

Professor Tom Koenig
537 Holmes Hall
617-373-3854
Office Hours: M, Th. 10:25- 11:25 and by appointment

SOCL 4518
M, W, Th 9:15-10:20
Spring 2011
128 Ryder Hall

Law and Social Issues

“There is hardly a political question in the United States which does not sooner or later turn into a judicial one.” Alexis de Tocqueville, **Democracy in America** (1831).

“The ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influence, are usually the slaves of some defunct economist.” John Maynard Keynes

“Capitalism is the astounding belief that the most wickedest of men will do the most wickedest of things for the greatest good of everyone.” John Maynard Keynes

“Modern jurisprudence is ‘masculine’ . . . the values [and] dangers that characterize women’s lives are not reflected at any level whatsoever in contracts, torts, constitutional law or any other field of law.” Robin West

Subject:

This course will examine the way that social scientists and ethicists view the U.S. justice system. The contemporary political struggles over tax revisions, health care reform, educational financing, criminal justice restructuring, affirmative action, gender justice, internet neutrality, free trade, foreign policy and numerous other social issues are reflections of deep divisions over conceptions of human nature, social justice and the legitimate uses of power. A coherent solution to the Wikileaks dilemma, for example, involves confronting underlying questions about the definition of a free press, the nature of patriotism, the role of morality and secrecy in both domestic and foreign policy, the evolving character of international law, and even the concept of rape. Is Julian Assange, the spokesperson for WikiLeaks, a criminal who should be prosecuted for revealing secret U.S. communications or is he a hero for letting the American public know what their representatives are really doing? Is he protected by the First Amendment guarantee of free speech? If he should be prosecuted, what country’s laws should apply to a crime that takes place on the Internet?

Americans pride themselves on obeying “the rule of law” but is that the same as living in a just society? For example, exactly ten years ago the U.S. Supreme Court ruled in a 5 to 4 decision that no more Florida votes could be recounted, making George W. Bush the president of the United States by less than 600 votes. Was this a just decision or a political one? Why did even the most loyal supporters of Vice President Al Gore obey

this ruling? Is an “activist judge” merely someone you disagree with or is the U.S. Constitution a sacred touchstone as suggested by the House of Representatives’ solemn reading of this document a few days ago?

Does yesterday’s shooting of Congresswoman Giffords justify the modification of our Second Amendment rights? Is there a gender component to the assassination attempt? Would more severe penalties (the death penalty) discourage such violent acts? Under what circumstances should the killer be allowed to plead “not guilty by reason of insanity”? If he is found to be insane should he escape punishment?

This week feminist author Naomi Wolf (author of *The Beauty Myth*) wrote an editorial arguing that rape victims should be publically identified. She states: “The convention of not naming rape accusers is a relic of the Victorian period, when rape and other sex crimes were being codified and reported in ways that prefigure our own era. Rape was seen as “the fate worse than death,” rendering women – who were supposed to be virgins until marriage – ‘damaged goods.’” Naomi Wolf “Why is Rape Different?” <http://www.project-syndicate.org/commentary/wolf31/English> (last visited Jan. 9, 2011). Others argue that neither alleged rapists nor their victims should be publically named until a legal conviction occurs on the grounds that “men falsely accused of rape destroy reputations. False allegations occur at an alarming rate. There is no justice for the false accusers.” <http://www.suite101.com/content/false-allegations-a21219#ixzz1AaLsA3RM> Traditionally feminists have supported anonymity for rape victims to encourage them to come forward.

When high school bullies drive Phoebe Prince to suicide, what actions should legal authorities take? Does it matter if (as alleged) she had previously bullied fellow students when she was part of a popular clique in Ireland? These are typical of the complex social justice issues that we will analyze in this course.

Law is not simply a set of formal rules; it is a battleground of social issues. Both civil and criminal legal doctrines for dealing with conflict and violence evolve as society changes. Social inequalities are frequent sources of social strain that may lead to struggles over the law. New technologies, evolving standards of morality, globalization and other forces of social change produce conflicts that are reflected in emergent legal doctrines. To explore this topic we will look at how law is changing to deal with the challenges posed by the rapid expansion of the Internet. For example, is it a criminal matter when a college student secretly records and streams an Internet video of his roommate having sex? If so, what is a just punishment? These questions are deeply sociological but, unlike classroom debates, legal dilemmas require decisions about whether to punish bad behavior and how to punish.

This course contrasts several major schools of thought about the relationships between law and social justice. The differing assumptions about the law that are contained in natural law, utilitarianism, libertarianism, virtue theory, utilitarianism, communitarianism, formalism, originalism, law and economics, conflict theory, Marxism and feminist legal studies will be examined in order to reveal their theoretical bases and their policy-making implications. Each school will be presented with attention to how its

proponents approach issues of social justice. The course is organized so that students will pool their intellectual strengths through group projects.

Readings:

The books will be read in the following order:

Foundations of the Law: An Interdisciplinary and Jurisprudential Primer by Bailey Kuklin and Jeffrey Stemple .

Justice: What's the Right Thing to Do? by Michael Sandel.

Cybercrime: Criminal Threats from Cyberspace by Susan Brenner.

.

Articles dealing with legal issues will be posted on Blackboard when they occur.

Grading:

There are 4 assignments:

- (1) Student will make a 15 minute presentation to the class about a controversial legal issue of their choosing. The presentation should briefly summarize the dispute over the law and clear up any contradictions and difficult points. Powerpoint and other visual aids should be utilized. Presenters should consider the following questions:
 - a. What is the problem at issue in this topic?
 - b. What are the major arguments being put forth about this topic, and who is putting them forward? Are there conflicts among some parties on the same side of the policy debate?
 - c. How is justice being defined within these arguments?
 - d. What is the law as it currently stands?
 - e. What is the best legal policy in the presenter's opinion? Can legislation provide a socially just solution? Why or why not?

This will account for 25% of the final grade.

- (2) Each student will produce a twelve to fifteen page term paper covering the same material that was presented orally to the class. This will be another 25% of the final grade.
- (3) Each student will write three different 2-3 page reaction papers applying class readings and discussions to newspaper, Internet or magazine articles that

I will post on the Internet or pieces that you find on your own. This will count for 30% of the final grade (10% per paper).

(4) A take-home final examination will comprise 20% of the final grade.

When a student's grade is on the borderline, class participation will decide which way the balance tips. If absenteeism becomes a problem, attendance will be reflected in students' grades.

University rules on academic misconduct will be strictly enforced. If you are unclear about what constitutes plagiarism or other forms of academic dishonesty please consult the student handbook. Papers may be subject to SafeAssignment anti-plagiarism review.