

LAW 234.2

Criminal Justice Seminar:

SHRINKING THE CARCERAL STATE

Monday, 10:00 am to 12:40pm, Rm. 134 [But our two makeups are from 1-3 on February 5, and March 4 respectively, rooms to be announced]

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Office hours: Tuesdays 2-3 pm; Weds 11-12 am (Please book in advance, other times available)

Books:

Jeremy Travis, Bruce Western, and Steve Redburn, *The Growth of Incarceration in the United States* (National Academy Press 2014) (free pdf download at: https://download.nap.edu/login.php?record_id=18613&page=http%3A%2F%2Fwww.nap.edu%2Fdownload.php%3Frecord_id%3D18613)

Recommended

Jonathan Simon, *MASS INCARCERATION ON TRIAL: A REMARKABLE COURT DECISION AND THE FUTURE OF PRISONS IN AMERICA* (New Press 2014)¹

All other reading assignments will be in the form of **PDFs** on the bCourse page (check under Files on the menu and then under readings) or links to online sources in this syllabus

Paper Assignment:

Students will prepare a 15 to 20 page paper on an aspect of the carceral state in the US and solutions for shrinking it. The paper can take several different forms, including:

- Policy Brief: A report aimed at educating a particular audience of law makers or decision makers (from voters to legislators or county commissioners to prosecutors and prison wardens) about a particular problem within the carceral

¹ The book has not been ordered through the bookstore. You can find it in Berkeley at Revolution Books, University Press Books, and Moes Books or order it from your favorite online provider.

state and policy options for solving it. The report should define the problem, provide compelling examples, collect data about the extent and depth of the problem, and develop one or more policy option for addressing it.

- Scholarly Essay: An essay that aims to contribute to the scholarly discussion of a problem associated with the carceral state by identifying new examples that shift in some way the perspective that might be taken (case law and legislation being obvious examples), providing relevant data that has not been brought into the discussion or producing conceptual innovations that help clarify the problem of the carceral state or its solution.
- Case or legislation Note: An essay that identifies a recent court decision, piece of legislation, or administrative regulation or decision that implicates the scale of the carceral state and provides an analysis of those implications.

Class Schedule and Assignments:

(Complete through February 19th)

January 11: Geographies and Histories of the Carceral State

Simon, MASS INCARCERATION ON TRIAL, Introduction

Jeremy Travis, Bruce Western, and Steve Redburn, THE GROWTH OF INCARCERATION IN THE UNITED STATES, pp. 33-43, 56-67

The Marshall Project, Next Year in Criminal Justice

<https://www.themarshallproject.org/2015/12/21/next-year-in-criminal-justice>

January 25: Politics of the Carceral State: Race, Insecurity, and Violent Crime

Marie Gottschalk, “Hiding in Plain Site: American Politics and the Carceral State,” ANNUAL REVIEW OF POLITICAL SCIENCE 2008. 11:235–60

Stuart Hall, The Great Moving Right Show, MARXISM TODAY, January 1979

Willie Horton Revisited

<https://www.themarshallproject.org/2015/05/13/willie-horton-revisited#.SOpW2ARDp>

Recommended:

Jeremy Travis, Bruce Western, and Steve Redburn, THE GROWTH OF INCARCERATION IN THE UNITED STATES, pp. 104-129

February 1: Building a Carceral State: Crime Legislation

Simon, “The Omnibus Crime Control and Safe Streets Act and Law Making Since 1968,” from GOVERNING THROUGH CRIME: HOW THE WAR ON CRIME

TRANSFORMED AMERICAN DEMOCRACY AND CREATED A CULTURE OF FEAR
(Oxford University Press 2009), pp. 90-101

Michael Fortner, The Carceral State and the Crucible of Black Politics: An Urban History of the Rockefeller Drug Laws, STUDIES IN AMERICAN POLITICAL DEVELOPMENT, 27 (April 2013), 14–35

Jeremy Travis, Bruce Western, and Steve Redburn, THE GROWTH OF INCARCERATION IN THE UNITED STATES, 70-85

February 5 (Make up class 1pm to 3pm): Building a Carceral State: Courts in the War on Crime

Simon, An Unenviable Task: How Federal Courts Legitimized Mass Incarceration, in LEGITIMACY AND CRIMINAL JUSTICE: AN INTERNATIONAL EXPLORATION, Justice Tankebe and Alison Liebling Editors (Cambridge University Press 2014), pp. 227-246

Farmer v. Brennan (1994) 511 U.S. 825

Spain v. Procunier (9th Circuit 1979) 600 F.2d 189

February 8: Building a Carceral State: Administration (Policing, Prosecution and Corrections)

Heather A. Thompson, Lessons from Attica: From Prisoner Rebellion to Mass Incarceration and Back, SOCIALISM AND DEMOCRACY, 28:3, 153-171

David Simon, Q and A, Marshall Project
<https://www.themarshallproject.org/2015/04/29/david-simon-on-baltimore-s-anguish#.zvzCrOqzO>

Ghosts of Attica
<https://www.themarshallproject.org/2015/02/28/attica-s-ghosts#.PBzJBHwBy>

February 22: Crisis of the Carceral State

Brown v. Plata, 131 S.Ct. 1910 (2011)

Simon, MASS INCARCERATION ON TRIAL, Chapter 6

February 29: Shrinking the Carceral State: Dignity Based Strategies

Kony Kim, “Chapter 3: The Capabilities Approach as a Framework for Reintegration Policy,” Chapter 4: Higher Education as a Fertile Capability for Incarcerated Americans,” in **Building Human Capabilities After Punishment: Our Political Responsibilities Toward Incarcerated Americans (Dissertation Draft, JSP 2016)**

Martha C. Nussbaum, Capabilities as Fundamental Entitlements: Sen and Social Justice, *Feminist Economics* 9(2 – 3), 2003, 33 – 59

Danny Murillo, John Gardner Fellow, “Lived Experience as a Source of Knowledge,” Matsui Center News, UC Berkeley
<https://matsuicenter.wordpress.com/2016/01/19/lived-experience-as-a-source-of-knowledge/>

Free Scholars

<https://www.youtube.com/watch?v=UzM5QKw6Sko>

March 4 (1pm to 3pm): Shrinking the Carceral State: Dynamic Deterrence

Mark Kleiman, Substituting Effective Community Supervision for Incarceration: Transcribed Speech, 99 Minn. L. Rev. 1621-1630 (2014-15)

David Weisburd, Cody W. Telep & Brian A. Lawton, Could Innovations in Policing have Contributed to the New York City Crime Drop even in a Period of Declining Police Strength?: The Case of Stop, Question and Frisk as a Hot Spots Policing Strategy, *Justice Quarterly*, 31:1, 129-153 (2014)

America’s Rock Star Cops

<https://www.themarshallproject.org/2015/10/16/america-s-rock-star-cops#.10eAoYEo5>

March 7: Reform and Abolition: Where do the two meet?

Allegra McLeod, “Prison Abolition and Grounded Justice,” at 62 *UCLA Law Review* 1156-1239

March 14: Promising problems, solutions, and organizations
Readings TBA

Mindful Minute:

It is my practice to begin each class with a minute or two of silent meditation. I will provide you some initial guidance but I only ask that you remain silent and seated during this time. The purposes of this are completely secular (although many religions have recognized and harnessed the power of this technique). Substantial empirical research now suggests that this practice can increase understanding and retention of what you learn in class while reducing stress. It is becoming common professional practice in business, medicine, and now law. I am also moved by two other considerations. First, we meet as a group of more than 10 and in midst of an already busy week and full day. Most of us will arrive with many things on our minds, and this technique is proven to help increase focus. Second, the subjects of this course include many on which strong feelings and emotions will be generated. Many of us have been victims of crimes against our dignity or have experienced the challenge to dignity posed by arrest or incarceration (including in the immigration system). Students are encouraged to speak up with questions and comments about these topics, and to respond to points raised by other students. The maintenance of an effective learning space in class, however, requires all of us to act with respect for and empathy toward everyone in the room. The minute of mindfulness is an opportunity at the outset of each class to acknowledge these facts and commit our-selves to a period of respectful work together.

For more on mindfulness and law see

http://www.abajournal.com/magazine/article/mindfulness_in_legal_practice_is_going_mainstream/