

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 around the world. 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 7, *or* participation in moot court sessions during the week of December 10, 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:

Angela Y. Davis, *Are Prisons Obsolete?* (2003)

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

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

All other readings will be posted on the course Moodle.

Reading Assignments

- 1.) Matters of Life and Death (Wednesday, September 5)

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

*2.) American Justice (Friday, September 7)

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

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

3.) Actus Reus (Wednesday, September 12)

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

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

4.) Causation (Friday, September 14)

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

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

5.) Mens Rea and Culpability (Wednesday, September 19)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2nd edition (2004), pp. 170-182, 194-202.

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

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

Culpability in the Model Penal Code

ESSAY #1 OUT, WEDNESDAY SEPTEMBER 19

6. Necessity (Friday, September 21)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2nd edition (2004), pp. 403-419.

Commonwealth v. Markum, 541 A.2d 347 (Pa. Super. 1988)

7.) Defense Against Aggression (Wednesday, September 26)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2nd edition (2004),

pp. 419-429.

People v. Goetz, 497 N.E.2d 41 (N.Y. 1986)

*8.) Mental Abnormality (Friday, September 28)

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

The Case of Joy Baker

ESSAY #1 DUE, FRIDAY, SEPTEMBER 28

*9.) Retribution and Deterrence (Wednesday, October 3)

Exodus 21: 23-25.

Harcourt, "Beccaria's *On Crimes and Punishments*: A Mirror on the History of the Foundations of Modern Criminal Law," in M. Dubber, ed., *Foundational Texts in Modern Criminal Law* (2014), pp. 39-60.

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

ESSAY #2 OUT, WEDNESDAY, OCTOBER 3

*10.) Discipline (Friday, October 5)

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.

*11.) Criminal Liability (Wednesday, October 10)

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

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

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

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

*12.) Incarceration (Friday, October 12)

Davis, *Are Prisons Obsolete?* (2003).

ESSAY #2 DUE, FRIDAY, OCTOBER 12

13.) Murder (Wednesday, October 17)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2nd 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)

14.) Manslaughter I (Friday, October 19)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2nd edition (2004), pp. 800-818.

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

*15.) Manslaughter II (Wednesday, October 24)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2nd edition (2004), pp. 818-825.

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

ESSAY #3 OUT, WEDNESDAY, OCTOBER 24

16.) Felony Murder I (Friday, October 26)

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

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

17.) Felony Murder II (Wednesday, October 31)

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

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

ESSAY #4 OUT, WEDNESDAY, OCTOBER 31

*18.) The Exclusionary Rule (Friday, November 2)

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.

Stuntz, "Virtues and Vices of the Exclusionary Rule," *20 Harvard Journal of Law and Public Policy* (1997), pp. 443-456.

ESSAY #3 DUE, FRIDAY, NOVEMBER 2

*19.) Arrests and Stops (Wednesday, November 7)

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)

Harris, "Frisking Every Suspect: The Withering of *Terry*," *28 University of California at Davis Law Review* (1994), pp. 1-52.

Harmon and Manns, "Proactive Policing and the Legacy of *Terry*," *Ohio State Journal of Criminal Law* (2017), pp. 49-71.

*20.) Trials and Bargains (Friday, November 9)

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).

Steyn, "Plea-Bargaining in South Africa: Current Concerns and Future Prospects," *20 South African Journal of Criminal Justice* (2007), pp. 206-219.

ESSAY #4 DUE, FRIDAY, NOVEMBER 9

*21.) Inquisitorial Procedure (Wednesday, November 14)

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.

ESSAY #5 OUT, WEDNESDAY, NOVEMBER 14

*22.) Inquisitorial Plea Bargains (Friday, November 16)

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.

THANKSGIVING BREAK

*23.) How We Got Here (Wednesday, November 28)

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

ESSAY #5 DUE IN CLASS, WEDNESDAY, NOVEMBER 28

ESSAY#6 OUT, WEDNESDAY, NOVEMBER 28

*24.) The Warren Court and Beyond (Friday, November 30)

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.

*25.) The New Jim Crow (Wednesday, December 5)

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

*26.) The Standard Story (Friday, December 7)

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

Pfaff, "Escaping from the Standard Story: Why the Conventional Wisdom on Prison Growth is Wrong, and Where We Can Go from Here," *26 Federal Sentencing Reporter* (2014), pp. 265-270.

ESSAY #6 DUE IN CLASS, FRIDAY, DECEMBER 7

MOOT COURT SESSIONS TO BE SCHEDULED IN THE WEEK OF DECEMBER 10