

Law 234.2 Syllabus  
11/21/13

BERKELEY LAW/JURISPRUDENCE & SOCIAL POLICY  
SPRING 2014

Law 234.2

REDUCING MASS INCARCERATION: Innovative Solutions to a  
California and National Problem

Wednesdays, 2:10-5:00pm, Selznick Seminar Room, 2240 Piedmont Ave

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### INTRODUCTION

As the population of prisoners slowly diminishes in California and nationwide, the door is open to innovative solutions to crime for the first time in decades. The national love affair with imprisonment that began in the late 1970s corresponded to a period of considerable pessimism in criminology and criminal justice research. A generation of hopeful research on rehabilitation in prisons and parole, police crime prevention strategies, and court reform, all seemed to end in a result that defined the era: “nothing works.”

Today the downturn in the prison population corresponds to a surge in optimism about alternative ways to reduce crime. Nearly two decades of lower crime rates in American cities is part of the reason. But the powerful hold of the prison on the American criminal justice imagination suggests that if crime rates should turn back up, a return to mass incarceration policies is possible. This class aims at providing a criminological introduction to the new sciences of crime prevention for students in law, social science, and public policy interested in exploring alternatives to incarceration that can help keep crime down without exacerbating the problems of racial disparities associated with imprisonment.

### TOPICS:

We will organize our reading around major lines of criminological research that have origins in the 20<sup>th</sup> century or earlier and have shown new shoots of life.

The new deterrence:

Deterrence is the original criminological new idea when it was first introduced by Cesare Beccaria in the mid-18<sup>th</sup> century and elaborated by Jeremy Bentham at the start of the 19<sup>th</sup>. For much of the 20<sup>th</sup> century, deterrence was the major competitor among legal policy elites to rehabilitation, before both were largely squeezed out by incapacitation at turn of the 21<sup>st</sup> century. Today a new wave of research is pushing for more modest but much more certain sanctions as a way to address persistent crime problems like parolee recidivism and gun crime in cities.

The new rehabilitation:

For much of the 20<sup>th</sup> century, legal and policy elites put primary hope in scientifically developed forms of penal treatment to reduce crime. In the 1970s support for penal treatment collapsed as many liberal legal elites viewed retribution as a better foundation to protect the dignity of offenders, and conservatives pushed for measures to deter or incapacitate. Over the last twenty years, however, rehabilitation has reemerged in a variety of forms especially problems solving courts (e.g., drug courts, mental health courts) and re-entry.

The new incapacitation:

Although mass incarceration reflected in part the triumph incapacitation, or the idea that penal sanctions can prevent crime by removing offenders from society; the triumph was for general incapacitation. As support for incarcerating as many people, for as long as possible, wanes, a new wave of interest in selective incapacitation grows. While mass incarceration was preceded by a broad collapse in confidence about the ability to predict future dangerousness, new risk assessment tools are being promoted as far more effective than in the past. Much of this rests on the premise that the science of neurology could for the first time give us an account of violent crime based on the brain. Interestingly this takes us back to one of dominant themes of early 20<sup>th</sup> century criminology, biological models of crime causation.

The new social ecology of crime:

Since the 19<sup>th</sup> century social scientists have believed that the causes of crime may lie in particular neighborhood traits that in turn alter the behaviors and values of those who live there and make criminal behavior more or less likely. In the early 20<sup>th</sup> century, the Chicago School of

Sociology focused its research on this neighborhood effect and influenced pre-World War II prison, parole, and police policies. The Chicago school waned in the post-War period in favor of more psychological approaches to crime. Today a revitalized ecological approach to crime has been joined by a robust study of crime as a function of routine activities to shed new light on neighborhoods in the 21<sup>st</sup> century.

The new dignity:

For much of the 19<sup>th</sup> and 20<sup>th</sup> centuries, utilitarian approaches to crime reduction were contested by philosophical criminology emphasizing the autonomy of the offender and the centrality of retribution as a moral benefit of punishment on both the victim and the offender. While Kant's views on dignity and punishment have continued to be influential today, few of his admirers can accept or even understand his metaphysical commitment to penal suffering as a moral good. Instead, new approaches to dignity and crime are emerging around restorative justice and human rights approaches to defining and responding to crime.

## STUDENT ASSIGNMENTS

Reading for this class will be heavy with a book or several articles expected for each week. Students will be expected to write blog posts on each week's readings on our course website. Ultimately each student will produce a 30 plus page paper analyzing a contemporary innovation idea or practice from the perspective of one or more of the bodies of research we will study.

## PRELIMINARY READING LIST:

Marcus Felson and Rachel Santos, *Crime and Everyday Life*, 4<sup>th</sup> Edition (Sage 2009)

Mark A. R. Kleiman, *When Brute Force Fails: How to Have Less Crime and Less Punishment* (Princeton University Press 2009)

John Laub and Robert Sampson, *Shared Beginnings, Divergent Lives: Delinquent Boys at 70* (Harvard University Press 2006)

Susan Miller, *After the Crime: The Power of Restorative Justice Dialogues Between Victims and Violent Offenders* (NYU 2011)

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Tom Tyler *Why People Obey the Law*, 2<sup>nd</sup> edition (Princeton 2006)

Franklin Zimring, *The City that Became Safe: New York's Lessons for Urban Crime and Its Control* (Oxford University Press 2011)

Recommended reading:

David M. Kennedy, *Don't Shoot: One Man, a Street Fellowship, and the End of Violence in Inner City America* (Bloomsbury 2011)

Victor Rios, *Punished: Policing the Lives of Black and Latino Boys* (NYU 2011)

Robert J. Sampson, *Great American City: Chicago and the Enduring Neighborhood Effect* (Harvard University Press 2012)

Rebecca Tiger, *Judging Addicts: Drug Courts and Coercion in the Justice System* (NYU Press 2013)

#### PRELIMINARY CLASS TOPIC LIST

Class 1: Mass Incarceration: Crisis and Opportunity

Readings: *Brown v. Plata*; materials on realignment in California

Class 2: Mass Incarceration as Crime Control: The Baseline

Readings: Stephen Leavitt on the crime reduction effects of incarceration and his critics

Class 3: The old deterrence

Readings: Beccaria, Bentham, Gary Becker, critics- Justice McCrary and Stephen Lee on Myopia of youth

Class 4: The new deterrence

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Readings: Kleiman, When Brute Force Fails: How to Have Less Crime and Less Punishment

Class 5: The Old Social Ecology

Readings: Oscar Lewis; Charles Murray

Class 6: The New Social Ecology I

Readings: Laub and Sampson, Shared Beginnings, Divergent Lives: Delinquent Boys at 70

Class 7: The New Social Ecology II

Readings: Felson and Santos, Crime and Everyday Life

Class 8: The Old Risk Management

Readings: Greenwood, Simon and Feeley

Class 9: The New Risk Management

Readings: Bail Reform Institute

Class 10: The Old Dignity

Readings: Kant, von Hirsch

Class 11: The New Dignity I

Readings: Tyler, Why People Obey the Law

Class 12: The New Dignity II

Readings: Miller, After the Crime

Class 13: Lessons from New York City

Readings: Zimring, The City that Became Safe