

SOC149-THE PENAL STATE

Professor Loïc WACQUANT <loic@berkeley.edu>

Tuesday 5:10-6:30pm SSB 170

Office hours Tu/Th 3-4pm and by appointment on zoom

Topic: In the past half-century, the United States has gone from being a leader in progressive penality to the biggest incarcerator in the world. Police killings of unarmed black men and tussles with homeless people are drawing outrage and outcry. Jails have become the country's largest psychiatric facility in the country. Probation and parole are extending their reach ever deeper into poor neighborhoods and homes. Racial disparity in arrest, sentencing and imprisonment has risen to the forefront of public issues. Calls for "criminal justice reform" and even "abolition" are multiplying. How do we make sense of it all? What are the links between punishment and inequality, criminal justice and social justice? How do they play out in the various institutions that combine to make up the penal apparatus?

This course starts by reviewing the main sociological theories about crime, punishment and inequality to give us tools to map out the penal state (defined as the agency claiming a monopoly over the legitimate use of physical and symbolic violence). Then we work our way along the "punishment chain," dissecting in turn the police, jail, bail, court (prosecution, public defense, plea bargaining and judging), probation, imprisonment and parole, and we trace the collateral and repercussive effects of penal sanctions. We end by considering the politics, possibilities and pitfalls of criminal justice reform and abolition.

Warning: This course is not an activist banquet designed to get people riled up about the "Prison Industrial Complex" (a myth we will dismantle on day one). It is an introduction to sociological reasoning and an application of its tools to the question of penality, defined as the ensemble of categories, discourses, practices, and institutions entrusted with the lawful enforcement of criminal statutes. The course will demonstrate that many of the facile slogans of the contemporary debate around the police, the courts and the prison are just that, slogans. It demands serious engagement with complex materials and rigorous thinking, not following blindly one's moral emotions and personal indignation. The first step, then, is to forsake the "logic of the trial" (which seeks to establish guilt or innocence, tells the "good guys" from the "bad guys") in favor of the logic of "analytical ordering" of the empirical world (as Max Weber puts it). Only when we have built a solid model of the penal state can we hope to turn to changing it with maximum impact.

Requirements: In addition to regular attendance (you are allowed TWO missed lectures during the semester) and regular reading (on PAPER PRINTOUTS and HARD COPIES of the texts assigned, involving marking and note-taking, which will be checked periodically by the instructors), the requirements of the course are threefold: 1) a short take-home essay question covering the first three weeks on sociological theory (for which ChatGPT will be of no help whatsoever); 2) a midterm covering the first half of the course in week 8; 3) a final exam covering the entire course on the date determined by the university finals calendar. Both midterm and final exams will involve a mixture of true/false and multiple choice questions, short answers, a mini-essay and will include bonus points to reward those who have worked to master the materials.

Rewards: This course will teach you theories that will illumine the world around you, facts that will turn your head around, challenge you to think outside the box and shed some of your preconceptions and cherished beliefs about “criminal justice.” It will stretch your mind and give your tools to grasp the latter as it works in reality—and not in the imagination of both advocates and detractors. It will improve your reading capacity and analytic skills. The hard work will pay off—it always does.

1-What is the state and why we punish (January 16)

The demonic myth of the Prison Industrial Complex – three approaches to the state: Weber, Bourdieu, Mann – definition of the penal state – punishment before the prison – punishment beyond the prison – linking penal and social policies to manage marginality – philosophies of penal sanction: rehabilitation, just deserts (retribution), neutralization

a-Spierenburg, Weber, Bourdieu, Mann (short excerpts)

b-Hirsch, Wacquant

Spierenburg, Peter. 1995. “The Body and the State: Early Modern Europe.” Pp. 49-78 in *The Oxford History of the Prison: The Practice of Punishment in Modern Society*. Edited by Norval Morris and David J. Rothman. Oxford: Oxford University Press.

Weber, Max. 1918. “Politics as Vocation.” [1918]. READ pp. 155-161 in *Max Weber’s Complete Writing on Academic and Political Vocations*.

Bourdieu, Pierre. [1993] 1994. “Rethinking the State: On the Genesis and Structure of the Bureaucratic Field.” *Sociological Theory* 12, no. 1: 1-19. READ pp. 3-12.

Mann, Michael. 1984. “The Autonomous Power of the State: Its Origins, Mechanisms and Results.” *European Journal of Sociology/Archives européennes de sociologie* 25, no. 2: 185-213. READ pp. 187-191, 196-197.

Hirsch, Andrew von. 1999. "Penal Theories." Pp. 659-683 in *The Handbook of Crime and Punishment*. Edited by Michael Tonry. New York: Oxford University Press.

Wacquant, Loïc. 2012. "The Wedding of Workfare and Prisonfare in the 21st Century." *Journal of Poverty* 16, no. 3: 236-249.

c-recommended

Garland, David. 1990. *Punishment and Society: A Study in Social Theory* Chicago: University of Chicago Press.

Wacquant, Loïc. 2009. *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Durham, NC: Duke University Press.

2-Sociological theories of punishment 1 (January 23)

Durkheim on penalty and solidarity – collective consciousness and passion – phatic function of punishment – drawing the boundaries of community – Marx on penalty and class control – instrumentality and rationality – Weber's three types of legitimacy – Elias on the "civilizing process"

a-Durkheim, Marx

b-Weber, Elias, Spierenburg

Durkheim, Émile. "Law as An Index of Social Solidarity" and "From Repressive to Restitutive Law" (from *The Division of Labor in Society*, 1893), in Lukes and Scull, *Durkheim and the Law*, pp. 54-61, 62-77.

Marx, Karl. 1991. "Marx and Engels on Crime and Punishment." Pp. 45-56 in *Crime and Capitalism: Readings in Marxist Criminology*. Edited by David Greenberg. Palo Alto: Mayfield.

>>*JC CUT TO 5 to 10 pages if you can Weber, Max. [1918-20] 1978. "The Types of Legitimate Domination," pp. 212-254, in *Economy and Society* [1818-20] 1978.

Elias, Norbert. [1937] 1998. "The Social Constraint towards Self-Constraint." Pp. 49-66 in *On Civilization, Power, and Knowledge*. Chicago: The University of Chicago Press (from *The Civilizing Process*, Blackwell, 1994, pp. 443-456).

Spierenburg, Pieter. 1984. "The Spectacle of Suffering," extract (pp. 1-12 and 200-207). *The Spectacle of Suffering*. Oxford: Oxford University Press.

c-Recommended

Smith, Philip. 2008. *Punishment and Culture*. Chicago: University of Chicago Press.

Rusche, Georg and Otto Kirschheimer. [1939] 2003. *Punishment and Social Structure*. New Brunswick: Transaction Press.

3-Sociological theories of punishment 2 (January 30)

Foucault on modernity, capitalism and punishment – from sovereign power to disciplines – making bodies “docile and useful” – the Panopticon – Goffman on inmate societies, plural – “total institution”- mortification of the self – underlife of closed organizations

a-Foucault

b-Goffman

*>>JC make a selection of 20-30 pages centered on docile bodies, spread of discipline, Panopticon, I’ll make one too and we’ll see the overlap.

SELECT FROM Foucault, Michel. [1975] 1977. *Discipline and Punish: The Birth of the Prison*, (*REDUCE FROM: pp 3-31, 73-89, 126-131, 135-139, 155-156, 167-169, 184-256, 264-282, 293-308). *Werth selects: pg 3-16 only)

*>>JC make a shorter selection of about 35-40 pages and we’ll see the overlap
Goffman, Erving. 1962. “On the Characteristics of Total Institutions.” Pp. 1-24, 40-43, 69-72 in *Asylums. Essays on the Social Situation of Mental Patients and Other Inmates*. New York: Penguin.

-recommended: read the entire books by
Michel Foucault, *Discipline and Punish* (1975).
Erving Goffman, *Asylums* (1962).

4-Policing (February 6)

Invention of policing – slave patrols are not the origins of the modern police – multinodal policing as reflection of the fragmented bureaucratic field – missions and operations – “911 is a joke” – policing the hyperghetto – overpolicing and underpolicing – policing the police

a-Lepore, Moskos

b-Moskos, Bassett, Stuart

Lepore, Jill. 2020. “The Invention of the Police.” *The New Yorker* 13 (9 pages).

Moskos, Peter. 2008. “911 is a Joke” and “Under Arrest: Discretion in the Ghetto,” chapters 5 and 6 (pp. 88-157) in *Cop in the Hood: My Year Policing Baltimore’s Eastern District*. Princeton, NJ: Princeton University Press.

Bassett, Mary T. 2021. “A History of US Police Violence.” *The Lancet* 397, no. 10289: 2039-2040.

Stuart, Forrest. 2016. “Policing the Police,” chapter **, pp. ** in *Down, Out and Under Arrest: Policing and Everyday Life in Skid Row*. Chicago: University of Chicago Press.

c-recommended

- Balto, Simon and Max Felker-Kantor. 2022. "Police and crime in the American city, 1800–2020." In *Oxford Research Encyclopedia of American History*.
- Rios, Victor. 2011. *Punished: Policing the Lives of Black and Latino Boys*. New York: NYU Press.
- Balto, Simon. 2019. *Occupied Territory: Policing Black Chicago from Red Summer to Black Power*. Chapel Hills: UNC Press.
- Go, Julian. 2023. *Policing Empires: Militarization, Race, and the Imperial Boomerang in Britain and the US*. New York: Oxford University Press.

>> *CHECK OUT AND SELECT ONE

- Brucato, Ben. 2023. *Race and Police: The Origin of Our Peculiar Institutions*. Rutgers University Press.
- Brucato, Ben. 2020. "Policing Race and Racing Police." *Social Justice* 47, no. 3/4 (161/162 (2020): 115-136.
- dated Monkkonen, Eric H. 1992. "History of Urban Police." *Crime and Justice* 15: 547-580.

5-Jail and bail (February 13)

Core urban institution under the radar – jailing as class cleansing – detached and disreputable – disintegration, disorientation, degradation – “jailing” – social basis and effects of bail as institutionalized class discrimination

a-Wacquant, Irwin

b-Irwin, Page/Scott-Hayward

- Wacquant, Loïc. 2023. "The Jail as Core Urban Institution." Pp. 137-143 in *Bourdieu in the City: Challenging Urban Theory*. Cambridge: Polity Press
- Irwin, John. 1985. Chapters 3-5 in *The Jail: Managing the Underclass in American Society*. University of California Press, pp. 42-84.
- Page, Josh and Christine Scott-Hayward. 2022. "Bail and Pretrial Justice in the United States: A Field of Possibility." *Annual Review of Criminology*, 5, 91-113.

c-recommended

- Walker, Michael. 2022. *Indefinite: Doing Time in Jail*. New York: Oxford University Press.

6-court: prosecution (February 20)

Situating prosecutors – division of labor – charging, negotiating and resolving cases – from “absolute” to “bounded” discretion – art of plea bargaining – vanishing of the trial

a-Eisenstein/Jacob, Davis
b-Levine/Wright

Eisenstein, James and Herbert Jacob. 1977. *Felony Justice: An Organizational Analysis of Criminal Courts*. Boston: Little, Brown. READ pp. 5-12 on the “courtroom workgroup.”

Davis, Angela J. 2007. Ch1 “Prosecutorial Discretion: Power and Privilege” (pp. 3-18); Ch2 “Let’s Make a Deal” (pp. 43-60) in *Arbitrary Justice: The Power of the American Prosecutor*. New York: Oxford University Press.

Levine, Kay L., and Ronald F. Wright. 2012. “Prosecution in 3-D.” *Journal of Criminal Law & Criminology* 102, no 1: 1233-1275.

c-recommended

Johnson, Brian D., Ryan D. King, and Cassia Spohn. 2016. “Sociolegal approaches to the study of guilty pleas and prosecution.” *Annual Review of Law & Social Science* 12: 479-495.

Wright, Ronald F., Kay L. Levine and Russell M. Gold (eds.). 2021. *The Oxford Handbook of Prosecutors and Prosecution*. New York: Oxford University Press.

7-court: public defense (February 23)

Birth of indigent defense – varieties of public defense – background and careers of PDs processing and litigating cases – PDs in the “courtroom workgroup” – adrenaline, machismo, burnout

a-Wice

b-Guest lecture by Jenae Carpenter on public defenders at work (typology, ground-level experience, Q&A)

Wice, Paul B. 2005. *Public Defenders and the American Justice System*. Westport: Praeger, chapters 5 and 6, pp. 95-143.

c-recommended

Wright, Ronald F. and Jenny Roberts. 2023. “Expanded Criminal Defense Lawyering.” *Annual Review of Criminology* 6: 241-264.

8-court: from the side of defendants + MIDTERM (March 5)

Through the defendant’s eyes – class bifurcation in pathways to the court – muting the defendant – withdrawal and delegation – “client control” – agency affirmed or denied?

a-MIDTERM

b-Clair, Matthew. 2020. "Punishing Withdrawal, Rewarding Delegation." Pp. 136-177 in *Privilege and Punishment: How Race and Class Matter in Criminal Court*. Princeton, NJ: Princeton University Press.

9-judging, sentencing and probation (March 12)

Calendar judges and trial judges – sentencing as collaborative exercise – steps and rules of sentencing – social variations in sentencing – administrative management of misdemeanors – probation is the most common punishment – navigating probation

a-Spohn, reread Eisenstein/Jacob (see above)

b-Spohn, Phelps

Spohn, Cassia. 2009. *How Do Judges Decide*. Newbury Parks, CA: Sage. Chapter 3, pp. 81-126.

Phelps, Michelle. 2013. "The Paradox of Probation: Community Supervision in the Age of Mass Incarceration." *Law & Policy*, 35(1-2), 51-80.

c-recommended

Ulmer, Jeffery T. 1997. *Social Worlds of Sentencing: Court Communities Under Sentencing Guidelines*. Stony Brook: SUNY Press.

10-imprisonment (March 19)

Pulling time – social order of the tier and the yard – the five pains of imprisonment – "prisonization" versus "importation" – gangs as government – the carceral habitus

a-Clemmer, Sykes, Kreager

b-Pyrooz/Decker, Caputo-Levine

Clemmer, Donald. 1958. "Prisonization." Selection from *The Prison Community*. New York: Holt, Rinehart, Winston (reprinted in Joseph E. Jacoby, ed., *Classics of Criminology*, Long Grove: Waveland Press, 2004, 3rd ed., pp. 506-510).

Sykes, Gresham. 1958. *The Society of Captives*, Chapter 4, "The Pains of Imprisonment," pp. 63-83.

Kreager, Derek A. et al. 2017. "Where "old heads" prevail: Inmate hierarchy in a men's prison unit." *American sociological review* 82, no. 4: 685-718. READ ONLY pp. 696-701, 708-711.

Pyrooz, David C. and Scott H. Decker. 2019. *Competing for control: Gangs and the social order of prisons*. New York: Cambridge University Press, chapter 6, "The Role of Gangs in the Social Order of the Prison," pp. 122-153. OR "The Gang and the Prison" (2019).

Caputo-Levine, Deirdre D. 2013. "The Yard Face: The Contributions of Inmate Interpersonal Violence to the Carceral Habitus." *Ethnography* 14, no. 2: 165-185.

c-recommended

Kreager, Derek A., and Candace Kruttschnitt. 2018. "Inmate society in the era of mass incarceration." *Annual Review of Criminology* 1: 261-283.

Crewe, Ben. *The Prisoner Society: Power, Adaptation and Social Life in an English prison*. Oxford: Oxford University Press.

Skarbak, David. 2014. *The Social Order of the Underworld: How Prison Gangs Govern the American Penal System*. New York: Oxford University Press.

SPRING BREAK (March 26)

11-parole (April 2)

Origins and purposes of parole – from springboard to trap – parole officers at work – parolee subjectivity – questioning the "reentry industry"

a-Petersilia

b-Wacquant, Werth

Petersilia, Joan. 2003. Ch3, "The Origins and Evolution of Modern Parole," pp. 55-75; Ch4, "The Changing Nature and Nature of Parole," pp. 76-92 in *When Prisoners Come Home: Parole and Prisoner Reentry*. New York: Oxford University Press.

Werth, Robert. 2012. "I Do What I'm Told, Sort of: Reformed Subjects, Unruly Citizens, and Parole." *Theoretical Criminology* 16, no. 3: 329-346.

OR

Werth 2016. "Breaking the rules the right way: Resisting parole logics and asserting autonomy in the USA." In *Parole and beyond: International experiences of life after prison*, Ruth Armstrong and Ioan Durnescu, editors. London: Palgrave Macmillan. 141-169.

Wacquant, Loïc. 2010. "Prisoner Reentry as Myth and Ceremony." *Dialectical Anthropology* 34-4 (December): 604-620.

c-recommended

Miller, Reuben Jonathan. 2021. *Halfway home: Race, punishment, and the afterlife of mass incarceration*. Boston: Little, Brown.

12.-Race, class and incarceration (April 9)

Myth of "the New Jim Crow" – from mass incarceration to hyperincarceration – prison as race-making and class-splitting institution – prison and hyperghetto

a-Alexander, Wacquant 2010

b-Wacquant 2001/2024

Alexander, Michelle. 2010. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New York: New Press, pp. 1-5.

Wacquant, Loïc. 2010. "Class, Race and Hyperincarceration in Revanchist America." *Daedalus* 140, no. 3: 74-90.

Wacquant, Loïc. 2001. "Deadly Symbiosis: When Ghetto and Prison Meet and Mesh." *Punishment & Society* 3, no.1: 95-133.

c-recommended

Forman, James. 2016. *Locking Up Our Own: Crime and Punishment in Black America*.

Muller, Christopher, and Alexander F. Roehrkasse. 2022. "Racial and class inequality in US incarceration in the early twenty-first century." *Social Forces* 101, no. 2: 803-828.

13-collateral and repercussive effects (April 16)

Secondary prisonization – fine and fees: the monetary millstone – loss of rights: welfare, public housing, voting – privacy, stigma and surveillance in the age of digital data

a-Comfort

b- Beckett/Harris, Lageson

Comfort, Megan. 2008. *Doing Time Together: Love and Family in the Shadow of the Prison*. Chicago: University of Chicago Press, chapter 4, pp. 21-64.

Beckett, Katherine and Alexis Harris. 2011. "On Cash and Conviction: Monetary Sanctions as Misguided Policy." *Criminology & Public Policy* 10, no. 3: 505-507.

Lageson, Sarah Esther. 2016. "Found out and opting out: The consequences of online criminal records for families." *The ANNALS of the American Academy of Political and Social Science* 665, no. 1: 127-141.

c-recommended

Western, Bruce. 2018. "Ch.3: Transitions," in *Homeward: Life in the Year After Prison*. New York: Russell Sage Foundation.

14. Reform or abolition? (April 23)

Calls for reform – reinventing the wheel? – lessons from the failure of reform in the 1970s – what is "system change"? – proposals, pitfalls and prospects of "abolition" – humane penalty in Scandinavia?

a-*Beckett?, Schenwar and Law Davis *OR Feeley on bail reform 1987

b-Davis, Shammass

Davis, Angela Y. 2003. *Are Prisons Obsolete?* Seven Stories Press, chapters 1 and 6.

Schenwar, Maya and Victoria Law. 2020. "Introduction: Everyone Loves Prison Reform," "Ch.7: Beyond Alternatives" in *Prison by Any Other Name: The Harmful Consequences of Popular Reforms*. The New Press.

Shammass, Victor Lund. 2014. "The pains of freedom: Assessing the ambiguity of Scandinavian penal exceptionalism on Norway's Prison Island." *Punishment & Society* 16, no. 1: 104–123.

c-recommended

Beckett, Katherine. 2018. "The politics, promise, and peril of criminal justice reform in the context of mass incarceration." *Annual Review of Criminology* 1: 235-259.

Goodman, Phillip, Josh Page, and Michelle Phelps. 2017. Ch.6: Beyond the Pendulum," in *Breaking the Pendulum: The Long Struggle Over Criminal Justice*. New York: Oxford University Press.

Selection Feeley, Court Reform on Trial: Why Simple Solutions Fail, chapter on speedy trial or bail reform?

Schoenfeld, Heather. 2016. "A Research Agenda on Reform: Penal Policy and Politics Across the States." *The ANNALS of the American Academy of Political and Social Science*, 664(1), 155-174.

Tuesday 30 April: LAST DAY OF CLASS, REVIEW SESSION

EXAM WEEK 6-10 MAY

SOCIOL 149 THE PENAL STATE - Loïc Wacquant

This course starts by reviewing the main sociological theories about crime, punishment and inequality to give us tools to map out the penal state. Then we work our way down the "penal chain": police, jail, court (prosecution, public defense, judging via plea bargaining and trial), probation, imprisonment and parole. We end by considering the possibilities and pitfalls of criminal justice reform or abolition.