**Introduction to Public Law**

Political Science 326

**Spring 2017**

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**COURSE DESCRIPTION**

What is law and why is it such a significant part of modern-day society and culture in the United States? How does the legal system operate through its various actors – judges, lawyers, and juries – to enable individuals to resolve disputes without resorting to violence? How does the law operate to structure and control the state? From where does legal power arise and what are its limits? How does the law both constrain and empower subordinated individuals and groups in American politics and society? These questions and others will be the subject of this course, which provides students with a general overview of the legal system of the United States.

The course is taught on the 300 level and is intended primarily for students who have little or no prior background in law. Some students who take the course will view it as a gateway to further study about law, while others will use it simply to broaden their understanding of the legal system as one of the most significant and powerful institutions in the modern American state. Regardless, all students will learn 1) to demonstrate substantive knowledge about the various players in the legal system, 2) to think and write critically about how the law structures and channels power in American culture, politics, and society, and 3) to construct and defend legal arguments effectively in oral and written form. The major group activity and associated writing assignment will also introduce students to a particular area of American law in the form of a simulation designed as a lawsuit.

The course is a lecture course but will incorporate discussion. During the lecture times, students can expect a mixture of lecturing by the professor and discussion with the professor and other students in the class. Because class discussions are an important part of the course, students will be expected to keep up with the reading and to think about it as they are doing it. In addition, students will meet in smaller groups frequently to work through some of the issues presented in the lectures and to organize their work on the mock lawsuit. Students will be expected to work independently on the mock lawsuit through a Blackboard conference website. This sounds worse than it is; you will get plenty of help.

*Is this class right for me?* The course, while taught at the 300 level, will involve significant reading and writing requirements. You will be expected to complete all of the reading and to attend all of the lectures; you will also be expected to participate actively in the mock lawsuit. Students who have tried in the past to get by through either doing the reading or coming to lectures have traditionally been unhappy with their final grades. The course demands a lot, but delivers a lot in return, in proportion to the effort you put into it. That being said, *effort alone* will not get you an A. Only outstanding performances on the various assignments will get you into the A range for this course. Of course, effort is not irrelevant in establishing outstanding performance!

**COURSE REQUIREMENTS**

Students will be expected to attend all lectures. Performance in discussions taking place during the lectures is not a formal requirement in the course. Nonetheless, constructive, informed, respectful participation that contributes directly to conversations about the course material will raise borderline grades; consistently disruptive participation may result in lower grades.

In order to help students to understand better the operation of the legal system, the course incorporates a simulation of a legal dispute. All students will choose to be lawyers or judges; the lawyers will represent either the plaintiff or the defendant in the dispute. The judges will manage negotiations between plaintiffs and defendants and will either approve settlements or conduct trials and write opinions adjudicating their cases. Most of this work will take place through Blackboard discussion boards, though some class sessions will be devoted to the simulation. Failure to participate in the simulation either in class or through Blackboard will have a highly negative impact on a student’s final grade.

The course has one major writing assignment connected with the simulation. The writing assignment involves a hypothetical case that will be made available later in the term. Students will be asked to write complaints, responses, or memoranda outlining settlements or judgments. All students will write rough drafts, which will be evaluated by the instructors. These papers will most likely range between eight and ten pages. Students may then revise the rough draft or keep the grade they received. The writing component of the course (draft and final paper) will comprise 35% of your grade for the course.

Students will also take four examinations: three quizzes during the semester and a final examination at the end of the semester. Professor Novkov will discuss the format and expectations for these tests as they approach, but the quiz formats will be uniform across the term.

You must keep up with the reading throughout the term. If it becomes apparent that some students are not fulfilling this obligation, the professor reserves the right to administer up to three unannounced quizzes on the readings. The quizzes could take place *on any day*, and no make-ups will be permitted without a documented medical excuse. If these quizzes take place, each will constitute 5% of your grade, which will come proportionally from the allocations for the other assignments.

The allocation of weight for your various obligations is as follows:

#### Quiz One 5%

# Quiz Two 5%

## Quiz Three 5%

## Rough Draft of Paper 5%

## Performance in mock lawsuit 20%

## Final Paper 30%

Final Examination 30%

**POLICIES**

*Students with disabilities*. If you have a documented disability and anticipate needing accommodations in this course, please make arrangements to meet with the professor soon. Please request that the Counselor for Students with Disabilities send a letter verifying your disability.

*Extensions for papers*. To avoid creating problems for other students in the class, no extensions will be given for rough drafts,. Late papers will be penalized half a grade per day for every day that the paper is late, starting at the beginning of class on the day the assignment is due. Extensions for final papers will only be permitted under compelling circumstances *and* if the extension is requested in advance. Any student who does not turn in her or his paper or other assignment on time and has not contacted the professor *in advance* will lose a half grade per day for every day the paper is late unless the student can provide a University-approved excuse involving some dire tragedy.

*Regrading of materials*. You may request regrading of materials that have been graded. If you wish to make such a request, you must follow the procedure detailed on the course’s Blackboard site. You will be asked to provide a written explanation of why you wish to have the assignment regraded.

*Plagiarism or cheating*. This one’s simple: don’t do it. Don’t even think about doing it. Plagiarism is the use of someone else’s words or ideas without giving the original author credit by citing him or her. If you use someone else’s language directly, you must use quotation marks. If you rely on another person’s ideas in creating your argument, you must provide a citation. If you have any questions about plagiarism, please contact the professor *before* you submit the assignment for grading. Plagiarism or cheating will result in a failing grade for the assignment and the submission of your name to the Office of Conflict Resolution at the *very minimum*. Ignorance will not provide a defense to the application of this policy.

**MATERIALS**

The sources for reading materials are *Before the Law: An Introduction to the Legal Process* and several additional materials on Blackboard. You will need the eighth edition of *Before the Law*, which is available for purchase at the University bookstore and at Mary Jane’s. I will also post updates on information and assignments on Blackboard. To log on to Blackboard, go to <https://blackboard.ualbany.edu/> and follow the login instructions. **IMPORTANT NOTE: You will need to use Blackboard to gain access to all of the assigned reading, research your papers, and participate in the mock lawsuit. Be sure your email address in the Blackboard system is configured to reach you.**

**SYLLABUS**

**Introduction: What is Law?**

January 24 Law and Legal Reasoning

1. Kafka, “Before the Law” (F.1)
2. Kafka, “Dialogue Between a Priest and K” (F.2)

# January 26 Founding the American Republic

# Declaration of Independence (Blackboard)

1. Articles of Confederation (Blackboard)

January 31 Refounding the American Republic

1. United States Constitution (Blackboard)

February 2 Constitutional Moments

1. United States Constitution, Amendments 1-10 (Blackboard)
2. United States Constitution, Amendments 13-15 (Blackboard)
3. United States Constitution, Amendments 16-19 (Blackboard)
4. Proposed amendments to the Constitution of the United States (Blackboard)
5. Constitution of New York (Blackboard)

**Judging and Interpretation**

February 7

* Llewellyn, “The Bramble Bush” (1.1, 1.7)
* Frank, “The Judging Process and the Judge’s Personality” (2.1)

February 9 Modes of Legal Reasoning: Introduction

1. Farber and Sherry, “The Constitutional Foundations of Shirley Edelman’s Latkes” (Blackboard)
2. Lon Fuller, “The Speluncean Explorers”

February 14 Modes of Legal Reasoning: Textualism and Originalism

1. *Coy v. Iowa* (1988) (textualism) (Blackboard)
2. *Marsh v. Chambers* (1983) (originalism) (Blackboard)

February 16 Modes of Legal Reasoning: Doctrinal Reasoning and Natural Law/Aspirationalism

1. *Plessy v. Ferguson* (1896) (Blackboard)
2. *Gaines v. Canada* (1938) (Blackboard)
3. *Sipuel v. Oklahoma State Board of Regents* (1948) (Blackboard)
4. *Sweatt v. Painter* (1950) (Blackboard)

* *Rochin v. California* (1952) (aspirationalism) (Blackboard)
* *Goodridge v. Department of Human Services* (2003) (aspirationalism) (Blackboard)

February 21 Modes of Legal Reasoning: Legal Realism

* *Perez v. Sharp* (1948) (legal realism) (Blackboard)
* *Perry v. Schwarzenegger* (2009) (legal realism) (Blackboard)
* *Atkins v. Virginia* (2002) (legal realism) (Blackboard)

##### The Adversarial System in the United States

February 23 The Adversarial Process

1. Frank, “The ‘Fight’ Theory versus the ‘Truth’ Theory” (13.2)

QUIZ ONE TODAY

February 28 The Adversarial Process: A Grimmer View

1. Mills, “I Have Nothing to Do with Justice” (13.3)

March 2 Structuring Disputes

* Felstiner, Abel, and Sarat, “Naming, Blaming, and Claiming” (Blackboard)
* Menkel-Meadow, “The Transformations of Disputes by Lawyers” (18.1)

##### Lawyers, Their Training, and Their Ethical Challenges

March 7 Law School and its Structural Purposes

1. Bonsignore, “Law School” (12.1)
2. Kennedy, “Legal Education and the Reproduction of Hierarchy” (12.2)

March 9 GROUP SESSION

March 21 Lawyers’ Work and Lawyers’ Ethics

1. Grutman and Thomas, “The Big Casino” (11.3)
2. Hadfield, “The Price of Law” (11.4)
3. Curtis, “The Ethics of Advocacy” (13.1)
4. ABA Model Rules of Professional Conduct (Blackboard)

March 23 Advocacy and Ethics

1. Subin, “The Criminal Lawyer’s ‘Different Mission’” (Blackboard)

QUIZ TWO

March 28 Applying Ethical Rules

1. *Swidler & Berlin v. US* (Blackboard)
2. Newspaper report on *Atkins v. Virginia* (Blackboard)

March 30 Jury Selection and Discrimination: Race and Gender

1. *Batson v. Kentucky* (16.5)
2. *J.E.B. v. Alabama* (Blackboard)

PLAINTIFFS’ ROUGH DRAFTS OF COMPLAINT BRIEF DUE

##### Juries and Their Role in the Legal System

March 31 OPEN GROUP SESSION TO BE RUN BY JUDGES

April 4 The Power of the Jury

1. Scheflin, “Jury Nullification” (15.4)
2. Scheflin and Van Dyke, “Merciful Juries” (15.5)

DEFENDANTS’ ROUGH DRAFTS OF COMPLAINT BRIEF DUE

April 6 Should the Jury Know its Power?

1. Jury Instructions (15.6)
2. *United States v. Dougherty* (15.7)

April 13 SETTLEMENT CONFERENCE I

April 18 SETTLEMENT CONFERENCE II

##### Law, Power, and Coercion

April 20 Force and Violence in Law

* Cover, “The Violence of Legal Acts” (8.1)
* D’Errico “The Law is Terror Put into Words” (9.1)

REFLECTION ON SETTLEMENT CONFERENCE DUE

April 25 Structural Inequality

1. Galanter, “Why the ‘Haves’ Come Out Ahead” (4.1)

ROUGH DRAFTS OF JUDGES’ RULINGS DUE

**Conflict Resolution: Power in Context**

April 27 Community Justice

* Merry, “The Social Organization of Mediation in Nonindustrial Societies: Implications for Informal Community Justice in America” (19.1)
* Umbreit, “The Development and Impact of Victim-Offender Mediation in the United States” (19.2)
* Ackerman, “Disputes Together: Conflict Resolution and the Search for Community” (20.1)
* Kolbert, “The Calculator: How Herbert Feinberg Determines the Value of Three Thousand Lives” (20.3)
* Justice in Transition booklet (Blackboard)

QUIZ THREE

May 2 Case Study: The Bhopal Disaster and the Green River Plea Bargain

* Sheila Jasanoff, “Bhopal’s Trials of Knowledge and Ignorance” (Blackboard)
* Davalene Cooper, “Thinking about Justice Outside the Box” (Blackboard)
* Gene Johnson, “Suspect Admits to 48 Seattle-Area Killings” (Blackboard)
* Gene Johnson, “Green River Plea May Crimp the Death Penalty” (Blackboard)
* Gary Ridgway plea (Blackboard)
* Statement of King County Prosecutor Dan Sattenberg (Blackboard)

ALL FINAL BRIEFS DUE

**Disobeying the Law**

May 4 Perspectives on Civil Disobedience

* Thoreau, *On the Duty of Civil Disobedience* (Blackboard)
* King, “Letter from Birmingham Jail” (9.2)
* Murphy-Ellis, “I Support Sabotage” (Blackboard)

JUDGES’ FINAL RULINGS DUE

# May 9

# FINAL EXAMINATION THURSDAY MAY 12, 3:30 PM -5:30 PM