

Race, Crime, and Citizenship in American Law

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21H.319/17.908
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Thurs. 10-1
Office hours: Wed. 10-12

This course is an introduction to the law of race in the United States with an emphasis on the history of American criminal justice and the rise of what is known as “mass incarceration.” We begin with a look at the development of American race legislation since the late nineteenth century and its relationship to changing definitions of citizenship. The class then turns to the ongoing debate over whether America’s prison system serves as an instrument for the control of historically disadvantaged minorities and the poor. In that context, we consider a series of discrete topics including the death penalty and felon disenfranchisement, criminal procedure (the regulation of policing), plea bargaining, the “Black Lives Matter” movement, and immigration restriction. Class exercises and assignments invite students to experiment with some of the basic categories and techniques of legal analysis.

Required Materials (also on reserve at Dewey Library):

James Forman, Jr., *Locking Up Our Own: Crime and Punishment in Black America* (Farrar, Straus and Giroux, 2017) [hereinafter “Forman, *Locking Up Our Own*”]. Note: Forman’s book has just been released in a paperback edition.

James Q. Whitman, *Hitler’s American Model: The United States and the Making of American Race Law* (Princeton University Press, 2017) [hereafter “Whitman, *Hitler’s American Model*”].

All other required materials will be posted on the course Stellar site. Students should bring the website materials (either printed in hard copy or in digital form on your laptops or tablets) to the relevant seminar sessions.

Digital distraction:

The use of computers and other electronic/digital devices for purposes unrelated to the subject matter of this course is not permitted. I trust you to use your electronic/digital devices constructively, for purposes of advancing your individual and our collective learning in this course. Constructive uses of technology are unlikely to include anything other than notetaking, viewing the assigned readings for a given class, and looking up materials on the internet that are directly relevant to the discussion at hand. Please do yourself, your fellow students, and me the courtesy of suspending all other uses of your devices (email, social media, web browsing) during class meeting time.

Class format and evaluation:

Grades are determined as follows:

1. Two papers (25% and 35% respectively, described more fully below).
2. A series of very short (one page, double-spaced) written responses to the readings that will be due most weeks of the semester by 8pm the night before we meet (10%, to be graded on a simple scale of 0-2 points).
3. A law school-style mini quiz (10%).
4. Oral participation in class discussions, including two legal/policy debates, one on felon disenfranchisement, the other on immigration (20%). Role assignments for the debates to follow.

The topics and deadlines for the two papers are as follows:

1. Six-page analysis of the Whitman book (due in class March 8, 25% of final grade). Please cite to relevant passages of Whitman using parenthetical page references only; no other citations needed.
2. Eight-page paper on the debate over “mass incarceration” drawing on the required readings for this course (due in class on May 17, 35% of final grade). I will distribute more detailed guidelines for this paper later in the semester. For this paper, please use the citation system of *The Chicago Manual of Style*, which you can locate via the MIT Libraries Citation Guide posted on the Stellar site under “General and Reference” materials.

Attendance Policy:

By registering for this class, you are making a commitment to attend the duration of class each week and to arrive on time. Because we meet only once a week and cover a good deal of ground in each seminar meeting, it will be difficult to continue in this course if you miss more than two class meetings (barring an unusual medical or personal emergency). If you must miss a class, please contact me in advance.

Schedule of Meetings and Readings:

Part One: Mass Incarceration, Race, and Citizenship

1. Feb. 8: Introduction to the course; some legal and constitutional background
 - a. Syllabus
 - b. Selected provisions of the U.S. Constitution (for discussion in class)

2. Feb. 15: The Problem of Mass Incarceration
 - a. Ta-Nehisi Coates, “The Black Family in the Age of Mass Incarceration,” *The Atlantic* (Oct. 2015), <http://theatlntc/2muSVLE>.
 - b. Michelle Alexander, “Jim Crow Still Exists in America,” *NPR* (Jan. 16, 2012), <http://n.pr/2ks4FLg>.
 - c. Forman, *Locking Up Our Own*, pp. 3-14.
 - d. Written response: How useful is the term “mass incarceration” for understanding the phenomenon that it purports to describe? List at least two advantages and two disadvantages to the use of this term, and suggest an alternative if you think we need one.

3. Feb. 22: Racism and Second-Class Citizenship in American Law (I)
 - a. Whitman, *Hitler’s American Model*, Introduction and Ch. 1.
 - b. Written response: Are the phenomena that Whitman describes in his book still at work in American society today, or have we moved beyond the ugliness of that era?

4. Mar. 1: Racism and Fascism
 - a. Whitman, *Hitler’s American Model*, Ch. 2 and Conclusion.
 - b. Written response: Draw up a chronology of the ten most important events/dates discussed in Whitman’s book (paying attention in particular to the starting and ending points of his account).

Part Two: Towards Mass Incarceration

5. Mar. 8: Drugs, Guns, and Policing
 - a. Forman, *Locking Up Our Own*, Chs. 1-3.

FIRST PAPER DUE IN CLASS TODAY

6. Mar. 15: The War on Drugs
 - a. Forman, *Locking Up Our Own*, Chs. 4-5.
 - b. *United States v. Armstrong*, 517 U.S. 456 (1996).
 - c. Written response: Is the *Armstrong* case correctly decided in your view?

Part Three: Towards Black Lives Matter

7. Mar. 22: The Death Penalty and Felon Disenfranchisement
 - a. *McKleskey v. Kemp*, 481 U.S. 279 (1987).
 - b. *Johnson v. Governor of Florida*, 405 F.3d 1214 (11th Cir. 2005).

- c. Derek Hawkins, “Florida’s ban on ex-felons voting is unconstitutional and biased, federal judge rules,” *Washington Post* (Feb. 2, 2018), <http://wapo.st/2C0OIIW>.

CLASS DEBATE: FELON DISENFRANCHISEMENT

- 8. Apr. 5: The 4th Amendment
 - a. Forman, *Locking Up Our Own*, Ch. 6.
 - b. *Maryland v. King*, 133 S. Ct. 1958 (2013).
 - c. Written response: How well do you think the Supreme Court justices understand the science and technology of DNA as reflected in the opinions in *Maryland v. King*?
- 9. Apr. 12: Plea Bargaining, Innocence, and Guilt (**Note: part of this class meeting to be rescheduled, if possible**)
 - a. Jed Rakoff, “Why Innocent People Plead Guilty,” *The New York Review of Books* (Nov. 20, 2014), <http://bit.ly/10sIc4F>.
 - b. Jonathan M. Katz and Erik Eckholm, “Evidence Clears Two Men in 1983 Murder,” *New York Times* (Sept. 2, 2014), <http://nyti.ms/1waf5Of>.
 - c. Benjamin Weiser, “5 Exonerated in Central Park Jogger Case Agree to Settle Suit for \$40 Million,” *New York Times* (June 19, 2014), <http://nyti.ms/1psE21q>.
 - d. Film: “The Central Park Five” (to be viewed in class this week).
 - e. Written response: Is \$40 million too much, too little, or just right for purposes of compensating the Central Park defendants?
- 10. Apr. 19: “Black Lives Matter” and the 2016 Election
 - a. Damien Cave and Rochelle Oliver, “The Videos that are Putting Race and Policing into Sharp Relief,” *The New York Times* (Nov. 24, 2015), <http://nyti.ms/1HuaVJj>.
 - b. Ta-Nehisi Coates, “The First White President,” *The Atlantic* (Oct. 2017), <http://theatlantic.com/2eJ0Teb>.
 - c. The Spotlight Team, “Boston. Racism. Image. Reality.” *Boston Globe* (Dec. 10-16, 2017), <http://bit.ly/2E7oa3U>. Read “Day 1” and “Day 7” articles as well as one other article (chosen by you) from the series.

LAW SCHOOL-STYLE QUIZ IN CLASS TODAY

- 11. Apr. 26: Class field trip to Boston federal court – **we will meet at 10am at the entrance to the MBTA Kendall/MIT “T” station (opposite the MIT Coop)**.

Part Four: Immigration and Citizenship

12. May 3: The Development of American Citizenship and Immigration Law
 - a. Gerald L. Neuman, "Citizenship," in *The Oxford Handbook of the United States Constitution*, ed. Mark Graber, Sanford Levinson, and Mark Tushnet (New York: Oxford University Press, 2015).
 - b. Mae Ngai, "The Lost Immigration Debate," *Boston Review*, Sept. 6, 2006, <http://bit.ly/2dRWhAc>.
 - c. Peter H. Shuck, "The Immigration System Today," in Peter H. Shuck, *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship* (Boulder, CO: Westview Press, 1998), 3-15.
 - d. Written response: What duties, if any, does a nation-state owe to persons living within its borders who are not citizens?

13. May 10: The Dreamers and Immigration Reform (Special guest today: MIT custodian Francisco Rodriguez will visit with our class today from 1-2pm)
 - a. Anne Trafton, "MIT Custodian Francisco Rodriguez released from detention," *MIT News* (Dec. 22, 2017), <http://bit.ly/2E8UWwo>.
 - b. Peter H. Shuck, "The Message of Proposition 187: Facing Up to Illegal Immigration," in Peter H. Shuck, *Citizens, Strangers, and In-Betweens: Essays on Immigration and Citizenship* (Boulder, CO: Westview Press, 1998), 149-160.
 - c. Michael Shear, "Trump Must Keep DACA Protections for Now, Judge Says," *The New York Times* (Jan. 9, 2018), <http://nyti.ms/2mgtdZ>.
 - d. U.S. Citizenship and Immigration Services, "Termination of the Designation of Haiti for Temporary Protected Status," *Federal Register* (Jan. 18, 2018), <http://bit.ly/2BdH3jP>.

CLASS DEBATE: DACA AND TPS FOR HAITIANS (HALF THE CLASS WILL DEBATE DACA, THE OTHER HALF TPS FOR HAITIANS).

14. May 17: Conclusion (*please be sure to bring your laptops to class today: we will spend 10-15 minutes at the start of class filling out the online subject evaluations*)
 - a. Forman, *Locking Up Our Own*, Epilogue.
 - b. Erica Goode, "Internet Lets a Criminal Past Catch Up Quicker," *N.Y. Times* (Apr. 28, 2011), <http://nyti.ms/1w6goOb>.
 - c. Al Baker, "An 'Iceberg' of Unseen Crimes: Many Cyber Offenses Go Unreported," *The New York Times* (Feb. 5, 2018), <http://nyti.ms/2E4t6r3>.

FINAL PAPER DUE IN CLASS TODAY