

Prisons (Seminar)
Harvard Law School, Spring 2004
Assistant Professor Schlanger

Syllabus

- Week 1 (2/2/04): The Purposes of Imprisonment
- Week 2 (no class)
- Week 3 (2/16/04): Issues in Prison Management – Cotaught by A.T. Wall, Director, Rhode Island Department of Corrections
- Week 4 (2/27/04): PRISON TOUR, Rhode Island Department of Corrections (double class)
- Week 5 (3/1/04): Deterrence, Recidivism, and Other Consequences of Mass Incarceration – Cotaught by Prof. Anne Piehl, John F. Kennedy School of Government
- Week 6 (3/8/04): Individual Inmate Litigation
- Week 7 (3/15/04): Correctional Court Order Litigation – Cotaught by Jim Pingeon, Attorney at Mass. Correctional Legal Services
- Week 8 (3/22/04): Global Historical Trends and Issues – Cotaught by Daniel Botsman, Carrie Elkins, Rebecca McLennan, Associate Professors of History, Harvard University
- Week 9 (4/8/04): Causes of Mass Incarceration
- Week 10 (4/12/04): Prison Reform Commissions – Cotaught by Scott Harshbarger, Chair, Massachusetts Governor's Commission on Corrections Reform
- Week 11 (4/19/04): Criminal Prosecution of Official Misconduct in Prison – Cotaught by Ted Merritt, Assistant U.S. Attorney, District of Massachusetts
- Week 12 (4/26/04): Race, Segregation & Gangs

DETAILED SYLLABUS FOLLOWS

Class material will be made available at the distribution center, in class, or on the class website. There will be a number of such distributions throughout the term. Unless otherwise noted, page numbers are from the distributed materials.

Week 1 (2/2/04): The Purposes of Imprisonment	
Sentencing Project reports on prison population trends as of 2000 and 2001 . . .	pp. 1-7
<i>Prison Admissions by Race, 1960-90</i> (From Michael Tonry, <i>Malign Neglect</i>) .	p. 8
BJS, <i>Lifetime Likelihood of Going to State or Federal Prison</i>	p. 9
Margo Schlanger, <i>Differences Between Jails and Prisons</i> (unpublished, 2003)	pp. 10-18
MICHAEL S. MOORE, <i>The Prima Facie Justification of Punishment</i> , in <i>LAW AND PSYCHIATRY: RETHINKING THE RELATIONSHIP</i> 233-239 (1984)	pp. 19-21
David Garland, <i>Sociological Perspectives on Punishment</i> , 14 <i>CRIME & JUSTICE</i> 115 (1991).	pp. 22-47
JOHN IRWIN, <i>THE JAIL: MANAGING THE UNDERCLASS IN AMERICAN SOCIETY</i> 1-3, 11-17, 101-118 (1985)	pp. 48-67
FRANKLIN E. ZIMRING & GORDON HAWKINS, <i>INCAPACITATION: PENAL CONFINEMENT AND THE RESTRAINT OF CRIME</i> 3-17 (1995)	pp. 68-75
Week 2 (2/9/04): NO CLASS	
Week 3 (2/16/04): Issues in Prison Management Cotaught by A.T. Wall, Director, Rhode Island Department of Corrections	
“A Day in the Life of Prisoner 12345,” excerpted from Norval Morris, <i>The Contemporary Prison</i> , in <i>THE OXFORD HISTORY OF THE PRISON</i> 236 (Norval Morris & David J. Rothman, eds., 1994)	pp. 76-81
GRESHAM M. SYKES, Chapter 3, <i>The Defects of Total Power</i> , in <i>THE SOCIETY OF CAPTIVES: A STUDY OF A MAXIMUM SECURITY PRISON</i> 40-62 (1958)	pp. 82-93
JOHN J. DI IULIO, JR., <i>GOVERNING PRISONS: A COMPARATIVE STUDY OF CORRECTIONAL MANAGEMENT</i> 11-48, 99-164 (1987)	pp. 94-147
Chase Riveland, <i>Prison Management Trends, 1975-2025</i> , in <i>PRISONS</i> 163-203 (Michael Tonry & Joan Petersilia eds. 1999)	pp. 148-167
FYI, A.T. Wall’s resume is included in the reading packet	pp. 168-170
<p>RESPONSE PAPER QUESTIONS:</p> <p>(1) Imagine that you are conducting a personnel evaluation of the head of a small state prison system (say, the Director of the Rhode Island Department of Corrections, though without the jail and non-incarceration part of that job). Please set out the topics and goals you would include as part of the evaluation, and what your expectations would be with respect to each one. Then write a couple of pages, more analytically, about the trade-offs you might expect to see in practice and how the Director should think about assessing them.</p> <p>(2) John DiIulio is obviously very enamored of what he calls the “control model” of prison management. What do you see as the drawbacks of this model? Would it be appropriate and/or good (or inappropriate and/or bad) for constitutional law to have much bearing on the choice of correctional model chosen by a state and its correctional officials?</p>	

Week 4 (2/27/04): PRISON TOUR, Rhode Island Department of Corrections (This is a double class)	
LEO CARROLL, <i>LAWFUL ORDER: A CASE STUDY OF CORRECTIONAL CRISIS AND REFORM</i> (1998)	pp. 171-279
Rhode Island Department of Corrections: Discipline Severity Scale	Blackboard
Rhode Island Department of Corrections: Inmate Classification	Blackboard
<p>RESPONSE PAPER QUESTION: In light of the history of the Rhode Island Department of Corrections, Department (as discussed by Carroll), what do you think are likely to be the major problems of the prison system? Concretely, if you were charged with investigating these problems, how would you go about determining if these do, indeed, exist and their severity? What do you think you can learn from a visual inspection?</p>	
Week 5 (3/1/04): Deterrence, Recidivism, and Other Consequences of Mass Incarceration	
Cotaught by Prof. Anne Piehl, John F. Kennedy School of Government	
Raymond V. Liedka et al., <i>The Crime-Control Effect of Incarceration: Does Scale Matter?</i> (Working Paper, March 2003)	Blackboard
James P. Lynch and William J. Sabol, <i>Assessing the Effects of Mass Incarceration on Informal Social Control in Communities</i> (Working Paper)	Blackboard
<p>RESPONSE PAPER QUESTIONS: 1) How much incarceration is the right amount? How ought policymakers go about answering this question? 2) Suppose that we knew that the average cost of prison were precisely equal to the (avoided) average cost of prevented crimes. What would be the policy implications for sentencing?</p>	
Week 6 (3/8/04): Individual Inmate Litigation	
Margo Schlanger, <i>Inmate Litigation</i> , 116 HARV. L. REV. 1555. (2003)	pp. 280-355
JIM THOMAS, <i>PRISONER LITIGATION: THE PARADOX OF THE JAILHOUSE LAWYER</i> (1988) (Chapter 8, <i>The Making of a Jailhouse Lawyer</i>)	pp. 356-371
<p>RESPONSE PAPER QUESTIONS: 1) Is the game worth the candle? That is, are inmate damage actions a good idea? 2) How might you evaluate the above question? Alternatively, how could you create a system susceptible to such evaluation?</p>	

Week 7 (3/15/04): Correctional Court Order Litigation	
Cotaught by Jim Pingeon, Attorney at Mass. Correctional Legal Services	
Prison Litigation Reform Act, 18 U.S.C. § 3626	pp. 372-375
James B. Jacobs, <i>Judicial Impact on Prison Reform</i> , in PUNISHMENT AND SOCIAL CONTROL 63 (Thomas G. Blomberg & Stanley Cohen, eds.)	pp. 376-382
Margo Schlanger, <i>Beyond the Hero Judge: Institutional Reform as Litigation</i> , 97 MICH. L. REV. 1994 (1999)	pp. 383-404
Susan Sturm, <i>The Legacy and Future of Prison Litigation</i> , 142 PENN. L. REV. 639, 641-48, 681-86, 706-38 (1993)	pp.405-428
RESPONSE PAPER QUESTIONS:	
1) What's the best and worst part of the PLRA, in terms of its requirements for injunctive remedies?	
2) Assume that I'm correct when I argue in my Michigan piece that even litigated correctional court orders are more the work of the parties than of courts. What are the normative implications for this (for example, in terms of the "countermajoritarian difficulty," or the appropriate remedial scope of the order). Those interested in this topic may want to (but need not) look also at some brief additional reading posted on the course documents page.	
Week 8 (3/22/04): Global Historical Trends and Issues	
Cotaught by Daniel Botsman, Carrie Elkins, Rebecca McLennan, Associate Professors of History, Harvard University	
REBECCA MCLENNAN, THE CRISIS OF IMPRISONMENT: PROTEST, POLITICS, AND THE MAKING OF THE MODERN AMERICAN PRISON 1865-1933, INTRODUCTION AND CHAPTER 1 (forthcoming 2003).	Packet
DANIEL BOTSMAN, PUNISHMENT AND POWER IN THE MAKING OF MODERN JAPAN, CHAPTER 6 (forthcoming 2004).	Packet
Background on the Mau Mau Rebellion from Wikipedia.	Packet
Caroline Elkins, <i>Detention, Rehabilitation & the Destruction of Kikuyu Society</i> , in MAU MAU AND NATIONHOOD: ARMS, AUTHORITY AND NARRATION (E.S. Atieno Odhiambo and John Lonsdale, eds., 2003).	Packet
RESPONSE PAPER QUESTIONS:	
1) All three papers deal in some way with the purpose of imprisonment in different settings. How does this kind of historical inquiry and the conclusions the authors draw relate (or do they relate) to the normative/legal issues of the appropriate purposes of imprisonment and the appropriate processes for imposition of carceral sanctions in our current day and place?	
2) What is the relationship between process for imposition of incarceration and the purpose of that incarceration?	
3) You may, if you like, react to something more particular (whatever you choose) in one or more of the papers -- but please draw on at least two of them in your analysis.	
SPRING BREAK	

Week 9: Causes of Mass Incarceration (4/8/04) To be held in Morgan Courtroom, 5-7pm	
DAVID GARLAND, THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY, chs. 1, 6-8 (2001)	pp. 429-476
Allen J. Beck, <i>Growth, Change, and Stability in the U.S. Prison Population, 1980-1995</i> , 1997 CORRECTIONS MANAGEMENT Q. 1	pp. 477-490
Rebecca McLennan, <i>The new penal justice state: globalization, history, and American criminal justice, c. 2000</i> , 2 INTER-ASIA CULTURAL STUD. 407 (2001).	Distribution Center
RESPONSE PAPER QUESTIONS: 1) So what? That is, is there a policy, political, or legal "take-away" from either Prof. Garland's or Prof. McClennan's analysis? What is it? 2) What, if anything, does either (or both) readings' approach to the sociology/political economy of penalty have to say about the U.S. government's detention practices after 9/11?	
Week 10 (4/12/04): Prison Reform Commissions Cotaught by Scott Harshbarger, Chair, Massachusetts Governor's Commission on Corrections Reform	
Boston Globe Articles August 25, 2003- April 1, 2004	pp. 491-533
Short Biography of Scott Harshbarger	p. 534
<i>Governor's Commission on Corrections Reform: Mission Statement</i>	p. 535
Massachusetts Governor's Commission on Criminal Justice Innovation, <i>Final Report</i>	pp. 536-569
Administrative Investigation, <i>The facts and circumstances surrounding the events, which led to Inmate John Geoghan's death on August 23, 2003</i>	Packet (original pagination)
RESPONSE PAPER QUESTIONS: 1) Write a plan of action for the Harshbarger commission, including detailed goals, methods of investigation, and justifications for both of the above. 2) What seem to you to be the pros and cons of the commission method of prison reform compared to the approach of injunctive litigation?	

Week 11 (4/19/04): Criminal Prosecution of Official Misconduct in Prison Cotaught by Ted Merritt, Assistant U.S. Attorney, District of Massachusetts	
18 U.S.C. § 241 & 242	p. 570
Screws v. United States, 65 S.Ct. 1031 (1945)	pp. 571-587
United States v. Crochiere, 129 F.3d 233 (1st Cir. 1997)	pp. 588-594
Trial Brief of the United States, United States v. Donnelly (D.Mass.)	pp. 595-622
RESPONSE PAPER QUESTIONS: Prosecutions of police and prison misconduct have the lowest conviction rate of any kind of prosecutions. What seem to you likely to be the set of issues that makes these difficult cases to bring and win? How might a prosecutor overcome these obstacles?	
Week 12 (4/26/04): Race, Segregation & Gangs	
Lee v. Washington, 390 U.S. 333 (1968) (per curiam)	p. 623
Excerpt from: LEO CARROLL, HACKS, BLACKS AND CONS: RACE RELATIONS IN A MAXIMUM SECURITY PRISON (1974)	pp. 624-627
Turner v. Safley, 482 U.S. 78 (1987)	pp. 628-649
Farmer v. Brennan, 511 U.S. 825 (1994)	pp. 650-671
Chad Trulson & James Marquart, <i>Inmate Racial Integration: Achieving Racial Integration in the Texas Prison System</i> , 82 PRISON J. 498 (2002)	pp. 672-686
Johnson v. California, 321 F.3d 791, 336 F.3d 1117 (9th Cir. 2003) (dissent from denial of reh'g en banc)	pp. 687-703 pp. 704-710
David Grann, <i>The Brand: How the Aryan Brotherhood Became the Most Murderous Prison Gang in America</i> , THE NEW YORKER, Feb. 16 & 23, 2004, at 157	pp. 711-725
RESPONSE PAPER: The Supreme Court has granted cert. in Johnson v. California; please write a majority opinion. This may but need not be a prediction of what will actually happen in the case.	