

RACE AND THE CRIMINAL JUSTICE SYSTEM: GETTING PAST THE NUMBERS

SYLLABUS AND GENERAL INFORMATION

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This seminar will try to answer one of the most sensitive questions facing Americans today: Why are African Americans grossly over-represented in the American criminal justice system? Some answer this question with a simple accusation that the system is racist in design and implementation, and point to familiar statistics to buttress their claim. African Americans are eight times more likely to be incarcerated than whites. At the end of the first decade of the 21st century, over 12% of African American men between the ages of 25 and 29 were in custody. For under-educated young black men, the incarceration rates are simply astounding: in 2000, nearly one in five African-American men under 41 who had not attended college were in prison or jail. Yet these statistics, as dispiriting as they are, must open the debate, not end it. While no one credibly doubts the persistence of racially biased decision-making throughout the criminal justice system, careful empirical research strongly suggests that overt discrimination plays a relatively modest role in producing the current state of play. The explanations for the disparities that haunt the criminal justice system are nuanced and complex, and therefore deserving of careful study. Absorbing lessons from a wide variety of disciplines, including history, sociology, political science, economics, psychology, and law, this seminar will try to shed light on this vexing American problem.

Attendance, preparation, and participation are mandatory. Because the literature on this topic is voluminous, the readings for each class will range across a wide field. I expect the time commitment to be substantial. Still, there are no special course requirements. Grades will be based on class participation (15%) and a research paper (85%) due at the end of the term. As part of the course, we will try to tour the Maximum Security Prison in Auburn, New York, the timing of which will be determined once registration is complete and we have a roster of students. To accommodate the visit, the reading schedule will be adjusted as needed.

As for more general matters, I have two offices, one in the Government Department at 117 White Hall, and another at the Law School at 238 Myron Taylor Hall. During the 2014-15 school year, I anticipate being at the Government Department MTW, and the law school ThF.

I have not yet settled on office hours for spring 2015, but I will be in one of my offices regularly, and you are encouraged to stop by anytime (though you should probably email first, just to make sure I'm not in a meeting), with whatever questions you might have. If the door is open, feel free to wander in, and the door will always be open unless I am with a student who has specifically asked that it be closed, or I am discussing attorney-client information in one of my cases.

WEEK 1: INTRODUCTION: THE SCOPE AND NATURE OF THE PROBLEM: GETTING BEYOND THE NUMBERS

Film: THE FARM: LIFE INSIDE ANGOLA PRISON

Randall Kennedy, *Race, Crime, and the Law* (Vintage 1997), Foreword & Chapter 1.

Michael Tonry, *Punishing Race: A Continuing American Dilemma* (Oxford University Press 2011), Chapters 1 & 4.

WEEK 2: RACE AND EARLY CRIMINAL LAW: SLAVE CODES, BLACK CODES, CONVICT LABOR, & CHAIN GANGS, Part I

Kennedy, *Race, Crime, and the Law*, Chapter 3

David Oshinsky, *Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (New York: Free Press 1997)

WEEK 3: RACE AND EARLY CRIMINAL LAW: SLAVE CODES, BLACK CODES, CONVICT LABOR, & CHAIN GANGS, Part II

Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* (New York: Verso, 1995), Preface and Chapters 1-2

Khalil Gibran Muhammad, *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (Harvard University Press 2010), Chapters 1-3

WEEK 4: A DETOUR INTO SYMBOLIC POLITICS AND SOCIAL CONSTRUCTIONS

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

Stuart Scheingold, *The Politics of Rights: Lawyers, Public Policy, & Political Change* (Yale 1974, 2d ed.), Prefaces to First and Second Editions, 1-22; 83-96

Joseph Margulies, *What Changed When Everything Changed: 9/11 and the Making of National Identity* (Yale 2013), Chapters 1 & 2

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

WEEK 5: CIVIL RIGHTS, THE REFORM OF CRIMINAL PROCEDURE, AND THE WARREN COURT: MYTH AND REALITY

Rep. Edwin Willis (D-LA), "Why Congress is Justifiably Concerned" (1958)

Yale Kamisar, "On the Tactics of Police-Prosecution Oriented Critics of the Courts," 49 Cornell L. Q. 436, 436-454, 471-477 (1964)

Daniel Gutman, "The Criminal Gets the Breaks," *New York Times* (Nov. 29, 1964)

Sen. Strom Thurmond (D-SC), "Usurpation of Power" (1964)

Yale Kamisar, "When the Cops Were Not Handcuffed," *New York Times* (Nov. 7, 1965)

"The Rights of the Guilty," *Wall Street Journal* (Apr. 26, 1965)

Jerold H. Israel, "Criminal Procedure, The Burger Court, and the Legacy of the Warren Court," 75 Mich. L. Rev. 1319, 1319-26; 40-49 (1977)

Selections from key criminal procedure cases from the Warren Court, chosen among: *Mapp v. Ohio* (1961), *Gideon v. Wainwright* (1963), *Escobedo v. Illinois* (1964) & *Massiah v. United States* (1964), *Swain v. Alabama* (1965), *Miranda v. Arizona* (1966), *United States v. Wade* (1967), *Terry v. Ohio* (1968), and *Duncan v. Louisiana* (1968)

WEEK 6: THE RISE OF LAW & ORDER, Part I

Film: THE CHOICE (GOLDWATER CAMPAIGN FILM)

Michael W. Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (Columbia University Press: 2005)

WEEK 7: THE RISE OF LAW & ORDER, Part II

Selections from Katherine Beckett, *Making Crime Pay: Law and Order in Contemporary American Politics* (New York: Oxford University Press, 1997)

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

Margulies, *9/11 and the Making of National Identity*, Chapter 5

WEEK 8: RACE AND THE WAR ON DRUGS, I

Film: THE HOUSE I LIVE IN

Selections from Craig Reinerman & Harry Levine, *Crack in America: Demon Drugs and Social Justice* (Berkeley: U. Cal. Press 1997)

James Orcutt & J. Blake Turner, "Shocking Numbers and Graphic Accounts: Quantified Images of Drug Problems in the Print Media," *Social Problems*, vol. 40, Issue 2, pp. 190-206

Katherine Beckett, et al., "Drug Use, Drug Possession Arrests. And the Question of Race: Lessons from Seattle," *Social Problems*, vol. 52, Issue 3, pp. 419-441

WEEK 9: RACE AND THE WAR ON DRUGS, II

James Hawdon, "The Role of Presidential Rhetoric in the Creation of a Moral Panic: Reagan, Bush, and the War on Drugs," 22 *Deviant Behavior* 419 (September 2001)

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

Kennedy, *Race, Crime, and the Law*, ch. 10

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

Selections from key criminal procedure cases representative of the Supreme Court position vis-à-vis the war on drugs, including, among others: *United States v. Montoya-Hernandez*; *California v. Hodari D.*; *Illinois v. Wardlow*

WEEK 10: THE POLITICAL ECONOMY OF THE WAR ON DRUGS

Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (Harvard Univ. Press 1993), pp. 9-16, 115-147

Selections from Loic Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke Univ. Press 2009)

Peter B. Kraska & Victor E. Kappeler, "Militarizing American Police: The Rise and Normalization of Paramilitary Units," *Social Problems*, vol. 44, No. 1 (Feb. 1997), pp. 1-18

Radley Balko, "Overkill: The Rise of Paramilitary Police Raids in America," *The Cato Institute* (2006), pp. 1-14

Radley Balko, "How Did America's Police Become a Military Force on the Streets?," *ABA Journal* (Jul. 1, 2013)

Eric Schlosser, "The Prison-Industrial Complex," *The Atlantic* (Dec. 1998)

Eric Blumenson & Eva Nilsen, "The Drug War's Hidden Economic Agenda," *Univ. of Chicago Law Review*, vol. 65, no. 1 (1998), pp. 35-56

WEEK 11: RACE, DISCRETION, AND EQUAL PROTECTION IN THE CRIMINAL LAW

Race and the Death Penalty: *McCleskey v. Kemp*, 481 U.S. 279 (1987)

Race and Jury Service & Selection: *Batson v. Kentucky*, 476 U.S. 79 (1986)

“Illegal Racial Discrimination in Jury Selection: A Continuing Legacy” (Equal Justice Initiative 2010), available at: <http://www.eji.org/files/EJI%20Race%20and%20Jury%20Report.pdf>

Race and Prosecutorial Discretion: *United States v. Armstrong*, 517 U.S. 456 (1996)

Michelle Alexander, *The New Jim Crow*, ch. 3

Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, 67 Fordham L. Rev. 13 (1998)

WEEK 12: RACE AND CIVIL DEATH: COLLATERAL CONSEQUENCES

Selections from Jeff Manza & Christopher Uggen, *Locked Out: Felon Disenfranchisement and American Democracy* (New York: Oxford University Press 2006)

Jean Chung, *Felony Disenfranchisement: A Primer* (Washington, D.C.: The Sentencing Project 2013)

Legislative Update, *State Reforms Reducing Collateral Consequences for People with Criminal Records: 2011-2012 Legislative Round-Up* (Washington, D.C.: The Sentencing Project 2012)

WEEK 13: RUMINATIONS ABOUT THE FUTURE: COMING OUT OF THE TURN?

Todd R. Clear & Natasha Frost, *The Punishment Imperative: The Rise and Failure of Mass Incarceration in America* (NYU Press 2013), chapter 1

Fox Butterfield, “With Cash Tight, States Reassess Long Jail Terms,” *New York Times*, November 10, 2003, A1, A16.

Michael Jacobson, “Reversing the Punitive Turn: The Limits and Promise of Current Research,” 5 *Criminology and Public Policy* 277 (2006)

United States Department of Justice, “Smart on Crime: Reforming the Criminal Justice System for the 21st Century,” August 2013, available at <http://www.justice.gov/ag/smart-on-crime.pdf>

Attorney General Eric Holder, “Memorandum to the United States Attorneys and Assistant Attorney General for the Criminal Division

Regarding Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases,” August 12, 2013, available at: <http://big.assets.huffingtonpost.com/HolderMandatoryMinimumsMemo.pdf>