

Lectures: 10:10-11:00AM on Mon/Wed/Fri in 155 Kroeber Hall

Professor Richard Perry; Email: [rwperry@law.berkeley.edu](mailto:rwperry@law.berkeley.edu) (Email is the best mode of contact)  
Office hours: Mon/Wed/ 9:30-10:00AM and Mon/Wed/ 11:15-11:45AM, in 337E Boalt North Addition, or by appointment

GSI: Stephen Galoob: Email: <[sgaloob@berkeley.edu](mailto:sgaloob@berkeley.edu)>; Office Hours: Wednesdays 12-1:00pm & Fridays 9-10:00 am at Cafe Zeb (in law school, facing Bancroft Way)

Section 101: Weds. 3:00-4:00 in 104 Barrows Hall

Section 102: Friday 8:00-9:00 in 104 Barrows Hall

### **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 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 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.

#### *Weeks 6-11*

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 11-15*

The third and final part of the course will focus on leading recent developments in criminal law and justice policy, in the shifting empirical realities 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 (but NOT Reader II) 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. Also, as noted below, in-class participation will count for 10% of the course grade.

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:

Handed out Sept. 28 <sup>th</sup> -- due Oct. 3 <sup>rd</sup> .	1 <sup>st</sup> Midterm: 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.	25% of final grade
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<p>Nov. 1<sup>st</sup> multiple choice part and Nov. 4<sup>th</sup> essay part.</p>	<p><u>2<sup>nd</sup> Midterm:</u> In-class exam administered in two parts in two class meetings. 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 and Bluebook</p>	<p>25% of final grade</p>
<p>Posted after RRR-week review session; due December 10<sup>th</sup></p>	<p><u>Final Exam:</u> 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 two sections of the course, if the grade on the final test is higher than those on the first two tests, the third and final test MAY be weighted more heavily in the student's favor.</p>	<p>30% of final grade</p>

	<p><b>Class Participation:</b> Coming to class already having read the assigned material and participating in the class discussion is required of all students. Students will be assigned to on-call groups, alphabetically by last name, and will be called on in rotation. 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.</p>	20% of final grade
Total		100%

## **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. 24

Introduction to the course and to the instructors. Introduction to some key terms and concepts in the study of crime, law, criminology, and criminal justice. View excerpt from the 2003 documentary film, *Capturing the Friedmans*; discuss this case study as an 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. 27, 29 & 31

*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 and BJS Index Crimes. Enlightenment rationalization and reform of criminal law and penalty, to nineteenth century positivism, and to the emergence of modern criminology.

Contrast Durkheim to Beccaria and Bentham and the 19<sup>th</sup> century Classical School to later schools of theory on crime, criminology and 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).

Recommended further reading: Packer's "Two Models" and Wechsler's Model Penal Code; Zimring and Hawkins on crime and categorical contagion – all on bSpace.

**Week 3:** Sept. 5 & 7 (*NO CLASS SEPT. 3—Labor Day holiday*)

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

Read for Week 3: Finish Durkheim chapters.

**Week 4:** Sept. 10 (Group A), 12 (Group B) & 14 (Group C)

Discussion of "Classical School of Theory" -- Beccaria and Bentham -- continued; Durkheim's social solidarity, organicism, anomie, functionalism, "Laws of Penal Evolution": contrast Foucault's critique of Enlightenment Classical theory's "leniency revolution."

Read: Foucault pp. 3-31.

Recommended: Foucault pp. 32-69.

**Week 5:** Sept. 17 (Group D), 19 (Group A) & 21<sup>st</sup> (Group B)

On "Conflict Theories" and the political economy of crime and criminalization.

Read for Week 5: Wm. Chambliss "Law of Vagrancy"; E.P. Thompson & Douglas Hay, *Albion's Fatal Tree: Crime and Society in Eighteenth Century England* (1975) excerpt; Rusche and Kirchheimer excerpt.

Recommended: Skim table of contents and Book Four of “Of Crimes” in Blackstone's Commentaries on the Laws of England (1765-69) on bSpace.

**Week 6:** Sept. 24 (Group C), 26 (Group D), & 28 (Group A)

The “Positivist School,” 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 6: Selections from Cesare Lombroso’s “Criminal Man” and “Criminal Woman”. Ellis & Walsh; Rowe “Does the Body Tell?” NY Times Profile of Adrian Raine and “The Criminal Brain.”

Recommended: Nicole Rafter *The Criminal Brain: Understanding Biological Theories of Crime* excerpts on bSpace; excerpt from Foucault “Abnormal” on bSpace.

**TAKE-HOME MIDTERM TEST HANDED OUT FRIDAY, SEPT. 28<sup>th</sup>; DUE IN CLASS ON WEDNESDAY, OCT. 3<sup>rd</sup>**

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## **Part II Weeks 7-11: Critical Overview of Substantive Criminal Law**

**Week 7:** Oct. 1 (Group B), 3 (Group C) & 5 (Group D)

*All Students Are Required to Purchase Reader II from Copy Central and Bring the Reader to Every Class Meeting of Part II of LS 170*

Review-discussion of the construction of criminal subject; also, review concepts of retribution, deterrence, rehabilitation, predicted dangerousness, and therapeutic versus incapacitative theories; BJS ‘Index Crimes’; the harm principle and the categorical grading of crimes. Introduce *The Model Penal Code* (1962).

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

Further readings: Crimes of omission, “American Bystanders,” on bSpace

Week 8: Oct. 8 (Group A), 10 (Group B) & 12 (Group C)

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 5 and 6

Week 9: Oct. 15 (Group D), 17 (Group A) & 19 (Group B)

Reader II chapters 7 and 8: Cases and materials on accomplice liability and inchoate crimes; complicity, conspiracy, solicitation.

Week 10: Oct. 22 (Group C), 24 (Group D), 26 (Group A)

Reader II Ch. 9: Crimes against Persons; Homicide doctrine, culpability and dangerousness: levels of mens rea, strict liability and special circumstances.

Homicide discussion continued and generalized to other sex offenses, and other crimes against persons; the felony murder rule; discussion of deterrence and dangerousness.

## MIDTERM II – GIVEN IN 2 PARTS ON NOV. 2<sup>ND</sup> & NOV. 5<sup>TH</sup> IN-CLASS

Week 11: Oct. 29 (Group B), 31<sup>st</sup> (Group C) & Nov 2<sup>ND</sup> *MIDTERM PART I*

Sex offenses and other crimes against persons; introduction to debates over defendants and victims in social context; mens rea revisited: cultural defenses and other new defenses – raced and gendered violence and the contested category of *hate crime*.

Read for Week 11: Reader II Ch. 10  
Review of criminal doctrine.

The first part of second mid-term exam will be administered during class period on Friday Nov. 2<sup>nd</sup> - 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 Monday Nov. 5<sup>th</sup> -- please bring a blue book.

## Part III: Current Trends and Controversies in Criminal Justice

**Week 12: Nov. 5<sup>th</sup> MIDTERM II PART 2- Essay (bring Bluebook)**

On-Call for Nov. 6<sup>th</sup> (Group D), Nov. 8<sup>th</sup> (Group A)

Read for Week 12: Estrich and Volpp articles in Reader III and bSpace, re-read Reader II, pages 154-167.

Cultural defenses; the “gay panic” defense; Araujo case; other “particularized” defenses; socio-legal discussion of emergence of hate crime laws. Probable guest lecture by Prof. Leti Volpp.

**Week 13: NO CLASS on Monday Nov. 12<sup>th</sup> – Veterans’ Day Holiday**

Nov. 14<sup>th</sup> (Group B) & Nov. 16<sup>th</sup> (Group C)

POSSIBLE GUEST LECTURE BY STEHEN GALOOB ON THE CONTESTED ETHICS OF CRIMINAL DEFENSE LAWYERING ON FRIDAY NOV. 16<sup>TH</sup> -- IN WHICH CASE THE READINGS OF WEEKS 13 AND 14 WILL BE RE-ORDERED

Plea Bargaining, rational choice, and transactional-economic approaches to criminal law; video excerpt.

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

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

**Week 14: Nov. 19<sup>th</sup> (Group D) & Nov. 21<sup>st</sup> (Group A) (SHORT WEEK DUE TO THANKSGIVING)**

Read for Week 14: (see Week 13 -- either Plea Bargaining or Legal Ethics Readings)

**Week 15:** Nov. 26 (Group B), Nov. 28<sup>th</sup> (Group C), Nov. 20<sup>th</sup> (Tentative guest lecture by Prof. Jonathan Simon).

Read for Week 15: Simon (2007) *Governing through Crime*, chapters 1, 3, 8.

Read also: Jerome Skolnick; Wilson & Kelling “Broken Windows” (1982), Harcourt, excerpt.

Recommended: Review Foucault excerpt on panoptic surveillance; Teresa Caldeira “City of Walls” and Garland “Culture of Control” excerpts. Mona Lynch, “The Punitive City.”

**RRR Week:**

Review session tentatively scheduled for Monday, Dec. 3<sup>rd</sup>

Course review/summary and discussion of take-home final exam, to be distributed on bSpace at least one week before campus final exam date, and to be submitted TBA. 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: Monday, December 10<sup>th</sup> 8:00-11:00 am,  
Location TBA (time and location are assigned by Registrar)**