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COLUMBIA UNIVERSITY

IN THE CITY OF NEW YORK

ABOLITION: A SOCIAL JUSTICE PRACTICUM

ALEXIS J. HOAG AND BERNARD E. HARCOURT

Fall 2019

LAW L8419
CPLS W3980

3 CREDITS

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Course times: **MONDAY 4:20 – 7:10 pm**
Course location: TBD

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COURSE DESCRIPTION

This course will explore the social justice road to punitive abolition—to the abolition of capital punishment and the dominant punitive punishment paradigm in the United States. It will investigate how abolition of the death penalty might be achieved in this country, but also what it might mean to imagine abolition in the context of policing, of the prison, and also of punishment more broadly.

The United States incarcerates more of its own than any other country in the world and than any other civilization in history. With over 2,600 inmates on death row, 2.2 million people behind bars, another 5 million people on probation or parole, and over 70 million people in the FBI's criminal record database, this country now operates a criminal justice system of unparalleled punitiveness. The burden of this system has fallen predominantly on poor communities of color. In fact, in some striking

ways, this country's criminal justice system and reliance on mass incarceration have replaced chattel slavery. As Bryan Stevenson explains, "Slavery didn't end in 1865. It just evolved."

This course will explore how the country can move from a punitive paradigm to a new paradigm that favors instead education and well-being. It will investigate: (1) how to chart a social justice path toward abolition of the death penalty; (2) how to reimagine the criminal justice system so that it is no longer based on a punitive paradigm; and (3) what it would mean to imagine abolition more broadly of policing and punishment.

This course will be limited to about 18 students—12 law students and 6 undergraduate students. Law students will register for this course under LAW L8419; undergraduates will register for this course under CPLS W3980. Students will work on research projects together on mixed teams of law and undergraduate students. Research projects will be in the areas of capital punishment, criminal defense, parole, jury representation, and such. Projects will include, for instance:

- Researching and charting the most likely path to abolition of the death penalty in the USA, figuring out what the next strategy should be and how it could be implemented;
- Investigating the process of parole revocation and starting a parole revocation hearing "Trial Watch" in New York City;
- Researching and preparing a plan to challenge jury venire in Louisiana criminal cases based on a violation of a defendant's Sixth Amendment "fair cross section" right;
- Providing legal research for a post-conviction federal death penalty or state post-conviction challenge, or related to parole requests and hearings;

This practicum will be co-taught by Alexis J. Hoag and Bernard E. Harcourt.

Alexis J. Hoag is Practitioner in Residence at the Eric H. Holder Jr. Initiative on Civil and Political Rights at Columbia University. Before joining Columbia, Alexis Hoag was senior counsel at the NAACP Legal Defense and Educational Fund, Inc. (LDF), where she represents clients in both criminal and civil cases, focusing primarily on capital post-conviction proceedings. Prior to LDF, Alexis served eight years as an Assistant Federal Public Defender in the Capital Habeas Unit of the Federal Public Defender for the Middle District of Tennessee in Nashville, where she represented death sentenced individuals in their federal habeas and related state court proceedings.

Bernard E. Harcourt is Professor of Law and Political Science at Columbia University and the Executive Director of the Eric H. Holder Jr. Initiative on Civil and Political Rights at Columbia University. He has represented individuals sentenced to death and to life imprisonment without parole in Alabama for thirty years.

Law students and undergraduate students in this course will work with Hoag and Harcourt on research projects regarding abolition; regarding capital and non-capital cases; regarding parole hearings and policy; and on other areas including challenging jury pool composition, eradicating racial bias in sentencing, and narrowing the class of individuals eligible for the death penalty.

The course will meet for a three-hour working seminar every week, and then students will work separately on projects with Hoag and Harcourt. Student can be expected to work intensely on projects for at least three hours for every hour in seminar. Law students will be paired with undergraduates on projects.

We will be inviting numerous guests to discuss the path to abolition with us in the course and to complement the readings. We will also try to organize a field trip to Montgomery, Alabama, to visit the Legacy Museum and The National Memorial for Peace and Justice.

For the undergraduates, this course is intended to build on [core competencies](#) for graduation, including: civic individual responsibility; written communication; community engagement and inclusion; creativity and innovation; critical thinking; global awareness; knowledge; research; and teamwork and collaboration. This course will offer an eye-opening and mind-flexing experience for undergraduates and law students that will directly engage issues of race, class, inequality, law, history, philosophy, and justice. Plus, students will be introduced to leading social justice advocates.

COURSE PREREQUISITES

All students who wish to take the course should send a paragraph describing their background and reason for wanting to take the course and their CV. Please send this information to Ghislaine Pagès at gmp2142@columbia.edu.

COURSE REQUIREMENTS

Students will be required to read the assigned materials, attend the weekly seminar, and participate in seminar discussion.

Students will be required to work on research projects. Those will be graded first on the basis of a proposal submitted on week four; and then on the basis of the completed research project submitted at the end of the course. Ongoing feedback and discussion with the instructors will provide ongoing guidance for successful research.

Students will be required to submit a final written product that may be a research paper or policy brief. The work product is expected to be 4,000-5,000 words.

During the semester, the students will be asked to submit in consultation with the instructors a document detailing their research topic and describing what they will be working on during the semester; and at the end of the semester, submit the final draft of their research or policy paper. The final grade for the course will be determined in the following manner:

- Seminar Attendance and Participation (20%)
- Project Description (20%)
- Final research or policy paper (60%)

STATEMENT REGARDING ACADEMIC INTEGRITY

Each student in this course is expected to abide by the Columbia University Code of Academic Integrity. Any work submitted by a student in this course for academic credit must be the student's own work. The complete Faculty Statement on Academic Integrity can be found at: <https://www.college.columbia.edu/academics/integrity-statement> and the Columbia University Undergraduate Guide to Academic Integrity can be found here: <https://www.college.columbia.edu/academics/academicintegrity>

Any violation of the Academic Code of Integrity will be forwarded to the Office of Judicial Affairs and Community Standards and will result in a failing grade for the course.

STATEMENT REGARDING DISABILITY ACCOMMODATIONS

This seminar will comply fully with the language and spirit of the Faculty Statement on Disability Accommodation that is here: <http://www.college.columbia.edu/rightsandresponsibilities>.

If you are a student with a disability and have a DS-certified Accommodation Letter, please confirm your accommodation needs with me. If you believe that you might have a disability that requires accommodation, you should contact [Disability Services](#) at 212-854-2388 and disability@columbia.edu.

LAPTOP POLICY

No laptops will be allowed in the classroom unless you have accommodations to use a laptop or unless we are working on a project that requires laptops.

SYLLABUS

Week #1: Introduction to Abolition

In our first seminar, we will introduce the topic of abolition and the various projects that we will be working on this semester. We will assign students to research projects and begin to chart speakers to invite to class, targeted readings for the sessions, and chart out the research plans.

Readings:

Allegra McLeod, "Prison Abolition and Grounded Justice," 62 UCLA L. Rev. 1156 (2015)

Amna Akbar, "Towards a Radical Imagination of Law," 93 NYU L. Rev. 405 (2018)

Week #2: The Road to Abolition of the Death Penalty

Readings:

The Road to Abolition ed. Charles Ogletree and Austin Sarat New York: NYU Press, 2008.

John D. Bressler, Chapter 7, "Road to Abolition," *Cruel and Unusual: The American Death Penalty and the Founders' Eighth Amendment* (Northeastern University Press, 2012), 265-338

Week #3: Supreme Court Directions Regarding Abolition of the Death Penalty

Readings:

Glossip v. Gross, 135 S.Ct. 2726, 2755-2797 (2014) (J. Breyer, dissent)

Washington v. Gregory, No. 88086-7 (Oct. 11, 2018)

Week #4: The Road to Abolition in Pennsylvania

Guest:

Cassandra Stubbs, ACLU, Capital Punishment Project Director

Readings:

Cox and Marinelli v. Pennsylvania, Nos. 102 EM 2018 & 103 EM 2018, Petitioner's Brief (Feb. 22, 2019)

NAACP LDF Amicus Brief, *Cox and Marinelli v. Pennsylvania*, (Feb. 22, 2019)

***** Submit Research or Policy Topic Description Essay in class on Week 4 *****

Note: Essay should be 1,000 words long and contain two main sections: a first section summarizing the topic of your research or policy analysis, followed by a second section describing in more detail how you are going to realize the project. We will give directions early in the semester. This assignment will be graded and returned to you promptly, as well as feedback on your seminar participation.

Week #5: Prison Abolition

Guest:

Professor Ruth Wilson Gilmore, CUNY

Readings:

NYT Magazine article, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, April 17, 2019, available [here](#).

Angela Y. Davis, *Are Prisons Obsolete?* New York: Seven Stories Press, 2003 (selections)

Optional: “A World Without Walls” Abolitionist Toolkit, *Critical Resistance*, [available here](#).

Week #6: Police Abolition: Successfully Challenging the NYPD’s Racially Discriminatory Stop & Frisk Policy

Guests:

Darius Charney, Center for Constitutional Rights, Senior Staff Attorney, lead counsel on *Floyd v. City of New York*; and Professor Jeffrey Fagan, Columbia University, lead expert witness on *Floyd* case.

Readings:

Amna Akbar, “An Abolitionist Horizon for Police Reform,” working draft, July 19, 2019
Floyd, Davis, and Ligon v. City of New York, NYC Joint Remedial Process (excerpts), May 16, 2018, [available here](#).

Week #7: Judicial Lawmaking & Litigation Campaigns

Guest:

Elaine Jones, LDF President and Director-Counsel, 1993-2004, counsel in *Furman v. Georgia*

Readings:

Jack Greenberg, CC ’45, CLS ’48, Chapter 32, NORI and Criminal Justice, *Crusaders in the Courts: How a dedicated band of lawyers fought for the Civil Rights Revolution* (Basic Books, 1994), 440-460

Furman v. Georgia, 408 U.S. 238 (1972) (selections)

Week #8: The Road to Reconciliation – Possible Field Trip to Montgomery, Alabama

Field Trip:

The Legacy Museum and The National Memorial for Peace and Justice, Montgomery, AL

Readings:

Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror*, 3d ed., [available here](#).

Sherrilyn A. Ifill, Chapter 9, Reconciliation in the Twenty-First Century, *On the Courthouse Lawn: Confronting the Legacy of Lynching in the Twenty-First Century* (Beacon Press, 2018), tenth-anniversary edition, 173-176

Week #9: Race and Justice

Guest:

Vincent Sutherland, NYU Law Center on Race, Inequality, and the Law Executive Director

Readings:

Michelle Alexander, Chapter 3, The Color of Justice, *The New Jim Crow* (The New Press, 2012), rev. ed., 97-139

Sherrilyn Ifill, Loretta Lynch, Bryan Stevenson, Anthony C. Thompson, *A Perilous Path: Talking Race, Inequality, and the Law* (The New Press, 2018)

Week #10: Poverty and Class

Guest:

Stephen Bright, Southern Center for Human Rights Director, argued *Foster v. Chatman* and *Snyder v. Louisiana*

Readings:

Stephen B. Bright, "Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer," 103 *Yale Law Journal* 1835 (1994)

Carol S. Steiker and Jordan M. Steiker, *Sober Second Thoughts: Reflections on Two Decades of Constitutional Regulation of Capital Punishment*, 109 *Harvard L. Rev.* 355 (1995) (especially pages 357-360 and 426-438)

Week #11: Criminalizing Blackness

Guest:

Christina Swarns, Office of the Appellate Defender, Attorney-in-Charge, argued *Buck v. Davis*

Readings:

Buck v. Davis, 137 S.Ct. 759 (2017)

Jennifer Eberhardt, et. al., *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 *Psychol. Sci.* 383 (2006)

Week #12: Fear of Too Much Justice: *McCleskey* and the North Carolina Racial Justice Act

Guest:

Jin Hee Lee, CLS '00, NAACP LDF Senior Deputy Legal Director, argued *NC v. Burke*

Readings:

McCleskey v. Kemp, 481 US 279 (1987)

NAACP LDF Amicus Brief, *North Carolina v. Burke*, No. 181A93-4 (Feb. 15, 2019)

Week #13: Restorative Justice: Defense Victim Outreach

Guest: Mickell “Kelly” Branham

Readings:

Mickell Branham and Richard Burr, *Understanding Defense-Initiated Victim Outreach and Why it is Essential in Defending a Capital Client*, 36 Hofstra L. Rev. 1019 (2008)

Week #14: The Undercommons and Abolition

Readings:

Stefano Harney and Fred Moten. *The Undercommons: Fugitive Planning and Black Study*. Minor Compositions, 2013, chapter 0 to 4.

Allegra McLeod, “Law, Critique, and the Undercommons,” in *A Time for Critique*, eds. Didier Fassin and Bernard E. Harcourt (Columbia University Press, 2019)

***** Final Submissions, Research Papers or Policy Proposals due (4,000 – 5,000 words) on December 13 at 5:00 PM *****