

Emory University

LAW AND THE UNCONSCIOUS MIND
FALL 2021

PROFESSOR MARTHA GRACE DUNCAN

Law and the unconscious? What's that? Oh you mean like a police officer dreaming about the arrests he'll make in the morning?

—Atlanta cab driver speaking to Professor Duncan

But there is no such thing as a simple response to reality. External reality has to be acquired. To deny that there is anything other than external reality . . . is a denial of the unconscious.

—Juliet Mitchell, *Psychoanalysis and Feminism*

Man lives, not nakedly or directly in nature like the animals, but within a mythological universe. Most of this is held unconsciously.

—Northrop Frye, *The Great Code: The Bible and Literature*

To us he is no more a person
Now but a whole climate of opinion.

—W. H. Auden, *In Memory of Sigmund Freud*

COURSE DESCRIPTION

- How can prison be irresistibly alluring, and what does this allure imply for the purposes of punishment?
- How does the character of the one-time criminal differ from that of the career offender?
- How does stealing gratify both the wish to be dependent and the wish to be macho and aggressive?
- Why are metaphors of soft, we dirt (such as *slime* and *scum*) commonly used for criminals, and why is this usage not really as negative as it seems?
- Why might the world be a *poorer* place without criminals?

These are some of the intriguing questions that will be explored in this class. In addition, the course provides a basic understanding of psychoanalysis, including infantile sexuality, the unconscious, and the defense mechanisms, such as denial, repression, undoing, and splitting. The class format will consist of lecture, discussion, movies, and (a few) games.

GRADING AND ATTENDANCE POLICIES

A three-hour, open-book examination will be the primary basis for the grade. Class participation may be grounds for grade adjustment. Pursuant to ABA and law school rules, regular attendance is required. A pattern of poor attendance may be cause for lowering a grade.

COURSE MATERIALS

BOOKS AND ARTICLES

The following books will be read in their entirety or in substantial part:

Franz Alexander & William Healy, **ROOTS OF CRIME.**

Charles Brenner, **AN ELEMENTARY TEXTBOOK OF PSYCHOANALYSIS**

Martha Grace Duncan, **ROMANTIC OUTLAWS, BELOVED PRISONS: THE UNCONSCIOUS MEANINGS OF CRIME AND PUNISHMENT**

Muriel Gardiner, **THE DEADLY INNOCENTS: PORTRAITS OF CHILDREN WHO KILL**

Nancy McWilliams, **PSYCHOANALYTIC DIAGNOSIS**

- **ROOTS OF CRIME** and **THE DEADLY INNOCENTS** are available on Library Course Reserves.
- **AN ELEMENTARY TEXTBOOK OF PSYCHOANALYSIS and ROMANTIC OUTLAWS, BELOVED PRISONS: THE UNCONSCIOUS MEANINGS OF CRIME AND PUNISHMENT** are available from the Barnes & Noble at Emory Bookstore and Amazon.
- In addition to the books listed above, many readings will be available in **LAW AND THE UNCONSCIOUS: SUPPLEMENTAL MATERIALS VOLUME I AND VOLUME II**. They are available on Library Course Reserves.

MOVIES AND TELEVISION SERIES

Selected episodes from the HBO series *In Treatment* and the movie *Ordinary People* will be required viewing. *Louis Theroux in San Quentin* (2008 BBC documentary) will be required viewing in conjunction with the prison part of the course.

Here is the link to watch *Ordinary People* for free:

<https://myflixxer.to/movie/ordinary-people-16630>

Here are the options to watch *In Treatment*:

- HBO: Anyone who has an HBO subscription can watch it. If you don't have one already you can get a free trial for 7 days and then cancel it at the end of the 7 days and will not get charged. Otherwise, it is \$14.99 a month.

- Hulu: Offers *In Treatment* but you have to add HBO Max to your original Hulu plan, which will be an additional \$14.99 a month. The free trial works with Hulu also.
- Amazon: *In Treatment* is available on Amazon, so you can start a 7-day free trial there as well. In the alternative, you can buy an individual episode of *In Treatment* on iTunes for \$2.99.

Louis Theroux in San Quentin is available for free at this link:

- <https://documentaryheaven.com/louis-theroux-behind-bars/>

The movie *Les Misérables* (1998 version, with Liam Neeson and Geoffrey Rush) is highly recommended for its depiction of Javert's obsessive pursuit of Jean Valjean, which relates to the reading entitled "A Strange Liking: Our Admiration for Criminals."

Marnie (Alfred Hitchcock's film about a kleptomaniac) and *Spellbound* (Hitchcock's film about the analysis of a possible murderer) are also highly recommended.

I. INTRODUCTION TO PSYCHOANALYTIC THEORY: *The Unconscious, Infantile Sexuality, Id, Ego, and Superego, and the Defense Mechanisms.*

A. Introduction

1. Two Fundamental Hypotheses: Determinism and the Unconscious, Chapter 1 in *An Elementary Textbook of Psychoanalysis*, by Brenner.
2. The Drives: Chapter 2 in Brenner.

B. Id, Ego, and Superego

3. The Differentiation of the Ego from the Id, Chapter 3 in Brenner.
4. The Ego's Struggle to Master the External Environment and the Internal Impulses and Wishes, Chapter 4 in Brenner.
5. The Oedipus Complex and the Superego, Chapter 5 in Brenner.

C. Symptoms: Ego-Alien vs. Ego-Syntonic; Compromise Formation; Primary & Secondary Gains

6. Psychopathology, Chapter 8 in Brenner.

D. Psychoanalysis as Treatment: The Talking Cure

7. HBO series “In Treatment” episodes to be seen in class.
8. Movie “Ordinary People,” directed by Robert Redford, to be seen in class.

E. Review and Synopsis

9. Sigmund Freud and the Classical Psychoanalytic Tradition, Chapter 1 in *Freud and Beyond*, by Stephen A. Mitchell and Margaret J. Black, in the Supplemental Materials.

F. But Isn't Freud Dead?

10. Jerry Adler, Freud in our Midst, *Newsweek* (March 27, 2006); Fred Guterm, What Freud Got Right, *Newsweek* (Nov. 11, 2002); Thomas Nagel, Freud's Permanent Revolution, *The New York Review of Books*, vol. 41, #9, (May 12, 1994), in the Supplemental Materials.

II. CRIME, LAW, AND SOCIETY: PSYCHOANALYTIC PERSPECTIVES

A. THE PSYCHO-DYNAMICS OF CRIMINAL BEHAVIOR

CHRONIC STEALING

11. Introduction and The Victim of Loyalty, in *Roots of Crime: Psychoanalytic Studies*, by Franz Alexander and William Healy.
12. The Undetected Shoplifter, *Roots of Crime*.
13. A Favorite of Women, *Roots of Crime*.
14. The Case of Rashid. Purloined Letters: The Psychoanalysis of a Man Who Stole Books, in *Errant Selves*, edited by Arnold Goldberg, in the Supplemental Materials.

Recommended:

- *Marnie* (dir. Hitchcock, 1964) (about a kleptomaniac whose husband, played by Sean Connery, tries to help her overcome her impulse to steal).
- August Aichhorn, *Wayward Youth*

HOMICIDE

15. Introduction and Peter, in *The Deadly Innocents: Portraits of Children*

Who Kill, by Muriel Gardiner.

16. Neurotic Crime vs. Criminal Behavior, by George Devereux, in the Supplemental Materials, Vol. 2; and Gloria, in *The Deadly Innocents*.
17. Tom, in *The Deadly Innocents*.
18. Jake in Leslie Bennetts, The Seeds of Violence, in *Vanity Fair*, volume 52, #3 (March, 1989), in the Supplemental Materials, Vol. 2.

B. THE HIDDEN GRATIFICATIONS OF PENAL CONFINEMENT

19. Cradled on the Sea: Positive Images of Prison and Theories of Punishment, in *Romantic Outlaws, Beloved Prisons*, by Martha Grace Duncan, first paragraph on page ix; and pages 1-31.
20. Cradled on the Sea, pages 32-56 of *Romantic Outlaws*.
21. *Louis Theroux in San Quentin* (BBC Documentary, 2008), to be shown in class.

Recommended:

- Otto Fenichel, Chapter on Depression and Mania, in *The Psychoanalytic Theory of Neurosis* (for a clear explanation of impulse neurosis).
- *The Shawshank Redemption* (movie illustrating paradoxes of prison).

C. THE FUNCTIONS OF CRIMINALITY FOR LAW-ABIDING PEOPLE

22. A Strange Liking: Our Admiration for Criminals, in *Romantic Outlaws, Beloved Prisons*, page 57-top of 60 and pages 64-90.
23. A Strange Liking, pages 90-118.
24. In Slime and Darkness: The Metaphor of Filth in Criminal Justice in *Romantic Outlaws, Beloved Prisons*, pages 119-146.
25. In Slime and Darkness, pages 147-170.
26. In Slime and Darkness, pages 171-193; and Conclusion.

Recommended Reading and Viewing:

- Movie: *Les Misérables* (1998 version with Liam Neeson and Geoffrey Rush).
- Daphne du Maurier, *Jamaica Inn*.

- Robert Hughes, *The Fatal Shore*.
- Ruth Munroe, The Anal State, in *Schools of Psychoanalytic Thought*, pages 194-98.

III. THE LAWYER AS HERO AND VILLAIN: AMBIVALENCE TOWARD LAWYERS IN SOCIETY

27. Harper Lee, *To Kill a Mockingbird*

28. Dickens' Lawyers

Great Expectations [Jaggers and Wemmick], chapters 18, 20, and 21

Bleak House [Tulkinghorn and Vholes], chapters 2, 10, 22, 39, 48

A Tale of Two Cities [Sidney Carton], book 2: 3, 5; book 3: 13,15.

Recommended Reading:

- Leonard Manheim, *The Law as Father: An Aspect of the Dickens Pattern*, University of Hartford Studies in Literature, vol. 9 (1977).

GOALS OF THE COURSE

1. Learn to define and illustrate the fundamental concepts of psychoanalysis: determinism, the unconscious, infantile sexuality and the psychosexual stages, and the defense mechanisms, such as denial, projection, splitting, reaction formation, and undoing.
2. Learn the primary criticisms of psychoanalysis.
3. Develop an understanding of the psychological differences between career criminals, especially thieves, and one-time offenders, especially murderers. Be able to illustrate the differences using particular cases.
4. Learn how a psychoanalytic approach can illuminate some paradoxical aspects of criminal sanctions, for example, why imprisonment may actually constitute an inducement to commit crimes.
5. Acquire solid understanding of the criminal-noncriminal dyad. In particular, be able to explain the allure of criminality for the noncriminal. Be able to elucidate how this allure may manifest itself as repulsion in policies such as transportation or banishment and the "separate system.