



ST. THOMAS
UNIVERSITY
Benjamin L. Crump
College of Law

COMPARATIVE CRIMINAL LAW AND PROCEDURE

Mon. - Th., 9:00 a.m. – 10:50 a.m. | 3 credits

INSTRUCTOR

Professor Robin M. Peguero
Office Hours | By appointment
rpeguero@stu.edu | 305.978.9371 (cell)

COURSE MATERIALS

Stephen C. Thaman, *Comparative Criminal Procedure: A Casebook Approach* (Second Edition) (2008).

Peguero, Robin. (2022). *With Prejudice*. Hachette Books.

Feature Film: *Anatomy of a Fall* (2023).

All other assigned reading will be available for download via Canvas.
Please come to class having read the materials assigned for the day.

COMPARATIVE CRIMINAL PROCEDURE
A CASEBOOK APPROACH - SECOND EDITION
Stephen C. Thaman



CAROLINA ACADEMIC PRESS COMPARATIVE LAW SERIES

COURSE GOALS AND OBJECTIVES

This case-study-intensive, discussion-oriented course will examine the procedural posture of the criminal justice system in America versus the rest of the world, including Spain, France, England, Italy, and Germany. Our central focus will be analyzing the strengths and weaknesses of the adversarial and inquisitorial models, weighing the American style of the former – including strong rights for the accused, partisan competitiveness, and lengthy penalization – against the truth-seeking, restorative-justice function of the latter. Major areas of analysis include the role of police and the investigatory phase; the right to remain silent (or lack thereof); burdens of proof and evidentiary hurdles; and differences in sentencing and predominant theories of punishment.

By the end of this course, students should be able to:

- compare and contrast the American adversarial system versus the inquisitorial or mixed systems of Europe.
- know how to extract issues, rules, holdings, and policy from judicial opinions.
- recognize and argue the various sides of a given legal issue, particularly as it relates to competing penological interests; the proper roles of actors in the criminal justice system; the objectives of trial; and the requirements of due process for the rights of the accused.
- distinguish or harmonize, as appropriate, cases on the basis of law or fact or both.
- analyze and critique legal scholarship with an eye toward its practical application in the real world.

GRADING

Your final grade in this course will be based on the components and percentages identified below:

70 percent of your grade will be based on a take-home final exam to be administered at the end of the semester.

30 percent of your grade will be based on attendance, including punctuality, and in-class participation.

ATTENDANCE

Regular and punctual attendance is required for all classes. In order to earn credit for a course, a student must attend, at minimum, 80% of our class sessions. Because we meet 20 times in the semester, that means a student cannot miss greater than four class sessions or that student may be withdrawn from the course with no credit awarded or given an administrative 'F,' per St. Thomas University School of Law policy.

COURSE CHANGE POLICY

The professor reserves the right to change the course at his discretion. Any changes will be announced to students.

ACADEMIC INTEGRITY, PLAGIARISM, & CHEATING POLICY

Please refer to the Student Handbook for the applicable academic integrity policy, including policies on plagiarism, cheating, and other matters.

You are individually and solely responsible for violations of copyright and fair use laws.

COURSE CALENDAR AND READING ASSIGNMENT SCHEDULE

Week One:

Monday, May 26

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter One: Criminal Law and Its Procedures (pp. 16 – 20).

ONLINE. McKillop, *Anatomy of a French Murder Case* (pp. 528-543)

Watch: *Anatomy of a Fall* (2023)

Tuesday, May 27

Read: ONLINE. Kadish & Schulhofer, Criminal Law and Its Processes, Chapter Two: The Process for Determining Guilt (pp. 77-84)

ONLINE. Jessica Peake, *A Spectrum of International Criminal Procedure: Shifting Patterns of Power Distribution in International Criminal Courts and Tribunals*, 26 Pace Int'l L. Rev. 182 (2014)

Wednesday, May 28

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter Two: The Criminal Investigation (pp. 23 – 30).

ONLINE. Kadish & Schulhofer, Criminal Law and Its Processes, Chapter Two: The Process for Determining Guilt (pp. 85-108)

Thursday, May 29

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter Two: The Criminal Investigation (pp. 30 – 44).

ONLINE. Justin Sevier, *The Truth-Justice Tradeoff: Perceptions of Decisional Accuracy and Procedural Justice in Adversarial and Inquisitorial Legal Systems*, 20 Psychol. Pub. Pol'y & L. 212 (2014).

Week Two:

Monday, June 2

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 4: The Defendant as a Source of Evidence: The Privilege against Self-Incrimination (pp. 85 – 104).

ONLINE. Allard Ringnalda, *Procedural Tradition and the Convergence of Criminal Procedure Systems: The Case of the Investigation and Disclosure of Evidence in Scotland*, 62 Am. J. Comp. L. 1133 (2014).

Tuesday, June 3

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 5: Determining the Admissibility of Evidence at Trial (pp. 105 – 124).

ONLINE. Christopher Slobogin, *Lessons from Inquisitorialism*, 87 S. Cal. L. Rev. 699, 705 (2014).

Wednesday, June 4

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 5: Determining the Admissibility of Evidence at Trial (pp. 105 – 124).
Peguero, *With Prejudice*, pp. 1-34

Thursday, June 5

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 5: Determining the Admissibility of Evidence at Trial (pp. 125 – 143).
Peguero, *With Prejudice*, pp. 35-104

Week Three:**Monday, June 9**

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 6: Procedural Economy: Avoiding the Trial with All Its Guarantees (pp. 147 – 169).
ONLINE. McKillop, *Anatomy of a French Murder Case* (pp. 544-548).
ONLINE. Maximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 Harv. Intl. L.J. 1 (2004).

Tuesday, June 10

Read: **ONLINE.** Kadish & Schulhofer, Criminal Law and Its Processes, Chapter Two: The Process for Determining Guilt (pp. 109-139)

Wednesday, June 11

Read: **ONLINE.** McKillop, *Anatomy of a French Murder Case* (pp. 548-563)
ONLINE. Felicity Nagorcka, et al., *Stranded Between Partisanship and the Truth? A Comparative Analysis of Legal Ethics in the Adversarial and Inquisitorial Systems of Justice*, 29 Melb. U. L. Rev. 448 (2005).

Thursday, June 12

Read: **ONLINE.** Kadish & Schulhofer, Criminal Law and Its Processes, Chapter Two: The Process for Determining Guilt (pp. 139-159)

Week Four:**Monday, June 16**

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 7: The Trial (pp. 171 – 191).
ONLINE. McKillop, *Anatomy of a French Murder Case* (pp. 564-583)
Peguero, *With Prejudice*, pp. 105-160

Tuesday, June 17

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 7: The Trial (pp. 191 – 206).

ONLINE. Kadish & Schulhofer, Criminal Law and Its Processes, Chapter Two: The Process for Determining Guilt (pp. 159-188)
Peguero, *With Prejudice*, pp. 160-222

Wednesday, June 18

Read: Thaman, Comparative Criminal Procedure: A Casebook Approach (Second Edition) (2008) Chapter 7: The Trial (pp. 206 – 222).
Peguero, *With Prejudice*, pp. 223-258

Thursday, June 19

Read: **ONLINE.** James Whitman, *Harsh Justice: Criminal Punishment and the Widening Divide Between America and Europe*, 31 Am. J. Crim. L. 317 (2004).
ONLINE. Lila Kazemian, *Long Sentences: An International Perspective*, 36 Fed. Sent. R. 63 (2023).
Peguero, *With Prejudice*, pp. 259-309