

**PSC 269—LAW, POLITICS, & MASS INCARCERATION—WINTER, 2017, A&L RM 207**  
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**Office hours: Tues & Th 1:00-3:00 on walk-in basis, or by appointment**

**Welcome!** This course is about the *nexus*, or intersection of law, politics, and imprisonment. It will begin with the basics of federalism, checks and balances, judicial review, and modes of constitutional interpretation. It will then cover our constitutional rights when accused, and the political contexts that have affected those rights. The course will conclude on the political and racial consequences of mass incarceration on prisoners and their home communities, and on alternatives to imprisonment and to prisons themselves.

It is easy to think of law and politics as separate realms. The reality is that they often intersect, and those intersections in turn influence the criminal justice system. Laws are generally made by elected representatives, enforced by the police, asserted by lawyers, interpreted and further enforced by elected and appointed judges, and administered by appointed bureaucrats. The processes of electing and appointing judges are intensely political, and judges do not live or make their decisions in apolitical or non-partisan bubbles. Similar intersections also affect entities such as states' attorneys/prosecutors, public and private defense attorneys, police review boards, grand 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.

In other words, the dynamics between law and politics illustrate the dynamics between political institutions and us, i.e. "we the people", even those who don't vote. How often have we the people demanded that "there should be a law against..." something? How often do we even know what we're asking for when we make such claims? The truth is that we often don't know what we're asking for in these moments. Hence key learning goals of this course are to provide better understanding of:

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

Coursework will include formal lecture by the Socratic method, interactive discussions, in-class exercises and reflections, case briefing assignments, and a policy proposal as a final project.

Any course on politics and law will be controversial and full of "uncomfortable truths". You might find some of the readings and topics upsetting. This course experience depends on honest, informed discussion of the materials and concepts. Respectful, thoughtful debate is encouraged. Civility is required.

**REQUIRED READING MATERIALS:**

- *Crook County*—Nicole Gonzalez-Van Cleve
- *Race to Incarcerate: A Graphic Retelling*—Sabrina Jones and Marc Mauer
- *Spatializing Blackness*—Rashad Shabazz
- Additional readings posted on D2L or handed out by the instructor.

**RECOMMENDED:** A brief law dictionary, especially if you're serious about going to law school

**NOTE:** Read this syllabus **CAREFULLY** and **THOROUGHLY NOW**, to avoid costly misunderstandings later. It is also subject to change at any time during the quarter.

## GRADING SCALE AND REQUIRED COURSEWORK

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

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

### 1. FIVE CASE BRIEFS @ 20 points each 100 total points

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

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

Reflections must be a minimum of 600 words. You will select dates at the beginning of the term, and submit each reflection hard copy, in class, on the dates you sign up for them. Reflections must include the following three components:

- Part 1. a summary of the readings assigned for that day, i.e. key arguments and conclusions
- Part 2. an explanation of what you found most informative about the readings
- Part 3. an explanation of what you found most challenging or problematic about the readings

### 3. POLICY PROPOSAL (due on D2L by 5:00 pm, March 14) 90 total points

You will design a policy or law proposal aimed at solving any of the problems that we cover in this course. This proposal must include all four of the following components, and must include standard citations of all sources that you refer to or quoted. All components must be single-spaced.

- Part 1. a 400-500 word statement of the problem your proposal addresses, including whom you propose it to
- Part 2. an annotated bibliography of 10 cases/readings that most inform/inspire your proposal.
- Part 3. a 500-700 word statement and explanation of your proposal, i.e. its purpose and how it works
- Part 4. a 500-700-word justification of your proposal, including potential opposition to it

### 4. CLASS PARTICIPATION AND ATTENDANCE 35 total points

The importance of coming to class is obvious; you can't participate if you're not there. Preparedness and thoughtful responses during Socratic questioning is essential—even if your answer is wrong (which it often will be). I expect consistent, thoughtful participation is expected. I will not tolerate disruptive, pointless, or disrespectful comments.

I will only excuse absences for the following reasons: verified jury or election duty, DePaul athletic schedules, religious observations, official campus/road/transportation closures. Leaving class mid-session is obnoxious and not allowed; if you leave, do NOT come back—I will count such departures as an absence. If you have a medical need to leave, see below under "Disability and Medical Accommodations".

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

**WRITING POLICY:** *I have very high expectations for your writing—so should you! And because case briefing is such an important and transferable skill, I go in especially hard on those.* Do let me know if you have serious concerns about your writing, and do 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, and writing a 500-word analysis on what you learned from the event, and how the event relates to what we've covered in class. You may submit EC assignments up until the last day that this class meets, via hard copy, in class.

**DISABILITY AND MEDICAL ACCOMMODATIONS:** If you require disability accommodations please notify me with the required documentation and requests, as stipulated by DePaul's Office of Students with Disabilities.

## 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 totally unsatisfactory work.

## FUNDAMENTAL EXPECTATIONS

**1) Attend class a) consistently, and b) on time.** I understand that life can get in the way of school. But ultimately, you get out of the course what you put into it. In this regard, consistent and punctual attendance is crucial.

**2) Keep up with the readings and coursework.** If you fall behind I would be 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 with the readings and all other coursework.

**3) Participate in class discussions.** This may be an intimidating thought, especially to 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 (yes—consider this a gentle introduction to the notorious first-year law school experience). It is also intended to foster quick thinking and analysis, both of which are crucial legal and life skills.

**4) Put forth your best effort in your writing, no matter how short the length of the assignment.** 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. Always strive to present your ideas in the best possible light--they deserve it!! If you have problems with or hesitations about writing DO talk to me and/or consult DePaul's Writing Center. Finally, be technologically prepared--*computer glitches, printer problems etc. are not acceptable reasons for submitting late work.*

**5) Work honestly.** Violations of DePaul's Academic Integrity Policy "include but are not limited to...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." This also includes *missing or insufficient citations* of direct quotations, paraphrased quotations or other references to sources. Depending on the degree of the violation, the penalty will be an "F" for either the assignment or the entire course; I must also report such cases to the Academic Integrity Board. See <http://offices.depaul.edu/oa/faculty-resources/teaching/academic-integrity/for-students/Pages/default.aspx> for further information about this policy. FYI, it takes instructors far less time to detect plagiarism than it takes students to commit it.

**6) If you find yourself in crisis, do NOT go it alone and do NOT wait until the last minute to seek assistance.** Contact your instructors and/or the Dean of Students (<http://offices.depaul.edu/student-affairs/about/departments/Pages/dos.aspx>) for links to the many services and programs available for students facing challenges. Your DePaul tuition covers these services, so do not hesitate to take advantage of them.

## COURSE READING AND ASSIGNMENT SCHEDULE

- Court cases that are required reading are written in italics, as in *Thin Crust Pizza v. Deep Dish*
- I STRONGLY recommend that you print and annotate hard copies of the cases. Do not fool yourself by believing that reading cases passively and on-line will be sufficient.

### WEEK ONE

- Jan. 3**    **First class meeting**  
 Introductions, review of syllabus and subjects to be covered
- Jan. 5**    **Introduction to challenges of contemporary mass incarceration; introduction to law, courts, constitutional concepts, connection to politics**  
 Film shown in class: “13<sup>th</sup>”  
 (D2L) Calvi and Coleman, *American Law and Legal Systems*, Chapters 1, 3  
 Concepts to focus on: sociological approach, substantive/procedural laws, selection of federal judges, judicial review and *Marbury v. Madison*, original intention/non-interpretation, federalism, separation of powers, due process, incorporation

### WEEK TWO

- Jan. 10**    **Introduction to law, courts, constitutional concepts, connection to politics, cont’d**  
 (D2L) Calvi and Coleman, Chapters 6, 14  
 Concepts to focus on: continued from Jan. 5
- Jan. 12**    **Federalism and judicial review, and race-as-property**  
 (D2L) Cases: *Marbury v. Madison*, *Plessy v. Ferguson*  
 U.S. Constitution: Article 1-Sections 2c, 8n, 9a, e, 10b; Art. 4-Sect. 2c; Art. 5; Amendments 1-10, 13, 14  
 Review Calvi & Coleman, pp. 125-129, 146-149

### WEEK THREE

- Jan. 17**    Class will begin at MLK breakfast, which begins at 10:00 at the Student Center. We will shift over to our regular classroom after the breakfast and conclude the class meeting there  
**Federalism and the rights of the accused—right to representation, right to remain silent; origins of the war on crime/drugs**  
 (D2L) Hinton, *From the War on Poverty to the War on Crime*, Chs. 2, 4  
 (D2L) *Mapp v. Ohio*, case packet pp. 600-606, *Terry v. Ohio*, also in case packet, after *Mapp*
- Jan. 17**    **Brief for *Marbury v. Madison* due in class. See pp. 2 and 6 of the syllabus for instructions.**
- Jan. 19**    **Federalism and the rights of the accused—exclusionary rule, right to confront evidence; origins of the war on crime/drugs, cont’d**  
 (D2L) Hinton, Chs. 8, 9  
 (D2L) *Miranda v. Arizona*, *Gideon v. Wainwright*, case packet pp. 611-635

### WEEK FOUR

- Jan. 24**    **Federalism & the rights of the accused—prosecutorial immunity; war on crime → war on drugs**  
 Mauer and Jones, *Race to Incarcerate: A Graphic Novel*, 1-54  
 (D2L) *Buckley v. Fitzsimmons*, *Brady v. Maryland*
- Jan. 26**    **Federalism & rights of the accused—enhanced sentencing; war on crime → war on drugs, cont’d**  
 Mauer and Jones, 54-108  
 (D2L) *Johnson v. U.S.*

### WEEK FIVE

- Jan. 31**    **War on drugs → mass incarceration; race, rights of the accused—exclusionary rule, habeas corpus**  
 (D2L) *The Atlantic*, “The Racism of Mass Incarceration” video  
 (D2L) *Utah v. Strieff*
- Jan. 31**    **Briefs for *Mapp v. Ohio* and *Miranda v. Arizona* due in class today**

**WEEK FIVE, continued**

- Feb. 2 War on drugs → mass incarceration; race, rights of the accused, and equal protection**  
 (D2L) *Sarasota Herald Tribune*, “Bias on the Bench”, parts 1-4  
 Film shown in class: *The House I Live In*

**WEEK SIX**

- Feb. 7 War on drugs → mass incarceration; politics, class, race; law, politics and mass incarceration**  
 (D2L) Fortner, *Black Silent Majority*, Chs. 3, 5
- Feb. 9 From the war on drugs to mass incarceration; Law, politics and mass incarceration, Chicago-style**  
 (D2L) Fortner, Conclusion  
 Gonzalez-Van Cleve, *Crook County*, Preface, Introduction and Ch. 1

**WEEK SEVEN**

- Feb. 14 Law, politics and mass incarceration, Chicago-style, cont’d**  
 Gonzalez-Van Cleve, Chs. 2, 3
- Feb. 14 Briefs for *Buckley v. Fitzsimmons* and *Utah v. Strieff* due in class today**
- Feb. 16 Law, politics and mass incarceration, Chicago-style, cont’d**  
 Gonzalez-Van Cleve, Chs. 4, 5, Conclusion  
 (D2L) *University of Chicago Torture Archive*, “About the Archive”, all five sections

**WEEK EIGHT**

- Feb. 21 Law, politics and mass incarceration, Chicago-style, cont’d**  
 Shabazz, *Spatializing Blackness*, Preface, Introduction, Chs. 2, 3
- Feb. 23 Law, politics and mass incarceration, Chicago-style, cont’d**  
 Shabazz, Chs. 4, 5, Epilogue  
 (D2L) *The Guardian*, “The Disappeared: Chicago Police Detain Americans at Abuse-Laden ‘Black Site’ ”

**WEEK NINE**

- Feb. 28 Juvenile justice**  
 (D2L) *The New Yorker*, “Before the Law”  
 (D2L) Bernstein, *Burning Down the House: The End of Juvenile Prison*, Chs. 1, 2, 8
- Mar. 2 Juvenile justice, cont’d**  
 (D2L) Bernstein, Chs. 9, 13, 15

**WEEK TEN**

- Mar. 7 Restorative and transformative justice**  
 (D2L) Zehr, *Changing Lenses: Restorative Justice in Our Times*, Pp. 160-164, Chs. 10, 11  
 (D2L) Cook County Juvenile Task Force, “Community Justice Concept Paper”  
 (D2L) *The Guardian*, “The Simple Idea That Could Transform U.S. Criminal Justice”
- Mar. 9 Mass incarceration and political representation; rethinking the concept of prison**  
 (D2L) Rivers, “Mass Incarceration and the Execution of Black Political Power”  
 (D2L) *The Vera Institute*, “Reimagining Prison”  
 (D2L) Davis, *Are Prisons Obsolete?*, Ch. 6
- Mar. 9 Last day to submit extra credit assignments—hard copy, in class.**

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**POLICY PROPOSAL DUE MARCH 14 ON D2L BY 5:00pm.  
 (See page 2 of syllabus for instructions and late policy)**

## Instructions and Template for Briefing Supreme Court Opinions

- Each brief must not exceed one side of one 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.
  - You must include each section, including the boldfaced headings, as listed below.
  - You must use your own words in order to prove that you understand what the Court is saying. Simply copying the Court's words is not enough.
  - See <http://cavern.uark.edu/~kshurlds/LAW/opinion.html> for tips on how to read a court opinion.
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### 1. Complete case citation

- This includes case name, volume, court, page, and year—as in *Cubs v. White Sox*, 123 U.S. 456 (2016)

### 2. Facts and legal history:

- Names of each party in the case
- Summary of events that led up to the case, including role all individuals discussed
- 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 (for example, “Mr. X claims that the state violated the 4<sup>th</sup> amendment”, etc.)
- 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 more complex phrasing.

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

- *The rationale 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.
- Note whether the Court followed or departed from the principle of precedent/*stare decisis*

### 6. Court's decision:

- Did the Court affirm, reverse, or vacate the lower court's decision?
- Did it remand the lower court's decision? (return the case to the lower court for a decision/further proceedings)
- If available, what was the split? (Was it unanimous? 8/1? 5/4?)

### 7. Dissents or concurrences:

- When instructed to do so, briefly summarize the dissents or concurrences.

### 8. Significance of the case and the 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.
- **NOTE:** Close decisions tends 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.