



## **COMPARATIVE CRIMINAL LAW AND CRIMINOLOGY**

### **Lecturers:**

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### **COURSE DESCRIPTION**

In this course students will learn the basic principles of, as well as differences and similarities between, Anglo-Saxon and continental approaches to criminal law. Working with legislation, case law, and secondary materials, students will develop their analytical and research skills in exploring the theory, method, and practice of comparative criminal law. Topics include criminal law and culture, violent crime, white-collar offences, organized crime, drug offences, sanctions, human rights, and critical approaches to criminal law.

### **LITERATURE**

Texts will be made available by the course instructor.

*Nota bene:* Students should come to class prepared. This means reading assigned materials ahead of time, which both facilitates knowledge integration and generates informed discussion and debate.

### **ASSESSMENT**

Students will write a short essay on a comparative criminal law topic of their choice and present it to the class in a Mini-Conference format.

The essay is to be completed in two parts. First, a short outline of the legal issue to be explored, choice of jurisdictions to be examined, and preliminary list of sources – e.g., legislation, case law, and secondary sources – is to be submitted by Class 4. Students will be given feedback on these. Second, students are to draft an essay based on their outline and the feedback they receive of between 2,500 to 3,500 words, or 6 to 10 pages including footnotes. The final essay will be due on the last day of classes.

Students will present their research topic in a short 5-7 minute presentation at the Mini-Conference during Classes 11 & 12. PowerPoint and other visual media are welcome, but not necessary to get a good grade.

Essay Outline – 20%

Final Essay – 60%

Presentation – 20%



## COURSE SCHEDULE

### CLASSES 1 & 2: INTRODUCTION TO COMPARATIVE CRIMINAL LAW

#### Brief Description:

*The first two sessions set out the fundamentals of comparative criminal law as theory, method, and practice. A review of the basics of the common law tradition and its role in the development of criminal law in the Anglosphere serves as a foil to the civil law tradition, among others, to illustrate how history and custom shape rules and institutions, framing subsequent analysis of the substantive content of such concepts as criminal liability and punishment. What is comparable, and how, are chief considerations.*

#### Readings:

- Markus D. Dubber, “Comparative Criminal Law,” in Mathias Reimann and Reinhard Zimmerman (eds), *The Oxford Handbook of Comparative Criminal Law* (Oxford University Press, 2019), 1276-1305.
- Kevin Jon Heller and Markus D. Dubber, “Introduction: Comparative Criminal Law,” in Kevin Jon Heller and Markus D. Dubber (eds), *The Handbook of Comparative Criminal Law* (Stanford Law Books, 2011), 1-11.

#### Questions:

- What are the purposes, or ends, of comparative criminal law?
- What factors, or commonalities, make certain jurisdictions more comparable than others?
- What sources are used in comparative criminal law?

### CLASS 3: CRIMINAL LAW AND/AS CULTURE

#### Brief Description:

*Criminal laws are products of the cultures and communities in which they are imagined, systematized, and enforced. Behaviors that are criminalized and sanctioned in one jurisdiction may be seen as reasonable and harmless in another. This session explores how culture is used to justify criminal law and policy as well as the problem of accommodating cultural difference in multicultural societies.*

#### Readings:

- Claes Lernestedt, “Criminal Law and ‘Culture,’” in Will Kymlicka et al. (eds), *Criminal Law and Cultural Diversity* (Oxford University Press, 2014), 15-46.
- See also Mathias Siems, *Comparative Law, Second Edition* (Cambridge University Press, 2018), 173-177.

#### Questions:

- What is the difference between universalism and cultural relativism?
- Can culture ever be legitimately used as a defence to criminal charges? Do any examples come to mind, either for or against this proposition?

### CLASS 4: VIOLENT CRIME IN COMPARATIVE PERSPECTIVE

#### Brief Description:



*Violent crime is unquestionably one of, if not the, main objects of criminal law around the globe. That said, both the meaning and toleration of violence varies to a significant degree across jurisdictions. Examination of the crimes of homicide, assault, and sexual and domestic violence, inter alia, are interrogated from a comparative perspective to examine whether anything approaching a universal treatment of violence exists or is even possible.*

Reading:

- Alice Ristroph, “Criminal Law in the Shadow of Violence,” *Alabama Law Review* 62, 3 (2011), 571-621.

Questions:

- What, if anything, is objective about the concept of “violence”?
- What, if any, role do stereotypes – i.e., gender, race, and class-based assumptions about a person’s character – play in the definition and enforcement of criminal laws dealing with violence?

## CLASS 5: WHITE-COLLAR OFFENCES

Brief Description:

*White-collar crime is routinely presented as a case apart in criminal law. Its perpetrators, in business, finance, and government, benefit from a heightened social status and extensive economic and political influence. Its victims, by contrast, are usually left without compensation when fraud, corruption, and like wrongful conduct wreak havoc on market actors and the economy. Surveying the theory and practice of holding white-collar offenders to account in the USA and Europe demonstrates how the criminal law does and does not treat such crimes as serious offences.*

Readings:

- Samuel W. Buell, “‘White-Collar’ Crimes,” in Markus D. Dubber and Tatjana Hörnle (eds), *The Oxford Handbook of Criminal Law* (Oxford University Press, 2014), 837-861.
- See also Christian Warburg, “White-Collar and Corporate Crime: European Perspectives,” in Melissa L. Rorie (ed), *The Handbook of White-Collar Crime* (Wiley-Blackwell, 2020), 337-346.

Questions:

- Are white-collar crimes more, less, or as serious as more conventional crimes against property and persons? What considerations make you answer as you do?
- Do you think economic crises and financial crashes can be blamed on individual behaviors and private corporations? In other words, should they be criminalized and punished at all?
- What more can or should government and public institutions do to hold profit-seeking enterprises accountable for malfeasance?

## CLASS 6: ORGANIZED CRIME

Brief Description:

*This session outlines the basic features of transnational and domestic law aimed at suppressing organized crime. The ubiquity of illicit activities and black markets around the globe has led international bodies, national states, and law enforcement to cooperate, in theory, in the fight against human trafficking, arms dealing, drug smuggling, illegal gambling, loansharking, protection rackets, and money laundering. The nexus between organized and white-collar crime shows how corruption undermines government and democracy.*



## Readings:

- Jay S. Albanese, “Transnational Organized Crime,” in Manhai Natarajan (ed), *International Crime and Justice* (Cambridge University Press, 2010), 231-238.
- Frederick Desroches, “The Use of Organized Crime and Conspiracy Laws in the Investigation and Prosecution of Criminal Organizations,” *Policing: A Journal of Policy and Practice* 7, 4 (2013), 401-410.

## Questions:

- How would you distinguish between white-collar crime and organized crime? Is the distinction useful or necessary?
- What are the benefits and disbenefits of conspiracy laws?

## CLASS 7: DRUG CONTROL LAW

## Brief Description:

*Drug use is a common human behavior, subject to strict regulation and criminalization under international treaty and domestic law around the globe. While drug reform, particularly vis-à-vis cannabis, is on the rise – e.g., in many US states, Canada, and Uruguay as well as South Africa and Thailand – the suppression of the demand for and supply of controlled substances remains the norm in law and policy. The drug control regime’s rationale, its implications for criminal law and resultant human rights issues, and the changing legal landscape are the main focuses of this session.*

## Reading:

- Beatrice Brunhöber, “Drug Offenses,” in Markus D. Dubber and Tatjana Hörnle (eds), *The Oxford Handbook of Criminal Law* (Oxford University Press, 2014), 789-811.
- See also *Psychoactive Substances Act 2016* (c. 2), §2 [<https://www.legislation.gov.uk/ukpga/2016/2/section/2/enacted>].

## Questions:

- How does the notion of “harm” shape both (1) the criminal law on drug possession and trafficking and (2) discourses aimed at reforming the system away from criminalization?
- Is a “one-size-fits-all” approach to enforcing drug laws appropriate given the wide variety of social, cultural, and political views on their use? Why or why not?

## CLASS 8: SENTENCING AND PUNISHMENT

## Brief Description:

*Those convicted of criminal offences are subjected to disciplinary measures as a matter of course. Some legal systems aim at the rehabilitation and reintegration of offenders, others are fixed on desert-based punishment. Penalties vary to a significant degree between jurisdictions and range from fines and community service to death, depending on the perceived severity of the crime. This session centers on the institutions and decision-makers that deal with lawbreakers, the idea of fairness in sentencing and its contestation, and what makes for a successful corrections programme.*

## Readings:

- Tatjana Hörnle, “Comparative Assessment of Sentencing Laws, Practices, and Trends,” in Darryl K. Brown et al. (eds), *The Oxford Handbook of Criminal Process* (Oxford University Press, 2019), 887-909.



- *R v. Gladue*, [1999] 1 SCR 688, paras. 24, 58, 66-85, and 89-92 [<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1695/index.do>].

#### Questions:

- What are the advantages and disadvantages of desert-based punishment?
- Based on your reading of the excerpts from the Supreme Court of Canada's *R v. Gladue*, do you think it is fair to consider factors beyond individual culpability in sentencing? Should history, politics, social standing, gender, race, class, and identity be considered? Why or why not?

### CLASS 9: HUMAN RIGHTS AND THE LIMITS OF CRIMINAL LAW

#### Brief Description:

*Human rights, entrenched in international, constitutional, and legislative instruments, routinely impose limits on the scope and application of procedural and substantive criminal law, frustrating the state's sovereign power over the use of force and securing for the accused and convicted anti-majoritarian legal protections. Just as often, human rights fail to protect people. This session looks at the proliferation of the "culture of justification" human rights are said to have inaugurated through an analysis of the right to a fair trial in common and civil law jurisdictions as well as the abolition, and persistence, of the death penalty around the globe.*

#### Readings:

- Carsten Momsen and Marco Willumat, "Due Process and Fair Trial," in Pedro Caeiro et al. (eds), *Elgar Encyclopedia of Crime and Criminal Justice* (Edward Elgar, 2023), <https://doi.org/10.4337/9781789902990.due.process.fair.trial>.
- See also Sandra Fredman, "Capital Punishment," in Sandra Fredman (ed), *Comparative Human Rights Law* (Oxford University Press, 2018), 153-186.

#### Questions:

- The common law's adversarial trial model differs in significant ways from civil law's inquisitorial trial model. Which system, in your view, best preserves the rights of defendants and why?
- Capital punishment is one of the most extreme examples of the state's capacity for violence. It nonetheless remains on the books in a not insignificant number of countries. What arguments have proved persuasive to the judges and courts that have upheld the legality of the death penalty? What about the judges and courts that have found it to be a violation of human rights?

### CLASS 10: CRITICAL APPROACHES TO CRIMINAL LAW

#### Brief Description:

*Criminal law is regularly presented as an objective set of rules that apply equally to all, but in fact it impacts different segments of the population very differently. From the changing nature of sexual assault in the digital age to the culture wars over Critical Race Theory, criminal law is under increasing pressure to account for the disparities it creates and perpetuates. In this session we examine how gender, race, class, and other characteristics affect the theory and practice of criminal law from a comparative perspective.*

#### Readings:

- Prabha Kotiswaran, "Feminist Approaches to Criminal Law," in Markus D. Dubber and Tatjana Hörnle (eds), *The Oxford Handbook of Criminal Law* (Oxford University Press, 2014), 59-69 and 77-83 [i.e., excluding parts III and IV].



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- Bennett Capers, “Critical Race Theory,” in Markus D. Dubber and Tatjana Hörnle (eds), *The Oxford Handbook of Criminal Law* (Oxford University Press, 2014), 25-37.

Questions:

- According to the readings, why do lawmakers, legal systems, and academics not take the concerns of gendered, racialized, and impoverished people as seriously as those of the majority?
- Are liberal ideas about gender, race, and class applicable outside the so-called “Western” legal tradition? For example, is Critical Race Theory simply an American point of view that is inapplicable beyond its borders? What, if anything, can such analyses add to comparative criminal legal scholarship?

CLASSES 11 & 12: MINI-CONFERENCE

Brief Description:

Short presentations of your research project in a casual environment.