrections and Rehabilitation, Final Ruling, Superior Court, State of California, December 2011 (bspace)

II. WHY DO WE PUNISH? A GRAMMAR OF MOTIVES

We often say that the urge to punish is natural, and we recognize a failure to punish wrongdoers as unjust. But where does this intuition come from? In this unit we explore productive frameworks from different disciplines — including psychology, philosophy, economics, criminology, and sociology — to understand this common sense about punishment’s “rightness.”

3. The Philosophy and Psychology of Retribution

Simon Gachter, Elke Renner, and Martin Sefton, The Long Run Benefit of Punishment, *Science Magazine*, 5 December 2008:
Vol. 322 no. 5907 p. 1510 <http://www.sciencemag.org/content/322/5907/1510.full>

John Darley. 2009. Morality in the law: the psychological foundations of citizens’ desires to punish transgressions. *Annu Rev Law Soc Sci* 5: 1-23
<http://www.annualreviews.org/doi/pdf/10.1146/annurev.lawsocsci.4.110707.172335>

Recommended:

B. Sharon Byrd, Kant's theory of punishment: Deterrence in its threat, retribution in its execution, *Law & Philosophy*, Vol. 8 (2) 100-150
<http://www.springerlink.com/content/n2034126563981u3/fulltext.pdf>

Jeffrie Murphy, “Does Kant have a Theory of Punishment,” *Columbia Law Review*, Vol. 87(3)509-532, 512-516 (1987)

Thomas Tyler and Robert Boeckman, Three Strikes and You Are Out, but Why? The Psychology of Public Support for Punishing Rule Breakers, *Law & Society Review*, Vol.31 (2):237-265 (concentrate on 237-44, 255-61),
<http://www.jstor.org/stable/pdfplus/3053926.pdf>

John Duckitt. Punishment attitudes: their social and psychological bases. In *Social psychology of punishment of crime*, eds. Oswald, Bieneck, Hupfeld-Heinemann, 75-92

Susanne Karstedt. 2002. Emotions and criminal justice. *Theoretical Criminology* 6(3): 299-317
<http://tcr.sagepub.com/content/6/3/299.full.pdf+html>

4. Deterrence and Incapacitation

Ewing v. California, 538 U.S. 11 (2003) (b space)

Cesare Beccaria, Of Crimes and Punishment (1764), Ch. 28 of *The Mildness of Punishments*, http://www.constitution.org/cb/crim_pun.htm

Recommended:

David Lee and Justin McCrary, “The Deterrence Effects of Prison: Dynamic Theory and Evidence,” National Bureau of Economic Research (2009)
http://emlab.berkeley.edu/~jmccrary/lee_and_mcrary2009.pdf

Todd Clear, “The Impact of Incarceration on Public Safety,” *Social Research*, Vol. 74(2) 613-30,
<http://socialresearch.metapress.com/app/home/contribution.asp?referrer=parent&backto=issue,17,25;journal,17,38;linkingpublicationresults,1:119739,1>

5. Community and Social Solidarity

Emile Durkheim, *The Division of Labor in Society*, pp. 31-76

Recommended:

William Miller, *Choosing the Avenger: Some Aspects of Blood Feud in Medieval Iceland and England* (1983) 159-165, 175-194

R. A. Duff. Punishment, communication, and community. In *Punishment and Political Theory*, ed. Matt Matravers, 48-68 (1999)

Joel Feinberg. “The expressive function of punishment. “*Monist* 49(4): 397-408 (1965)

III. THE SPECTACLE OF SUFFERING: PUNISHMENT AND STATE POWER FROM THE END OF THE MIDDLE AGES TO THE ENLIGHTENMENT

The notion that the desire to punish is deeply rooted and intuitive may seem obvious, but it ignores the enormous effort that state institutions invest in determining who gets punished, and how that punishment is both carried out and presented. We must keep in mind the strong primary motives that make punishment appealing and intuitive, even as we focus on variations across time and place in public practices and meanings associated with punishment.

6. The Rituals of the Scaffold

The details of execution scenes in early modern Europe

V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (1996), 29-56 (b space)

Pieter Spierenberg, *Written in Blood: Fatal Attraction in Renaissance Amsterdam* (2004), 105-16 (bspace)

Recommended:

Pieter Spierenberg, *The Spectacle of Suffering: Executions and the evolution of repression from a Preindustrial Metropolis to The European Experience* (Cambridge 1984)

7. The Uses of Spectacle

Early modern monarchies found in execution a crucial tool for building a new form of power: “sovereignty.” As the state became more involved in managing a national economic market, execution became one tool for responding to resistance generated by the suffering that accompanied the breakdown of feudalism.

Michel Foucault, *Discipline and Punish: The Birth of the Prison* (translated by Alan Sheridan 1977), pp. 32-69, 200-09

Recommended:

Douglas Hay, “Property, Authority and the Criminal Law,” in *Albion’s Fatal Tree: Crime and Society in 18th Century England*, Douglas Hay et al editors (2nd ed. 2011), pp. 17-64

8. The Crisis of the Scaffold

The 18th century saw the birth of a new political consciousness focused on the limits of state power and the rights of human beings (or at least males). Also, in early capitalism, deepening inequalities and the loss of traditional rural rights of the poor may have produced growing social conflict, some of which found expression in riotous behavior surrounding executions.

Peter Linebaugh, “The Tyburn Riot Against the Surgeons” in *Albion’s Fatal Tree: Crime and Society in 18th Century Britain*, Douglas Hay et al editors (2nd ed. 2011) pp. 65-118 (bspace)

Recommended:

V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (1996), pp. 225-241

Pieter Spierenberg, *The Spectacle of Suffering: Executions and the Evolution of Repression: From a Preindustrial Metropolis to the European Experience* (Cambridge 1984)

9. The First Abolition and the Limits of the Abolition Project

By the end of the 19th century, in most of Europe and European North America as well as South America, execution as a matter of penal justice was limited to murder and a handful of

violent felonies. Public execution was abolished by the first third of the 20th century. Why was this partial abolition successful, and why has use of the death penalty as a response to murder last so long (until today in the United States)?

David Brion Davis, "The Movement to Abolish Capital Punishment in America, 1787-1861," *American Historical Review* Vol. 63(1), pp. 23-46 (bspace)

Recommended:

Stuart Banner, *The Death Penalty: An American History* (2002), pp. 112-168

10. Abolition and Human Rights since World War II

After a brief period following World War II in which wartime collaborators and some criminals were executed, the continent of Europe led a global movement toward abolition. Today, only one state in Europe retains even the possibility of capital punishment; and virtually all states in South America and Australia have abolished or ceased to use the death penalty. Although the major human rights treaties drafted in the 1940s and 1950s recognized the legitimacy of capital punishment for serious crimes, human rights law since the 1970s has taken a sharp turn against the death penalty.

Franklin Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford, 2003), chapter 2 (bspace)

11. America's Near-Abolition and the Revival of the American Death Penalty

The United States followed the global pattern through the early 1970s, but it retained and even increased its use of capital punishment in the last decades of the 20th century.

Stuart Banner, *The Death Penalty: An American History* (2002) pp. 275-299

Gregg v. Georgia (1976) 428 U.S. 153 (1976) (bspace)

McCleskey v. Kemp (1987) 481 U.S. 279 (1987) (bspace)

Recommended:

David Garland, *Peculiar Institution: America's Death Penalty in an Age of Abolition* (Harvard 2011)

12. The Long and Winding Road (to Abolition in the United States)

After peaking in the 1990s, popular support for the death penalty declined in the United States. In the last decade, death sentences and actual executions slowed significantly. In recent years, for the first time in over half a century, several states have abolished the death penalty by legislative action. What is going on?

Austin Sarat, "The New Abolitionism" and the Possibilities of Legislative Action: The New Hampshire Experience, *Ohio St. U. L. J.* Vol. 63: 343 (2002) (bspace)

Roper v. Simmons (2005) 543 U.S. 551 (2005) (bspace)

Kennedy v. Louisiana (2008) 554 U.S. 407 (2008) (bspace)

Recommended:

Austin Sarat, *When the State Kills: Capital Punishment and the American Condition* (2001), pp. 60-84 (bspace)

James D. Unnever and Francis T. Cullen, "Public opinion and the death penalty." In *Social psychology of punishment of crime*, eds. Oswald, Bieneck, Hupfeld-Heinemann, 113-33 (1999)

13. Capital Punishment in Asia

For a long time, Asia (along with the Islamic world) looked like the major redoubt of death penalty retentionism — but that may be changing.

Franklin Zimring and David T. Johnson, "Law, Society and Capital Punishment in Asia," *Punishment & Society* April 2008 Vol. 10(2) 103-115
<http://pun.sagepub.com/content/10/2/103.full.pdf+html>

Recommended:

David Johnson and Franklin Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford 2009) excerpt

Punishment & Society (Special Issue: The Death Penalty in Asia) Vol. 10(2) April 2008

14. The New Death Penalty: Life without Parole

Will the end of the death penalty mark the beginning of Life without Parole as the new "ultimate sanction"?

Rachel Aviv, "Annals of Justice: No Remorse; Should a teen-ager be given a life sentence?" *The New Yorker*, January 2, 2012
http://www.newyorker.com/reporting/2012/01/02/120102fa_fact_aviv

Recommended:

Jonathan Simon, "Dignity and Risk: The Long Road from *Graham v. Florida* to the Abolition of Life without Parole," chapter 8 in *Life without Parole: America's New Death Penalty*, edited by Charles Ogletree and Austin Sarat (2012) (bspace)

15. In-Class Multiple Choice Midterm

IV. THE PRISON AND ITS ALTERNATIVES IN MASS SOCIETY

Partial abolition (as discussed in Class 10) was possible due to the emergence of a convincing new method of punishment and social control: the penitentiary-style prison.

16. The Prison and Its Competitors in the Late 18th Century

Reformers at the end of 18th century were pretty clear on what was wrong with the old approaches to punishment — but what should replace them?

John Howard, *The State of the Prisons* (1777), pp. 5-35, free ebook at <http://books.google.com/ebooks/reader?id=4EhNAAAAAYAAJ&printsec=frontcover&output=reader&pg=GBS.PA7>

Recommended:

Dario Melossi and Massimo Pavarini, *The Prison and the Factory: Origins of the Penitentiary System* (Macmillan 1981), translation of *Cárcel y fábrica: los orígenes del sistema penitenciario* (1978)

Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (Pantheon 1978)

Michel Foucault, *Discipline and Punish: The Birth of the Prison* (translated by Alan Sheridan 1977)

17. The Birth of the Penitentiary

The most enduring alternative was the prison. While the ideas behind the penitentiary would fade quickly, the hold of the cellular prison over our modern penal imagination remains formidable.

Charles Dickens, *American Notes*, Chapter 7: “Philadelphia, and Its Solitary Prison” (1842), <http://www.online-literature.com/dickens/americanotes/8/>

Recommended

Alexis de Tocqueville and Gustave de Beaumont, *The Penitentiary System in the United States and its Application in France* (Southern Illinois Press 1979)

18. Prison Labor

The prison was almost always a space of labor, sometimes without even a specialized building.

Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the South* (1996) chapter 2 (bspace)

Recommended:

Rebecca McClellan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776 – 1941* (The Cambridge History of American Law series, Cambridge University Press, March 2008)

19. Prison Discipline and Rehabilitation

In the 20th century, the idea of penitential reform or disciplinary training was replaced by a more scientific approach to rehabilitation.

Eric Cummins, *The Rise and Fall of California's Radical Prisoner Movement* (Stanford University Press, 1994) excerpt (bspace)

Recommended:

John Irwin, *Prisons in Turmoil* (1980) excerpt (bspace)

Karl Menninger. *The crime of punishment*, 4-18
BF Skinner. 1971. *Beyond freedom and dignity*, 62-77

V. MASS INCARCERATION

Between the 1970s and the 2000s, the United States embarked on a pattern of imprisonment unprecedented in history. California was an extreme but revealing example. The California prison population grew by over 500 percent between 1976 and 2006. Since 2009, California's prison system has been in a crisis. In view of federal court orders to reduce population, and a long-term medical bill for inmate health care that is unaffordable, California is beginning to reframe the ends and means of a legitimate and moral prison system.

20. What Is Mass Incarceration? What Caused Mass Incarceration?

In the last decades of the 20th century, the United States developed a distinctive approach to incarceration, one that abandoned almost two centuries of knowledge about how to maintain prison order. Sociologists and political scientists agree that mass incarceration is among the most significant developments of American society in the last half century — but what caused it?

Glenn Loury and Bruce Western, "The challenge of mass incarceration in America," *Daedalus* Summer 2010 (On Mass Incarceration), Vol. 139, No. 3:5-7
http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_e_00018

Loic Wacquant, "Class, race & hyperincarceration in revanchist America," *Daedalus* Summer 2010 (On Mass Incarceration), Vol. 139, No. 3: 74–90.
http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00024

Nicola Lacey, "American imprisonment in comparative perspective"
Daedalus Summer 2010 (On Mass Incarceration), Vol. 139, No. 3: 102–14.
http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00026

Recommended:

Plata v. Schwarzenegger, 3-Judge court final opinion and order, excerpts

David Garland, Mass Incarceration, an Introduction, *Punishment & Society* January 2001, 3: 5-7, <http://pun.sagepub.com/content/3/1/4.full.pdf+html>

Mona Lynch, *Sunbelt Justice: Arizona and the Transformation of American Justice* (Stanford 2009)

Joshua Page, *The Toughest Beat: Politics, Punishment and the Prison Officers Union in California* (New York 2011)

Bobo, Lawrence D. and Victor Thompson. 2010. Racialized mass incarceration: poverty, prejudice, and punishment. In *Doing race: 21 essays for the 21st century*, eds. Markus & Moya, 322-55

Angela Davis. 1998. Racialized punishment and prison abolition. In *The Angela Y. Davis reader*, ed. Joy James, 96-107

Ruth W. Gilmore. 1998/99. Globalisation and US prison growth: from military Keynesianism to post-Keynesian militarism. *Race & Class* 40(2/3), 33-50

Franklin E. Zimring, and David T. Johnson. 2006. "Public opinion and the governance of punishment in democratic political systems." *Annals of AAPSS* 605: 266-80

21. Mass Incarceration and Inequality

Whatever its causes, mass incarceration has produced extraordinary and largely negative effects, especially on our already-worsening inequalities.

Bruce Western, Becky Pettit, Incarceration & social inequality, *Daedalus* Summer 2010 (On Mass Incarceration), Vol. 139, No. 3: 8–19.
http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00019

Candace Kruttschnitt, The paradox of women's imprisonment, *Daedalus* Summer 2010, Vol. 139, No. 3: 32–42.

http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00021

Recommended:

Bruce Western, *Punishment and Inequality* (Russell Sage Foundation 2006)

Devah Pager, *Marked: Race, Crime and Finding Work in an Era of Mass Incarceration* (Chicago 2007)

22. Supermax Prisons

Mass incarceration has spawned a distinctive penal approach to maintaining order without the traditional mechanisms of cooptation and cooperation.

Keramet Reiter, “Parole, Snitch, or Die: California’s Supermax Prisons & Prisoners, 1987-2007” SSI Fellows Working Papers, Institute for the Study of Societal Issues, UC Berkeley, 07-07-2010

<http://escholarship.org/uc/item/04w6556f.pdf>

Recommended:

Atul Gawandi, The United States holds tens of thousands of inmates in long-term solitary confinement. Is this torture, *The New Yorker*, March 30, 2009

http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande

Madrid v. Gomez, 889 F.Supp. 1146 (N.D. Cal. 1995) edited (bspace)

Sharon Shalev, *Supermax: Controlling Risk through Solitary Confinement* (Willan 2009)

23. Mass Incarceration and Chronic Illness

The modern penitentiary began as a solution to the problem of illness and death from disease in traditional jails and dungeons. Yet California’s contemporary prison system has been experiencing a humanitarian medical crisis for more than a decade. One dark secret of contemporary prisons is that they house huge numbers of people with chronic illnesses including severe mental illnesses. How did prisons become a place for incarcerating very sick people?

Jonathan Simon, *Mass Incarceration on Trial*, excerpt (bspace)

Plata v. Schwarzenegger, 3-Judge court final opinion and order, excerpts (bspace)

VI. BEYOND MASS INCARCERATION

24. Localizing Mass Incarceration: Realignment and the End of the Carceral State

Mass incarceration represented a huge transfer of people from communities to prisons. Can we create better outcomes for both prisoners and communities by returning people and power to the community?

Robert J. Sampson and Charles Loeffler, "Punishment's place: the local concentration of mass incarceration," *Daedalus* Summer 2010 (On Mass Incarceration), Vol. 139, No. 3: 20–31, http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00020

Recommended:

Mona Lynch, Mass incarceration, legal change, and locale: Understanding and remediating American penal overindulgence, *Criminology and Public Policy*, Vol. 10(3) pp. 673-98, <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9133.2011.00733.x/full>

Jonathan Simon, Clearing the 'troubled assets' of America's punishment bubble *Daedalus* Summer 2010 (On Mass Incarceration), Vol. 139, No. 3: 91–101, http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00025

25. Community Corrections: Less Crime and Fewer Prisoners?

Mark A. R. Kleiman, Toward fewer prisoners and less crime? *Daedalus* Summer 2010 (On Mass Incarceration), Vol. 139, No. 3: 115-123 http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00027

Robert Weisberg and Joan Petersilia, "The dangers of Pyrrhic victories against mass incarceration," *Daedalus* Summer 2010 (On Mass Incarceration), Vol. 139, No. 3: 124–133. http://www.mitpressjournals.org/doi/pdfplus/10.1162/DAED_a_00028

26. Restorative Justice

Mass incarceration represented the triumph of a fear-based incapacitation approach to crime. What would it mean to re-center our criminal justice on the problem of injustice?

Albert W. Dzur, 2011. Restorative justice and democracy: fostering public accountability for criminal justice. *Contemporary Justice Review* 14(4): 367-81 <http://www.tandfonline.com/doi/pdf/10.1080/10282580.2011.616367>

Recommended

Albert W. Dzur, 2010. The myth of penal populism: democracy, citizen participation, and American hyperincarceration. *J. Speculative Philosophy* 24(4): 354-79

Dena M. Gromet, 2009. "Psychological perspectives on the place of restorative justice in criminal justice systems." In *Social psychology of punishment of crime*, eds. Oswald, Bieneck, Hupfeld-Heinemann, 39-54

Carrie Menkel-Meadow, 2007. "Restorative justice: What is it and does it work?" *Annu Rev Law Soc Sci* 3: 161-87
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1005485

27. From Humanitarian Crisis to Humanity: Humanitarian medicine and a new model of punishment

California's extreme conditions open the door to a new model of correctional practice, one based on public health and risk reduction.

Brown v. Plata, Supreme Court No. 09-1233, May 23 2011, majority opinion by Justice Kennedy, pages 1-13, <http://www.supremecourt.gov/opinions/10pdf/09-1233.pdf>

Jonathan Simon, *Mass Incarceration on Trial*, excerpt (bspace)

28. Dignifying Punishment: Human Rights and the Future of Imprisonment

Dignity has become central to the logic of prison reform in Europe, owing to the influence of the European Convention on Human Rights and organs like the Committee for the Prevention of Torture and the European Prison Rules. What role could human rights play in reimagining the future of American prisons?

Jonathan Simon, *Mass Incarceration on Trial*, excerpt (bspace)

Recommended:

Dirk van zyl Smit and Sonia Snacken, *Principles of European Prison Law & Policy* (Oxford 2009)