**RPOS 541**

**FIELD SEMINAR IN PUBLIC LAW**

Professor: Julie Novkov

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# COURSE DESCRIPTION

This course is the field seminar for public law. Its goals are to 1) introduce students to the primary paradigms for research in this area, 2) lay out classic and contemporary debates within the field, 3) prepare students for advanced graduate coursework, and 4) facilitate the development of critical frameworks for reading, thinking, and writing about law and politics. The course is oriented around the major theoretical questions that drive the field, which correspond with the structure of our comprehensive examinations. These questions are as follows:

1. Why build or empower legal institutions?
2. Once legal institutions are in place, how do actors active them?
3. Once legal institutions are activated, why do legal institutions resolve disputes or otherwise respond in the ways that they do?
4. Once legal institutions respond, what is the broader societal or systemic impact of their responses?

By the end of this course, you should be able to demonstrate full conversancy with the public law field and generate grounded critical discussions of debates within and among the various approaches. The course will be run in a seminar format, with the students spending most of the class time discussing the readings. I will facilitate these discussions both formally and informally.

# COURSE REQUIREMENTS

First, a caveat: this course will be taught on a graduate level and the workload and expectations will be high. Most students will have done at least some reading on law. I will expect you to come to each class meeting having done all of the readings thoroughly and carefully. Class attendance and participation will constitute a significant portion of your grade. Students will be expected to attend class and participate in class discussions. Lack of participation will invariably lead to excessively boring lectures on tangents chosen by the professor. You will be expected to keep up with the reading throughout the term.

In addition to the regular participation you do in class, each student will be expected to give a presentation three times during the term. For each presentation, you will write a short (3-5 pp.) response paper for distribution before the class meeting. I will provide weekly discussion questions on which you may choose to base your response paper. You will then spend ten to fifteen minutes presenting and discussing your paper, and you will facilitate the day’s discussion.

Students will also be responsible for submitting weekly journals for 8 weeks of the course (you decide which weeks). I will collect and grade these journals periodically to ensure that you are keeping up, and your final grade for this assignment will be based on all of the journals. The journal entries will generally be based on the questions with which I provide you, although you may write on another aspect of the reading that you find particularly intriguing.

There are two additional writing assignments. The first is a book review. And the second is a mock comprehensive examination which you will have one week (rather than the standard day) to complete at the end of the term. The weights of your various obligations are detailed below:

Class participation 10%

Presentations on the readings 30%

Book review 10%

Mock comp 30%

Final journal 30%

A schedule will be compiled at the beginning of the term for presentations. The timing for the mock comp is inflexible and no late papers will be accepted.

## 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 Disabilities Resource Center send a letter verifying your disability.

*Extensions for papers*. Extensions for 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 on time and has not contacted me 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.

*Class attendance*. You will be expected to attend class. Each student is permitted to miss two days of class per term with no questions asked and no penalties or reductions in his or her class participation grade. Any classes missed beyond those two will be taken into account in determining your class participation grade, regardless of the reason.

*Regrading of materials*. You may request regrading of materials. If you wish to make such a request, contact me for a copy of the regrading policy. 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 me *before* you submit the assignment for grading. If you plagiarize or cheat in this class, the **BEST** outcome you can hope to achieve is a failing grade from me, in addition to any mandatory university sanctions. Plagiarism or cheating, even if unintentional, will result in a failing grade for the assignment at the *very minimum*. Please refer to the university’s *Standards of Academic Integrity* at <http://www.albany.edu/eltl/academic_integrity.php> if you have any questions.

## MATERIALS

Books available for purchase exclusively at Mary Jane Books include Jeffrey Segal and Howard Spaeth, *The Supreme Court and the Attitudinal Model Revisited*, Lee Epstein and Jack Knight, *The Choices Justices Make*,Charles Epp, *The Rights Revolution*, Ronald Kahn and Kenneth Kersch, *The Supreme Court and American Political Development*, Thomas Keck, *The Most Activist Supreme Court in History*, Gerald Rosenberg, *The Hollow Hope*, and Michael McCann, *Rights at Work*. All of the articles and excerpts will be available on Blackboard; please check these readings early enough to let me know of any problems with scans.

**SYLLABUS**

August 26: *What is Public Law?*

Introduction to the course and overview of the public law field.

September 5: NO CLASS

September 10: *Politics, Institutions, and Law: Foundations*

Karl Llewellyn, *The Bramble Bush* (excerpts)

Jerome Frank, *Courts on Trial* (excerpts)

Robert Dahl. “Decision-making in a Democracy: The Supreme Court as a National Policy Maker.”

Howard Gillman. “Martin Shapiro and the Movement from ‘Old’ to ‘New’ Institutionalist Studies in Public Law Scholarship”

Stuart Scheingold. “The Path of the Law in Political Science: Decentering Legality from Olden Times to the Day before Yesterday”

Harold Spaeth. “Reflections about Judicial Politics”

September 17: *Approaches to Public Law*

Jeffrey Segal. “Judicial Behavior.”

Pablo Spiller and Rafael Gely. “Strategic Judicial Decision-Making.”

Rogers Smith. “Historical Institutionalism and the Study of Law.”

Lynn Mather. “Law and Society.”

Julie Novkov. “Understanding Law as a Democratic Institution”

September 26: *Method and Epistemology*

Lee Epstein and Gary King. “Rules of Inference.”

John Gerring. “Causal Mechanisms: Yes, But . . .”

Pamela Brandwein. “Law and American Political Development”

Patricia Ewick and Susan Silbey. *The Common Place of Law* chapter 2

October 3: NO CLASS

October 10: *Why Build Courts?*

Justin Crowe. *Building the Judiciary*.

Keith Whittington. *The Political Foundations of Judicial Supremacy* (excerpts)

TURN IN AT LEAST ONE SET OF JOURNAL ENTRIES

October 17: *Comparative Perspectives*

Alexei Trochev. “Less Democracy, More Courts: The Puzzle of Judicial Review in Russia.”

Jodi Finkel. “Judicial Reform In Argentina in the 1990s.”

Jodi Finkel. “Judicial Reform as Insurance Policy.”

Rodrigo Nunes. “Politics Without Insurance.”

Matthew Ingram. “Crafting Courts in New Democracies.”

October 24: *Activating Courts*

Charles Epp. *Rights Revolutions*.

George Lovell. *This Is Not Civil Rights*.

Steven Teles. *The Rise of the Conservative Legal Movement* (excerpts)*.*

October 31: *Legal and Attitudinal Models*

Jeffrey Segal and Howard Spaeth. *The Supreme Court and the Attitudinal Model.*

BOOK REVIEW DUE

November 7: *Strategic Model*

Lee Epstein and Jack Knight. *The Choices Justices Make.*

November 14: *Historical Institutional Approaches*

Pamela Brandwein. *Rethinking the Judicial Settlement of Reconstruction.*

Mark Graber, “The Non-Majoritarian Difficulty”

November 21: *The Problem of Legitimacy*

Thomas Keck, *The Most Activist Supreme Court in History*

Tom Clark. “Separation of Powers, Court Curbing, and Judicial Legitimacy.”

November 28: *(How) Do the Courts Matter I (on top)*

Gerald Rosenberg. *The Hollow Hope*.

Michael McCann. *Rights at Work.*

December 5: *(How) Do the Courts Matter II (on the ground)*

Marc Galanter, “Why the ‘Haves’ Come Out Ahead.”

William Felstiner, Richard L. Abel and Austin Sarat. “The Emergence and Transformation of Disputes: Naming, Blaming, Claiming.”

Sally Engle Merry. “Going to Court: Strategies of Dispute Management in an American Urban Neighborhood.”

David Engel. “The Oven Bird’s Song: Insiders, Outsiders, and Personal Injuries in an American Community.”

Frances Zemans. “Legal Mobilization: The Neglected Role of the Law in the Political System.”

December 12: Wrap up discussion

FINAL JOURNALS DUE

MOCK COMP DISTRIBUTED MONDAY DECEMBER 12; DUE MONDAY DECEMBER 19