CJ 496 (sec.03): Law, Social Control, and the War on Terror

Rutgers University
Fall 2010

Professor: Patrick Carr
Class Time: MW 1.40-3.00
Room: Livingston B115
Office: LSH A349
Office Hours: Monday 11.00-12.30, Weds 12.30-1.30 and by appointment
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Course Web Site: https://sakai.rutgers.edu

Introduction

This course is designed as a short foray into an area of the sociology of law that has both a longstanding theoretical and empirical tradition and great contemporary resonance. Proceeding from the seemingly obvious observation that law is a social construct, the course engages with the questions of how law becomes legitimate, and in what ways do we, as a collective and as individuals, accept restrictions on our freedom in exchange for the provision of security and guarantees of liberty. Specifically, I want to discuss how various forms of social control are bound up and inseparable from the exercise of law and how this changes according to what is perceived as legitimate and permissible. To examine these questions we will conduct a series of case studies that illustrate the tensions between law and legitimacy-namely the War on Crime in the US, the War on Terror and the USA Patriot Act. Though each case study would merit a course in its own right we will use them as a springboard for a more general discussion. The case studies also help form the basis for the two written exercises for the course.

Reading

There are two required books for this course, and there are some titles that I would suggest you add to your collection, especially if this is an area in which you think you will concentrate in the future. Much of the course reading is in the form of journal articles or chapters, and the bulk of this material will be directly available to you on the course web site. There is a decent amount of reading each week and you will be expected to keep up with these assignments.

Required Books

Benjamin Wittes (2008). *Law and the Long War: the Future of Justice in the Age of Terror*. New York: Penguin.

Jonathan Simon (2007). *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear*. New York: Oxford University Press.

Suggested Books

David Cole and James X. Dempsey (2006). *Terrorism and the Constitution: Sacrificing Civil Liberties in the Name of National Security.* New York: New Press (First Amendment Foundation).

Louis Fisher (2005). *Military Tribunals and Presidential Power: American Revolution to the War on Terror.* Lawrence Kansas: University of Kansas Press.

Michael Welch (2009). *Crimes of Power and States of Impunity: The U.S. Response to the War on Terror.* New Brunswick, NJ: Rutgers University Press.

Requirements
There are four assignments and a final exam that make up the vast majority of your grade in this course. The remaining 10% of your grade is awarded for your overall engagement in the course. This is a small class and its success is very much dependent on the effort you put forth each week in being prepared and contributing to the best of your ability. I will lecture for the first part of each class, but the remainder of class will be spent discussing the week's readings and I will expect people to come to class prepared and to participate regularly.

Assignment 1: Class Discussion Leader-Wednesday Forum (20%)
Each participant will have the opportunity to lead a class discussion on Wednesday, hence the term "Wednesday Forum". The class leader will be responsible for distributing a set of questions/discussion points/topics that come from their reading of the selected materials for the week. The list should be distributed to the class at least two days before the class, ideally by the Friday evening before the following Monday's class. The questions can be uploaded by adding them to the drop-box on the sakai website. The class leader will also be responsible for guiding the discussion in the second part of the class that week.

Assignments 2 and 3: Reflection Papers (2 x 15=30%)
These assignments are meant to get you to critically reflect on two separate case studies, issues or documentaries as they arise in the course, either the ones we discuss or view in the course, or, if you make a case, on another topic of your choosing. I am casting this in very broad terms to allow you to exercise you critical thinking abilities. For instance, you might examine how support has waxed or waned for the post 9/11 changes in law and governance, or how legitimacy has been constructed in the War on Crime. Alternately, you might examine the current controversy on where and how Khalid Sheikh Mohammed will be tried, or the Supreme Court cases involving Hamdi or Hamdan. I am happy to work with students individually on these papers and I expect them to be in the region of 2000-2500 words each. The deadline for the first paper is October 11 (in class) and the deadline for the second paper is November 17 (also in class).

Term Paper (25%)
In addition to the reflection paper you will be required to complete a more comprehensive term paper, which is worth one quarter of your grade. The paper will be 10-12 pages in length (circa 7,500 words) and will explore in detail a topic from the course. You will be

expected to choose a topic for your paper by early October, and to facilitate this process, you will submit (via email) a one-page proposal for your topic by October 4. Beginning on October 11, I will meet with each student to advise them on the suitability and feasibility of their topic, and I will provide feedback on the proposal. It is important that you put some work into the proposal as it will help you to hone in quickly on a question to explore.

Final Exam (15%)
There is a regularly scheduled final examination that will be held in class on December 22 from 4-7PM. The questions on the final will be chosen from a list that will be distributed prior to the last class.

Class Schedule

September 1: Introduction to the Course

September 6: No Class-Labor Day

September 8: Civil Society and the Need for Law
             Readings: Hobbes and Rousseau selections on Sakai.

September 13: What Gives Law Legitimacy?
             Readings: Habermas from *Legitimation Crisis* on sakai; Levi, Sacks & Tyler, on sakai; Weber on Sakai

September 15: The Carceral State as Social Control
             Readings: Foucault selections from *Discipline and Punish* on sakai: Gottschalk (2008) on Sakai

September 20-22: Before the War on Terror: The War on Crime
             Reading: Simon chapters 1, 2, 3, 4, & 5

September 27: The Law on September 10
             Reading: Wittes Chapter 1

September 29: The Response to the 9/11 Attacks
             Reading: Wittes Chapter 2

October 4: Film-The Dark Side

ONE PAGE PROPOSAL ON TERM PAPER DUE VIA EMAIL/DROPBOX

October 6: Film-Spying on the Home Front

October 11: The Patriot Act

Readings: The Patriot Act (sakai); Etzioni chapters 1-3 on Sakai

FIRST REACTION PAPER DUE IN CLASS

October 13: Guantanamo Bay
        Reading: Wittes chapter 3; Welch chapter 4

October 18: Habeas Corpus and Guantanamo
        Reading: Fisher chapter 7 on sakai

October 20: The Court Cases I: Hamdi Vs. Rumsfeld
        Reading: Hamdi on sakai

October 25: Film-Cheney's Law

October 27: The Court Cases II: Hamdan Vs. Rumsfeld
        Reading: Hamdan on sakai

November 1-3: The Case for Judicial Review
        Reading: Wittes chapter 4; Fisher, chapter 8 on sakai; Cole and Dempsey
        chapter 7 on sakai

SECOND REACTION PAPER DUE IN CLASS 11/3

November 8: Torture, and Cruel and Degrading Treatment: Abu Ghraib and Beyond
        Reading: Hersch on sakai; Welch chapter 5

November 10: Legislative Changes: Detainee Treatment Act
        Reading: Detainee Treatment Act on sakai

November 15-22: The Case for Unilateral Executive Action
        Reading: Posner and Vermeule chapters on sakai

November 29: The Case for Congressional Action
        Reading: Wittes chapter 5

December 1: The Law on Detention
        Reading: Wittes chapter 6

December 6: The Law on Interrogation
        Reading: Wittes chapter 7

December 8: The Law on Surveillance
        Reading: Wittes chapter 8

December 13: Governing Through Terror?
        Reading: Welch chapters 8-9

TERM PAPER DUE IN CLASS

December 22: Final Exam 4-7PM in class