

## CRIME AND PUNISHMENT

### Some Ground Rules

1. Formal office hours are Mondays, 1:10 p.m. to 4:00 p.m., although my door is generally open when I'm in. A call or email before you walk over is a good idea.
2. The readings on this list have been chosen to raise interesting and provocative questions about the philosophy, practice and outcomes of criminal justice in the United States and western Europe. Please read every item on the list, and be prepared each day for discussion in class. Much of the success of the course will depend on your willingness to address hard questions in class and explore your answers in light of the responses of others, so questions, opinions and the free exchange of ideas are strongly encouraged. Class participation, which is not the same thing as agreeing with anyone else or being correct each time you speak, will comprise a significant part of your final grade.
3. In addition to regular attendance and participation, course requirements include (1) two 2000-word essays, selected by the student, from the first five Essays whose due dates are indicated on the syllabus, provided that the two are not consecutively numbered; (2) *either* Essay 6, due on December 8, *or* participation in moot court sessions during the week of December 11, including a written brief or opinion on the case; and (3) short response papers containing two discussion questions on the day's readings for at least *nine* of the sixteen class discussions, indicated on the syllabus by asterisks.
4. Incompletes are strongly disfavored and will be granted only under conditions of *bona fide* personal exigency.

### Texts

The following books can be purchased at the Wesleyan bookstore or from many online booksellers:

William J. Stuntz, *The Collapse of American Criminal Justice* (2011).

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2012).

John F. Pfaff, *Locked In: The True Causes of Mass Incarceration, and How to Achieve Real Reform* (2017).

All other readings will be posted on the course Moodle.

### Reading Assignments

1.) Matters of Life and Death (Wednesday, September 6)

McGautha v. California, 402 U.S. 183 (1971), opinion of Harlan, J.

\*2.) American Justice (Friday, September 8)

Uviller, *Virtual Justice: The Flawed Prosecution of Crime in America* (1996), pp. 1-12.

Israel, Kamisar and LaFave, *Criminal Procedure and the Constitution* (2000), pp. 1-32.

3.) Actus Reus (Wednesday, September 13)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 61-72.

Doe v. City of Lafayette, 334 F.2d 606 (7<sup>th</sup> Cir. 2003)

4.) Causation (Friday, September 15)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 837-855.

State v. Pelham, 824 A.2d 1082 (N.J. 2003)

5.) Mens Rea and Culpability (Wednesday, September 20)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 170-182, 192-202.

Regina v. Faulkner, 13 Cox C.C. 550 (1877)

Regina v. Cunningham, 41 Crim. App. 155 (1957)

Culpability in the Model Penal Code

6.) Murder (Friday, September 22)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 775-790, 902-909.

State v. Brown, 836 S.W. 2d 530 (Tenn. 1992)

Furman v. Georgia, 408 U.S. 238 (1972)

Gregg v. Georgia, 428 U.S. 153 (1976)

7.) Manslaughter (Wednesday, September 27)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 800-825.

Freddo v. State, 155 S.W. 170 (Tenn. 1913)

People v. Casassa, 404 N.E. 2d 1310 (N.Y. 1980)

8.) Felony Murder I (Friday, September 29)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 855-877.

People v. Hansen, 885 P.2d 1022 (Cal. 1994)

9.) Felony Murder II (Wednesday, October 4)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 878-894.

State v. Sophophone, 19 P.3d 70 (Kan. 2001)

\*10) Mental Abnormality (Friday, October 6)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 531-563.

The Case of Joy Baker

## ESSAY #1 DUE IN CLASS, WEDNESDAY, OCTOBER 11

\*11.) Retribution and Deterrence (Wednesday, October 11)

Leviticus 24: 17-22.

Harcourt, "Beccaria's *On Crimes and Punishments*: A Mirror on the History of the Foundations of Modern Criminal Law," unpublished manuscript (2013).

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 1-33.

\*12.) Discipline (Friday, October 13)

Foucault, *Discipline and Punish: The Birth of the Prison* (1975), pp. 3-31, 195-228.

Garland, "Foucault's *Discipline and Punish* – An Exposition and Critique,"  
11 *American Bar Association Research Journal* (1986), pp. 847-880.

ESSAY #2 DUE IN CLASS, WEDNESDAY, OCTOBER 18

\*13.) Externality and Liability (Wednesday, October 18)

Adelstein, "Governing Exchange," unpublished manuscript (2017).

Adelstein, "Markets for Goods and Bads," unpublished manuscript (2017).

Adelstein, "Tort Liability," unpublished manuscript (2017)

\*14.) Criminal Liability (Friday, October 20)

Adelstein, "To Encourage the Others," unpublished manuscript (2017).

Adelstein, "Criminal Liability," unpublished manuscript (2017).

Adelstein, "Crime and Punishment," unpublished manuscript (2017).

ESSAY #3 DUE IN CLASS, WEDNESDAY, OCTOBER 25

\*15.) The Exclusionary Rule (Wednesday, October 25)

Israel, Kamisar and LaFave, *Criminal Procedure and the Constitution* (2000),  
pp. 55-63.

Wolf v. Colorado, 338 U.S. 25 (1949)

Mapp v. Ohio, 367 U.S. 643 (1961)

Uviller, *Virtual Justice: The Flawed Prosecution of Crime in America* (1996),  
pp. 63-87.

16.) Arrests and Stops (Friday, October 27)

Israel, Kamisar and LaFave, *Criminal Procedure and the Constitution* (2000),  
pp. 131-136, 199-208.

United States v. Watson, 423 U.S. 411 (1976)

Terry v. Ohio, 392 U.S. 1 (1968)

ESSAY #4 DUE IN CLASS, WEDNESDAY, NOVEMBER 1

\*17.) Trials and Bargains (Wednesday, November 1)

Langbein, "On the Myth of Written Constitutions: The Disappearance of Criminal Jury Trial," 15 *Harvard Journal of Law and Public Policy* (1992), pp. 119-127.

Uviller, *Virtual Justice: The Flawed Prosecution of Crime in America* (1996), pp. 177-199.

Adelstein, "Trials and Bargains," unpublished manuscript (2017).

18.) Plea Bargaining (Friday, November 3)

Miller, Dawson, Dix and Parnas, *Prosecution and Adjudication* (1982), pp. 866-894, 909-913:

Brady v. United States, 397 U.S. 742 (1970)

Bordenkircher v. Hayes, 434 U.S. 357 (1978)

Santobello v. New York, 404 U.S. 257 (1971)

\*19.) Inquisitorial Procedure (Wednesday, November 8)

Goldstein and Marcus, "The Myth of Judicial Supervision in Three 'Inquisitorial' Systems: France, Italy, and Germany," 87 *Yale Law Journal* (1977) pp. 240-283.

Langbein and Weinreb, "Continental Criminal Procedure: 'Myth' and Reality," 87 *Yale Law Journal* (1978), pp. 1549-1569.

\*20.) Inquisitorial Plea Bargains (Friday, November 10)

Langbein, "Land Without Plea Bargaining: How the Germans Do It," 78 *Michigan Law Review* (1979), pp. 204-225.

Dubber, "American Plea Bargains, German Lay Judges, and the Crisis of Criminal Procedure," 49 *Stanford Law Review* (1997), pp. 547-605.

Rauxloh, "Formalisation of Plea Bargaining in Germany – Will the New Legislation Be Able to Square the Circle?" 34 *Fordham International Law Journal* (2011) pp. 297-331.

ESSAY #5 DUE IN CLASS, WEDNESDAY, NOVEMBER 15

\*21.) How We Got Here (Wednesday, November 15)

Stuntz, *The Collapse of American Criminal Justice* (2011) pp. 1-195.

\*22.) The Warren Court and Beyond (Friday, November 17)

Stuntz, *The Collapse of American Criminal Justice* (2011), pp. 196-312.

Stevens, "Our 'Broken System' of Criminal Justice," *New York Review of Books*, November 10, 2011.

#### THANKSGIVING BREAK

\*23.) The Color of Justice (Wednesday, November 29)

Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010), pp. 1-139.

\*24.) The New Jim Crow (Friday, December 1)

Israel, Kamisar and LaFave, *Criminal Procedure and the Constitution* (2000), pp. 856-871.

McCleskey v. Kemp, 481 U.S. 279 (1987)

Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010), pp. 140-262.

\*25) The Standard Story (Wednesday, December 6)

Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (2017), pp. 1-126.

\*26) Prosecutorial Politics (Friday, December 8)

Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (2017), pp. 127-236.

ESSAY #6 DUE IN CLASS, FRIDAY, DECEMBER 8

MOOT COURT SESSIONS TO BE SCHEDULED IN THE WEEK OF DECEMBER 11

