

## 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, though students may not submit both Essay 1 and Essay 3; (2) *either* Essay 6, due on December 6, *or* participation in moot court sessions during the week of December 9, 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 fourteen 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 4)

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

\*2.) American Justice (Friday, September 6)

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.) Legality (Wednesday, September 11)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 80-92.

Rex v. Manley, [1933] 1 K.B. 529

4.) Vagueness (Friday, September 13)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 92-106.

Kolender v. Lawson, 461 U.S. 532 (1983)

5.) Actus Reus (Wednesday, September 18)

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)

6.) Causation (Friday, September 20)

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)

ESSAY #1 (State v. Bulley) OUT, FRIDAY, SEPTEMBER 20

7.) Mens Rea and Culpability (Wednesday, September 25)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> 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

8.) Defense Against Aggression (Friday, September 27)

Bonnie, Coughlin, Jeffries and Low, *Criminal Law*, 2<sup>nd</sup> edition (2004), pp. 419-429.

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

ESSAY #1 DUE, FRIDAY, SEPTEMBER 27

\*9.) Mental Abnormality (Wednesday, October 2)

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

The Case of Joy Baker

\*10.) Retribution and Deterrence (Friday, October 4)

Exodus 21: 23-25.

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

Adelstein, "Trading Goods and Bads," unpublished manuscript (2017).

Adelstein, "Criminal Liability," unpublished manuscript (2017).

Adelstein, "Crime and Punishment," unpublished manuscript (2017).

ESSAY #2 (Purposes of Criminal Law) OUT, FRIDAY, OCTOBER 4

\*11.) Discipline (Wednesday, October 9)

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.

\*12.) Incarceration (Friday, October 11)

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

\*13.) Alternatives (Wednesday, October 16)

Wang, "Chinese and American Criminal Law: Some Comparisons," 46 *Journal of Criminal Law and Criminology* (1956), pp. 796-832.

Tao, "Criminal Law of Communist China," 52 *Cornell Law Review* (1966), pp. 43-68.

NO CLASS, FRIDAY, OCTOBER 18

14.) Murder (Wednesday, October 23)

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)

ESSAY #2 DUE, WEDNESDAY, OCTOBER 23

15.) Manslaughter I (Friday, October 25)

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

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

ESSAY #3 (State v. Talker and Lensman) OUT, FRIDAY, OCTOBER 25

\*16.) Manslaughter II (Wednesday, October 30)

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

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

17.) Felony Murder I (Friday, November 1)

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)

ESSAY #3 DUE, FRIDAY, NOVEMBER 1

ESSAY #4 (Felony Murder) OUT, FRIDAY, NOVEMBER 1

18.) Felony Murder II (Wednesday, November 6)

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)

\*19.) Arrests and Stops (Friday, November 8)

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.

ESSAY #5 (Comparative Procedure) OUT, FRIDAY, NOVEMBER 8

\*20.) Trials and Bargains (Wednesday, November 13)

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).

Sekhri, "Plea Bargaining's Resounding Defeat? The Indian Experiment with Plea Bargaining," unpublished manuscript (2018).

\*21.) Inquisitorial Procedure (Friday, November 15)

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. 1549-15

ESSAY #4 DUE, FRIDAY, NOVEMBER 15

\*22.) Inquisitorial Plea Bargains (Wednesday, November 20)

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.

\*23.) How We Got Here (Friday, November 22)

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

ESSAY #5 DUE, FRIDAY, NOVEMBER 22

ESSAY #6 OUT, FRIDAY, NOVEMBER 22

THANKSGIVING BREAK

\*24.) The Warren Court and Beyond (Wednesday, December 4)

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 (Friday, December 6)

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

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 6

MOOT COURT SESSIONS TO BE SCHEDULED IN THE WEEK OF DECEMBER 9