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### Challenges and Choices in Criminal Law Course Design Commentary Symposium: Criminal Law Pedagogy

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# Challenges and Choices in Criminal Law Course Design

Roger A. Fairfax, Jr.\*

I thoroughly enjoy every course in my teaching package,<sup>1</sup> but the first-year Criminal Law course occupies a special place in my heart. The subject matter in the Criminal Law course is perhaps the most compelling of any offered in the first-year curriculum. As such, it provides Criminal Law instructors the tremendous opportunity to capture the imagination of students and to highlight the nexus between law in books and law in action.

In addition, because most entering law students arrive with years of exposure to popular culture representations of criminal justice in books, film, and television, the Criminal Law classroom is fertile ground for opportunities to challenge students to reassess their pre-conceived notions. In addition to examining the societal and policy choices behind criminal law doctrine, the course material often prompts discussion about the role and impact of various criminal justice actors, including attorneys. Therefore, the exploration of the ways in which Criminal Law course concepts and themes relate to the practice of law can provide a valuable avenue of career exploration for first-year students.

Furthermore, I typically teach the course in the first semester, and, thus, feel a particular obligation to supplement the criminal law concepts and doctrines with the ethics and professionalism training my faculty colleagues and I will continue to reinforce until the students graduate. It is truly satisfying to see the students' professional identities begin to take shape in the course of grappling with the complex questions raised in Criminal Law.

However, while I love to teach Criminal Law, I find it among the most challenging courses to design. Interestingly, my greatest difficulty in course planning came not before the first time I taught the class, but after two or three years in. It was not until I had a few semesters under my belt that I truly appreciated the range of topics I *could* be teaching, in addition to

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\* Professor of Law, George Washington University Law School. A.B., Harvard College; M.A., University of London; J.D., Harvard Law School. I would like to thank Professor Ellen Podgor for organizing and inviting me to participate in the 2012 Southeastern Association of Law Schools roundtable on criminal law pedagogy.

<sup>1</sup> In addition to Criminal Law, I regularly teach the Adjudicatory Criminal Procedure ("bail to jail") course and occasional criminal law and procedure seminars on a variety of topics, including white-collar investigations, the grand jury, and criminal justice policy and *The Wire*.

what my syllabus already covered. That same tension returns each summer when I begin to turn my attention to fall course preparation.

I doubt that I am alone in the experience of reviewing my course materials at the end of the semester and discovering my lecture notes and textbook littered with margin notes meant to remind me of things I might do differently the next time around—cases I should forgo, supplemental materials I should introduce, classroom exercises I should consider.

As a result of my gradual tweaking and adjusting of the Criminal Law course, I have experimented with a hodge-podge of pedagogical tools, including use of interactive practice exercises, multimedia presentations, literature excerpts, and television and film clips to help convey doctrines and concepts and develop students' analytical thinking. Some ideas have become a permanent feature of my course design, while less successful ones have ended up on the cutting-room floor. There are many other ideas I still look forward to auditioning—particularly the enhanced utilization of technology both inside the classroom (such as clicker technology), and in between class sessions (such as wikis, blogs, and social media-based supplemental class content discussions).<sup>2</sup>

But while there is no shortage of ideas for innovation in teaching the Criminal Law course, there is a very real limit on time and capacity. How does one make room for new pedagogical methods while preserving what is deemed to be essential to a traditional course in Criminal Law? To be sure, what is essential varies from teacher to teacher. Theories of punishment, definitions of culpability, homicide, rape and sexual assault, defenses, and inchoate offenses have remained at the core of my course coverage. In recent years, I also have devoted some time to theft offenses and have increased my emphasis on statutory analysis, utilizing both the Model Penal Code and state and federal criminal statutes. In addition, I have begun to incorporate skills exercises into the course.

Including all of that doctrinal content while employing often time-consuming pedagogical tools and classroom exercises leaves precious little room for many of the other vitally important issues animating the study of criminal law. I attempt to give students some limited exposure to the broader context within which criminal law doctrines operate. For example, I endeavor to touch upon the ubiquity of plea bargaining and the role of discretion within the criminal process. Likewise, I constantly struggle in the face of time constraints to ensure that mass incarceration and issues of

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<sup>2</sup> See, e.g., Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, 54 J. LEGAL EDUC. 551 (2004).

gender, race, and sexual identity receive sufficient attention where relevant. As the other essays in this symposium reveal, many other important topics could also compete for the very limited bandwidth available in the first-year Criminal Law course.

Navigating the many choices inherent in Criminal Law course design can be challenging and sometimes frustrating. Nevertheless, I find that the process of experimentation and refinement each year helps to rekindle my strong passion for teaching the course. For this reason, I expect that my Criminal Law course design will forever—and appropriately—remain a work-in-progress.

