

University of Washington
Professor Smadar Ben-Natan
SPRING 2021
LSJ 490/JSIS 478A
MW 3:30 pm - 5:20 pm

COMPARATIVE CARCERAL STUDIES – THE US AND ISRAEL

SYLLABUS

This course will address key issues in contemporary correctional and criminal justice policy through a comparative perspective on Israel and the United States. Although Israeli legal culture seems heavily influenced by the United States, the prison system was founded on European traditions, and legal professionals developed a complex and often critical attitude towards American punitive trends. We will explore the history of the Israeli and US correctional systems and current trends through issues such as capital punishment, retributivism and rehabilitation, prison privatization, overcrowding and de-carceration, extraterritorial detention facilities, and immigration detention. These issues provide a glance into differences in perceptions of crime, risk, personal and national security, and the role of the state.

This course will be taught online, synchronously via Zoom. Presence and participation is required and amounts to 15% of the final grade. If you are unable to attend a session please email me in advance to explain, one unexcused absence is permitted. It is understandable that COVID-19 and remote learning place unusual burdens on students, I will take that into account to accommodate justifiable needs as they arise and brought to my attention. **Students who experience COVID-19 related difficulties with synchronous learning should address me to make special accommodations.**

Class Hours: Monday, Wednesday 3:30 – 5:20 PM PST, 10 minutes break between 4:20-4:30.

Office Hours: Thursday, 4:00- 4:30 15 mins individual meeting (sign up in advance), 4:30-5:00 (open collective meeting, no sign up required).

Assignments and Evaluation:

15% - Presence and participation in online sessions.

20% - Class presentation: each student will present one reading item from the “further reading” section in class, according to a sign-up sheet to be filled by the end of the first week of class.

25% - Paper assignment: one essay question

40% - Final Paper on a topic of your choice

Instructions on Course Readings

- Students are expected to **read all readings in preparation for class**. Classes will not repeat the reading material but base discussions on that material, where students are expected to participate in an informed manner. It is advised to take short notes of the main points of reading materials and possible questions you may have, while reading or immediately after. This will help you remember the material and participate in class discussions.
- Reading in the “further reading” section is optional, these materials will be helpful in choosing the topic for your final paper.
- Documentary films are part of the course syllabus. We will watch them in part or in full in class, unless otherwise instructed.

Presentations in class

- Each student will present one reading item, as indicated in the sign-up sheet. Presentations should be about 15 minutes long. It is suggested that you start reading and preparing for your presentation at least a week prior to your presentation date, so you can still take advantage of office hours to ask clarification questions on the material.
- **A good presentation should include the following brief sections:** topic and context of the piece; the question that is being explored; the factual or empirical component or argument, including the sources or evidence that support it; the argument of the author; their conclusions; how does it relate to the main reading of the same class (complementing, countering, criticizing, and in what way); your own reaction. Reading items vary in content, genre and context, so some components might not be relevant and the presentation should be adjusted accordingly. Your reaction can be anything of the following examples: why this was interesting and what have you learned; how it changes or reinforces your preconception of the topic; How does it contribute to the comparative study of US/Israel, or to one of them; criticisms you might have; how would you apply these arguments to a real-world situation, controversy, of different field of interest; how does this piece relate to or reflect on other topics that we already explored.
- **Please do not prepare visual presentations (PPT etc.) for your class presentation**

Mid-Term Paper

Will be given after 10 classes (at the end of course part II) and include as essay prompt on the materials learned so far. Up to 1,500 words long.

Final Paper

Students should choose one topic discussed in the class, and submit a paper of up to 3,000 words. The paper will introduce a research question, different perspectives offered by the literature on the topic (secondary sources), analyzing at least one primary source that goes beyond what we have analyzed in class, and conclusion. The analysis should include at least one comparative argument.

Paper proposals, up to one page, are due before class on 5/27. A proposal should include a research question and possible answers; three secondary sources cited; and primary source/s cited. I will provide feedback on the proposals. Final papers are due 6/10.

Zoom Participation Guidelines

1. **Private space** - Please do your best to have a private and quiet space during classes. We will be understanding if that is not possible or if there are inevitable interferences, but it is better to avoid them for your own learning and focus.
2. **Name** - Please make sure that your zoom name reflects how you would like us to address you; if you would like, add to your zoom name your choice of pronouns.
3. **Mute** - Please mute your mic (lower-left corner of your screen) whenever you are not speaking. This helps avoid background noise and distractions for others. If we find that self-muting is not effective, we will take control of the mute function.
4. **Video presence** - We strongly encourage you to have your video on as much as possible. Please keep off-camera episodes as short as possible only when necessary. Seeing each-other's faces is extremely helpful to the learning process and engaging with others and the learning material. Seeing your faces also helps us be engaged, assess your experience, and make the situation more humane and pleasant. If you generally feel uncomfortable with video presence for any reason, please write me an email explaining yourself, so we can make sure you are feeling well through class.
5. **Bandwidth** - Closing any other applications on your computer to keep the video optimally functioning and your focus on the class. For these two hours, we ask that you avoid engaging simultaneously with social media, emails, and so on.
6. **Permission to speak** - If you want to speak or ask a question, please indicate by raising your hand physically or using the "raise hand" function under "participants".
7. **Chat** - You can also ask questions and make comments during class or using the "Chat" feature (also on the bottom and center of your screen), they will be answered after the next break, as I am not able to follow the chat during lecture.
8. **After the end of class** – I will stay on the Zoom chat for another 10 minutes to answer students' questions.
9. **Leaving at the end** - Please remember to "leave the meeting" when the session is finished.
10. **Mistakes are inevitable** - Please recognize that we are all still figuring out the manners of the virtual world. **Kindness matters more than ever now.**

CLASS TOPICS AND READING

*Readings are subject to minor adjustments during the course

Recommended Books (Shortlist):

David Garland, Punishment and Modern Society (2001)

Robert R. Friedmann (ed), Crime and Criminal Justice in Israel: Assessing the Knowledge Base toward the Twenty-First Century (1998)

Marie Gottschalk, The Prison and the Gallows: The Politics of Mass Incarceration in America (2006)

Michelle Alexander, The New Jim Crow, Mass Incarceration in the Age of Colorblindness (2012)

Films included in class:

Amit Goren, 2 Open, 21 Closed: <https://www.youtube.com/watch?v=m4uS5zl3eC0&t=60s>

Eva DuVernay, The 13th: <https://www.youtube.com/watch?v=krfcq5pF8u8&t=6s>

Avi Mograbi, Between Fences (2016): https://www.youtube.com/watch?v=x_76ATOqkrl&t=1971s

Class 1: introduction: Carceral, Comparative, Israel and the US: How to Connect the Dots?

- Michelle Brown, The Culture of Punishment: Prison, Society, and Spectacle, Introduction: Notes on Becoming a Penal Spectator, p. 1-12 (2009)

Part I – History, Society, Law, and the Challenges of Comparative Work

Class 2: Israeli Histories of Incarceration

- Gavriel Shavitt, The Israeli Prison System, 275-277 (in: Robert R. Friedmann (ed), Crime and Criminal Justice in Israel, 1998)
- Nomi Levenkron, "Work is the Path to Rehabilitation": The Shata Prison Revolt, 1958 (Forthcoming)

Further Reading:

- Gershon Shafir and Yoav Peled, Being Israeli: The Dynamics of Multiple Citizenship, Introduction, p. 1-4, 16-34.

Class 3: American Histories of Incarceration

- Marie Gottschalk, The Prison and the Gallows: The Politics of Mass Incarceration in America (Cambridge University Press, 2006), Chapter 3: Unlocking the past (41-76).

Further Reading:

- Katherine Beckett, Law and Order in Contemporary American Politics, in: Making Crime Pay, 3-13 (1997).
- Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, Chapter 1: The Rebirth of Cast 20-58 (2012).

Class 4: On Comparing

- Charles Ogletree and Yoav Sapir, Keeping Gideon's Promise: A Comparison of the American and Israeli Public Defender's Experience, 29 NYU Review of Law and Social Change, 203-236 (2004)

Further Reading:

- Gad J. Besinger, Corrections in Israel and the United States: A Comparative Analysis, International Journal of Comparative and Applied Criminal Justice, 8:1-2, 55-62 (1984).
- Pnina Lahav, American Moment(s): When, How, and Why Did Israeli Law Faculties Come to Resemble Elite US law schools? Theoretical Inquiries in Law, 10(2), 653-698 (2009).
- Hadar Aviram, Bad Role Models? American Influence on Israeli Criminal Justice Policy (2019): https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3404281
- Kenneth Mann and David Weiner, Creating a Public Defender System in the Shadow of the Israeli - Palestinian Conflict, 48 N. Y. L. Sch. L. REV. 91 (2003).

Part II - Punishment

Class 5: Theories of Punishment

- Robert Cover, Violence and the Word, 95 YALE L.J. 1601-1630 (1986).

Further Reading:

- David Garland, Punishment and Modern Society, 3-22 (1993).

Class 6: Death Penalty

- Ron Dudai, Restraint, Reaction and Penal Fantasies: Notes on the Death Penalty in Israel 1967-2016, 43(3) Law & Social Inquiry, 862-888 (2018).

Further Reading:

- Shai Lavi, Imagining the Death Penalty in Israel: Punishment, Violence, Vengeance, and Revenge (in: Austin Sarat and Christian Boulanger (eds), The Cultural Lives of Capital Punishment: Comparative Perspective), 219-230, (2005).
- Gershom Scholem, On Sentencing Eichmann to Death, Journal of International Criminal Justice 4, 859-861 (2006).

Class 7: Death Penalty

- Austin Sarat, Capital Punishment as a Fact of Legal, Political and Cultural Life: An introduction *in* The Killing State: Capital Punishment in Law, Politics and Culture 3-10 (Austin Sarat ed.) (1999)
- Hadar Aviram, Cheap on Crime: Recession-Era Politics and the Transformation of American Punishment, Chapter 4: The New Correctional Discourse of Scarcity: From Ideals to Money on Death Row, 58-77 (2015).

Class 8: Sentencing

- Arye Rattner and Gideon Fishman, The Criminal Justice System in Israel: A Sociohistorical Perspective, *Journal of Quantitative Criminology* 13(1) 1-6 (1997).
- Gideon Fishman and Arye Rattner, The Israeli Criminal Justice System in Action: Is Justice Administered Differently? *Journal of Quantitative Criminology* 13(1) 7-28 (1997).

Further Reading:

- Naomi Murakawa and Katherine Beckett, The Penology of Racial Innocence: The Erasure of Racism in the Study and Practice of Punishment, 44 *Law & Society Review*, 695-730 (2010).
- Oren Gazal-Ayal and Raanan Sulitzeanu-Kenan, Let My People Go: Ethnic In-Group Bias in Judicial Decisions - Evidence from a Randomized Natural Experiment, *Journal of Empirical Legal Studies* Volume 7, Issue 3, 403–428 (2010).
- Oren Gazal-Ayal, Hagit Turjeman & Gideon Fishman, Do Sentencing Guidelines Increase Prosecutorial Power: An Empirical Study, 76 *LAW & CONTEMP. PROBS.* 131 (2013).

Class 9: Individual Treatment and Judicial Review of Prison Conditions

- **Film:** Amit Goren, 6 Open, 21 Closed
- Israeli Supreme Court, HCJ 355/79, Katlan v. Prison Service (1980)
- Jordan B. Cherrick, "Constitutional" Adjudication in Israel? The High Court Speaks Out for Prisoners' Rights, *The International and Comparative Law Quarterly*, Vol. 30, No. 4, pp. 835-861 (1981)

Further Reading:

- Leon Sheleff, Punishment, Prisoners' Rights, and Pardons, in: Robert R. Friedmann (ed), *Crime and Criminal Justice in Israel: Assessing the Knowledge Base toward the Twenty-First Century* 255-263 (1998)
- Israeli Supreme Court, HCJ 2245/06 Dobrin v. Israel Prison Service (2006)

Class 10: Diversion and Decarceration

- Tali Gal and Hadar Dancig-Rosenberg, "I Am Starting to Believe in the Word 'Justice'": Lessons from an Ethnographic Study on Community Courts, 68 *The American Journal of Comparative Law*, 376-411 (2020).

Further Reading:

- Katherine Beckett and Naomi Murakawa, Mapping the Shadow Carceral State: Toward an Institutionally Capacious Approach to Punishment, 16(2) *Theoretical Criminology* 221-244 (2012).

Part III - Social Control

Class 11: Penology between Crime and Security

- Malcolm Feely and Jonathan Simon, The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications, 30 Criminology 449 (1992).
- Malcolm Feely and Jonathan Simon, Actuarial Justice, in: Patt O'Malley, Crime and the Risk Society, Conclusion: Some Thoughts on Crime and Civil War from the *Intifada* to South Central Los Angeles, 395-398, (1998).

Further Reading:

- David Garland, The Culture of Control, Chapter 1: A History of the Present, 1-26 (2001).

Class 12: Rates of Incarceration

- Alina Korn, Rates of Incarceration and Main Trends in Israeli Prisons, 3(1) Criminal Justice 29-55 (2003).

Further Reading:

- Elia Zureik, Crime, Justice, and Underdevelopment: The Palestinians Under Israeli Control, 20 International Journal of Middle Eastern Studies 411-442 (1998)
- Alina Korn, Crime and Legal Control: The Israeli Arab Population during the Military Government Period (1948-66), 40 British Journal of Criminology 574-593 (2000).

Class 13: Mass Incarceration

- Film: Eva DuVernay, The 13th (2016):
<https://www.youtube.com/watch?v=krfcq5pF8u8&t=6s>
- Michelle Alexander, The New Jim Crow, Chapter 5: The New Jim Crow, 178-220 (2012).

Class 14: Mass Incarceration

- David Garland, The Meaning of Mass Incarceration, in: Mass Imprisonment: Social Causes and Consequences, 9-11.
- Marc Mauer, The Causes and Consequences of Prison Growth in the United States, in: Mass Imprisonment: Social Causes and Consequences, 12-22.

Class 15: Prison Privatization

- HCJ 2605/05 Academic Center of Law and Business, Human Rights Division v. Minister of Finance (2009) (Chief Justice Beinisch, p. 34-105).

Further Reading:

- Malcolm Feeley, The Unconvincing Case Against Private Prisons, 89 Indiana Law Journal 1401 (2014)

Class 16: Prison Overcrowding

- US Supreme Court, *Brown v. Plata*, 131 S.Ct. 1910 (2011) (Justice Kennedy, 1-52, Justice Scalia 1-16)

Further Reading:

- Jonathan Simon, *The New Overcrowding*, *Connecticut Law Review* 48, no. 4 (May 2016): 1191-1216

Class 17: Prison Overcrowding

- HCJ 1892/14 *Association for Civil Rights in Israel v. Minister of Public Security* (2017)

Further Reading:

- Hillel Sommer & Guy I. Seidman, *Courts, Prisons, Budgets, and Human Dignity: An Israeli Perspective*, 8 L. J. Soc. Just. 135 (2017).

Class 18 – Military and Extraterritorial Imprisonment

- Lisa Hajjar, *International Humanitarian Law and “Wars on Terror”: A Comparative Analysis of Israeli and American Doctrines and Policies*
- *Boumediene v. Bush*, 128 S. Ct 2229 (2008) (excerpts)
- *Boumediene v. Bush*, Brief of Amici Curiae Specialists in Israeli Military Law and Constitutional Law in Support of Petitioners (excerpts):
<https://ccrjustice.org/sites/default/files/assets/Brief%20of%20Amici%20Curiae%20Specialists%20in%20Israeli%20Military%20Law%20and%20Constitutional%20Law%20in%20Support%20of%20Petitioners.pdf>

Further Reading:

- James Jr. Forman, *Exporting Harshness: How the War on Crime Helped Make the War on Terror Possible*, 33 N.Y.U. Rev. L. & Soc. Change 331, 374 (2009).

Class 19: Immigration Detention

- Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006) (excerpts).
- Rottem Rosenberg Rubins, *Crimmigration as Population Management in the “Control Society”: Lessons from the Detention of Asylum Seekers in Israel*, 22(3) *New Criminal Law Review* 236-300 (2019) (excerpts).
- Film (excerpt): Avi Mograbi, *Between Fences* (2016)
<https://www.avimograbi.org/between-fences>

Further Reading:

- TED talk: César Cuauhtémoc García Hernández
https://www.ted.com/talks/cesar_cuauhtemoc_garcia_hernandez_why_immigration_prisons_aren_t_the_answer?utm_campaign=tedsread&utm_medium=referral&utm_source=tedcomshare

- Maria João Guia, Maartje van der Woude, Joanne van der Leun (eds), Social Control and Justice: Crimmigration in the Age of Fear (2013)
https://www.researchgate.net/publication/281177201_Social_Control_and_Justice_Crimmigration_in_the_Age_of_Fear

Class 20: Prisoners Movements

- Guest Speaker: Professor Dan Berger, in conversation with Smadar Ben-Natan
- Dan Berger, Captive Nation: Black Prison Organizing in the Civil Rights Era, Chapter 4: The Pedagogy of the Prison, 139-176 (2014).

Further Reading:

- Esmail Nashif, Palestinian Political Prisoners: Identity and Community, Chapter 4: Structures of a Revolutionary Pedagogy, 72-98 (2008).
- Maya Rosenfeld, The Centrality of the Palestinian Prisoners' Movement to the Palestinian Struggle against the Israeli Occupation: A Historical Perspective, in: Threat: Palestinian Political Prisoners in Israel, 3-24 (2011).
- Lena Meari, Reading Che in Colonized Palestine, NACLA Report on the Americas, 50:1, 49-55 (2018).

Course Ends