INTRODUCTION TO LAW AND POLICY
DOCTORATE IN LAW AND POLICY PROGRAM ORIENTATION
NORTHEASTERN UNIVERSITY
SUMMER TERM 2009

Politics is about “who gets what, when and how.”
Lasswell (1951)

Policy Science is about “speaking truth to power.”
Wildavsky (1979)

“Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question.”
Alexis de Tocqueville, Democracy in America (1832)

OVERVIEW

This course provides students the opportunity to obtain foundational knowledge and exposure to law and policy definitions and integrated application. This course also provides students the opportunity to gain initial exposure to doctoral program and education on the purpose of doctoral training for knowledge creation, publishing of scholarly and professional work, and developing the highest professional competence. We will begin the initial stages of defining doctoral thesis topic analysis and research design. Appropriate experiential learning, guest speakers and lecturers will be incorporated.

As Alexis de Tocqueville observed in the 1820’s, lawyers comprise a natural aristocracy in a republic because there is no aristocracy of birth, no state church, and no central military force to make key decisions. Attorneys have always played an enormous role in shaping America’s ideological, economic and social structure. Law is not simply a set of formal rules; it is a battleground of social theory. Both civil and criminal legal doctrines evolve as society changes. This portion of the course contrasts several major schools of thought about the relationships between law, public policy and social experience. The differing assumptions about the law that are contained in formalism, legal realism, originalism, pragmatism, social choice theory, law and economics, Marxism, critical legal studies, communitarianism, conflict theory and natural law 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 scholars claim to know what they know, how its theories are created, tested, and evaluated, the range of issues that are regarded to fit to study, and how research agendas are set. We will also look in depth at several sociological perspectives on law and the origin of the notion that government should be constrained by law.

This portion of the course introduces students to the complex interaction of the various institutions impacting law and policy. This portion of the course begins to provide students a practical overview for crafting effective strategies for advancing public policy changes at the federal, state and local level using a range of legislative, litigation and
other policy tools. Through case studies from a variety of policy areas including education, health care, globalization and more, this portion of the course will consider what policy issues are best suited to being addressed at different levels of government (international, federal, state or local) and how to make strategic use of different policy instruments (legislation, litigation, regulation, ballot initiatives and other legal and policy instruments). The goal of this portion of the course is to begin the process of providing students with a framework for developing effective strategies for achieving desired policy change across a broad spectrum of issues, with particular emphasis to each student’s respective policy domain and doctoral thesis.

The educational goal of the policy portion of this course is for students to have the opportunity to begin their exposure to and understand the various multi-disciplinary skills found in positivist sciences, economics, research methodology, sociology, philosophy, critical thinking, and reflective self-understanding of the community writ large (the polity) and writ small (the policy community) to reach towards the aspiration to effectively ‘speak truth to power’—even, or especially unwelcome truths.

The educational goal of the law portion this course is for students to have the opportunity to be exposed to the complexity of legal institutions and enforcement vel non of policy, and that “law is not to be studied or practiced as if it were a discipline referenced only by its own norms The fact that law is a derivative discipline, one which draws on other disciplines to explain how rules have developed and should develop. The law is not received dogma, and it cannot be taught as such.” The Spirit of Renaissance, NYU Law School Magazine 45 (Spring 1993).

The educational goal of the doctoral thesis portion of this course is to give students the opportunity to begin identifying the domain, data sets, experiences and research interests of students, so that they begin the process of developing knowledge creation skills and how to ultimately publish their professional and academic work.

CLASS FORMAT

Though lectures are part of this course and program, this is not a traditional lecture-oriented course. This program is not structured like a Master’s level program - it is a doctoral program. Socratic method, student presentations, structured and/or assigned discussion participation, asynchronous weekly online assignments and discussions, and various learning activities are utilized.

Doctoral students are required to complete all readings, and be prepared to participate in all class activities, including online weekly assignments and discussion boards. During the monthly weekend intensives, students are called on randomly to explain their view of the readings for the class and to provide their perspectives. Advance preparation and timely completion of all assignments is critical to student success.

Faculty recognizes that a significant amount of reading and writing are assigned each week and understand that this is a rigorous doctoral program. Faculty work with students to provide some flexibility, but the demands and requirements of this program are not
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Introduction to Law and Policy Seminar and Orientation, Summer 2009

flexible. You are responsible for allocating an appropriate amount of time to complete these assignments. This time simply must be allocated. Students must acquire knowledge and develop knowledge creation skills consistently during the entire two-year program, work and learning is not limited to the monthly intensives.

ONLINE COURSES ON BLACKBOARD
At the beginning of each term students log in to the College of Professional Studies Blackboard at

https://cpsblackboard.neu.edu/webapps/login/

Your Blackboard login (username and password) is the same as your myNEU login.

Students are responsible for accessing the course on Blackboard regularly throughout each term to read and post to the discussion, access and upload written assignments, view supplemental readings, faculty announcements and other updates to the course.

DISCUSSION BOARD
Students engage in online discussions about readings and their applicability to individuals’ doctoral thesis domains on Blackboard. Faculty monitor on-line discussions and provide guidance and refinement as appropriate, but do not necessarily respond to specific individual posts. Faculty facilitation of on-line discussions is normally provided a few times each week.

TECHNICAL SUPPORT
24/7 CPS Blackboard Technical Support: 866-847-1573
Get immediate 24/7 technical support for the CPS Blackboard by calling 866-847-1573. You may also visit our support portal for answers to common questions, or email CPSBlackboard@neu.edu for help.

myNEU Support: 617-373-4357
For myNEU questions please call the university help desk at 617-373-4357.

COMMUNICATING WITH FACULTY
Please send e-mail directly to the appropriate faculty member with specific questions. Faculty will respond in a reasonable time-frame, generally no later than 24-48 hours after receipt. The July-August term may also accrue some delays due to academic travel in the Pacific, Europe and South America by faculty during this time.

USE OF TECHNOLOGY IN THE CLASSROOM
Cell phone ringers must be turned off before entering the classroom.
Laptops are acceptable only for note taking only. Class sessions are a time for focus and clarity of mind. Laptops are not tolerated for any other purpose as this distracts fellow students and interferes with concentration and focus.

**No email, no web browsing, and no computer games of any sort are to be engaged in during class.**

**ACADEMIC HONESTY AND INTEGRITY STANDARDS**

The University views academic dishonesty as one of the most serious offenses that a student can commit and imposes appropriate punitive sanctions on violators. Here are some examples of academic dishonesty. While this is not an all-inclusive list, we hope this will help you to understand some of the things instructors look for. The following is excerpted from the University’s policy on academic honesty and integrity; the complete policy is available at [http://www.osccr.neu.edu/policy.html](http://www.osccr.neu.edu/policy.html).

- **Cheating** – intentionally using or attempting to use unauthorized materials, information or study aids in an academic exercise. This may include use of unauthorized aids (notes, texts) or copying from another student’s exam, paper, computer disk, etc.

- **Fabrication** – intentional and unauthorized falsification, misrepresentation, or invention of any data, or citation in an academic exercise. Examples may include making up data for a research paper, altering the results of a lab experiment or survey, listing a citation for a source not used, or stating an opinion as a scientifically proven fact.

- **Plagiarism** – intentionally representing the words or ideas of another as one’s own in any academic exercise without providing proper documentation by source by way of a footnote, endnote or intertextual note.

- **Unauthorized collaboration** – Students, each claiming sole authorship, submit separate reports, which are substantially similar to one another. While several students may have the same source material, the analysis, interpretation and reporting of the data must be each individual’s.

- **Participation in academically dishonest activities** – Examples include stealing an exam, using a pre-written paper through mail order or other services, selling, loaning or otherwise distributing materials for the purpose of cheating, plagiarism, or other academically dishonest acts; alternation, theft, forgery, or destruction of the academic work of others.

- **Facilitating academic dishonesty** – Examples may include inaccurately listing someone as co-author of paper who did not contribute, sharing a take home exam, taking an exam or writing a paper for another student.

**WRITTEN ASSIGNMENTS**

Students will be provided a questionnaire at the July 9th Orientation meeting to describe their professional and doctoral thesis interests and skill sets. In order to advance student assessment and doctoral thesis direction the following assignment is given.
The first assignment requires each student to present in writing and orally before their respective students a detailed description of their experiential knowledge domain, the doctoral thesis topic that they are interested in, and the various potential data sources that are readily available to them in their current professional lives. The class presentations will last approximately 10 minutes per student during the August 14th-16th intensive period.

ESSAY GRADING CRITERIA

A Range Essay:
The essay is of outstanding quality in all, or almost all, respects. It is both ambitious and successful. It demonstrates mastery of the “Elements of the Academic Essay” with grace and confidence. It includes:
• An interesting, arguable thesis that is sufficiently limited in scope, presented early and developed throughout the essay;
• A logical, progressive structure that takes the reader on a journey, developing, complicating, and expanding the initial thesis by considering counter-arguments; strong and clear links between points, and well-organized paragraphs;
• Sufficient, appropriate, and interesting evidence, presented in a readable and understandable way;
• Original and insightful analysis, that shows how the evidence supports the thesis, and that goes beyond summary or paraphrase;
• Sources that are deployed in a range of ways (to motivated and support the argument, provide key-terms, and so on), that have been selected carefully, and that are quoted and cited correctly; and
• A style that is both conversational and sophisticated; that uses diction appropriate to the subject matter and the audience; that engages and stimulates the reader.

A-/B+ Range Essay:
The essay nearly lives up to the above requirements, but in one or two minor ways it falls short of the ideal. For example, the prose may be occasionally awkward, or word choice may be imprecise at points, or one section of the argument may be less well-developed than the others.

B Range Essay:
The essay is one that is ambitious but only partially successful, or one that achieves modest aims well. It exhibits one or more of the following features:
• A thesis that may be arguable but vague, uninteresting, or fragmentary; it may be implied rather than stated directly (or stated quite late); it may be dropped in places;
• A structure that proceeds logically most of the time or in general, but is periodically confusing due to missing links or large intellectual leaps; it might be overly predictable and undeveloped, with few complications; it may include disorganized paragraphs;
• Evidence that is generally solid but may be thin in places, or might be presented without analysis (as undigested quotations);
• **Analysis** that is at times insightful but sometimes either simply summary or entirely absent; that makes inconsistent or illogical connections between evidence and thesis;
• **Sources** that are quoted and cited correctly (for the most part) but are deployed in limited ways—as a straw person or a simple confirmation of the author’s viewpoint;
• A **style** that is clear but lacking in sophistication; or that is weighed down by inappropriately fancy diction; may demonstrate some errors in punctuation, grammar, spelling, and format.

**B-/C+ Range Essay:**
The essay, while still retaining the promise of an original and well-argued thesis, fall short in a number of ways. Perhaps the support for key assertions is inadequate, or an obvious counter-argument is ignored, or a major misstep in logic mars the coherency of the whole argument, or grammatical errors consistently mar the prose.

**C Range Essay:**
A C range essay has significant problems in articulating and presenting its argument, or seems to lack a central argument entirely. Its features include one or more of the following:
• A **thesis** that is vague, descriptive, or confusing; that has unintegrated parts; that is implied rather than stated directly (or stated too long); that is dropped in places;
• A **structure** that is confusing (making huge, unmotivated intellectual leaps) or predictable (a list or a “five paragraph” essay); that includes few complications or counter-arguments; that exhibits disorganized, often overly descriptive, paragraphs;
• Insufficient **evidence**, often presented without analysis as undigested quotations; may be taken out of context;
• **Analysis** that has moments of insight but is generally missing or simply summary and may include some misreadings;
• **Sources** that are not adequately situated or explained; that may be quoted and cited incorrectly; that are used simply as filler or as affirmation of the author’s viewpoint;
• A **style** that is difficult to read or overly simplistic; perhaps including errors in punctuation, grammar, spelling, and format.

**D Range Essay:**
A D range essay fails to grapple with either ideas or tests, or fails to address the expectations of the assignment. It features include:
• A **thesis** that is missing or purely descriptive (un-arguable), or that is a total misreading;
• A **structure** that is confusing, demonstrating little focused development; disorganized paragraphs; plot summary;
• **Evidence** that is scanty or absent; when present, it is chiefly undigested quotation and/or taken out of context;
• **Analysis** that is absent, based on misinterpretations of the evidence, or mere summary;
• **Sources** that are absent or, if present, are not adequately situated or explained, incorrectly quoted and/or cited, and/or used as filler;
• A **style** that is simplistic or difficult to read, and is probably riddled with technical errors.
INITIAL PROGRAM TEXTS
The following texts are distributed during the first introductory seminar session.

Dr. Howard’s Texts:

Law in Action, A Socio-Legal Reader by Macaulay, Friedman and Mertz

The Oxford Handbook of Public Policy by Moran, Rein & Goodwin

Making Policy, Making Law, An Interbranch Perspective by Mark C. Miller and Jeb Barnes

Dr. Koenig’s Texts:

Feminist Legal Theory: A Primer by Nancy Levit, Robert R. M. Verchick, and Martha Minow

Foundations of the Law, An Interdisciplinary and Jurisprudential Primer by Bailey Kuklin and Jeffrey W. Stempel

Global Issues in Tort Law by Julie A. Davies and Paul T. Hayd

Internet Law in a Nutshell by Michael L. Rustad

In Defense of Tort Law by Thomas Koenig and Michael Rustad.

Law’s Order: What Economics Has to Do with Law and Why It Matters by David Friedman


The Squandering of America: How the Failure of Our Politics Undermines Our Prosperity by Robert Kuttner

Dr. Fox’s Texts:

Essential Statistics for Public Managers and Policy Analysts by Evan M. Berman

The Chicago Guide to Writing About Numbers by Jane E. Miller

Using SPSS for Social Statistics and Research Methods by William E. Wagner

Dr. Golub’s Texts:

Microeconomics for Public Decisions, by Steinemann, Apgar, Brown
An Introduction to Law and Economics by A Michael Polinksy

**Dr. Dopkins Texts:**

Writing for Social Scientists: How to Start and Finish Your Thesis, Book, or Article: 2nd Ed., by Howard Becker


Additional readings are posted on Blackboard. Students are responsible for accessing the course on Blackboard regularly to view new discussion board posts, assignments, readings, faculty announcements and other updates to the course.

**SUMMER TERM ASSIGNMENTS**

*Assignment #1: July 2009 Discussion Board Post on Blackboard*
*Due: On or before August 9, 2009*
*Dr. Howard and Dr. Koenig*

Kuklin and Stemple briefly introduce a variety of social and philosophical perspectives that underlie contemporary American jurisprudence in Foundations of the Law, An Interdisciplinary and Jurisprudential Primer. They note that legal decision makers come to different conclusions based on their underlying philosophical beliefs.

<table>
<thead>
<tr>
<th>Moral Theory of Law</th>
<th>Kuklin, Chapter 1</th>
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<tbody>
<tr>
<td>Political Theory</td>
<td>Kuklin, Chapter 2</td>
</tr>
<tr>
<td>Economic Analysis of Law</td>
<td>Kuklin, Chapter 3</td>
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<tr>
<td>Political Structures</td>
<td>Kuklin, Chapter 4</td>
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<td>Dispute Theory</td>
<td>Kuklin, Chapter 5</td>
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<tr>
<td>Legal Theory</td>
<td>Kuklin, Chapter 6</td>
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</tbody>
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On or before August 9, 2009 post your thoughts on the Kukin readings and their applicability to your potential doctoral thesis topic, *vel non*, in the Discussion Board on Blackboard.

Read the Discussion Board posts and provide thoughtful responses to at least two of your colleagues’ posts.

*Assignment #2: Summer Term 2009 Theoretical Perspectives Essay – Submit via the View/Complete Assignment Link in Blackboard in the Assignments Folder*
*Due: On or before August 29, 2009*
*Dr. Koenig*
After reading *Foundations of the Law, An Interdisciplinary and Jurisprudential Primer* by Kuklin and Stemple (and doing supplementary research, when necessary), write an essay of approximately 6 pages explaining what perspective (or, more likely, what combination of legal perspectives) are most frequently employed in your area of specialization. Which of the perspectives in the readings are least likely to carry any weight among decision-makers? Are there structural reasons for privileging certain perspectives in your field (i.e. it would cost us a substantial amount of money and other resources if we accepted certain arguments) or are they based on the personal beliefs of key individuals or groups (i.e. the newspapers and the public would pillory us if we openly supported this legal perspective)? Which perspectives do you find most compelling and which do you most dislike? Why? When you disagree with a legal decision or principle employed in a dispute (by the courts, your human resources office, political leaders or other stakeholders), what is the underlying ideological basis of your disagreement?

The page length specified is only a guideline. Length does not make strength. I would rather have five tightly written pages than six pages of repetitive and meandering statements.

On or before August 29, 2009 submit your Kuklin essay using the View/Complete Assignment link in the Assignments folder on Blackboard.

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*Assignment# 3: Summer Term 2009 Law Essay, and Summer Term 2009 Policy Essay – Submit via the View/Complete Assignment Link in Blackboard in the Assignments Folder. Draft Due On or Before August 19, 2009 Final Due On or before August 29, 2009 Dr. Howard*

Read the following in the *Law in Action* and *Oxford Handbook of Public Policy* texts, as covered during the July and August Intensives and the Sub-Cohort Discussions:

**July Readings for Policy:**


“Training for Policy Makers,” Oxford Handbook of Public Policy. Yehezkel Dror. (policy educational goals for “grand policy makers”) pp. 80-105

Making Policy, Making Law

“A View from the President” pp. 72-88
Case Studies:

(1) 1853 Defining Torture in the War on Terror: The Trail of the “Torture Memo” and “Checking with the Professionals” (Interbranch Perspectives, Law and Politics, Law Enforcement, National Security, Terrorism)

After the September 11, 2001, attacks on the United States, President George W. Bush launched a military offensive in Afghanistan, which led to the capture of Al Qaeda operatives thought to be behind the attacks. Top US officials debated how to extract crucial information from them about Al Qaeda’s future plans. The Central Intelligence Agency wanted to apply aggressive interrogation methods, which it argued were necessary to convince detainees to reveal what they knew. But CIA officials worried such techniques might violate both international treaties banning torture and “cruel, inhuman or degrading” treatment of prisoners of war and detainees and, more consequentially, the domestic laws that enforced them. To protect its agents, the CIA sought a clear statement from the Bush Administration on how far agents could go in efforts to force detainees to talk. The White House sent the CIA’s request to the Office of Legal Counsel (OLC), an elite unit within the Justice Department which wrote legal opinions for the executive branch of government, for an opinion on what, under US law, constituted torture. These cases tell the story of OLC’s legal findings and their consequences.

Part A (1853.0) describes a series of OLC memoranda on the treatment of detainees in the “war on terror,” culminating in an August 2002 opinion that became known as the “torture memo,” which narrowly interpreted the legal meaning of torture but took a broad view of presidential wartime powers under the Constitution. Part A ends as Assistant Attorney General and OLC head Jay Bybee must decide whether to sign the opinion.

Part B (1854.0) tracks the results of the torture memo, tracing the use of interrogation techniques it sanctioned from CIA detention centers overseas to the naval base in Guantanamo Bay, Cuba. In the view of some, these harsher techniques eventually “migrated” to Abu Ghraib prison in Iraq, where abusive treatment of detainees became an international embarrassment for the US. A brief sequel (1854.1) describes the efforts of a small group of senators, led by John McCain of Arizona, to hammer out a compromise with the White House over what constituted torture and cruel and degrading treatment of detainees.

The cases are intended to describe the interface between legal advisors and high policy officials, and to ask how government lawyers should best advise their clients. Was it their responsibility to provide legal arguments to support a favored policy? Should they spell out risks, or introduce extra-legal considerations, such as the moral and ethical ramifications of a policy? Parts A and B were designed to be used together or in succession, but can also be taught as stand-alone cases.

(2) Making Policy, Making Law pp. 1-35
American Law Making from an Interbranch Perspective
“Adversarial Legalism in Action: The Pacific Northwest Forests-Spotted Owl Controversy”

July Readings for Law

“Viewing the Legal Phenomena,” Law in Action. pp. 1-18


Law in Action. (Note, pay particular attention to the research
methods discussion, and policy implications found in pages 48-56).

“Miranda’s Revenge: Police Interrogation as a Confidence Game,” pp. 58-75

Making Policy, Making Law
“Adversarial Legalism, the Rise of Judicial Policymaking, and the
Separation-of-Powers Doctrine”

August Readings for Policy

Christopher Winship.


Making Policy, Making Law
“A View of the Courts from the Hill”

Case Studies:

Making Policy, Making Law
Judicial Implementation of Statutes
(1) “Three Stories about Courts and the American with Disabilities Act”

(2) “The City of Boerne, Two Tales of One City”

August Readings for Law

“Non-Contractual Relations in Business: A Preliminary Study,” pp. 75-92


Mayhew.


Robert A. Kagin.

Making Policy, Making Law pp. 89-104

“Courts and Agencies”

Assignment for Policy:
Prepare a comprehensive essay on the policy readings, case studies, and lectures and how these perspectives relate to your doctoral thesis. Please also incorporate the appropriate theoretical paradigms from the readings Kuklin and lectures studied this term and apply to your doctoral thesis. This paper is due at the end of the Summer term. You will be required to provide a draft paper incorporating the materials from July and August for review by the August 19, 2009.

Assignment for Law:
Prepare a comprehensive essay on the law and society readings and their application to your doctoral thesis. Use the readings, case studies, and lectures from this term, and incorporate content from your other core curriculum as appropriate. This paper is due at the end of the Summer Term. You will be required to provide a draft paper incorporating the materials from July and August for review by the end by August 19, 2009.

INTRODUCTION TO LAW AND POLICY 2009 INTENSIVE SCHEDULE

Note: This schedule is subject to modification

Meet at Northeastern University Downtown Campus
89 Broad Street
2nd Floor of the Hilton Hotel Financial District
Boston, MA 02110

Thursday 7/9
Introduction, tour of university, completion of administrative documents, library visit, NU Husky Card I.D., etc., distribution of texts, Presentations by prior graduates 1:30-5:00P
Dinner at the Alumni Center – Columbus Place 7:00-9:00P

Friday 7/10
Breakfast 7:30-8:30A
Survey of Public Policy Scholarship 8:30-10:30A
Professor Chris Bosso.
Break 10:30-10:45A
Survey of Public Policy Scholarship 10:45-12:45P
Professor Chris Bosso

Lunch 12:45-1:45P

Survey of Public Policy Scholarship 1:45-3:45P
Professor Bosso

Break 3:45-4:00P

Foundations of the Law, Interdisciplinary and Jurisprudential Primer 4:00-6:00P
Professor Koenig

Break 6:00-6:15P

Foundations of the Law, Interdisciplinary and Jurisprudential Primer 6:15-7:15P
Professor Koenig

Dinner 7:15-8:15P

Saturday 7/11
Breakfast 7:30-8:30A

Methods and Statistics 8:30-10:30A
Professor Fox

Break 10:30-10:45A

Methods and Statistics 10:45-12:45P
Professor Fox

Lunch 12:45-1:45P

Policy and Case Studies 1:45-3:45P
Professor Howard

Break 3:45-4:00P

Policy and Case Studies 4:00-6:00P
Professor Howard

Dinner 6:00-7:00P

Law and Case Studies 7:00-8:00P
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Professor Howard and Koenig Review

Sunday 7/12
Breakfast 7:30-8:30A
Law and Case Studies 8:30-10:30A
Professor Howard
Break 10:30-10:45A
Law and Case Studies 10:45-12:45P
Professor Howard
Lunch 12:45-1:45P
Economics 1:45-3:45P
Professor Golub
Break 3:45-4:00P
Economics 4:00-6:00P
Professor Golub
Dinner 6:00-7:00P
Economics 7:00-8:00P
Professor Golub

Monday 7/13
Breakfast 7:30-8:30A
Foundations of the Law, Interdisciplinary and 8:30-10:30A
Jurisprudential Primer
Professor Koenig
Break 10:30-10:45A
Social Science Methods 10:45-12:45A
Professor Dopkins
August assignments and readings 12:45-1:00P
Break 1:00-1:15P
Doctoral Theses Workshop 1:15-3:15P
Scholar Presentations of Doctoral Thesis Ideas
10 Minutes Per Scholar
Professors Howard, Koenig and Dopkins

Student Consults 3:15-4:00P
Professors Howard, Koenig and Dopkins