

Legal Studies 109: *Aims & Limits of Criminal Law* Fall
2021

Lectures: M-W-F 3:10-4:00

Instructor: Richard Perry, J.D., Ph.D.

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Office hours: Tuesday afternoon 1:00-3:00, via
Zoom, sign up at <https://www.wejoinin.com/rwperry@berkeley.edu>

GSI: Griffin Brunk J.D. M.A.: Office hours TBA

UCB Catalog Course Description: This course focuses on the analysis of the capacity of criminal law to fulfill its aims. What are the aims of criminal law? How are they assigned relative priority? What principles can be identified for evaluating efforts to control disapproved activities through criminal law?

Important Notes:

Note 1: Given the current shifting conditions of instruction under the Covid Delta variant (not to mention the likelihood of firestorm air quality alerts, students should expect revisions to this syllabus. In addition to attending lectures & sections, students should check bCourses regularly for updates and email your instructors.

Note 2: During the first week of the semester sections will not meet.

Note 3: During the weeks following each of the two midterms, sections will not meet because there will be little or no new material to discuss and to allow our GSI to focus on grading the midterms in a timely fashion. Both instructors will still hold their office hours during these weeks.

Land Acknowledgement: UC Berkeley occupies unceded lands of the Chochenyo Ohlone, the Xučyun people. We recognize that every member of the Berkeley community benefits every day from the use

and occupation of this land, ever since our institution was founded in 1868. All students are strongly encouraged to consider enrolling in our department's new course, **LS 190.2: Racial & Colonial Foundations of UC Berkeley**, taught by Prof. Nazune Menka.

Topical and Thematic Structure of this Fall 2021 Course Offering:

This course is organized of two primary threads that are interwoven in each week's lectures and readings. The first thread of the course examines core concepts and doctrines of substantive Anglo-American criminal law from a critical "law & society" perspective. It considers these concepts and doctrines from an interdisciplinary and comparative-historical perspective. The second major thread addresses recurring and changing conceptual debates in scholarship and in socio-political controversies about crime in the US since the 18th and 19th centuries.

Learning Objectives:

- i. Students should come away from LS 109 familiar with the basic concepts of the Anglo-American common law, including both the general part and the specific subject categories of crimes against persons, habitation, property, public order, etc.
- ii. Students should come away with a broad understanding of the historical, political, and constitutional institutional frameworks of the common law. This will include a familiarity with reading, parsing, and debating cases and doctrines.
- iii. Students should come away with a grasp of contemporary debates in the critical analysis of criminal law by leading scholars at Berkeley and elsewhere. The strengths and limitations of efforts to rationalize or reform the criminal law – including the Model Penal Code and more recent social movements – will be discussed at considerable length.

This course will focus on leading recent developments in criminal law and will consider emerging theoretical frameworks for understanding these recent developments. Since

- C. Berkeley is now, and has long been, one of the world's leading centers for the study of criminal law and the criminal justice system, we will particularly highlight the

of law and society, the work of both past and current Berkeley scholars will be highlighted in particular.

Important Notes: This class will closely study criminal law appellate case opinions (some of which will merit a trigger note) and will discuss the often-conflicting legal doctrines that we see applied in those cases. Learning to read cases for their conflicting doctrines is

one of the skills that a good student should take away from LS 109. In most lecture meetings we will discuss the divergent doctrines that could be applied and very often we will discuss how the doctrines show us socio-legal, historical, and political fault-lines in US legal culture. Virtually every US law school requires criminal law as a first-year required subject. After three years of law school, almost all law school graduates take a bar review course and then a bar exam that has at least one section that reviews the general legal concepts that are found in virtually every state's laws and also a section that teaches students the law of the state where they wish to practice. But this course is designed to apply historical and theoretical criticism to the doctrines.

Required Readings:

There is one required textbook: Matthew Lippman, *Contemporary Criminal Law* (Sage), 5th Edition 2018. Since this is a class where the scholarly practice of reading and critically discussing legal cases is one primary learning objective of the course, every student in this class is required to have access to this textbook for every class meeting. We want to assist you to find one as easily as possible. This textbook has been scanned and it can be viewed under the HathiTrust ereserve site. The textbook can be purchased from Sage Publishing and from various online retailers for around \$34.00. Paper copies, both new and used, can also be bought online for a considerable savings and it can be purchased or rented on-line as an e-book for a lesser price. If you look on Amazon or the Sage Publishing sites, be careful that you do not buy/pre-order the next 6th edition – it won't be released until later in the year for \$125.00!

The majority of core courses in U.S. law schools focus their classroom activity on the reading and analysis of specific appellate case opinions, often called the "law on the books." This class uses the case method to a significant extent. For students to become competent in case analysis is a main goal of our course. But this course is a "legal studies" or "law and society" study of criminal law doctrines. This means that, in addition to the study of case law, we will also examine the "law in action" – i.e., how these legal doctrines actually work in the social world we live in.

There will be supplementary readings made available on bCourses, under "Required Readings" in each week's folder. Also in each week's folder on bCourses, under "Review Materials" students will find Powerpoints and other review materials (often posted AFTER the lecture, so we can maximize class participation), along with related video links and other recommended materials for further study.

Student Responsibilities:

Attendance: Students are expected to attend all lectures and section meetings having already prepared any readings or assignments. Your participation in both lectures and sections will count significantly toward your final grade. In every previous in-person offering of LS 109, a significant part of many lecture periods involved students raising their hands to offer their analysis of the major cases in each chapter. Learning how to discuss leading cases in an interactive environment is a central aspect of legal training. We will try to incorporate as much as possible of this sort of interaction in this semester's LS 109.

Classroom expectations: The topics of this course include many subjects which can be expected to generate strong feelings and emotions. It is a statistical fact that some members of the class are likely to have been victims of violent crimes; at the same time, other members of our class may themselves have experienced unfounded suspicions directed against them or against someone close to them. All students are encouraged to offer their own questions, comments, and experiences, as well as to respond to those expressed by other students. The goal of maintaining an open and inclusive discussion space in class, however, requires all of us to act with respect for and sensitivity toward everyone in the room, even as you may disagree vehemently.

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.

LS 109 is a course about the law of *crimes*, structured around our shifting conceptions of crime and around theories of its causes and responses to it. Many of the topics focus on harms to persons. We are obliged to discuss these diverse, often horrific, harms in order to teach this course, but we wish to do so with as much consideration as possible for the large percentage of us whose lives have been touched any of these physical or socio-psychological harm. Please do not hesitate contact your instructors so that we can work to accommodate your

individual circumstances

Updated language from the College of Letters & Sciences on student responsibilities

Students:

- *Know your extra-curricular activity schedule in advance and arrange your courses accordingly.*
- *Notify your instructor or GSI in writing before the end of the second week of the term of all foreseeable conflicts between the syllabus and scheduled extra- curricular activities.*
- *Include in your notification a proposal for resolving those conflicts.*
- *If unforeseen conflicts arise, promptly notify your instructor and arrange to discuss the situation as soon as these conflicts (or the possibility of these conflicts) are known.*
- *Make arrangements to cover the material in all missed classes, both absences scheduled in advance and those that happen ad hoc. It is not your instructor's or GSI's responsibility to tutor you in the missed material. Contact other students in the class to find out what you have missed or view the webcast or podcast.*
- *If your off-campus events conflict with the due dates of projects, make sure your work is in the hands of your instructor before you leave campus, unless your instructor has agreed in advance to other arrangements.*
- *Discuss the possibility of an alternate proctored exam (on- or off-campus) with your instructor if you have a scheduled conflict. Be aware that sometimes no alternative exams will be given outside of the scheduled classrooms or the appointed hours.*
- *If in the opinion of your instructor your list of foreseeable conflicts reveals multiple unresolvable scheduling conflicts, recognize that you may be advised to find another class that better suits your schedule.*
- *Know that your instructor has the option of declining to enroll you in the class if you cannot be present at all scheduled activities.*
- *If systematic or frequent unresolved conflicts are evident, be aware that the instructor may drop you from his or her class.*

Special Needs Due to Disabilities:

If you have special needs due to disabilities we will make every effort to accommodate them. For University policies regarding students with disabilities, and federal and state law affecting people with disabilities, see: <http://access.berkeley.edu/> . The student has the

responsibility to inform the professor or GSI during the first week of the term, along with providing the appropriate documentation from the DSP Office.

Evaluation and Grading:

There will be two mid-term exams. The first midterm will be during Week VIII and the second, two-part midterm will be during Week XIII. Tests will be designed to draw together concepts and materials from the entire course until that point in the course. Tests may be comprised of multiple choice, short answer, and/or essay questions of modest length. The final exam will be a longer take-home essay based on a prompt distributed after the Review Session at the beginning of RRR Week.

The two midterm tests will add up to 60% of the course grade.

The final exam will be a take-home format. The final exam prompt will be distributed on the Sunday at the end of RRR Week and it must be submitted at or before our university-assigned exam time, this allows approximately five full days. The final will count for 30% of the total course grade.

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. This 10% of the course grade will include participation BOTH in lecture and in weekly discussion sections.

Attendance and participation at weekly discussion sections is similarly expected. Short weekly quizzes may be administered in lecture and short written assignments designed to enhance students' understanding of key concepts may be required by the GSI in section meetings and included in the final course grade.

If a student needs 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 term.

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 and 2: On Concepts of Crime, Law, and Modern Constitutional Governance: The Classical Frameworks Introduced and Contrasted

Week I: Introduction to the course and to the instructors. Introduction to key terms and concepts in the study of crime, law, criminology, and criminal justice. Conceptualizing crime and criminal justice in the modern state. The lectures will summarize much of Lippman Ch. 1 and the appendix on case analysis. How do we recognize and assess harm and crime – and how can we distinguish harms and crime from one another? Index crimes and “crime rates.” Read Lippman Ch. 1.

Week II: Here we review the U.S. constitutional framework of crime, criminal law, and criminal justice process (“due process” and other processes) with a particular emphasis on theories of general deterrence, utilitarianism, questions of legitimacy of state violence and punishment; classical and contemporary theories, policies, and practices of punishment; the criminal justice system and policies and on-going controversies. Read Lippman Ch 2 and skim Ch 3. Further short reading on bCourses. On the boundaries of the person, the community – the police, and the sovereign powers of the state.

Part II: A Critical Law & Society Introduction to the “General Part” of Substantive Criminal Law

Week III: Begin Ch. 4 – *Actus Reus*; criminal acts and omissions. The principle of harm and criminal acts. Supplementary reading on bCourses.

Week IV: On *mens rea* and other modes of culpability. Read Lippman Ch. 5. Discussion of the evolution and influence of the Model Penal Code. Supplementary reading on bCourses.

Week V: Ch 5 continued; materials for discussion of duties to others that may give rise to criminal culpability. Discussion of strict liability and regulatory offenses.

Week VI: Begin Lippman Ch 6, on complicity and parties to crime. How is criminal culpability apportioned among multiple persons? Begin Lippman Ch 7 – on inchoate crimes. What justifies penalizing a failure to cause harm? Supplementary reading on bCourses.

Week VII: Lippman Ch. 7 and begin Ch. 8 – Affirmative defenses. What burdens of proof may fall upon the accused under what circumstances? What principles may justify harmful acts that would

otherwise be crimes?

Week VIII: Conclude Affirmative Defenses

NB: Friday Week 8 Midterm I In-class Test

Week IX: Begin Lippman Ch 9 – on excuses and mitigation. Do certain circumstances and/or particular accused individuals merit exculpation or other considerations for harms they cause? Further on bCourses: recommended Harcourt reading on prediction and dangerousness.

Week X: Read Lippman Ch 10. What are the meanings of life in homicide doctrine? Of taking life intentionally and/or otherwise? Where are the socio-legal boundaries between living persons, fetal persons, and the homicide victims?

Week XI : Wrap up Ch 10 and begin Lippman Ch 11– on crimes of sexual conduct and other harms to the dignity and autonomy of the person; on the troubled history of gendered personhood in the criminal law. Risks of relationships and pervasive gender disparities; supplementary reading on “the relationship penalty.”

Week XII: Lippman Chs. 12 & 13: On the notion of “home” in criminal law. Crimes against habitation; dwelling as a space of autonomous personhood, protected by criminal law. On the “properties” of crime: Lippman Ch 12 continued. Begin Lippman Ch 13 – the properties of property, places, spaces, and things.

Week XIII: Chs. 12 & 13 continued:

In-Class MIDTERM II on Friday of Week XIII

Week XIV: The shifting boundaries of law and morality between self and society: on “vice and victimless crimes” against community. Read Lippman Ch 15 – on crimes against public order and morality, their shifting definition. Supplementary reading on “victimless crimes”: supplementary readings on bCourses

Week XV:

RRR WEEK: Review date and location to be finalized. The take-home final prompt will be posted at the beginning of RRR Week, allowing 9-10 days to write final exam.

**The take-home exam is be uploaded to bCourses
by Final Exam End date FRIDAY, December 17,
2021 6:00 PM;**

**Students unable to conform to this exam schedule must
notify their GSI by Week II.**