

Judicial Studies Program  
History and Theory, Week 4, July 27-30

Professor Malcolm Feeley, Boalt Hall, UC Berkeley

## Criminal Justice Institutions in Historical and Comparative Perspective

### Readings and Assignment

Materials considered this week explore three topics—plea bargaining, women and crime, and privatization of corrections—in historical and comparative perspective. The purpose here is to consider issues that are common to or present in the modern American criminal justice system, and then look at them in historical or comparative perspective. This should help us take a fresh look at the contemporary issues.

**Assignment:** Each day come to each class with brief written statements about each separate reading. They should consist of what you think are the two most interesting points in each article, and then two weaknesses or problems with the article—what the author did wrong, what he misinterpreted, etc. Each statement should be no more than six or eight sentences. Thus for Monday's assignment, identify two of the most interesting points about Feeley's article, "Legal Complexity," and then two weaknesses or problems with it. Do the same for Langbein's article. Then the same for each other readings for the rest of the week.

Come to class prepared to be called on to identify the strengths and weaknesses you have identified.

#### **Monday. Plea Bargaining in Historical Perspective**

1. Malcolm M. Feeley. Complexity and the Transformation of the Criminal Process; The Origins of Plea Bargaining, *31 Israel Law Review* 183.

2. John Langbein, Torture and Plea Bargaining, *46 U of Chic.L.Rev.* (1978) 3.

**Tuesday: Plea Bargaining in Comparative Context**

3. John Langbein. Land Without Plea Bargaining: How the Germans Do It, *78 Mich.L.Rev.* (1979) 204.

4. David Johnson, The Organization of Prosecution and the Possibility of Order, *32 Law & Society Rev* (1998) 247.

**Wednesday: Women and Crime in Historical Perspective**

5. Malcolm Feeley and Hadar Aviram, *Where have all the Women Gone: The Decline of Women in the Criminal Process* (section of a book, forthcoming)

6. Lucia Zedner, *Women, Crime, and Custody in Victorian England* (Oxford: Clarendon Press, 1991), pp. 51-90.

**Thursday: Privatization of Corrections in Historical Perspective**

7. Malcolm M. Feeley. Entrepreneurs of Punishment: The Legacy of Privatization, *4 Punishment & Society* (2002) 321.

8. David Philips, Good Men to Associate and Bad Men to Conspire; Associations for the prosecution of Felons in England 1760-1860, in Douglas Hay and Francis Snyder, eds., *Policing and Prosecution in England; 1750-1850* (Oxford: Clarendon Press, 1989), pp. 113-170.