

TEMPLE UNIVERSITY DEPARTMENT OF CRIMINAL JUSTICE -- GRADUATE PROGRAM

Course Title: Law and Social Order
Course Number: CJ 8104
Classroom: 553 Gladfelter Hall
Time: 3:00-5.30 p.m., Thursdays

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Office Hrs: T/Th 10.30–noon & by appointment

COURSE DESCRIPTION

This course invites students to engage in a critical assessment of the legitimacy, effectiveness, and fairness of the *criminal law as a method* of securing social order. Through analysis and integration of primary legal materials (constitutions, statutes, case-law) and secondary sources (philosophical, legal, empirical works) students will develop a broad-based understanding of the criminal law – and hone skills in learning, critical thinking, and communication -- via a *problem-focused examination* of its roles and applications.

Problems and prospects for improvement will be investigated and discussed in relation to each of three major *functions* of the criminal law – defining *crimes*, defining *processes* of prevention and control, and defining *punishments* for convicted offenders: Should abortion be a crime? Pornography? Should recreational drug use be decriminalized or legalized? Prostitution? Obscenity? Should the insanity defense be abolished? Strict liability offenses? Should the right to counsel be extended to bail hearings? Other criminal proceedings? Should the exclusionary rule be abolished? Plea-bargaining? Consent searches? Should verdicts by non-unanimous and/or less-than-12-person juries be banned? Peremptory challenges? Should the death penalty be allowed for raping a child? Should it be abolished completely? What about sexual predator commitment laws? Should draconian sentences for relatively minor “3-strikes” offenders be considered cruel and unusual punishment?

On each of the three dimensions of inquiry, students will be challenged to form and articulate logically reasoned and evidence-based responses to questions of whether society is making the “right” choices in its *decisions* to invoke the criminal law method, and, if not, what changes should be made. Prerequisite considerations include the *sub-questions* of: *Who* should decide -- legislators vs. [activist?] appellate courts; federal vs. state vs. local authorities? *How* should they decide – what decision *rules* and *resources* should direct their decision-making process? And, most fundamentally, what *general principles* – of moral/political philosophy and constitutional/statutory law – should guide the search for answers?

TEACHING PHILOSOPHY AND COURSE LEARNING GOALS

The course is designed to reflect a teaching philosophy that learning processes [lectures, assignments, exercises, etc.] and assessment methods [exams, papers, class participation, etc.] should be driven by and explicitly foster learning goals. Wherever possible, the aim is for assessment and learning to overlap as much as possible, and for learning goals for students to be linked to the broader mission of the university. For this course, this produces the following set of goals:

- To increase students’ disciplinary knowledge of the criminal law
- To improve students’ skills in three key areas:
 - learning skills
 - critical thinking skills
 - communication skills
- To increase the likelihood that students – whether as academics, practitioners in the criminal justice field, or simply as concerned citizens -- will apply that knowledge and those skills to be an influence for positive change in the ways in which society addresses the problems of crime and criminal justice.

The course reading materials, assignments, exercises, and assessment methods described in subsequent parts of the syllabus are all designed with an eye towards strengthening students' ability to identify and question existing and proposed criminal law policies and practices; to articulate reasoned, logical, and evidence-based opinions about their legitimacy, effectiveness, and fairness; and to think creatively and argue persuasively about potential improvements.

Disciplinary Knowledge Goals

Students completing this course will:

- Be able to describe and explain the *criminal law* in terms of its
 - *Primary vs. secondary sources*
 - *Social control functions* – defining crimes, processes, and punishments
 - *General vs. special parts*
 - *Substantive vs. procedural divisions*
 - *Constitutional vs. code components*
 - *Limiting principles/justifying aims* – moral, constitutional, legal
 - *Issues, problems, and reform proposals* [e.g., over-criminalization/decriminalization; federal/state conflicts; judicial/legislative conflicts; blurring of criminal vs. civil and administrative law boundaries; abuse/misuse of discretion -- executive, judicial and legislative --in decisions defining crimes, processes, and punishments
 - *Themes* [e.g., assessing criminal law as a *decision-making/discretion control* endeavor; and as a *balancing* mechanism – individual rights vs. state power; crime control vs due process; criminal law
- Be able to draw comparisons and distinctions between various:
 - *Social control methods* [e.g., criminal law vs. civil/administrative law vs. extra-legal methods]
 - *Social control systems* [e.g., criminal vs. juvenile vs. mental health]
 - *Justice theories* [e.g., social, distributive, retributive, utilitarian, compensatory, restorative]
 - *Forms of deviance* [e.g., crime; tort; breach of contract; regulatory violation]

Skills Development Goals

Each skill category [learning, critical thinking, communication] will be discussed in class, with examples that will be reemphasized frequently and rehearsed repeatedly throughout the semester.

Recognizing that there can be significant overlap between groups, some examples include:

- *Learning skills*: ability to identify, use and evaluate library, internet, and other information sources; recognize and penetrate beneath “weasel words”; engage in active listening question more than comment; conduct basic legal research and formulate legal research questions.
- *Critical thinking skills*: intellectual reserve in forming and voicing opinions before careful understanding of the precise issue/question; awareness of biases/prejudices – our own and those of authors/advocates; ability to distinguish facts from opinions; ability to form and express independent opinions and beliefs based on reason, logic, and evidence vs. gut instincts, prejudices, religious or other dogma, accidents of birth, or parroting the views of others – and the ability to recognize the difference; open-mindedness and willingness to change beliefs in the face of new information and insights.
- *Communication skills*: written vs. verbal; description/information vs persuasion/argumentation; using examples to clarify general ideas; active listening; paraphrase in own words; thorough preparation by writing down, distilling, and organizing main points – e.g., along the lines of a well rehearsed Powerpoint presentation

COURSE REQUIREMENTS & USING THE TEMPLE BLACKBOARD SITE

The course will be posted on Temple's Blackboard [BB] site. Students should access the Course Information tab in BB for details about downloadable copies of this syllabus and a detailed week x week schedule of class topics, readings, assignments, and exam dates. Grading rubrics and results will also be posted in this section asap following each test. In the Course Documents section of BB students will find links to PDF files containing copies of course handouts, lecture notes and primary reading materials. Students are responsible for keeping up with the course through the Announcements section of BB and related updates posted to other sections throughout the semester. Any especially urgent announcements or changes will also be sent to students via the group e-mail service on BB. Make sure your TU email address is active and clear out your in-box periodically so that messages are not rejected because you have exceeded the quota allowed.

READINGS

Because there is no text that satisfactorily encompasses the range of topics and perspectives on criminal law covered in this course, all required readings are from primary sources [journal articles, cases, etc.] posted as PDF links in the Course Documents section of BB. Overviews of the basic features of criminal law will be presented in class and in accompanying lecture notes, also posted in the Course Documents section of BB

Although not required, it is suggested that students at least browse one or more of the many texts now flooding the market. In depth coverage of substantive and procedural criminal law and the specialized field of constitutional criminal procedure is mostly only found in texts dealing with them separately. The number of available texts written for law students, criminal justice students, and practicing attorneys is staggering. They include very basic undergraduate-focused texts such as Wallace. Principles of Criminal Law. 4th ed. Allyn Bacon (2007) [substantive]; exhaustive multi-volume treatises such as LaFave. Substantive Criminal Law: Criminal Practice Series. West (2007) [substantive]; and law school casebooks such as Israel, Kamisar, & LaFave. Criminal Procedure & the Constitution: American Casebook Series. West (2007) [constitutional criminal procedure]. A favorite of mine on criminal procedure, pitched at an intermediate level, is Acker & Brody. Criminal Procedure: A Contemporary Perspective. Jones & Bartlett (2004)

A couple of all purpose introductory texts that make an effort to combine coverage of both substantive and procedural criminal law are: Scheb & Scheb. Criminal Law & Procedure. 6th ed. Thomson/Wadsworth (2007); and a new one that I just reviewed from Allyn Bacon -- Davenport. Basic Criminal Law: The Constitution, Procedure, and Crimes. 2nd ed. Allyn Bacon/Prentice Hall (2009). They are both written primarily for undergraduate classes and follow the format of most texts for other introductory criminal justice courses rather than the case-book style more familiar to law students.

Although the summary materials on *legal research* discussed in class and posted on BB will be more than adequate for purposes of the current course, one of the better texts for criminal justice students wishing to delve more deeply into the wonders of legal research is Irving & Acker. *Basic Legal Research for Criminal Justice & the Social Sciences*. Jones & Bartlett Pubs. (1998). It is now dated but still covers most of the essentials in a clearer and more criminal justice-friendly way than most others.

CLASS PARTICIPATION

Importance of Regular Attendance and Active Involvement to Success of Course Learning Goals

Students are expected to attend regularly and to participate actively in class in order to have the best chance to succeed in attaining the different learning goals for the course. Much of the depth and nuance of *substantive knowledge* about criminal law that students are expected to gain from this course will come from lectures [active listening and well organized notes] and involvement in the planned and informal in-

class exchanges with the professor and with fellow students. More importantly, class Q & A sessions and exercises are an essential opportunity for students to build the kinds of critical thinking, communication, and learning *skills* that are central goals of the course -- to discuss them; to see them “modeled” by the professor and classmates; and, most especially, to practice/rehearse them actively and repeatedly throughout the semester. These skills are no different than skills in areas such as music or sports with which you may be more familiar. To develop them and keep them from atrophying requires practice, practice, practice.

Regular Attendance

Attendance will be monitored and unexcused absences will result in a reduction in the class participation grade [see the Course Information section of BB for full grading scheme]. Attendance is particularly essential on days when student presentations are scheduled. If you are absent for a class in which you are expected to present and lead discussion on your chosen problem-topic it will obviously disrupt the whole weekly schedule for the semester. It will also frustrate fellow students expecting to hear from you and prepared to ask intelligent and challenging questions and to make constructive suggestions about ways in which they might have liked to see more or different information.

Students who are unable to attend any regularly scheduled class period should notify the professor as far in advance as possible by email. Please be sure to put the course name and number in the subject box of your email and give a *very brief* explanation of the reason for your absence [e.g., religious holiday; illness; can't make bail; etc.]

Active Involvement

Keeping up with readings and class notes

- As an important aspect of the learning process for this course, a significant part of class sessions will involve calling on students at random for their assessment of the readings. *Students must be prepared for every class to give answers to the following questions:*
 - **If you were giving an exam to your classmates on this reading, what are the most important 2-3 questions you would you include?**
 - **What answers would you expect them to give?**
- As you complete your readings, *write down your answers to the above questions and be prepared to state them succinctly in class* if asked [a key communication skill]. So that students can gain experience evaluating each other's views and modifying their own opinions in light of new/alternative ideas and information [a hallmarks of “critical thinking”], other students will be asked in each class whether they agree with your assessment, and what their own answers would have been if called upon first.

Getting the most out of your reading

As emphasized and explained repeatedly throughout the course, one of the main learning goals is to increase students' *skills* [learning, critical thinking, and communication] along with expanding substantive *knowledge* of criminal law. A very basic *learning skill* involves knowing how to read and study most efficiently and effectively. The following rules of thumb will help you to get the most out of your reading. They require more work on your part than just reading casually while listening to music or underlining large chunks of each page with a yellow marker, but the pay-off in terms of your understanding of the materials and ability to think critically about the materials [assess their value/importance] will be well worth the effort:

- *Read each assigned reading as if you had to teach it to your classmates in the next class meeting.*
- *Skim the reading the first time through*, just looking at the title, table of contents, main headings and subheadings, and the introduction and summary sections to get a rough idea of what the whole chapter/article is about.
- As you read, *write down the main points* that you think the author is trying to make What are the most important points you think the author would stress if he/she were explaining the reading to the class?

- A helpful technique is to *convert each reading into a question and answer format*. Turn each of the headings and subheadings and main points in the reading into the questions you think the author is [implicitly or explicitly] raising, and then read looking for the answer(s).
- Especially *think about what are the one or two most general [“high-level”] question(s) that the reading as a whole is raising [and what answer(s) you think the author gives]*.

EXAMINATIONS & ASSIGNMENTS

A final examination, two papers and an in-class presentation will be assigned.

Exam

A final examination will be given in class on the date specified in the *Weekly Schedule of Activities* posted in the Course Information section of BB. The exam will be closed-book.

Student Presentations and Individual Topic Papers

Beginning in the fifth week of class and continuing for most of the remainder of the semester, students will be required to make individual presentations and lead class discussion on a specific problem-topic approved in advance by the professor. Each student will be responsible for only one presentation, although depending on final enrollment figures, most classes will include time for two separate presentations and Q&A sessions.

For each presentation, the student responsible will

- Identify and assign to fellow students at least one substantial reading or set of materials on the topic to be covered. Wherever possible, this should be an article, monograph, and/or case opinions that prepare classmates for the presentation by giving them as *recent* and as *broad* an overview of the issues as possible in advance.
- Prepare an outline and rough draft of a paper on the assigned problem-topic [to be developed further and finalized based on in-class discussion and written feedback after the presentation.]
- Prepare and distribute handouts [e.g., 1-2 page outline, tables, visual aids, power-point slide summaries, etc.] to accompany the formal presentation and discussion.
- Make a brief [15-20 minute] presentation. PowerPoint presentations or old-fashioned overheads are preferred but not required.
- Presentations should follow the outline of the draft paper and should include:
 - A very brief introductory description of the general problem-topic area -- what is the overarching question that the presentation/paper will examine and what is its historical background?
 - A succinct statement of the main sub-issues that help to convert the general problem statement into a more precisely conceptualized and separable set of questions to be addressed
 - A summary of the strengths and weaknesses of arguments, positions, and proposals on different sides of the issue(s) under scrutiny [NOTE: it is of course expected that your presentation and final paper will draw upon and integrate information from a much wider set of sources than the readings you assign to the rest of the class in advance of your presentation]
 - A concluding statement of conclusions and implications for subsequent study and questions for further discussion by the class

In short, after providing a basic foundation of information through the material you select for everyone to read in advance and through your presentation, your job is then to develop two or three main discussion questions and to facilitate examination of them by the class. The job of the rest of the class is to participate as active listeners in the session, by listening carefully, seeking clarification on points they might not fully understand, asking questions especially about the strengths and weaknesses of points made in the presentation, and trying to think of other questions that might be investigated.

Papers

Two research papers will be assigned. Assignment and due dates are specified in the *Weekly Schedule of Activities* in the Course Information section of BB.

Individualized Presentation Papers

A first paper will be based on the topic on which your individual presentation was made. Draft papers should be prepared in at least detailed outline form by the time of the presentation. Revisions should then be made based on feedback from fellow-students and the professor in the class discussion following the presentation. This revised version may be submitted as a final copy at any time prior to the end of the final class of the semester [May1]. However, it is strongly recommended that it should be submitted earlier to the professor as a “second draft” so that further comment and suggestions for improvement can be made before turning in the final/final copy for grading.

Final papers should be between 10-12 pages, double spaced 12pt font [preferably Times Roman], not counting the title page, abstract, table of contents, endnotes and appendices. References should be in APA style – do NOT use legal citation with references as numbered footnotes.

Term Paper

The second paper will be assigned on March 6 and will be due in class by April 10. All students will research and prepare papers on the same topic. Topic selection will depend on the final choices made by students for the presentation papers. Draft papers may be submitted for review and feedback by the professor at any time up to two weeks before the final submission date.

Final papers should be between 12-15 pages, and otherwise with the same specifications described above for the presentation papers.

ASSESSMENT METHODS AND GRADING SYSTEM

Each student’s overall course grade will be based on performance measured as follows:

1. Class presentation = 20%
2. Presentation paper = 25%
3. Term paper = 25%
4. Final Exam = 25%
5. General class participation/preparedness = 5%

Students should consult the Course Information section of BB for further detail on grading rubrics and policies.

DISABILITY DISCLOSURE & SPECIAL ASSISTANCE NEEDS

Any student who has a need for accommodation based on the impact of a disability should contact Professor Harland privately to discuss the specific situation as soon as possible. Contact Disability Resources and Services at 215-204-1280 in 100 Ritter Annex to coordinate reasonable accommodations for students with documented disabilities. All students are encouraged to seek individual or small group special assistance from the instructor at any time if they are experiencing any difficulty whatsoever with the course.

STUDENT & FACULTY RIGHTS STATEMENT

Freedom to teach and learn are inseparable facets of academic freedom. The University has a policy on Student and Faculty Academic Rights and Responsibilities (Policy #03.70.02) which can be accessed at the following link: http://policies.temple.edu/getdoc.asp?policy_no=03.70.02

CELL PHONES

Please turn off cell phones before class begins.