

**PRISONS
GOVERNMENT 3141**

**JOSEPH MARGULIES
SPRING 2016**

**SYLLABUS &
CLASS ORGANIZATION**

This is a class about the carceral state. You may not have heard this term before, though you have almost certainly seen or felt its operation. Like other expressions meant to describe governance in the United States—“the administrative state,” “the national security state,” “the bureaucratic state”—the carceral state provides a way to organize, distribute, and justify power in American society. In many ways, its operation is taken for granted, which frequently allows it to escape close scrutiny. But we will examine it in great detail, with a particular focus on how it came about, how it sustains itself, the role it plays in society, and how and why it may be changing.

This class is also about mass incarceration. You may have heard this term, and may have heard some of the statistics that often accompany its use, including for example the number of people under some form of custodial supervision in the United States, the overrepresentation in this pool of Blacks and Latinos, and the percentage of imprisoned people worldwide who are locked up in this country. Nowadays, many people—on both sides of the aisle and all points of the political spectrum—have decided mass incarceration is a serious problem.

But as you will discover in this course, ***mass incarceration is merely a symptom of something else—something much more significant.*** Through a focused and extended look at the American criminal justice system, we will try to figure out what that “something else” might be.

GENERAL:

1. Office Hours:

During the Spring 2016 Term, I will be teaching in both the Arts College and the Law School, which means I will be shuffling quite often between my office in the Government Department (117 White Hall) and at the Law School (238 Myron Taylor Hall). Office hours are by appointment, and it may be necessary to meet at the Law School, depending on the day.

2. Course Requirements & Academic Expectations:

Attendance and preparation are mandatory.

All students are expected to abide by the Cornell University Code of Academic Integrity. “Absolute integrity is expected of every Cornell student in all academic undertakings.” Students unfamiliar with or uncertain about specific attributes of the code should review it [here](#).

All students must avoid plagiarism, which is defined by the Code of Academic Integrity as “the unacknowledged use of the words or ideas of others.” If you are referring to the ideas of someone else or you are quoting another’s writing, be sure to cite them properly. If you have any questions about that, both the TAs and I are happy to suggest how work can best be cited.

Students agree that by taking this course all required papers may be subject to submission for textual similarity review by Turnitin.com for the detection of plagiarism. All submitted papers will be added to the Turnitin.com reference database solely for the purpose of detecting plagiarism.

3. Grades:

The grade will be based on:

- a. Class Participation (15%); ***and***
- b. A two-page (double-spaced) narrative based on attending a session of either the Tompkins County Felony Drug Court (<http://www.nycourts.gov/courts/6jd/tompkins/drug/index.shtml>) or the Ithaca City Drug Court (<https://www.nycourts.gov/courts/6jd/tompkins/ithaca/Drug>)

[CourtWebsiteInfo.shtml](#)). Information about this assignment is appended to the end of this syllabus. (10%); ***and***

- c. ***Either*** three short (7-9 page) papers ***or*** one substantial (25-30 page) research paper (75%).

i. Option 1: Three Short Papers

Students will write three short papers, based on a list of questions the TAs and I will generate and distribute as the course proceeds. The purpose of the exercise is to encourage deeper engagement with the material, whether it be the problem of convict labor (which we take up early in the term), the war on drugs or the Black Lives Matter movement (discussed in the middle), or the uncertain prospect of criminal justice reform (which we take up toward the end of the semester).

The short papers are due at 5:00pm on: March 1, 2016; April 6, 2016; and May 12. All papers must be submitted via email sent simultaneously to me and your TA. There will be no extensions absent extraordinary circumstances. To be clear, problems with your computer or alarm clock are not extraordinary circumstances, while illness or travel for Cornell-related activities could very well be. The first short paper will be worth 20% of your grade, the second 25%, and the third 30%.

ii. Option 2: Research Paper

Almost every aspect of the criminal justice system has spawned an enormous and fascinating literature. This syllabus barely scratches the surface of that material. The short papers give students an opportunity to examine some issues in more detail, but they are tied to the readings. Because some of you may want to go beyond the reading, you also have the option to write a longer research paper on some aspect of the criminal justice system. You may pick virtually any topic, but I will expect a deep engagement with the research and original reflection about its significance.

This choice, however, presents a certain risk. Some may neglect to finish a short paper on time, and therefore opt for the major research paper not by choice but by necessity. To prevent this, and to insure that everyone has assignments that must be completed throughout the term, completion of the research paper will be divided into three segments. ***On March 1, 2016, students completing a research paper must submit a detailed outline and proposed bibliography. By April 6, 2016,***

they must submit a first draft. By May 12, 2016, they must submit the final draft.

As with the short papers, the outline and proposed bibliography will be worth 20% of your grade, the first draft 25%, and the final draft 30%. And, as with the short papers, ***all three assignments must be submitted via email, no later than 5:00 pm on the due date, sent simultaneously to me and your TA. There will be no extensions absent extraordinary circumstances.***

The grading rubric for this class is as follows:

A+	99-100
A	92-98
A-	90-91
B+	89
B	82-88
B-	80-81
C+	79
C	72-78
C-	70-71
D+	69
D	62-68
D-	60-61

4. Books: (Required and Available in the Campus Bookstore)

David M. Oshinsky, *Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (Free Press Paperbacks 1996) ISBN 684 83095 7

James Q. Wilson, *Thinking about Crime* (Revised Edition Vintage 2013) ISBN 0-394-72917-x

Alice Goffman, *On the Run: Fugitive Life in an American City* (Univ. Chicago Press 2014)

Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton University Press 2014), ISBN 9780691164052

READINGS:

1. January 28, 2016: **Introduction, Requirements, and Class Organization**

Bruce Western, *Punishment & Inequality in America* (Russell Sage Foundation 2006), pp. 1-33

2. February 2, 2016: **Thinking About Criminal Justice**

Herbert Packer, "Two Models of the Criminal Process," *University of Pennsylvania Law Review*. Vol. 113, No. 1 (Nov. 1964), pp. 1-68 (selections on blackboard). ***NB: I am only assigning pp. 1-24 of this article, but I strongly encourage you to peruse the remainder.***

John Griffiths, "Ideology in Criminal Procedure, or, A Third 'Model' of the Criminal Process," 79 *Yale Law Journal* 359-417 (1970) (selections on blackboard). ***Again, I am only assigning pp. 359-391 of the article, but I encourage you to review the whole article.***

3. February 4, 2016: **VISITING LECTURE**

JUDGE JOHN GLEESON (United States District Court, Eastern District of New York): **A JUDGE'S PERSPECTIVE ON MASS INCARCERATION**

Stephanie Clifford, "Citing Fairness, U.S. Judge Acts to Undo a Sentence He Was Forced to Impose," *New York Times*, July 28, 2014,
<http://www.nytimes.com/2014/07/29/nyregion/brooklyn-judge-acts-to-undo-long-sentence-for-francois-holloway-he-had-to-impose.html>

Jane Doe v. United States of America, Mem. & Order, Case No. 14-MC-1412 (E. D. N. Y. May 21, 2015),
<http://ccresourcecenter.org/wp-content/uploads/2015/05/Doe-v-US.pdf>

4. February 9, 2016: Social Constructions, Symbolic Politics, & Implicit Bias

Murray Edelman, *The Symbolic Uses of Politics* (Urbana: University of Illinois Press 1964), Chapters 1-2, 9

Jennifer Eberhardt, et al., "Seeing Black: Race, Crime, and Visual Processing," *Journal of Personality and Social Psychology*. 2004. Vol. 87, no. 6, 876-893

Erich Goode & Nachman Ben-Yehuda, "Moral Panics: Culture, Politics, and Social Construction," *20 Annual Review of Sociology*. 1994. Vol. 20, 149.

5. February 11, 2016: Prison & Mythology

THE FARM: LIFE INSIDE ANGOLA PRISON, Part 1

No reading

***** **FEBRUARY BREAK** *****

6. February 18, 2016: Criminalizing Race, Part 1

THE FARM: LIFE INSIDE ANGOLA PRISON, Part 2

David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (Free Press 1997), pp. 1-106

7. February 23, 2016: VISITING LECTURE

SUPT. HAROLD GRAHAM (Auburn Correctional Facility, Auburn, NY): **A VIEW FROM THE INSIDE**

David Oshinsky, *Worse Than Slavery*, pp. 109-248

8. February 25, 2015: Criminalizing Race: Part 2

Doris Marie Provine, *Unequal Under Law: Race in the War on Drugs* (University of Chicago Press 2007), Chapters 2-3

Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Harvard University Press 2010), Introduction, Chapters 1-2

9. March 1, 2016: The Birth of “Law & Order”

Naomi Murakawa, *The First Civil Right: How Liberals Built Prison America* (Oxford University Press 2014), Chapters 1-2

Harry S. Truman, “Address at the Constitution Day Ceremonies at the Library of Congress,” September 17, 1951. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=13916>

Harry S. Truman, “Address at the Laying of the Cornerstone of the New U.S. Courts Building for the District of Columbia,” June 27, 1950. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=13539>

Dwight D. Eisenhower, “Special Message to the Congress on Civil Rights,” February 5, 1959. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=11567>

Dwight D. Eisenhower, “Statement by the President on the Observance of Law Day,” April 30, 1958. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*, <http://www.presidency.ucsb.edu/ws/?pid=11366>

Joseph Margulies, *What Changed When Everything Changed: 9/11 and the Making of National Identity* (Yale University Press 2013), Chapter 5, pp. 110-114

****** MARCH 1, 2016: FIRST PAPER DUE (OR, FOR THOSE COMPLETING A RESEARCH PAPER, DUE DATE FOR A DETAILED OUTLINE AND PROPOSED BIBLIOGRAPHY) ******

10. March 3, 2016. “Law & Order”: Backlash & Frontlash

Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997), Chapters 1-3. **I also encourage you to skim Chapter 6. All four chapters will be posted on Blackboard.**

Stuart Scheingold, *The Politics of Law and Order: Street Crime and Public Policy* (New York: Longman 1984), Preface, Chapters 2 & 3

Vesla Weaver, “Frontlash: Race and the Development of Punitive Crime Policy,” *Studies in American Political Development*, 21 (Fall 2007), 230–265

11. March 8, 2016: Law & Order Transformed

James Q. Wilson, *Thinking About Crime* (2013 ed), Chapters 3 & 7

Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (Columbia University Press: 2005), Introduction (pp. 1-7), Chapters 2, 4 & 6.

12. March 10, 2016: VISITING LECTURE

FBI SPECIAL AGENT JOSEPH RUDNICK, NEW YORK COUNTER-TERRORISM TASK FORCE: THE LAW ENFORCEMENT PERSPECTIVE

George L. Kelling & James Q. Wilson, “Broken Windows: The Police and Neighborhood Safety,” *The Atlantic*, March 1982, <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/>

13. March 15, 2016: **Hunters & Hunted**

Alice Goffman, *On the Run: Fugitive Life in an American City* (Univ. Chicago Press 2014)

14. March 17, 2016: **Aggressive Order Policing**

K. Babe Howell, *From Page to Practice and Back Again: Broken Windows Policing and the Real Costs to Law-Abiding New Yorkers of Color*, 34 N.Y.U. Rev. L. Soc. Change 439 (2010)

Note: This article is a much-abbreviated version of, K. Babe Howell, *Broken Lives From Broken Windows: The Hidden Costs of Aggressive Order Maintenance Policing*, 33 N.Y.U. Rev. L. Soc. Change 271 (2009). I **strongly encourage** you to peruse the original article, which is available on blackboard.

Charles R. Epp et al., *Pulled Over: How Police Stops Define Race and Citizenship* (Univ. Chicago Press 2014), Preface, Chapters 1-2, 7-8.

15. March 22, 2016: **VISITING LECTURE**

ROSS MACDONALD, CHIEF OF SERVICE, MEDICINE, CORRECTIONAL HEALTH SERVICES, NEW YORK, NEW YORK: MENTAL HEALTH AND THE CARCERAL STATE

Dominic Sisti, et al., “Improving Long-term Psychiatric Care: Bring Back the Asylum,” *JAMA*, January 20, 2015. 313.3:243-44

Dora M. Dumont, et al., “Public Health and the Epidemic of Incarceration,” *Ann. Rev. Public Health*. 2012. 33:325–39

Ross MacDonald, et al., “The Rikers Island Hot Spotters: Defining the Needs of the Most Frequently Incarcerated,” *Am. J. Public Health*. 2015. Nov. 105(11):2262-8.

Also, please skim the following article: “No Room at the Inn: Trends and Consequences of Closing Public Psychiatric Hospitals, 2005–2010,” *Treatment Advocacy Center*, http://www.tacreports.org/storage/documents/no_room_at_the_inn-2012.pdf

16. March 24, 2016: VISITING LECTURE

ROBIN STEINBERG, EXECUTIVE DIRECTOR, BRONX DEFENDERS: THE DEFENSE PERSPECTIVE

Christopher T. Lowenkamp, et al., “The Hidden Costs of Pretrial Detention,” The Laura and John Arnold Foundation, November 2013, available at:

<http://www.pretrial.org/download/research/The%20Hidden%20Costs%20of%20Pretrial%20Detention%20-%20LJAF%202013.pdf>

Ram Subramanian, et al., “Incarceration’s Front Door: The Misuse of Jails in America,” VERA Institute of Justice, July 29, 2015, available at:

http://www.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report_02.pdf

In addition, please skim the report written by the National Association of Criminal Defense Lawyers, “Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts,” April 2009, available on blackboard and at: <https://www.nacdl.org/reports/misdemeanor/>.

***** **SPRING BREAK** *****

******* APRIL 6, 2016: SECOND PAPER DUE (OR, FOR THOSE COMPLETING A RESEARCH PAPER, DUE DATE FOR A FIRST DRAFT) *******

17. April 5, 2016: The War on Drugs, Part 1

THE HOUSE I LIVE IN

Julilly Kohler-Hausmann, “The Attila the Hun Law’: New York’s Rockefeller Drug Laws and the Making of a Punitive State,” *Journal of Social History* (Fall 2010), pp. 71-96.

18. April 7, 2016: The War on Drugs, Part 2

Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (Free Press 2012), Chapters 2 & 3.

Michael Tonry, *Punishing Race: A Continuing American Dilemma* (Oxford University Press 2012), Chapter 3.

19. April 12, 2016: Community Effects

Todd Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (Oxford Univ. Press 2007), Chapters 1, 3-4

20. April 14, 2016: Collateral Consequences

Jean Chung, *Felony Disenfranchisement: A Primer* (Washington, D.C.: The Sentencing Project 2013), available at: http://sentencingproject.org/doc/publications/fd_Felony%20Disenfranchisement%20Primer.pdf

Rebecca Vallas and Sharon Dietrich, “One Strike and You’re Out: How We Can Eliminate Barriers to Economic Security and Mobility for People with Criminal Records,” *Center for American Progress* (December 2014), available at: <https://cdn.americanprogress.org/wp-content/uploads/2014/12/VallasCriminalRecordsReport.pdf>

Please *skim* “Legislative Update, State Reforms Reducing Collateral Consequences for People with Criminal Records: 2011-2012 Legislative Round-Up,” (Washington, D.C.: The Sentencing Project 2012), available at: [http://www.sentencingproject.org/doc/State%20Collateral%20Consequences%20Legislative%20Roundup%20Sept%202012%20\(1\).pdf](http://www.sentencingproject.org/doc/State%20Collateral%20Consequences%20Legislative%20Roundup%20Sept%202012%20(1).pdf)

In addition to these documents, you should take a look at the website for The Sentencing Project, which has links for news and publications related both to collateral consequences (<http://sentencingproject.org/template/page.cfm?id=143>) and felon disenfranchisement (<http://sentencingproject.org/template/page.cfm?id=133>).

21. April 19, 2016: **VISITING LECTURE**

JOHN CRUTCHFIELD, RAY ROE, WILLIE MARSHALL: AN INSIDER’S PERSPECTIVE

No reading

22. April 21, 2016: **Black Lives Matter**

Review the official website of Black Lives Matter (<http://blacklivesmatter.com/>) and read some of the many statements of its principles and purpose, especially the following:

<http://blacklivesmatter.com/about/>

<http://blacklivesmatter.com/herstory/>

<http://blacklivesmatter.com/11-major-misconceptions-about-the-black-lives-matter-movement/>

<http://blacklivesmatter.com/two-years-later-black-lives-matter-faces-critiques-but-it-wont-be-stopped/>

Compare this to some of the conservative commentary about the movement, including for instance:

<http://www.nationalreview.com/article/429094/black-lives-matter-wrong-police-shootings>

<http://www.nationalreview.com/article/417214/black-murderers-matter-dennis-prager>

<http://humanevents.com/2015/09/08/black-lives-matters-agenda-is-costing-black-lives/>

<http://www.breitbart.com/video/2015/08/31/fncs-tom-shillue-its-shut-it-down-time-for-criminal-organization-black-lives-matter/>

As you read these articles, take time to read some of the comments at the end of the columns.

23. April 26, 2016: **VISITING LECTURE**

JOHNNY PEREZ, SAFE REENTRY ADVOCATE, URBAN JUSTICE INSTITUTE, NEW YORK, NEW YORK: “EVERYTHING I LEARNED ABOUT LIFE, I LEARNED IN PRISON”

24. April 28, **Criminal Justice Reform, Part I**

James Austin, et al., “Ending Mass Incarceration: Charting a New Justice Reinvestment,” April 2013,
<http://sentencingproject.org/doc/Charting%20a%20New%20Justice%20Reinvestment%20FINAL.pdf>

Marie Gottschalk, *Caught: The Prison State and the Lockdown of American Politics* (Princeton University Press 2014), Chapters 1, 4-5

25. May 3, **Criminal Justice Reform, Part II**

Gottschalk, *Caught*, Chapters 8-9, 12

Joseph Margulies, "The Limits of Criminal Justice Reform,"
Boston Review, Nov. 17, 2015,
<http://bostonreview.net/us/joseph-margulies-criminal-justice-transformation>

26. May 5, 2016: Detentions in the War on Terror

Joseph Margulies, *Guantanamo and the Abuse of Presidential Power* (Simon & Schuster 2006), Preface, Chapter 9.

Senate Select Committee on Intelligence, "Committee Study of the CIA's Detention and Interrogation Program," December 9, 2014, Findings & Conclusions (pp. 1-19); Executive Summary pp. 17-49; 409-413.

<http://www.nytimes.com/interactive/2014/12/09/world/cia-torture-report-document.html>

27. May 10, 2016: VISITING LECTURE

**SANDRA BABCOCK, CLINICAL PROFESSOR OF LAW,
CORNELL UNIVERSITY LAW SCHOOL, A
COMPARATIVE LOOK AT MASS INCARCERATION**

Reading to be announced.

****** MAY 12, 2016: THIRD PAPER DUE (OR, FOR THOSE
COMPLETING A RESEARCH PAPER, DUE DATE FOR FINAL
DRAFT) ******

Drug Court Assignment:

You must attend a session of either the Tompkins County Felony Drug Court or the Ithaca City Drug Court and draft a two-page (double-spaced) observational essay. Because we are a large class, it is imperative that some people attend court early in the semester so that we spread

ourselves evenly through the semester. Before you go, try to learn a little about the courts by reviewing their respective websites, provided above.

For your essay, pick a theme and develop it. I am interested in whatever strikes you as most noteworthy about the entire proceeding. You may want to draw on your reactions or impressions about the courtroom, the personnel, the interactions, the “body language”, what is being said, what is *not* being said, etc. You may also want to reflect on how the courtroom (arrangements, language, procedures, etc.) contributes to the labeling, categorization, self-naming, or social construction of the individuals involved.

The essay is due by 5:00pm on the Friday immediately following your visit. It must be submitted via email sent simultaneously to me and your TA.

- The Tompkins County Felony Drug Court meets Wednesdays at 3pm @ 302 North Tioga Street on the following dates:

Feb 3 & 17
Mar 2 & 16
April 6 & 20
May 4 & 18

- The Ithaca City Drug Court meets Tuesdays at 1:30 pm @ 118 E. Clinton Street on the following dates:

Feb 2 & 16
Mar 1 & 15 & 29
April 12 & 26
May 10

Finally, here are some suggestions about being an observer in drug court:

- 1) ***Be sure to get there at least 10-15 minutes early*** because you will need to go through security, and you will want to be seated and settled before the Judge enters the chambers. ***Turn off all cell***

phones and electronic devices before entering the courtroom.

- 2) Do not leave part way through the session.
- 3) Leave large knapsacks/bookbags at home or in a locked car. It takes a long time to go through security if they must inspect Cornell students' bags and we can quickly exhaust the patience of the security personnel.
- 4) Please sit towards the back of the courtroom or wherever you are directed to sit.
- 5) Assuming you take notes, try to do so inconspicuously on a small pad.
- 6) And above all, **please respect the privacy of the individuals you observe by referring to them in your paper with initials or first names or a pseudonym but NOT by their real name.** Please do not refer to anyone by name in conversation or in any other writing that you may do.