LAW 624: Select Problems in Criminal Law: Restorative Justice

Fall 2011: Semester Hours: Two
Mondays, 1:25–3:15 p.m.
Room A-233
Instructor: Anne P. Wheeler, Adjunct Professor
Contact Info: E-mail: awheeler@law.ua.edu
Cell Phone (205) 410–0366

For it is part of our common political life, if anything is,
that justice is our critic, not our mirror, …
that we may always ask of some settled institutional scheme whether it is fair.

Ronald Dworkin, A Matter of Principle

A. Seminar Description

Western criminal jurisprudence has been critiqued as ignoring the needs of victims, emphasizing retributive at the expense of rehabilitative goals, and creating an economic burden through increasingly punitive sentencing patterns. This course offers a critical examination of restorative justice as an ancillary approach to holding criminal offenders accountable while also addressing victim and community needs. Students will become familiar with practices they may encounter or have the opportunity to initiate in their own work in the criminal justice system.

A major project, including a research/analysis paper and class presentation, is required in lieu of an exam.

B. Student Learning Outcomes

Upon successful completion of this seminar, you will be able to:

-- Explain the origins and evolution of restorative justice as a coherent paradigm for criminal justice.

-- Articulate core elements of restorative theory and explain how they compare and contrast with other theories of justice applied in western criminal justice systems (e.g. retributive, rehabilitative, communicative).

-- Describe core restorative practices and the contexts in which they appear to be most and least effective.

-- Identify and evaluate risks and limitations as well as potential benefits of restorative practices in various areas of the criminal justice system.

-- Have a basic familiarity with how restorative justice is being implemented in Alabama and in other states and what the experience of other countries suggests for restorative justice in the U.S.

-- Articulate and defend your own evaluation of how restorative theory and practice might or might not enhance your work in the future.

-- Discuss in detail the strengths and weaknesses of restorative justice in the particular context that is the focus of your chosen research project.

C. Description of Assignments and Due Dates

There is no exam. Grades will be based on class participation and a major research/analysis project. Specific point allocations are shown in Section D below.

Class Participation. Class participation will account for 25% of your final grade and will be evaluated according to how effectively you engage the assigned material and move class discussion forward in a productive way.
Innovative and controversial ideas are welcomed, but you are expected to be able to support your positions through reference to class readings, other resources (including personal experiences and material gleaned in other coursework), or cogent reasoning.

Major Project. Each student will complete a major research/analysis project on a topic related to the seminar material. I will provide a suggested list of topics for projects and will recommend possible source material. If you want to use a topic other than one from the suggested list, you should discuss your choice with me before going forward.

All written submissions must be typed in Word, double-spaced, in 12-point Times New Roman font, with one-inch margins at top, bottom, and sides. Citations to source material may be incorporated in the body of the paper or in footnotes. Footnotes may be in 11-point type. All required written assignments must be submitted in electronic form by the dates shown below.

Project Proposal. You should begin selecting a topic within the first four weeks of the semester and be prepared to submit a Project Proposal no later than the date shown on the schedule below. The Project Proposal should include:

- a clear statement of your thesis
- a summary of major issues you expect to address, including points supporting your thesis and anticipated counter-theses, and
- a preliminary list of major sources you plan to use.

This submission may take the form of a formal outline or it may be a narrative summary. The purpose of this requirement is to encourage early attention to the Project, which will form the larger part of the grade for the semester, and to provide an opportunity for early feedback regarding the feasibility of the proposed topic.

Class Presentation. Students will make oral presentations and lead class discussion on their topics during one of the November class sessions. Presentations will range from 30 to 40 minutes (depending on final class size), including discussion. You are encouraged (but not required) to use power-point, hand-outs, or other aids in your presentations. Class presentations will be graded based on the clarity with which you present the topic, the extent to which the presentation evidences effective research and analysis, and the thoughtfulness with which you prepare for and facilitate class discussion of the material. At least a third of your time should be reserved for class discussion. You are expected to plan pertinent questions to raise with the class in the event your presentation does not spark spontaneous questions from your classmates. This is an opportunity for constructive feedback, so you may want to invite critique of key points, raise issues that strike you as ambiguous, or take the role of devil’s advocate if the class seems too readily receptive of your major thesis and explication.

Preliminary Draft. You must submit a preliminary draft of your paper no later than the last day of class. I will send you feedback by e-mail no later than December 5; if you want to receive feedback earlier than December 5, you should plan to submit your draft before the Thanksgiving holidays.

Final Paper. The final paper should be from 20 to 25 pages in length and must include a bibliography or list of sources consulted. I will post instructions for formatting footnotes and source citations. Failure to include the source list will result in an automatic reduction of 3 points. Your paper may include references to material assigned as a part of the required readings, but should reflect significant research and analysis beyond that covered by the required material and class discussions.

Each paper will be graded based on the thoroughness and clarity with which it states and explains the issue addressed, the scope and depth of research and analysis reflected in the paper, and compliance or non-compliance with the requirements set out in this syllabus and in further instructions. You are expected to proof-read carefully; up to 3 points will be deducted for papers that reflect significant or persistent errors in spelling and grammar.

Consults on Research Project. The goal of the research project is to give you an opportunity to conduct in-depth research and analysis of a particular topic. The best topic will be one that engages your personal and professional interests. I encourage you to e-mail me or arrange a time to meet with me outside of class to discuss any problems you may encounter, including the initial selection of a topic, promising research sources, and difficulties in formulating either the class presentation or the final paper.
Due Dates. ALL submissions will be made electronically. Submissions other than the final paper should be sent to me at the e-mail address at the top of this syllabus. Final papers should be submitted by e-mail to the registrar with a copy to me.

Unexcused late submissions will result in a reduction of 3 points per day for the respective assignment. If you are late in submitting any assignment you may send me an e-mail explaining the reason for the late submission. The decision to consider the tardiness excused or unexcused will be in my sole discretion.

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<tr>
<th>Task</th>
<th>Electronic Submission Due</th>
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<tr>
<td>Project Proposal</td>
<td>Friday, Sept. 30</td>
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<tr>
<td>Draft</td>
<td>Monday, Nov. 28</td>
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<tr>
<td>Final Paper</td>
<td>Wednesday, Dec. 21</td>
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D. Grading Procedures

Grades will be based on the following allocation of points:

- Research Project: 75 points
- Class Participation: 25 points

Points for the Research Project will be spread across the four components as follows: Project Proposal: 5 points; Class Presentation: 15 points; Draft of Final Paper: 15 points; Final Paper: 40 points.

E. Attendance, Participation, Recording, and Confidentiality Policies

The teaching method used in this course is highly interactive; you are expected to be prompt and to attend all class sessions, to be familiar with the material assigned for each class, and to participate fully in class discussions. If you know you will have to miss a class, or if you are unexpectedly unable to be present for a class, you should e-mail me as soon as is practical after learning of the problem. Any unexcused absence and any pattern of repeated, unexcused tardiness will result in a reduction of up to 5 points from the class participation grade. To ensure that I have a record of your excuse when assigning class participation grades, you must send me an e-mail either before or after the missed class, explaining the reason for your absence.

Laptops and tablet computers may be used to record notes during most classes but should not be used for activities unrelated to the work of the class. Laptops will not be allowed during student presentations. Audio and video recordings are not allowed, and all cell phones and other electronic devices, except those being used to make notes of class discussion or to make student presentations, must be turned off or silenced during class sessions.

I may record class sessions to assist in grading and as a tool for improving the course in the future. Such recordings will not be shared with others without the consent of students who appear in such recordings. Transcripts or summaries of class discussions may be shared with others for professional purposes, but will not include the identities of individual participants without their consent. Final papers may be shared with professional colleagues, with attribution. If you do not want your name disclosed as the author, you should so note at the end of your paper.

In the course of class discussion and presentations, students may share personal information or disclose personal experiences pertinent to the topic being addressed. Such disclosures are not required, but if they are shared with the class, all students are expected to be respectful and to keep such disclosures confidential and not discuss or disclose them to persons outside the class without the express consent of the person making the disclosure.
F. Notifications, Conferences and Feedback

All official course notifications will be made through the TWEN site or to the e-mail address that you provide to me at the start of the semester. You are responsible for all notifications and materials posted through TWEN and for all e-mails sent to your designated e-mail address. You should go to the TWEN page promptly and add this course to your list so that you will receive e-mails and other notifications posted through TWEN. This will also ensure that you are included on the grading sheet that has been set up in TWEN. Anyone having difficulty using the TWEN site should contact me promptly.

I will generally be available for individual conferences by appointment before and after class sessions and may be available on campus on other days. In either event, you will need to e-mail me in advance and confirm a specific time and location for a conference.

This is a relatively new course, and I encourage you to give me feedback during the course, particularly if you have suggestions that you believe will benefit you and other class members in gaining maximum benefit from the course. If you have concerns about the course, the instructor, or the classroom environment, you are expected to communicate those concerns directly and constructively with me as early as practicable.

G. University Code of Academic Conduct

All students in attendance at the University of Alabama are expected to be honorable and to observe standards of conduct appropriate to a community of scholars. The University expects from its students a higher standard of conduct than the minimum required to avoid discipline. Academic misconduct includes all acts of dishonesty in any academically related matter and any knowing or intentional help or attempt to help, or conspiracy to help, another student.

The Academic Misconduct Disciplinary Policy will be followed in the event of academic misconduct.

H. Policy on Disabilities

Students with disabilities are encouraged to contact Jenelle Marsh, Associate Dean for Students/Academic Services at (205) 348-5751 or jmarsh@law.ua.edu so that the individual’s needs or support services can be evaluated and accommodated in a timely manner. Students may also register with the Office of Disability Services, 348-4285. Thereafter, you are invited to schedule appointments to see me during my office hours to discuss accommodations and other special needs.

I. Required Texts

The following texts are required and may be purchased at the Law School Book Store or from Amazon.com.


J. Assignments

The following is a list of topics and reading assignments for the semester. Materials (other than principal texts) not available through Lexis, Westlaw, E-Reserves, electronic databases available through the UA Library system, or the regular reserves at the Bounds Law Library, will be provided in pdf format through the TWEN site. In order to facilitate your research for your major project, most of the books that have been placed on reserve may be checked out for limited periods of time. If you remove the reserve books from the library, please be respectful of your fellow students’ needs to have access and do not check out more books than you can reasonably expect to use.
Assignments and order of topics may be altered, depending upon availability of guest speakers and topics selected by students for research projects. Any changes to the assignments will be posted on TWEN or sent to you by email or before the Thursday before the class affected by such changes.

August 22: **Introduction to Restorative Justice: A Case Study**

No Advance Reading

August 29: **Competing Paradigms**

**Required:**

*The Queen v. Patrick Dale Clotworthy*, T.971545 in the District Court held at Auckland, New Zealand, Sentencing Notes, Thorburn, S. A., Judge, 24 April 1998.[TWEN – Course Materials]

*The Queen v. Patrick Dale Clotworthy*, CA 114/98 in the Court of Appeal of New Zealand, Judgment of the Court, Tipping, J., Heron, J., Anderson, J, 29 June 1998. [TWEN – Course Materials]


September 5: **Labor Day: No Class**

September 8: **Recommended:** Special Screening of *Concrete, Steel and Paint*, at the Alys Stephens Center in Birmingham. Documentary on a project engaging victims of violent crime with incarcerated offenders. Discussion with filmmaker after film. For details and info go to [http://alysstephens.uab.edu/events/?day=2011-09-08](http://alysstephens.uab.edu/events/?day=2011-09-08)

September 12: **Roots, Values, and Conceptualizations**

**Discus Semester Project**

**Required:**


Recommended:


Recommended (Restorative Justice and Religion):

DeGruchy, John W., Reconciliation: Restoring Justice (Minneapolis, MN: Augsburg Fortress, 2002).


September 19:

**Victims and Criminal Justice**

**Required:**


Herman, Susan, “Is Restorative Justice Possible without a Parallel System for Victims?” in Zehr and Toews, 75-84.


**Recommended:**

September 26:  
**Offenders and Restorative Justice**

**Required:**


Radzik, Linda, Offenders, the Making of Amends and the State” in Johnstone & Ness, 192-207.


**Recommended:**


Swanson, Cheryl, *Restorative Justice in a Prison Community, or Everything I Didn’t Learn in Kindergarten I Learned in Prison* (Lanham, MD: Rowman and Littlefield, 2009) (Based on author’s experience in working with prisoners at Alabama’s maximum security prison, W. C. Holman Correctional Facility.) [Bounds Reserves]

October 3:  
**Other Community and Institutional Stakeholders and Core Practices: Mediations, Conferences, Circles**

**Required:**


McCold, Paul, “What is the Role of Community in Restorative Justice Theory and Practice?” in Zehr and Toews, 155-172.


Pavlich, George, “What are the Dangers as Well as the Promises of Community Involvement?” in Zehr and Toews, 173-184.


Recommended:


October 10: Restorative Practices and Juvenile Crime

Required:


Umbreit, Mark, Robert B. Coates, and Betty Vos, “Impact of Restorative Justice Conferencing with Juvenile Offenders: What We Have Learned from Two Decades of Victim Offender Dialogue Through Mediation and Conferencing,” prepared for the
Balanced and Restorative Justice Project, Community Justice Institute, Florida Atlantic University, 2001. [TWEN Course Materials]


Maxwell, Gabrielle and Allison Morris, “What is the Place of Shaming in Restorative Justice?” in Zehr and Toews, 133-142.


Kathleen Daly, “Entries and Endings: Victims’ Journeys with Justice,” in Victims and Mediation (Edited and published by Associação Portuguesa de Apoio à Vitima (APAV), Lisbon, with support from the European Union, 2008), 15-35. [Available from K. Daly professional web page; see links at end of Syllabus]

Recommended:


October 17:  

**Restorative Justice and Violent Crime**

**Required:**


**Recommended:**


October 24: **Restorative Practices in Alabama Criminal Courts**

**Required:**


October 31: **What Does the Research Tell Us? and Restorative Justice and Societal Conflict**

**Required:**


**Recommended:**


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<th>Date</th>
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<tr>
<td>November 7</td>
<td><strong>Student Presentations</strong></td>
<td>assignments to be announced.*</td>
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<td>November 14</td>
<td><strong>Student Presentations</strong></td>
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<td><strong>Student Presentations</strong></td>
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<tr>
<td>November 28</td>
<td><strong>Limits and Tensions/Future of Restorative Justice</strong></td>
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* Reading Assignments for November will be made after topics for student presentations have been selected.
Resources on the Web

- Center for Restorative Justice & Peacemaking, University of Minnesota

- Center for Peacemaking and Conflict Studies, Fresno Pacific University http://peace.fresno.edu/rjp/

- The Centre for Restorative Justice, Simon Frazer University
  http://www.sfu.ca/cfrj/

- Balanced and Restorative Justice Project
  http://www.barjproject.org/

- International Victim Offender Mediation Association
  http://www.voma.org/

- Prison Fellowship International: Restorative Justice Online
  http://www.restorativejustice.org/

- Kathleen Daly Professional Publications
  http://www.griffith.edu.au/professional-page/professor-kathleen-daly/publications


- Restorative Justice Consortium, UK
  http://www.restorativejustice.org.uk/

- Minnesota Restorative Justice Coalitions
  http://www.mnmrsc.org/links.htm

- http://www.eforum@restorativepractices.org

Collections of Restorative Justice Essays


Walgrave, Lode, ed., Restorative Justice and the Law (Cullompton, United Kingdom; Portland, Oregon: Willan, 2002).[Bounds Reserves]