

Preliminary Course Overview
C-275 / Law TBD: Law & Science of Sentencing and Punishment
Winter Quarter / Spring Semester 2017
Professors Jonathan Glater & Keramet Reiter

Part I: Punishment in Theory and Practice

Key Questions: Why should we punish? What purpose do the Guidelines serve? What role should discretion play in the sentencing process? When and why is a defendant culpable for a crime, and how does this affect sentencing? What role should science and/or social science play in assessing culpability?

Week 1: Theories of Punishment

- Legal: *Kennedy v. Louisiana* (2008); Rawls, “Two Theories of Rules” (1954); Hart, “The Aims of Criminal Law” (1958)
- Empirical: Garland “Sociological Perspectives on Punishment” (1991); Feeley & Simon “The New Penology” (1992); excerpts of Michel Foucault’s *Discipline and Punish* (1975)

Week 2: Sentencing Law, Policy & Practice

- Legal: USSC guidelines; *U.S. v. Booker* (2005); *Kimbrough v. U.S.* (2007); *Gall v. U.S.* (2007)
- Empirical: Excerpt of Lynch’s book federal sentencing guidelines (2016)
- Exercise: Read a sample case and apply Guidelines to assign a sentence.

Week 3: The Changing Socio-Legal Terrain of Culpability

- Legal: *Atkins v. Virginia* (2002); *Roper v. Simmons* (2005); *Graham v. Florida* (2010)
- Empirical: Human Rights Watch, *The Rest of Their Lives* (2005); Pifer “The Scientific and the Social in *Implementing Atkins*” (2016); Carroll, “Brain Science and the Mens Rea”(2015)
- Assignment: Choose a topic for the research paper

Part II: From Discipline to Punishment

Key Questions: What should be the relationship between school discipline and criminal enforcement? When and why should a suspect be subject to detention prior to conviction?

Week 4: From Discipline to Punishment

- Legal: *Barnhardt v. Meridian Consent Decree* (2013); *Fuller v. Decatur Public School* (2000)
- Empirical: Skiba et al., “African American Disproportionality in School Discipline” (2009-10); Simon, “Chapter 7: Safe Schools” in *Governing Through Crime* (2007)
- Assignment: Submit a research plan.

Week 5: Detention in the Absence of Conviction & Habeas Law

- Legal: *Fong Yue Ting v. U.S.* (1893); *Wong Wing v. U.S.* (1896); *Hamdi v. Rumsfeld* (2004)
- Empirical: Perkinson, “The Gutted Writ” (2010); Coutin & Chacon readings TBD.

Part III: Post-Conviction Rights and Remedies

Key Questions: What are the limits of punishment? How are the boundaries set? How can prisoners challenge these limits and boundaries? What role does empirical evidence play in setting and challenging the imposition of punishment? If sentencing outcomes are not consistent with our ideas about punishment, what reform is appropriate?

Week 6: Challenges to Conditions of Confinement (and Their Limits)

- Legal: *Estelle v. Gamble* (1976); *Hutto v. Finney* (1978); *Rhodes v. Chapman* (1981)
- Empirical: Feeley & Rubin, “Two Classic Prison Reform Cases” (1999); Gordon, *Spirit of the Law* excerpts (2010); Piche & Walby, “Problematizing Carceral Tours” (2010)
- Exercise: Visit a prison or jail.
- Assignments: Submit a preliminary thesis statement

Week 7: Challenges to Criminal Justice Outcomes: Race and Equal Protection

- Legal: *McCleskey v. Kemp* (1987); *Johnson v. California* (2005)
- Empirical: Baldus Study readings TBD; Goodman, “It’s Just Black, White, or Hispanic” (2008)
- Assignments: Submit an introduction

Week 8: Procedural Due Process

- Legal: *Plata v. Brown* (2010); *Ashker v. Brown Settlement* (2015)
- Empirical: Reiter, “(Un)Settling Solitary Confinement in California” (2015) and “The Most Restrictive Alternative” (2012)

Week 9: Statutory Rights and Non-Rights: CRIPA and the PLRA

- Legal: CRIPAA and PLRA Statutes, DOJ Findings in *Cresson* investigation
- Empirical: Schlanger, “Inmate Litigation” (2003); other readings TBD.

Week 10: Postconviction Relief: Parole and Reentry

- Legal: *In re: Dannenberg* (Cal. 2005); other parole readings TBD
- Empirical: Phelps, “Rehabilitation in the Punitive Era” (2011)
- Assignments: Submit complete draft of research paper.

Part IV: Writing Workshops (Optional for Non Law Students)

Weeks 11 & 12: Each participating student will present her/his research paper to the class, comment on a draft presented by a classmate, and record comments on that draft by others and by the instructor.