

## PSC 269/ABD 290—Law, Politics, and Mass Incarceration—Spring 2019

Instructor: C. Rivers, Ph.D.

Phone: 773/325-4593

E-mail: [crivers@depaul.edu](mailto:crivers@depaul.edu)

Office hours: Tues., 3:00-5:00 at 990 W. Fullerton, rm. 2104 and Thurs., 11:00-1:00 at SAC rm. 551  
or by appointment



**Welcome!** This course is about the *nexus*, or intersection, of law, politics, and the carceral state. The overarching contexts of this course will be: 1) the relationship of trauma and exposure to the criminal justice system, and 2) restorative, asset-based approaches to those who harm others. It will focus on our constitutional rights when accused of a crime, the political contexts that have affected them, and the (d)evolution of those rights over time. The course will also explore wrongful convictions, excessive sentencing, and lack of a parole system as particularly pressing legal, policy, and political issues in Illinois.

This course challenges conventional and simplistic thinking about law, justice, and addressing harm. It is easy to think of law and politics as separate realms, but the reality is that they often intersect. Laws are generally made by elected representatives, enforced by the police, argued by lawyers, and interpreted by elected and appointed judges. The process of electing and appointing judges is intensely political, and despite claims otherwise judges do not make their decisions in neutral, apolitical bubbles. Politics also influences states' attorneys/prosecutors, public and private defense attorneys, police review boards, juries, parole boards, etc. Laws and law enforcement in turn are influenced by the will of the people via elections, protests, and other expressions of public opinion. Meanwhile, approximately 4,500,000 Americans can't vote due to a felony conviction. Those individuals thus lack a fundamental power to influence political decisions that most closely affect them and their communities.

The dynamics between law and politics are of course driven by the dynamics between political institutions and us, i.e. "we the people"—including those of us who don't or can't vote. We the people often demand "there should be a law against xyz!" But do we even know what we're asking for? The truth is that we often don't fully understand what we're asking for in these moments. In this course, we will think more deeply about what we want regarding criminal justice.

**Key learning goals for this course include increasing our knowledge and understanding of:**

- the U.S. Constitution, particularly civil liberties and civil rights
- the relationship between branches and levels of government
- the various and conflicting processes of interpreting laws
- tensions between democracy, the will of the people, and the rule of law
- basic legal concepts, including the practice of case briefing
- the debates over concepts such as equality, justice, and the centrality of race/class in those debates

**This course also seeks to enhance students' ability to:**

- Explain and evaluate a sophisticated conception of justice, identify and describe situations in which justice concerns arise, and take an informed position about the meaning or demands of justice.

Coursework will include formal lecture, Socratic questioning, interactive discussions and exercises, written reflections, case briefing, and a final project. As with any course on politics and law, we will confront many "uncomfortable truths". Success in this course thus depends on honest, thoughtful discussion of the materials and concepts, and on a spirit of mutual learning. Humor is welcome; civility and respect are required.

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**REQUIRED READING MATERIALS (all books are available at DePaul's bookstore):**

1. Lippman, *Essential Criminal Law*, 2<sup>nd</sup> Edition
2. Kim, et. al, *The Long Term: Resisting Life Sentences, Working Toward Freedom*
3. Gonzalez Van Cleve, *Crook County, Racism and Injustice in America's Largest Criminal Court*
4. Russo, *Feminist Accountability: Disrupting Violence and Transforming Power*
5. Berman and Adler, *Start Here: A Road Map to Reducing Mass Incarceration*
6. Additional readings as posted on D2L or handed out by the instructor
7. "Earhustle" podcasts, listen on your own, <https://radiopublic.com/EarHustle>

**RECOMMENDED:** A brief law dictionary, esp. if you plan to go to law school (Barron's, Black's, etc.)

**NOTE:** Read this syllabus CAREFULLY and THOROUGHLY NOW, to avoid costly misunderstandings later. This syllabus is subject to change at any time during the quarter. **Do not hesitate to ask questions about this syllabus, or in general!**

## Grading Scale and Required Coursework

**Remember: instructors do not simply give you grades—you earn your grades.**

(DePaul has no A+)	<b>B+ = 274-262</b>	<b>C+ = 235-223</b>	<b>D+ = 196-184</b>	<b>F = &lt;170</b>
<b>A= 300-288</b>	<b>B = 261-249</b>	<b>C = 222-210</b>	<b>D = 183-171</b>	
<b>A- = 287-275</b>	<b>B- = 248-236</b>	<b>C- = 209-197</b>	<b>(DePaul has no D-)</b>	

### **FOUR CASE BRIEFS @ 20 points each 80 total points**

Case briefs must not exceed 1 typed page; I will not read or grade anything over that amount. See last page of syllabus for briefing instructions, and see reading schedule for briefing due dates.

### **THREE REFLECTIONS ON THE READINGS @ 25 points each 75total points**

Reflections must at least 750 words long, 1.5 line spacing. You will select dates at the beginning of the term, and submit each reflection in class on the dates you sign up for them. On those dates, you will help guide class discussions. Reflections must include the following four components, using the underlined terms below as headings for each section.

- Part 1. A *summary* of key points about the readings Do *not* simply review/restate them.
- Part 2. An *explanation* of what you found most informative or valuable about the readings/issues
- Part 3. An *explanation* of what you found most challenging or problematic about the readings/issues
- Part 4. A *reflection* on your overall impression of the readings. Where applicable, discuss how you'd address problems.

### **FINAL GROUP PROJECT(due June 13, 6:00pm) 115 total points**

I will hand out more detailed instructions later in the quarter. This project involves drafting a bill for state or federal legislation related to this course topic. The bill must include the following 5 components, and must utilize standard citations for all sources that you refer to or quoted, and bibliography for each component. Part 1 is written and graded as a group, and is worth 35 points. Parts 2-5 are written and graded individually, and are worth 80 points each.

- Part 1. The title and actual text of the bill; the text should be at least 1,000 words.
- Part 2. A 1,000-word explanation of the bill, i.e. its purpose and how it works
- Part 3. A 1,000-word justification of the bill, i.e. whom the bill will benefit AND how it will enhance existing assets
- Part 4. A 1,000-word explanation of the legal basis of the bill, i.e. what laws it relates to, amends, revokes, etc.
- Part 5. A 1,000-word explanation of the political aspects of the bill, i.e. who is most likely to support the bill, oppose it, and how your group will address opposition to it.

### **CLASS PARTICIPATION AND ATTENDANCE 30 total points**

Preparedness and thoughtful responses during Socratic questioning is essential—even if you're nervous or if your answer is wrong (both of which are very common). I expect consistent, sincere, relevant participation, and encourage civil disagreement and debate. This is not the class for disruptive, pointless, uninformed, or disrespectful comments.

I excuse absences for the following reasons only: verified jury or election duty, religious observations, official campus/road/transportation closures, or major traffic disasters. Each unexcused absence will lower your overall grade by half a letter grade.

**POLICY ON LATE WORK:** I do not accept late work unless it's due to the reasons for which I excuse absences.

**WRITING POLICY:** I have very high expectations for your writing—so should you! And because case briefing is an essential skill for law school and a valuable transferable skill, I go in hard on those assignments. That said, DO let me know if you have serious concerns about your writing. Everyone should also take advantage of DePaul's Writing Center services.

**EXTRA CREDIT POLICY:** You may earn up to 15 extra credit points by attending a relevant event on or off campus, watching a relevant film or documentary, reading a relevant book or article, and writing a 500-word analysis on what you learned and how it relates to what we've covered in class. You may also write an additional reflection on the readings or podcasts. You may submit ONE such assignment up until the last day that this class meets, hard copy only.

**ACCOMMODATIONS:** Notify me and provide documentation if you require accommodations for disabilities or official (not extra-mural) DePaul athletic team schedules.

## Grading Criteria

### Again, instructors do not simply give you grades—you earn your grades.

**'A' (300-275)**—designates work of superb quality. Written work is clear, well-organized and thought-provoking, and is free of grammatical and mechanical errors. Case briefs reflect a clear and coherent understanding of both the facts of and doctrine grounding a decision. Class participation is voluntary and frequent. It is also relevant and reflects that you have read the materials, have an excellent grasp of them, and are prepared to discuss them in class. (i.e. frequent but irrelevant comments do not meet this, or any, standard.)

**'B' (274-236)**—designates work of high quality. Written work reflects solid understanding of the readings, and writing is coherent, with minimal errors. Case briefs reflect a good understanding of both the facts of and doctrine grounding a decision. Class participation is also voluntary, and reflects that you have read and understood the readings well.

**'C' (235-197)**—designates work that minimally meets requirements. Written work may contain arguments that are confusing, with minimal evidence of organization. Writing is marred by some errors. Case briefs reflect a basic understanding of both the facts of and doctrine grounding a decision. Class participation is occasional and/or rarely voluntary, with comments that reveal a basic but not strong grasp of issues and concepts.

**'D' (196-171)**—reflects minimal clarity and comprehension. Written work is confusing, contradictory, repetitive, and/or unsupported, and is weakened by many structural errors. Case briefs reflect little or very confused understanding of both the facts of and doctrine grounding a decision. Class participation is minimal, involuntary, and reveals that you have either not read or understood the readings.

**'F' (170 or below)**—reflects unsatisfactory work that is insufficient to pass the course.

## Fundamental Expectations

**⚖️ Attend class consistently.** Life can definitely get in the way of school. But ultimately, you get out of the course what you put into it. In this regard, consistent attendance is crucial.

**⚖️ Keep up with the readings and coursework.** If you fall behind I'm happy to meet with you to help you strategize how to get back up to speed. But I will not simply review the materials for you, and it is your responsibility to stay current.

**⚖️ Participate in class discussions.** This may be an intimidating thought, especially for those of you who hate to speak up in class. Ideally, such discussions should help you better understand and analyze the readings, which should in turn enhance your grade. Socratic questioning is intended in part to intimidate (consider this a gentle introduction to the notorious first-year law school experience). It is mostly intended to foster quick thinking and analysis, both of which are crucial legal and life skills.

**⚖️ Put forth your best effort in your writing, no matter the length of the assignment.** *Always strive to present your ideas in the best possible light--they deserve it!!* If you write an assignment on the day it is due, and/or if it is little more than a minimally edited first draft, you are courting disaster. If you have problems with or hesitations about writing DO talk to me. Be technologically prepared--computer glitches, printer problems etc. are not acceptable reasons for submitting late work.

**⚖️ Work honestly.** Violations of DePaul's Academic Integrity Policy "include but are not limited to the following categories: cheating, plagiarism; fabrication; falsification or sabotage of research data; destruction or misuse of the university's academic resources- alteration or falsification of academic records; and academic misconduct." Plagiarism includes missing or insufficient citations of direct quotations, paraphrased quotations or other references to sources. For more on this policy see [https://offices.depaul.edu/academic-affairs/faculty-resources/teaching/academic-integrity/Documents/Academic%20Integrity%20Policy\\_Spring%202016.pdf](https://offices.depaul.edu/academic-affairs/faculty-resources/teaching/academic-integrity/Documents/Academic%20Integrity%20Policy_Spring%202016.pdf) AND <https://offices.depaul.edu/academic-affairs/faculty-resources/teaching/academic-integrity/Pages/student-faqs.aspx>. ***I will fail intended, egregious, or repeated violators either for the assignment or the course, which could go on your transcript. FACT: Instructors tend to find plagiarism faster than it takes students to do it. You do not want to test me—or any instructor—on this.***

**⚖️ If you find yourself in crisis, please do NOT go it alone, and do NOT wait until the last minute to seek assistance.** Talk to me if you're running into problems that impede your work. Contact the Dean of Students for assistance with the many services and programs available for students facing challenges. Your tuition covers these services, so do not hesitate to take advantage of them.

## Reading and Assignment Schedule

I strongly encourage you to write notes in your books/articles if you're using hard copies. Many of these materials are dense—reading them quickly or while distracted will very likely cause you problems.



### Week One

Introductions, course and syllabus overview, opening discussion Nature and function of criminal law.

#### April 2

- “Mass Incarceration—The Whole Pie” (D2L)
- “Women’s Mass Incarceration—The Whole Pie (D2L)
- “Earhustle” podcast (D2L)

#### April 4

- Lippman, Ch. 1, all
- Lippman, Ch. 2, 21-26, 38-39, 40-47
- “The Adverse Childhood Experiences Study” (D2L)

### Week Two

Constitutional limitations on governments and individuals; “nationalization” of civil liberties. Elements of crimes. Wrongful convictions.

#### April 9

- *Marbury v. Madison* (D2L)
- *Mapp v. Ohio* (D2L)
- *Terry v. Ohio* (D2L)

#### April 11

- Lippman, Ch. 3, all
- “Unlocking the Black Box of Prosecution: I am a Community Member Section” (D2L)
- “John Thompson v. American Justice” podcast, Part 1 (D2L)

### Week Three

Parties to crime; attempted conspiracy and solicitation. Criminal defenses, justifications, excuses. Prosecutorial immunity.

#### April 16

- **Brief for *Mapp v. Ohio* due in class, hard copy—see pg. 7 of syllabus for briefing instructions**
- “John Thompson v. American Justice” podcast, Part 2 (D2L)
- Lippman, Chs. 4 and 5, all

#### April 18

- Lippman, Ch. 6, 113-124, 133-153, 334-338
- *Buckley v. Fitzimmons* (D2L)

## Week Four

**Limitations on searches. Homicide. *Nolo contendere* and “Alford” pleas.  
Parole and “civil commitment” policies in Illinois.**

### April 23

- *Katz v. U.S.* (handout)
- Lippman, Ch. 7, all
- “Why Do Innocent People Plead Guilty to Crimes They Didn’t Commit”? (D2L)
- “Legislature Passes Bill to Expand Post-Conviction Relief” (D2L)

### April 25

- “Never Sentenced, Never Released” (D2L)
  - “36 Years in an Illinois Prison Without a Conviction or Sentence” (D2L)
  - Illinois House Bill 3214 to restore parole in Illinois (D2L)
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## Week Five

**Other crimes against the person and against property.**

**Recent decisions on 4<sup>th</sup> and 5<sup>th</sup> amendment: lawfulness of searches, due process, and police coercion.**

### April 30

- **Brief for *Katz v. U.S.* due in class, hard copy—see pg. 7 of syllabus for briefing instructions**
- Lippman, Ch. 8, 177-197
- Lippman, Ch. 9, 216-227, 203-206, 228-232, 239-242

### May 2

- *Illinois v. Wardlow* (handout)
  - *Chavez v. Martinez* (handout)
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## Week Six

**Crimes against public order, morality. Drug crimes. Offenses against administration of justice.  
The politics of mass incarceration.**

### May 7

- Lippman, Ch. 11, 271-277, 281-293
- Lippman, Ch. 12, 303-322

### May 9

- Lippman, Ch. 13, 323-336, 345-347
  - Mauer, *Race to Incarcerate*, Ch. 4 (D2L)
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## Week Seven

The politics of mass incarceration, continued. Victims' rights. Insights from the inside.  
Prosecutorial and public defense challenges in Cook County.

### May 14

- **Brief for *Illinois v. Wardlow* due in class, hard copy—see pg. 7 of syllabus for briefing instructions**
- Office for Victims of Crime: Guiding Values (D2L)
- Office for Victims of Crime: Working Definition and Mission Statement (D2L)
- Incite! Critical Resistance Statement (D2L)

### May 16

- Kim, et. al., *The Long Term*, 19-21, 86-101, 102-106, 114-118, 31-33
- Gonzalez-Van Cleve, *Cook County*, Ch. 4

## Week Eight

The politics of mass incarceration, prosecution and public defender practices in Cook County, and insights from the inside, continued. Looking toward solutions.

### May 21

- Kim, et. al., *The Long Term*, 148-153, 215-216, 228-237, 262-264
- Gonzalez-Van Cleve, *Cook County*, Ch. 5

### June 23

- Kim, et. al., *The Long Term*, 240-258, 306-308, 309-315, 178-183
- Gonzalez-Van Cleve, *Cook County*, Conclusion

## Week Nine

Gender, sexuality, and incarceration. Looking toward solutions.

### May 28

- **Brief for *Chavez v. Martinez* due in class, hard copy—see pg. 7 of syllabus for briefing instructions**
- Russo, Chs. 4, 7
- Kim, et. al., *The Long Term*, 34-41

### May 30

- Russo, Chs. 5, 6

## Week Ten

Looking toward solutions, cont'd. The electoral and representational implications of mass incarceration.

### June 2

- Berman and Adler, *Start Here*, Chs. 3, 6
- Rivers, "The Execution of Democracy" (D2L)
- Illinois House Bill 2541, "The Re-Entering Citizens Civics Education Act" (D2L)
- Legislative proposal for LGBTQ rights/protections in Illinois prisons (D2L)

### June 4

- Berman and Adler, *Start Here*, Chs. 8 and Conclusion
- "Inmates are Getting Registered to Vote in One of the Country's Biggest Jails" (D2L)
- Kim, et. al., *The Long Term*, "Affirmation", 316-317

## QUICK GRADE TALLY/PROJECTION

<b>Brief #1</b>	_____ out of 20
<b>Brief #2</b>	_____ out of 20
<b>Brief #3</b>	_____ out of 20
<b>Brief #4</b>	_____ out of 20
<b>Reflection #1</b>	_____ out of 25
<b>Reflection #2</b>	_____ out of 25
<b>Reflection #3</b>	_____ out of 25
<b>Final project, group</b>	_____ out of 35
<b>Final project, individual</b>	_____ out of 80
<b>Partic. &amp; Attend.</b>	_____ out of 30
<b><i>Sub-total</i></b>	<b>_____ out of 300</b>
<b>Extra credit</b>	_____ out of 15
<b><i>Total points</i></b>	<b>_____ out of 315</b>

## Instructions and Format for Briefing Supreme Court Opinions

- Briefs must follow the format, including the boldfaced headings, listed below.
  - Briefs must not exceed one side of one typed page. I will not read or grade anything beyond that. You can write in bullet points or full sentences/paragraphs, as long as you're consistent and have included all the key information and explanations. Never leave it to the reader to guess or clarify what you're talking about.
  - Briefs must be written in your own words in order to demonstrate that you understand what the Court is saying. Simply repeating the Court's words is not enough.
  - For general tips on reading, annotating, and briefing a case, see: <https://www.lexisnexis.com/en-us/lawschool/pre-law/how-to-brief-a-case.page>
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### 1. Case citation

- This includes case name, volume, court, page, year—i.e. *Thin Crust Pizza v. Deep Dish Pizza*, 123 U.S. 456 (2018)

### 2. Summary of Facts and legal history:

- Names of each party in the case, along with other key folks involved if applicable
- Summary of events that led up to the case, including the role of all individuals involved
- Summary of preceding court decisions, if that information is available

### 3. Summary of legal claims/issues:

- Specify the legal claims/issues the litigants are asking the Supreme Court to rule on
- Specify the actual laws at issue (as in, "Jones claims that the state violated his right to due process...")
- Note any additional legal issues that the Supreme Court adds, if applicable

### 4. Summary of the Supreme Court's holding:

- The holding is the Court's conclusion/s on the claims raised in the case. This can be very tricky to figure out. Sometimes the Court gives a clear "yes" or "no" if the issues/claims are put as a question. Other times, the holding may be buried in maddeningly complex phrasing.

### 5. Explanation of the Court's reasoning:

- *The reasoning is the heart of the Court's decision, and thus of your brief.*
- It can also be the most difficult or frustrating part to brief, since the Court's reasoning can be nuanced, ambiguous, and downright confusing! This is more likely in sensitive or highly political cases.

### 6. Court's decision:

- Did the Court affirm, reverse, vacate the lower court's decision, or remand it back to the lower court?
- Note whether the decision followed or departed from the principle of precedent/*stare decisis*
- If available, what was the vote breakdown? (Was it unanimous? 8/1? 5/4?)

### 7. Dissents or concurrences:

- *Only when instructed to do so*, briefly summarize the dissents or concurrences. Otherwise you can skip this section.

### 8. Significance of a case and decision:

- Explain how the decision is important, both when it was decided and how it affected later policies and practices in that area. *Be careful not to simply impose your contemporary values onto older eras.*
- Explain the political significance or aspects of the decision, especially if it departed from precedent.
- **NOTE:** Close decisions tend to reflect a highly controversial legal or political context. *Per curiam* decisions can indicate that the Court is extremely fractured on an issue, or that a decision is politicized to the point where individual justices are reluctant to identify how they decided.