CCJS602: COURTS AND SENTENCING
SPRING 2016

PROFESSOR

Brian D. Johnson, Ph.D.
2220D LeFrak Hall
Phone: (301) 405-4709
E-mail: bjohnso2@umd.edu

OFFICE HOURS

Wednesday 1:00 – 4:00; By Appointment

MEETING TIME

Wednesday 4:00 – 6:45; LEF 2165E

COURSE DESCRIPTION

This graduate seminar focuses on the role criminal courts play in meting out punishment in society. It examines courtroom decision making from an interdisciplinary perspective, drawing on research and theory from sociological, criminological and organizational perspectives. Specific topics examined include empirical research and theorizing on prosecutorial discretion, plea-bargaining practices, sentencing guidelines, mandatory minimums and truth-in-sentencing reforms. Particular attention will be devoted to the study of racial, gender and class disparities in criminal punishment.

COURSE EXPECTATIONS

The primary goal of this course is to provide a general overview of criminal court sentencing systems. Students should become familiar with the different decision-making points in the sanctioning process and should gain a nuanced understanding of contemporary theoretical perspectives and empirical research in the field. Students will be expected to attend class ready to discuss assigned readings. The course will rely heavily on student participation in addition to class lectures, and ultimately the success of the course will depend on student contributions.

TEXTBOOKS


Recommended:
COURSE ASSIGNMENTS AND GRADING

Your grade in this course will be determined by a variety of assignments designed to further your understanding of the criminal sentencing process. These include 1) leading classroom discussion, 2) writing a final research paper, 3) an in-class final examination, and 4) class participation.

1) Each student will be expected to lead class discussions for two weeks, presenting an in-depth look at several aspects of that week’s topic. These presentations should include the most relevant empirical research to provide answers to questions posed for that week. The class presentations are intended to serve as a focus for classroom discussion, to bring additional materials into the classroom discussion, and to help you improve your ability to evaluate empirical research. Class presenters should be the local “experts” for that week and should work to stimulate interesting discussion among the group. Presenter should make copies of their class presentation materials available to other class members. Grades for the classroom presentations will be based on a 20-point scale with 50% of the grade made by the instructor and 50% from the students in class. I will pass out “score sheets” for this purpose early in the class.

2) Each student will be expected to write a final research paper in the area of courts and sentencing. This paper should provide the foundation for writing a professional research paper or grant proposal. Students should choose the specific form of the proposal that is most appropriate for their own career trajectory. The goal of this assignment is for students to produce a proposal that can (perhaps with some modification) later be submitted to an MA or PhD committee for review, or serve as the basis of an empirical research paper for later publication. The proposal should include 1. an introduction and problem statement, 2. literature review, 3. data and methods, and 4. preliminary and/or expected findings. Research proposals should be 15-20 double-spaced pages including references (use Criminology as a guide for references). Proposals will be due on Wednesday, April 27th.

3) The final part of your grade will consist of a 3-hour, in-class, closed-book, final examination. It will be designed to simulate the courts and sentencing portion of the general comprehensive qualifying examination in the Criminology Department at the University of Maryland. This exam will be given on the last day of class, Wednesday, May 4th.

4) A graduate seminar cannot succeed without the active participation of its students. Therefore your class attendance, participation and effort will be reflected in your final grade.

<table>
<thead>
<tr>
<th>GRADING BREAKDOWN</th>
<th>FINAL GRADE DISTRIBUTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARTICIPATION</td>
<td>Over 92.5% = A</td>
</tr>
<tr>
<td>LEADING DISCUSSIONS</td>
<td>89.5% to 92.5% = A-</td>
</tr>
<tr>
<td>RESEARCH PAPER</td>
<td>87% to 89.5% = B+</td>
</tr>
<tr>
<td>FINAL EXAMINATION</td>
<td>83% to 87% = B</td>
</tr>
<tr>
<td></td>
<td>79.5% to 83% = B-</td>
</tr>
<tr>
<td></td>
<td>70% to 79.5% = C</td>
</tr>
<tr>
<td></td>
<td>60% to 69.9% = D</td>
</tr>
</tbody>
</table>
**COURSE SCHEDULE: (SUBJECT TO CHANGE AS NECESSARY)**

**Week 1:** **INTRODUCTION (1/27)**

*The mood and temper of the public with regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country.*

~Winston Churchill~

**TOPICS/READINGS**

**SYLLABUS**

**WEEKLY DISCUSSION/SNACK SIGN UP**

**OVERVIEW OF THE CRIMINAL COURT SYSTEM**

**Week 2:** **THE CHANGING CRIMINAL COURT SYSTEM (2/3)**

*Thirty years ago...the word “sentencing” generally signified a slightly mysterious process which...involved individualized decisions that judges were uniquely qualified to make. The situation today is much more complex...*

~Cassia Spohn~

**HISTORICAL DEVELOPMENTS**


**CRIMINAL COURTS IN THE REAL WORLD**


James Eisenstein and Herbert Jacob. *Felony Justice*. Chpts 1-3. pgs 1-64.

**Discussion Questions:** Systematically outline the most important insights you can draw about how American courts operate “in the real world” based on *Courtroom 302* and *Felony Justice*. How are these different from typical conceptions of the American justice system?
Week 3:  **The Role of the Prosecutor (2/10)**

Most extant and proposed determinate sentencing systems have ignored prosecutorial discretion in charging and plea-bargaining practices. ~Terence Miethe~

**OVERVIEWS:**


**RESEARCH:**


**Discussion Questions:** Assess the current state of research on plea-bargaining and prosecutorial discretion in the United States. What are the strengths and weaknesses of this research? What do we know for sure about prosecutor and guilty pleas? What theoretical perspectives (if any) have been useful for understanding prosecutorial decision making? What needs to be done next in terms of research in this area? What are some of the key challenges to completing this research? What are the key policy issues with regard to the role of the prosecutor in the US criminal justice system?

**Additional Readings:**


Frohmann, Lisa, 1997; Convictability and Discordant Locales: Reproducing Race, Class, and Gender Ideologies in Prosecutorial Decision Making; *Law & Society Review* 31: 531.


**Week 4:** **Criminal Trials and the Jury (2/17)**

*If criminals wanted to grind justice to a halt, they could do it by banding together and all pleading not guilty.*

~Dorothy Wright Wilson~

**OVERVIEWS:**


**Jury Sentencing:**


**The Trial Penalty**


**Class discussion:** Assess the current state of research on jury sentencing and trial penalties in the United States. What are the strengths and weaknesses of this research? What do we know for sure about how juries make decisions? Why don’t more states have jury sentencing? What theoretical perspectives (if any) have been useful for understanding the jury decision making? What role do trial penalties play in the function and the US criminal justice system? What needs to be done next in terms of research in this area? What are some of the key challenges to doing research on jury sentencing and trial penalties? What are the key policy issues with regard to each? Should jury sentencing be abolished or expanded?

**Additional Readings:**


Week 5: Goals and Theories of Sentencing (2/24)

Deciding how much to punish is an agonizing process in which conflicting aspirations compete. ~Andrew von Hirsch~

Overview:


Theoretical Perspectives:


Class discussion: Identify the different philosophies of punishment utilized in the United States. What are the strengths and weaknesses of different philosophical approaches? What are the primary goals of sentencing? How do these goals complement or contradict one another? What are the major theoretical perspectives used to explain criminal sentencing? How do they differ from one another? How are they similar? How might these perspectives be integrated into one collective theory of sentencing? What might such a theory look like? What needs to be done next in terms of theoretical development in research on sentencing? What are some of the key challenges to doing research in this area?

Additional Readings:


Week 6:  **SENTENCING GUIDELINES (3/2)**

*Guidelines promulgated by commissions have altered sentencing patterns and practices, have reduced sentencing disparities...and have shown that sentencing policies can be linked to correctional resources.*

~Michael Tonry~

**THE SENTENCING COMMISSION**


**STATE SENTENCING GUIDELINES**


**Class discussion:** Assess the current state of research on state sentencing guidelines in the United States. What are the strengths and weaknesses of this research? What do we know for sure about sentencing guidelines and their effect on criminal justice decision making in the United States? How do state guidelines differ from one another? How are they the same? What are the different qualities or characteristics of different guideline systems? What needs to be done next in terms of research on sentencing guidelines? What are some of the key challenges to doing this research? What are the key policy issues with regard to the role of sentencing guidelines in the US criminal justice system? Should sentencing guidelines be abolished? Should they be expanded?

**Additional Readings:**


WEEK 7:  **FEDERAL SENTENCING GUIDELINES (3/9)**

*The federal judge merely functions as an automaton by mechanistically applying the stark formulae set by a distant Sentencing Commission*  
~Stith and Cabranes

**OVERVIEWS:**


Tonry, Michael, 1998. *Sentencing Matters* Chpt 3 pgs. 72-99 (recommended)

**RESEARCH:**


**Class discussion:** Assess the current state of research on the federal sentencing guidelines. What are the strengths and weaknesses of this research? What do we know for sure about federal sentencing practices? How do the federal guidelines differ from state sentencing guidelines? Describe and discuss the background and influence of the recent Supreme Court decisions in Blakely, Booker and Fanfan. What impact have these decisions had on federal sentencing practices? What does future research need to do to better study the impact of these decisions? What are some of the key challenges to implementing this research? What are the key policy issues with regard to the role of the federal guidelines in the US criminal justice system? Should they be mandatory? Should they be abolished?

**Additional Readings:**


WEEK 8:  **NO CLASS – SPRING BREAK (3/16)**
WEEK 9: RACIAL/ETHNIC DISPARITIES (3/23)

Racism goes beyond prejudicial discrimination and bigotry. It arises from outlooks, stereotypes, and fears of which we are vastly unaware.

~Judge Clyde Cahill~

OVERVIEWS:


RESEARCH:


Class discussion: Assess the current state of research on courtroom discrimination based on gender, race or class in the United States. What are the strengths and weaknesses of this research? What do we know for sure about gender/race/class discrimination? How have our conclusions on these issues changed over time? What theoretical perspectives (if any) have been useful for understanding discrimination in sentencing? What needs to be done next in terms of research on discrimination in sentencing? What are some key challenges to doing this research? What are the key policy issues? How are disparity and discrimination qualitatively different?

Additional Readings:

Daly, Kathleen and Rebecca Bordt. 1995; Sex Effects and Sentencing: An analysis of the statistical Literature; Justice Quarterly: Vol. 12, pg. 141.


WEEK 10: DEPARTURES AND CONTEXTUAL VARIATIONS IN PUNISHMENT (3/30)

The evidence is conclusive that judges of widely varying attitudes on sentencing ... mete out widely divergent sentences...

~Marvin Frankel~

GUIDELINES DEPARTURES


CONTEXTUAL DISPARITY


Class discussion: Assess the state of research on departures and contextual disparity in sentencing. What are its strengths and weaknesses? What do we know for sure about disparities in departures and across contexts? What theoretical perspectives have been useful for understanding these sources of sentencing disparity? What needs to be done next in terms of research in these two areas? What are some of the key challenges to conducting this research? What are the key policy issues and how effective are current U.S. sentencing policies in addressing each of these contemporary social problems?

Additional Readings:
WEEK 11:  MANDATORY PENALTIES AND THREE STRIKE LAWS (4/6)

Inflexible rules in fact considerably increase the scope for arbitrariness of decision. ~Jeremy Bentham~

MANDATORY MINIMUM SENTENCING


THREE-STRIKES LAWS


In Class Movie: Moore. 1999. The Legacy: Murder and Media, Politics and Prison

Class discussion: Assess the current state of research on mandatory penalties (including three strikes laws) in the United States. What are the strengths and weaknesses of this research? What do we know for sure about mandatory penalties and their effect on criminal justice decision making in the United States? What theoretical perspectives (if any) have been useful for understanding mandatory penalties and their role in the US criminal justice system? What needs to be done next in terms of research on mandatory penalties? What are some of the key challenges to doing this research? What are the key policy issues? Should mandatory penalties be abolished? Why or why not?

Additional Readings:
WEEK 12: INTERESTING AND INNOVATIVE APPROACHES TO SENTENCING RESEARCH (4/13)

NO DISCUSSION (MEET AT GOLF COURSE)

There are notable conceptual and methodological problems inherent in the modal sentencing research strategy that limit its overall utility.

~Eric Baumer~

RACIAL DISPARITY


ADDITIONAL RESEARCH OF INTEREST


Each student should find 1 additional “new and innovative” study to share and discuss with the rest of the class...

Class discussion: Assess the current state of sentencing research in terms of the theoretical, conceptual and methodological advances that have been made in the past two to three decades. Where has the most progress been made? Where has the least? What are the most important issues that need to be addressed by sentencing scholars in coming decades? What are the major hurdles to accomplishing these goals and how might they be overcome?

Additional Readings:
WEEK 13: RESTORATIVE JUSTICE AND ALTERNATIVE SENTENCES (4/20)

Intermediate sanctions are the greatest challenge to the empirical study of sentencing.
~Charles Ostrum~

Insanity is doing the same thing over and over again and expecting different results.
~Anonymous~

ALTERNATIVE SANCTIONS


PROBLEM SOLVING COURTS AND RESTORATIVE JUSTICE


Class discussion: Assess the current state of research on alternatives to incarceration in the United States. What are the strengths and weaknesses of this research? What do we know for sure about sentencing alternatives and restorative justice approaches to punishment? What needs to be done next in terms of research in these areas? What are some of the key challenges to doing research on intermediate sanctions and restorative justice? What are the key policy issues with regard to the role that prison diversion plays in the US criminal justice system? Should the role of intermediate sanctions be increased or reduced in the US system? Is it feasible for the justice system to be based on restorative justice? Is this a promising alternative?

Additional Readings:


**Week 14:** SENTENCING AND CORRECTIONS (4/27)

The reason to support the death penalty is because it saves other peoples lives. It's the only reason to be for it.  

~George W. Bush~

I have inquired for...studies that might show that the death penalty is a deterrent, and I have not seen any research that would substantiate that point.  

~Janet Reno~

**ASSESSING PUNISHMENTS**


**DEATH PENALTY**


**Class discussion:** Assess the state of research on the effectiveness of different philosophies of punishment. How have philosophies of punishment changed in recent decades and what are promising directions for the future? How effective is the death penalty as a sentencing option? Should the death penalty be abolished? What are the various collateral consequences that accompany felony conviction and what should be done to address them? What are next steps that need to be taken to advance research on punishment? What directions for are most promising?

**Additional Readings:**

**Week 15:** FINAL IN-CLASS EXAMINATION (5/4)