

Syllabus for the MA course Crime, Criminalisation and Gender

(translated from German)

MA course taught by Prof. Beate Binder, Dr. Friederike Faust and Dr. Todd Sekuler through the Institute for European Ethnology and the Center for Transdisciplinary Gender Studies of Humboldt-Universität zu Berlin, Germany, summer 2021; Language: German and English.

Course Description: The seminar starts from the observation that criminalization is increasingly demanded and/or used as a tool in contemporary politics by governmental institutions, emancipatory interventions and right-wing populist movements. Social problems, it seems, are often discussed in terms of il/legality, rights and wrongs, and un/justness; police, courts, and prisons are often invoked as appropriate institutions for responding to social problems; and emancipatory demands are increasingly tied to the expansion of criminal law and more consistent law enforcement. But what does this mean for the modalities of democratic governance and citizenship? In this course, we explore the current political dynamics of criminalization from anthropological and sociological perspectives, interrogating them for their intersectional dimensions with an emphasis on gender and gendering. The first half of the seminar deals with the construction of, and responses to, criminality, and the feminist critique of criminalisation. In the second part, the seminar will be divided into three working groups, each engaging with a distinct topic of criminalization from an intersectional perspective. Finally, the results of the group work will be presented and discussed with regards to the central question: What ambivalences arise when, on the one hand, crime control and prosecution are called upon to improve the protection of particularly vulnerable/vulnerabilized groups and, on the other hand, criminalization drastically restricts rights and opportunities for democratic participation? How does criminalization interfere with the relationship between the state, citizens, non-governmental organizations and private companies? What does this mean for democratic participation and the fundamental rights of criminalized subjects?

Schedule

Week 1: Introduction

Week 2: Gender and Criminal Law

Readings:

- Nicolson, Donald (2000): Introduction. In: Bibbings, Lois & Donald Nicolson (eds.), *Feminist perspectives on criminal law*. London: Cavendish.
- Wang, Jackie (2018): *Carceral Capitalism*. Cambridge: MIT press, Introduction.

Week 3: Criminalization as a Mode of Governing

Readings:

- Garland, David (2001): *The Culture of Control- Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press, Chapter 1.
- Fassin, Didier (2019): *Crime and Punishment*. Talk given at Streitraum, Schaubuehne Berlin (in Germ. + Engl.): <https://www.schaubuehne.de/de/seiten/streitraumarchiv.html>

Optional reading:

- Comaroff, Jean & John Comaroff (2016): *The truth about crime: sovereignty, knowledge, social order*. Chicago, London: The University of Chicago Press, Chapter 1.

Week 4: Genealogical Perspectives on the Governing through Crime

Readings:

- Wacquant, Loïc (2000): *Prisons of Poverty*. Minnesota: University Press, Chapter 1.
- Garland, David (2001): *The Culture of Control- Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press, Chapter 2.

Optional reading for German context:

- Belina, Bernd (2018): Perioden der Kriminalisierung im und durch den (west-) deutschen Staat. Zum Wert marxistischer Analysen. In: J. Puschke/T. Singelstein (eds.), *Der Staat in der Sicherheitsgesellschaft*. Wiesbaden: Springer, pp. 171-192.

Week 5-7: Working Groups (of app. 7 students each)

Working Groups 1 “Ambiguities of the Criminalization of Online Hate Speech”

WG 1a) Protection and monitoring of whom and for whom?

Assignment: Present an analysis of the film *Im Schatten der Netzwelt - The Cleaners* from an intersectional perspective. What are the subject positions that emerge in the global assemblage of private and public institutions charged with regulating hate speech?

Readings:

- Butler, Judith (1997): Introduction: On linguistic vulnerability, in: *Excitable Speech. A Politics of the Performative*. New York: Routledge, pp. 1-42.
- Ganz, Kathrin (2019): Hate Speech im Internet, in: J. Dorer et al. (eds.), *Handbuch Medien und Geschlecht*. Wiesbaden: Springer, pp. 1-10.
- Schmidt, Francesca (2021): Kapitel 6: Feministische Netzpolitik und digitale Gewalt, in: *Netzpolitik. Eine Feministische Einführung*. Opladen: Verlag Barbara Budrich, pp. 85-116.
- Shoshan, Nitzan (2016): Chapter 1: A Specter of Nationalism, in: *The Management of Hate. Nation, Affect, and the Governance of Right-Wing Extremism in Germany*. Princeton: Princeton University Press, pp. 3-28.
- Block, Hans & Rieseewieck, Moritz (Dirs.) (2018): *Im Schatten der Netzwelt - The Cleaners*. Gebrueder beetz film production.
- Browne, Simone (2015): Chapter 1: Notes on Surveillance Studies. Through the Door of No Return, in: *Dark Matters. On the Surveillance of Blackness*. Durham: Duke University Press, pp. 31-62.
- Lavin, Talia (2020): Chapter 1: On Hating, in: *Culture Warlords. My Journey into the Dark Web of White Supremacy*. London: Monoray, pp. 9-22.
- Schmidt, Francesca (2021): Kapitel 7: Feministische Netzpolitik und Überwachung, in: *Netzpolitik. Eine Feministische Einführung*. Opladen: Verlag Barbara Budrich, pp. 117-150.
- Shoshan, Nitzan (2016): Chapter 4: Penal Regimes of Political Delinquency, in: *The Management of Hate. Nation, Affect, and the Governance of Right-Wing Extremism in Germany*. Princeton: Princeton University Press, pp. 87-116.

WG 1b) On the violence and freedom of speech

Assignment: Based on the recorded debate *Der Digital Services Act und die Regulierung gegen Hass im Netz* linked below, present an analysis of current discussions in Germany about the recently proposed European *Digital Services Act* from an intersectional perspective. What concepts and logics mediate discussion of violence and freedom of expression online? How do the political positions and concepts of violence and freedom differ across the implicated actors?

Readings:

- Butler, Judith (1997): Introduction: On linguistic vulnerability, in: *Excitable Speech. A Politics of the Performative*. New York: Routledge, pp. 1-42.
- Ganz, Kathrin (2019): Hate Speech im Internet, in: J. Dorer et al. (eds.), *Handbuch Medien und Geschlecht*. Wiesbaden: Springer, pp. 1-10.
- Schmidt, Francesca (2021): Kapitel 6: Feministische Netzpolitik und digitale Gewalt, in: *Netzpolitik. Eine Feministische Einführung*. Opladen: Verlag Barbara Budrich, pp. 85-116.
- Shoshan, Nitzan (2016): Chapter 1: A Specter of Nationalism, in: *The Management of Hate. Nation, Affect, and the Governance of Right-Wing Extremism in Germany*. Princeton: Princeton University Press, pp. 3-28.

- Becker, Carlos & Seubert, Sandra (2016): Privatheit, kommunikative Freiheit und Demokratie, in: Datenschutz und Datensicherheit 2, pp. 73-78.
- Butler, Judith (1997): Chapter 4: Implicit Censorship and Discursive Agency, in: Excitable Speech. A Politics of the Performative. New York: Routledge, pp. 127-164.
- Eickelmann, Jennifer (2017): Kapitel 4: Hassrede vs. Redefreiheit - Ein Irrweg, in: 'Hate Speech' und Verletzbarkeit im Digitalen Zeitalter. Phänomene mediatisierter Missachtung aus Perspektive der Gender Media Studies. Bielefeld: Transcript, pp. 117-148.
- Kettemann, Matthias C. (2017): "Hassrede und Katzenbilder: Wie können im globalen Netz nationale Gesetze respektiert werden?" in Lorena Jaume-Palásí, Julia Pohle, and Matthias Spielkamp (eds.), Digitalpolitik. Eine Einführung. Berlin: Wikimedia, pp. 48-57. Available: https://irights.info/wp-content/uploads/2017/05/Digitalpolitik_-_Eine_Einfuehrung.pdf
- Grüne im Bundestag. Der Digital Services Act und die Regulierung gegen Hass im Netz, Feb 4, 2021. Available: www.youtube.com/watch?v=QHliD2QHDmE
- Herring, Susane et al (2003): Searching for Safety Online: Managing "Trolling" in a Feminist Forum, in: The Information Society 18, pp. 371–384.

Working Groups 2 "The Sexual in Criminal Law: On the Paradox of the Regulations of Intimacy"

WG 2a) Violation of sexual self-determination as a criminal offense

Assignment: Discuss and prepare a presentation on the question of how sexual encounters in the "private sphere" are protected and thus become relevant under criminal law. For example, consider the legally mandated securing of consent during sex, but also protection against sexualized or gender-based violence, especially in the domestic sphere, and questions of sexual deception, such as stealthing, and similar topics. In addition to national regulations, transnational agreements or regulations also apply here, e.g. the Istanbul Convention, which has been ratified by Germany - other states have refused to do so or have withdrawn their ratification.

Readings:

- Lembke, Ulrike (Hg.) (2017): Regulierungen des Intimen Sexualität und Recht im modernen Staat. Geschlecht und Gesellschaft. Wiesbaden: Springer VS.
- Brown, Wendy (2002): Suffering the Paradoxes of Rights. In: W. Brown & J. Halley (eds.), Left Legalism/Left Critique. Durham: Duke University Press, pp. 420-434
- Wacquant, Loic (2009). Punishing the Poor. The Neoliberal Government of Social Insecurity. Duke University Press.
- Rubin, Gayle (1984): Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality. In Carole Vance (ed.), Pleasure and Danger. New York: Routledge.
- Laubenthal, Klaus (2012): Handbuch Sexualstraftaten: die Delikte gegen die sexuelle Selbstbestimmung. Heidelberg: Springer.
- Elisabeth Holzleithner: Sexuelle Selbstbestimmung als Individualrecht und als Rechtsgut Überlegungen zu Regulierungen des Intimen als Einschränkung sexueller Autonomie. In: Lembke (see above).
- Donovan, Catherine, Rebecca Barnes (2018): Being 'ideal' or falling short? The legitimacy of lesbian, gay, bisexual and/or transgender victims of domestic violence and hate crime, in: Marian Duggan (Hg.): Revisiting the "Ideal Victim": Developments in Critical Victimology. Bristol, Chicago: Policy Press, DOI:10.1332/policypress/9781447338765.003.0006.
- Hörnle, Tatjana (2016): Sexuelle Selbstbestimmung: Bedeutung, Voraussetzungen und kriminalpolitische Forderungen, in: Zeitschrift für die gesamte Strafrechtswissenschaft, 127, 4, 851, 10.1515/zstw-2015-0040.
- Gruber, Aya (2009): Rape, Feminism, and the War on Crime, in: Washington Law Review, 581, <https://scholar.law.colorado.edu/articles/255>
- Gribaldo, Alessandra (2021): Unexpected Subjects: Intimate Partner Violence, Testimony, and the Law. London: HAU Books.

WG 2b) Sex in Public: preventing public nuisance and/or protecting against sexual violence?

Assignment: Discuss and prepare a presentation on the question of how sexuality can be articulated in public space. Who feels disturbed by what and whom, what is considered a public nuisance under criminal law, how can people present themselves and where does who need to be protected from sexualized or gender-based assaults? What discussions take place around this - who should be protected from what, and how are which ideas of decency and manners mobilized in the process?

Readings:

- Lembke, Ulrike (Hg.) (2017): Regulierungen des Intimen Sexualität und Recht im modernen Staat. Geschlecht und Gesellschaft. Wiesbaden: Springer VS.
- Brown, Wendy (2002): Suffering the Paradoxes of Rights. In: W. Brown & J. Halley (eds.), *Left Legalism/Left Critique*. Durham: Duke University Press, pp. 420-434
- Wacquant, Loic (2009). *Punishing the Poor. The Neoliberal Government of Social Insecurity*. Duke University Press.
- Rubin, Gayle (1984): *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*. In Carole Vance (ed.), *Pleasure and Danger*. New York: Routledge.
- Ulrike Lembke (2017): *Sexualität in der Öffentlichkeit. Zwischen Konfrontationsschutz und Teilhabe am öffentlichen Raum*. In: Lembke (see above).
- Laubenthal, Klaus (2012): *Exhibitionismus und Erregung öffentlichen Ärgernisses* (Hg.): *Handbuch Sexualstraftaten: Die Delikte gegen die sexuelle Selbstbestimmung*. Berlin, Heidelberg: Springer Berlin Heidelberg, 269-287.
- Hubbard, Philip (2012): *Cities and Sexualities*. Milton Park, New York: Routledge (Chapter on Public Sex).

Working Groups 3 “Women's Prison - On the Gendering of the Penal System”

WG 3a) From rehabilitation to risk management: criminalization and punishment

Assignment: Explore and prepare a presentation that illuminates the shift from the welfare penal system to the punitive, neoliberal prison in the United States. The focus is on replacing the idea of rehabilitation and social critique with an emphasis on personal responsibility. Use the US American series “Orange is the new black” to illustrate your arguments.

Readings:

- Bosworth, Mary (2007): Creating the responsible prisoner: Federal admission and orientation packs. *Punishment & Society* 9: 1, pp. 67-85.
- Garland, David (2001): *The Culture of Control- Crime and Social Order in Contemporary Society*. Chicago: University of Chicago Press, Chapter 2.
- Wacquant, Loic (2009). *Punishing the Poor. The Neoliberal Government of Social Insecurity*. Duke University Press, Chapter 4-6.

WG 3b) The gendered dimensions of the meanings and practices of punishment

Assignment: Discuss and prepare a presentation on the gendered and intersectional dimensions of the current system of neoliberal punishment, taking into account the history of women's prisons. Examine how the current emphasis on personal responsibility and security, as well as the earlier ideas of rehabilitation and correction, are intersectionally gendered and applied accordingly in everyday prison life. Use the US American series “Orange is the new black” to illustrate your arguments.

Readings:

- McCorkel, Jill (2004): Criminally Dependent? Gender, Punishment, and the Rhetoric of Welfare Reform. *Social Politics: International Studies in Gender, State & Society* 11:3, S. 386-410.
- McCorkel, Jill (2003): Embodied surveillance and the gendering of punishment: *Journal of Contemporary Ethnography* 23:1, 41-76.
- Pollack, Shoshana (2007): “I'm Just Not Good in Relationships”: Victimization Discourses and the Gendered Regulation of Criminalized Women. *Feminist Criminology* 2:2, S.158-174.

- Pishko, Jessica (2015): A history of women's prison. *Jstor daily*: <https://daily.jstor.org/history-of-womens-prisons/>

Week 8: Guest Lecture by Dr. Agata Dziuban (Jagiellonian University, Krakow)

“Sex Work Criminalisation: Between Policing and Institutional Abandonment”

Reading:

Wagenaar, Hendrik (2017): Why Prostitution Policy (Usually) Fails and What to Do about It? *Social Sciences* 6: 43, pp. 1-15.

Week 9: Presentation of Working Groups 1a) + b) on Hate Speech

Week 10: Presentation of Working Groups 2a) + b) on Sexuality and Intimacy

Week 11: Presentation of Working Groups 3a) + b) on Punishment and Gender

Week 12: Final Discussion and Conclusion