

Texas State University-San Marcos
Department of Criminal Justice

**CJ 7310: The Philosophy of Law, Justice & Social Control
Spring 2015**

Texas State University's TRACS Platform: Syllabi, class notes, and other material will be placed on TXST's TRACS.

Instructor Contact Information:

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Office hours: immediately before class or by arrangement.

Course Description:

Generally, an undergraduate "Introduction to Criminal Justice" course introduces the student to the nomenclature and organizational realities of the criminal justice system. A master's level course usually adds a critical analysis approach so that the student becomes familiar with critiques of the system as well as coverage of methodological and policy-related issues. This doctoral level course raises the level of abstraction to questions regarding the essence of law itself. What is law? How does law develop? What are the justifications for societal control? Why should we obey the law? Where do rights come from? We will explore these questions through the platform of Constitutional law. The first couple weeks of the course will be a brief introduction to the philosophical approaches to law. Then we will explore seminal and current Supreme Court decisions that have shaped our legal system organized under the most relevant amendments in the Bill of Rights and the 14th Amendment. The last couple weeks will cover controversies in international law and human rights. Finally, we will discuss constructionism versus interpretationism.

Course Goals:

Students will develop the ability to:

1. Understand and apply the various approaches to understanding law, including natural law, legal positivism, legal realism, and critical legal theory.
2. Be familiar with and describe the various justifications and suggested limits of law as a tool of social control and the relationship between law and rights.
3. Understand and apply the five basic elements of a crime and the levels of mens rea. Also, understand and be articulate examples of legal defenses.
4. Understand the debate regarding judicial activism (interpretationism) versus constructionism.
5. Be able to utilize the above information in understanding case precedent and current cases involving the 1st, 2nd, 4th, 5th, 6th, 8th, and 14th amendments.

Required Texts

Philosophy of Law: A Very Short Introduction. Raymond Wacks. (Oxford Univ Press, 2014)
(This is a very small “pocket” sized book giving you just the basics of philosophy of law. It was about \$11 for a new one on Amazon.)

Packing the Court: The Rise of Judicial Power and the Coming Crisis of the Supreme Court, James MacGregor Burns (Penguin, 2009)

The Case Against the Supreme Court, Erwin Chemerinsky (Viking, 2014)

Various articles, cases, and youtube.com videos will also be required as indicated in folders titled by the week and topic area. They may be posted on TRACS, via hyperlink, through LEXIS-NEXIS or some other search engine, or they may be Xeroxed handouts.

Class Format, Attendance and Participation

The class is designed as a seminar and each student must be an active participant in every class. Each student is responsible for each reading assigned for that class period. If a student is unprepared, he or she will be counted as absent.

Academic-Scholastic Dishonesty and Disabilities Statement

The School of Criminal Justice follows the university dishonesty policies. Please be aware of them. A hyperlink is provided here: <http://www.txstate.edu/effective/upps/upps-07-10-01.html>.

Students with disabilities are asked to contact the Office of Disabilities Services who will then coordinate any necessary accommodations: <http://www.txstate.edu/effective/upps/upps-07-11-01.html>.

Grading

Participation:

Attendance + participation 100 (25%)

Attendance: after the first absence, all others will detract from the student’s grade

Participation: any time the student is unprepared will count as an absence; being unprepared means not being able to talk knowledgeably about the readings assigned for that class period and/or not have the study review questions answered in preparation for class.

Seminar Paper: 100 (25%)

20 pages. Choose a criminal justice related Supreme Court case that is either on the docket this year (October 2014 term), or a case decided last year and provide an extensive analysis of case precedent, predicted outcome (if it has not been decided), and anticipated progeny (cases that will come next and how they will be decided). Provide a section analyzing the Supreme Court’s opinion utilizing at least one of the legal philosophies presented in the course.

Format will follow APA style (not law review style) as explained via OWL website:

<http://owl.english.purdue.edu/owl/resource/560/05/>.

ALL LATE PAPERS WILL BE PENALIZED 10 POINTS PER DAY.

Paper deadline: April 16, 2015.

Mid-Term 100 (25%)

The test will be essay and cover the broad range of material in the first half of the course.
Grading will be based on content and writing ability.

Final 100 (25%)

The final will be essay and comprehensive, although with a greater emphasis on material in the second half of the course.

Grading Scale

Grades will be assigned according to the following percentages:

- A 100%-90%
- B 89%-80%
- C 79%-70%

Tentative Course Outline (Short Version)

For specific readings, see “Week” folders in TRACS

Week 1, Jan 26: Introduction to course and review syllabi. Brief introduction to legal philosophy (lecture). Brief explanation of law and how to read cases. Diagnostic exam.

Week 2, Feb 2: Natural Law and Positivism

You should be able to:

- 1. Define natural law and identify major theorists and their contributions.**
- 2. Define positivism and identify major theorists and their contributions.**

Week 3, Feb 9: Legal Realism and Critical Legal Theory

You should be able to:

- 1. Describe the definition, origins, and major theorists and writers in the area of legal realism and critical theory.**
- 2. Apply all four legal philosophies to a legal issue or case.**

Week 4, Feb 16: The Limits of Law & Origin of Rights

You should be able to:

1. Describe and provide examples for the justifications/rationales for law.
2. Identify the five elements of a crime (including when omissions can form *actus reus* and the different types of *mens rea*). Be able to distinguish specific intent versus general intent crimes.
3. Describe legal defenses/excuses to culpability.
4. Discuss where rights come from according to case law and legal philosophy.
5. Relate the idea of civil disobedience to rights and legal philosophy. Be able to defend when (if ever) civil disobedience is justified.

Week 5, Feb 28: Incorporation, First Amendment & Privacy

You should be able to:

1. Understand selective and total incorporation, and be familiar with seminal cases.
2. Analyze First Amendment cases with precedent cases and apply the legal tests to weigh individual rights against governmental objectives; specifically, distinguish between strict scrutiny and rational relationship tests.
3. Understand where our rights of privacy come from and be familiar with relevant case law. Be able to analyze a privacy case by applying the appropriate legal tests.

Week 6, Mar 2: Catch-up & study for final

ACJS is this week. This class day will be left flexible for catch-up. If we don't need it, we will cancel or study sessions may be arranged for the mid term.

Week 7, Mar 9: MID-TERM

Week 8, Mar 16: SPRING BREAK!!!!!!!!!!

Week 9, Mar 23: Fourth Amendment

You should be able to:

1. Define what is and is not a search and what the exceptions to the Fourth Amendment requirements for a warrant.
2. Distinguish between the three levels of detainment and the levels of proof required for each.

3. Analyze a 4th Amendment search or seizure issue using case precedent and appropriate legal tests.
4. Describe the source and rationale for the exclusionary rule, along with the exceptions to the exclusionary rule and relevant case law.

Week 10, Mar 30: Fifth Amendment.

You should be able to:

1. Explain the distinction between testimonial and physical evidence in 5th Amendment jurisprudence.
2. Explain when the Miranda right speech must be given to the defendant and describe the exception to the exclusionary rule relative to 5th Amendment violations.

Week 11, Apr 6: Sixth Amendment

You should be able to:

1. Describe the parameters of 6th Amendment “trial rights.”
2. Explain the “critical stage” test for Sixth Amendment rights and utilize case law to answer any question of whether the right to an attorney attaches.
3. Apply the “Strickland” test for attorney competence.

Week 12, April 13: 8th & 14th Amendment - Due Process

You should be able to:

1. Apply the definition of cruel and unusual punishment to various fact situations to determine if a violation of rights has occurred.
2. Use 8th amendment jurisprudence to address capital punishment of juveniles and others with some form of incapacity.
3. Distinguish between procedural and substantive due process rights from 14th Amendment jurisprudence.

Week 13, April 20: International Law, International Criminal Court (Universal Human Rights) & Torture

You should be able to:

1. Describe the philosophical rationale/justification for war (the “just war” concept).
2. Identify the arguments for and against any form of international law tribunal.
3. Describe the parameters of what have been recognized as basic human rights that should be protected under international law.
4. Apply international law standards to the use of torture.

Week 14, April 27: Judicial Interpretationism v. Constructionism

You should be able to:

1. Articulate the two positions of originalism (textualism, constructionism) and interpretationism (activism) and identify the positions in various discussions or case holdings.
2. Critique the position that these two approaches are clear or that it is even possible to be a “textualist”.
3. Apply the arguments of constructionism and interpretationism to the case law concerning a Second Amendment right to bear arms.

Week 15, May 4: Wrap up/Catch up/Discussion of Final

Final Exam: TBA