

Honors Seminar I (Clemency and Pardons): Fall 2019

George Mason University
CRIM 491.001, Enterprise Hall #274
Thursdays, 10:30 am to 11:45 am
Online/classroom hybrid
Instructor: Dr. Andrew Novak

Course Description

Virtually every legal system in the world has a mechanism for executive clemency, allowing an executive authority to pardon, commute sentences, remit fines, or relieve punishments. These mechanisms vary widely among the countries of the world and even among U.S. states. In some jurisdictions, the executive alone has the power to make the decisions; in others, he or she must consult with a pardon or parole board; in some, the executive is bound by the recommendation of a pardon or parole board; and in a handful, the board alone makes the decision. Why do some jurisdictions grant clemency at extremely high rates? Yet, in other jurisdictions, clemency is virtually nonexistent, even though the legal mechanisms may not vary all that much. At the core, however, is a basic philosophical conundrum: clemency may be subject to political misuse but also serves as a final safety valve in the event of wrongful convictions.

Research on clemency poses several methodological challenges, which we will explore further in this course. Foremost among them is that many jurisdictions do not publicly release complete clemency statistics, complicating the work of the comparative scholar. Even when the numbers of grants and denials are known, few jurisdictions release reasons for decisions, and applicants for clemency may not know why their petitions have been denied. This course will explore the outer boundaries of clemency, such as its relationship to political amnesties for serious human rights abuses, its role in DNA testing and the “innocence revolution,” and its contribution to the global decline of capital punishment and the rise of parole. The course will explore clemency from a variety of different disciplines. Readings will be historical, legal, comparative, philosophical, and/or political in nature.

About the Instructor

I am a term assistant professor of criminology, law, and society at George Mason University. My research is primarily international and comparative in nature, focusing on the death penalty, clemency, comparative constitutional law, and international criminal law. I have a Master of Science in African Politics from the London School of Oriental and African Studies, a Juris Doctor from Boston University, and a Ph.D. in law from Middlesex University in London. I am licensed to practice law in New York and Washington, DC.

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Office Hours

I am available Thursday afternoons, typically between 1:00 pm and 3:00 pm in my office, Enterprise 345 (across from the front desk in the criminology department).

Course Format and Grading

CRIM 491 (Fall) and CRIM 492 (Spring) are intended to be a year-long commitment. Your grade for each semester, however, is exclusively based on work completed during that semester. The grading structure will be the same for both semesters.

- **Weekly Online Quizzes (25% Fall and Spring):** Every week before class starts, you will need to take an online quiz based on the video lectures, readings, and any internet assignments. These quizzes are not timed and do not need to be completed in one sitting. There are a total of 12 quizzes per semester.
- **Country Profiles (25% Fall and Spring):** During both the fall and spring semesters, you will need to write TWO 2-page clemency profiles on two separate jurisdictions of your choice. These profiles should include a description of the constitutional provisions, clemency law or policy, news articles, and any relevant secondary sources. All students should choose different countries.
- **Citation Assignment (15% Fall) and Editing Assignment (15% Spring):** During the fall semester, you will have a mid-semester assignment in which you must properly cite a number of sources in different citation formats. During the spring semester, you will need to edit a document that contains errors at the midpoint of the semester. Instructions will be provided.
- **Detailed Outline (25% Fall) and Final, Publishable-Quality Paper (25% Spring):** The fall semester (CRIM 491) ends with a detailed outline for your final paper, which you will submit for feedback. Papers may be coauthored with me, done in a team or a group, or done individually. If you are writing a group or team paper, or coauthoring a paper with me, your outline should include a statement explaining what your individual contribution is to the project. The spring semester (CRIM 492) ends with the final, publishable-quality version of your final paper that you are *strongly encouraged* to submit for publication. If you want to write a group or team paper, or coauthor something with me, we should have a conversation early in the fall semester.
- **Class Participation (10%):** Your grade for class participation is based on how well you contribute to class discussion, offer constructive criticism, raise useful questions, and promote a learning environment.

If you know you are not returning for the spring semester, such as if you are graduating in December, you will have a modified course format. You will only write ONE country profile for 15% of your grade and you will turn in a *final paper*, not just a draft or an outline, by the end of the fall semester for 35% of your final grade. Unfortunately, you are not able to receive departmental honors unless you take both semesters of this class, but the honors seminar will appear on your transcript.

Minimum Attendance Policy

This course is an online hybrid, so most of the graded work will be completed at home, on your own time rather than in class. Class time is still important, since it is in class that we relate the

topics in the online lectures to one another. Nonetheless, the attendance requirement is a little softer than an ordinary in person class.

There are ELEVEN classes in addition to the introductory class, or twelve in total. You must attend **SIX** of these eleven, not including the introductory class, or your participation grade will be reduced by a flat 5-points. If you attend **EIGHT** of the eleven classes (not including the introductory class), I will drop your lowest quiz grade when I am calculating your quiz scores.

I consider this to be a lenient policy. Therefore, **I ONLY COUNT ATTENDANCES, NOT ABSENCES**. This course does not have “excused absences,” so I do not need doctor’s notes or information about family or other emergencies. If you have a *continuing* reason to be out of class over multiple weeks, please let me know, because we may be able to use web conferencing software so that you may join. This is only for emergencies.

Course Registration

The Criminology, Law and Society Honors Program is open to Criminology, Law and Society majors who show the ability and drive to benefit from intensive study in the honors seminars. There are no formal course or GPA requirements, although the most promising candidates will be students who have taken challenging courses at Mason and who have earned at least a 3.5 overall/cumulative GPA. Students must have permission to participate in this course and are expected to make a one-year commitment to participate in both CRIM 491 and CRIM 492. Students who successfully complete CRIM 491 and 492 with a GPA of 3.5 or above will receive the honors designation in Criminology, Law and Society when they graduate and the letters “RS” will appear on their academic transcripts indicating they have participated in a Research and Scholarship Intensive course. The six credits from these two courses can be applied towards the CRIM electives section of the major and can count toward the criminal justice or the law and society concentration.

Late Work Policy

If you are late taking a weekly quiz, please let me know as soon as possible and I will keep it open for up to 48 hours longer. All the quizzes must be completed before I grade them, because grading will reveal the answers. If you missed a quiz for which I have already released the answers, you may still take a portion of the quiz for partial credit. Typically, this will be only the short answer portion, not the objective portion.

If your country profiles, citation and editing assignments, or draft and final papers are late, it will be subject to a flat 5% grade reduction regardless of when it is submitted. I would rather read a good paper that’s a week late than a bad paper that’s a day late. However, if the assignments are not submitted by the time I calculate grades, you must ask me for an incomplete *before your final grade is submitted*. I cannot change a final grade unless I made a calculation error.

Finally, your research should not contain interviews or surveys that you have administered yourself without advance notice. This constitutes research on human subjects and requires ethical clearance from the university.

Reading Assignments and Schedule of Classes

Thursday, August 29

Topic: Introduction to the course

Workshop (in class): Introduction to final research project

Thursday, September 5

Topic: Common law prerogative of mercy

Required Reading (to be completed **before class**): Andrew Novak, "Pardon Power," Max Planck Encyclopedia of Comparative Constitutional Law

Excerpts from, Peter De Cruz, *Comparative Law in a Changing World*

Daniel Pascoe, "Sources and Methods," in *Last Chance for Life: Clemency in Southeast Asian Death Penalty Cases*

Online video (to be completed **before class**): Clemency in common law countries

Quiz (to be completed online **before class**)

Workshops (in class): Defining words; Introduction to the comparative method; Constitutional provisions of British overseas territories

Thursday, September 12

Topic: Clemency in civil law countries

Required Reading (to be completed **before class**): Rene Levy, "Pardons and Amnesties as Policy Instruments in Contemporary France," *Crime and Justice* (2007)

Todd Foglesong, "Pardons and Amnesties in Russia, Clarifying the Differences," *Federal Sentencing Reporter* (2001)

Online video (to be completed **before class**): Clemency in civil law countries

Quiz (to be completed online **before class**)

Workshops (in class): Introduction to academic publishing; Developing models of clemency

Thursday, September 19

Topic: Amnesty

Required Reading (to be completed **before class**): Excerpt from, Mark Freeman, *Necessary Evils: Amnesties and the Search for Justice*

Symposium, “Debating the Questions of Amnesty in South Africa”

Online video (to be completed **before class**): Amnesties and Pardons

Quiz (to be completed online **before class**)

Workshops (to be completed **in class**): Considering a graduate or law degree

Thursday, September 26

Topic: Death Penalty Clemency and International Law

Required Reading (to be completed **before class**): Selected legal provisions from treaties and other international law documents

Chapter by Chiara Sangiorgio from our edited book (on the right to seek clemency and the United Nations)

Online videos (to be completed **before class**): Death penalty clemency in international law

Quiz (to be completed online **before class**)

Workshop (**in class**): Introduction to online legal research

Thursday, October 3

CLASS CANCELLED (but online work is still due!)

Topic: Mercy committees (makeup)

Required Reading (to be completed **before 10:30 am**): Margaret Colgate Love, “Reinvigorating the Federal Pardon Power: What the President Can Learn from the States,” University of St. Thomas Law Journal

Selection of constitutional provisions

Online videos (to be completed **before 10:30 am**): Introduction to mercy committees

Quiz (to be completed online **before 10:30 am**)

Thursday, October 10

Topic: Mercy committees (conditions of service)

Required Reading (to be completed **before class**): Andrew Novak, “Comparative Mercy Committees” chapter draft

Burton G. Burton-Bradley, “The Power of Mercy,” *Australia and New Zealand Journal of Psychiatry* (1990)

Online videos (to be completed **before class**): Makeup and procedure of mercy committees

Quiz (to be completed online **before class**)

Workshops (in class): Writing in a simple and direct way; paragraph structure

Assignment Due: First Country Profile (2-3 pages)

Thursday, October 17

Topic: Judicial review and due process for clemency

Required Reading (to be completed **before class**): Andrew Novak, “Transparency and Comparative Executive Clemency: Global Lessons for Pardon Reform in the United States,” *University of Michigan Journal of Law Reform*

Online videos (to be completed **before class**): Judicial and administrative review of clemency

Quiz (to be completed online **before class**)

Workshops (in class): Choosing a journal and the peer review process

Thursday, October 24

Topic: Pardons at international criminal tribunals

Required Readings (to be completed **before class**): Barbara Hola and Joris van Wijk, “Life After Conviction at International Criminal Tribunals.”

Excerpts from statutes of international criminal tribunals.

Online videos (to be completed **before class**): Pardons at international criminal tribunals

Quiz (to be completed online **before class**)

Workshop (in class): Preparing your resume or CV for graduate school

Thursday, October 31

Topic: Posthumous Pardons

Required Reading (to be completed **before class**): Paolo Caroli, “The Thin Line between Transitional Justice and Memory Activism: The Case of the German and British ‘Pardons’ for Convicted Homosexuals,” *International Journal of Transitional Justice* (2018)

Simon Wessely, “The Life and Death of Private Harry Farr,” *RUSI Journal* (2006)

Online videos (to be completed **before class**): Posthumous pardons

Quiz (to be completed online **before class**)

Workshops (in class): Developing a healthy writing process

Assignment Due: Citation Assignment (Submit on Blackboard)

Thursday, November 7

Topic: Self-pardons

Required Reading (to be completed **before class**): Robert Nida and Rebecca Spiro, “The President as His Own Judge and Jury”

Selected constitutional provisions

Online videos (to be completed **before class**): Self-pardons

Quiz (to be completed online **before class**)

Workshops (in class): Legal citation format

Assignment Due: Preliminary Outline for Feedback (not graded)

Thursday, November 14

Topic: Islamic law and victim’s pardons

Required Reading (to be completed **before class**): Mutaz Qafisheh, “Restorative Justice in the Islamic Penal Law: A Contribution to the Global System,” *International Journal of Criminal Justice Sciences*

Online video (to be completed **before class**): Victim’s pardons in Islamic law

Quiz (to be completed online **before class**)

Workshop: Understanding cross-referencing, table of contents, and index features in Word; punctuation quiz

Assignment Due: Second Country Profile (2-3 pages)

Thursday, November 22

CLASS CANCELLED: No Work Due

Thursday, November 28

CLASS CANCELLED (Thanksgiving): No Work Due

Thursday, December 5

Topic: The Lonely Decision

Required Readings (to be completed **before class**): Robert Ehrlich, “Pardons and Commutations: Observations from the Front Lines”

George Ryan, “I Must Act” (speech on January 11, 2003)

Online video (to be completed **before class**): The lonely decision

Quiz (to be completed **before class**)

Workshops: Would you grant clemency in these cases? What factors would you look at? (Informal survey); preview of clemency procedure

Thursday, December 12

Assignment Due: Final, Detailed Outline or Draft is Due at 11:59 pm on Blackboard (graded assignment)

Paper Guidance

This course will end in a writing assignment. Your grade is based on **how you write**, so **it is essential** to focus on grammar, presentation, conciseness, and clarity of writing. I will provide more guidance in class. The papers **should cite an appropriate number of scholarly sources**. They are not reflection papers. I will track changes on Microsoft Word and upload the paper back to Blackboard. If you submit the paper in PDF form, I will change this to a Word document and grade it in Word.

Honor Code Policy

Available on the web at academicintegrity.gmu.edu. All graded course work must be done independently. You are bound by the George Mason University Honor Code. Violations will be referred to the University Honors Committee. You may collaborate with other students in studying and discussing course topics, but your written course work must be entirely your own.

ALL STUDENTS ARE ON NOTICE THAT I CONSIDER PAPER RECYCLING FROM ANOTHER COURSE TO BE A VIOLATION OF THE HONOR CODE. This is, in part,

because I use the Blackboard “Safe Assign” feature to detect plagiarism, and the Safe Assign feature cannot distinguish between another student’s paper and a paper that you have previously turned in to another class.

Disability Accommodations

If you have a documented learning disability or other condition that may affect academic performance you should (1) make sure this documentation is on file with Office for Disability Services (SUB I, Rm. 4205; 993-2474; <http://ods.gmu.edu>) to determine the accommodations you need; and (2) talk with me to discuss your accommodation needs. I want to be helpful.