This seminar introduces students to the inter-relationships of law, courts, and public policy. Law is obviously one of the major tools of public policy. As a positive policy instrument, it is usually directed at bringing about changes in individual or organizational behavior. The typical societal response to some form of problematic human behavior is either to make it illegal (through criminal law), or to provide for private action in court to recover for damages caused by the behavior (through the civil law of torts), to set up a governmental agency to regulate it (with administrative or regulatory law), or to structure incentives to encourage more socially valuable behavior (through tax policy, public works programs, etc.). Before acting, policy makers need to examine the implications of recourse to these various legal tools to achieve policy objectives. They also need to consider the ramifications of involving courts and judges in that process. There are thus two broad sets of issues to be examined in this course: First, the policy implications, the strengths and weaknesses, of the specific legal tools available to government — private law, criminal law, regulation — and, second, the special role of judges and courts in making public policy in a democratic political order.

The course is a reading seminar and thus there is a good deal of assigned reading. On average, I expect you to read and digest the equivalent of about book a week. The readings will form the basis of class discussion and are mandatory. A major component (20%) of your course grade will be the quality and, to a lesser degree, the quantity of class participation. Class attendance will be taken, and absences will be reflected in your final grade. Due to holidays and the academic schedule, we only have 12 substantive class sessions this semester and that makes attendance even more critical in getting the full impact of the class.

There are three writing components in the course: three short reader responses, a midterm exam and a final exam.

(1) Two exams — an in-class midterm exam (based on the first half of the course) and a take home final exam (based on the entire course).

(2) The reader responses will be three to five page papers based on the reading assignments and will be designed to elicit class discussion on each of the topics from various perspectives. It may ask you to synthesize the material, it may be a short briefing paper for a policymaker or it may be an advocacy piece.

**Grades**

Grades will be based on in-class discussion (20%), three response papers (30%), the midterm exam (25%), and the final exam (25%).
Books To Be Purchased
(Books are available at Mary Jane's Bookstore; also on the Internet, but you need to order early to be sure and have the books when necessary. Try www.addall.com to check prices of the books at a variety of on-line stores)

1. Peter Bell and Jeffrey O'Connell, *Accidental Justice* (Yale, 1997)
2. Lawrence Friedman, *Total Justice* (Russell Sage, 1994)

Material marked on the course outline with an asterisk is available on the University Library's Blackboard (BLS) website. Go to www.albany.edu; click on “libraries” at the top of the main page; click on BLS on the left side of the page and then click on PAD/POS 529. You should check BLS each week to see if there are any updates for the class (discussion questions, etc).

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### Course Outline and Assignments

Material should be read before the class in which it is discussed. Material on BLS is indicated by an asterisk (*) before the author's name.

#### Class Meeting Schedule

<table>
<thead>
<tr>
<th>August 29, 2012</th>
<th>#1 -- Introduction to Course</th>
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<tbody>
<tr>
<td>September 5, 2012</td>
<td>#2 -- Introduction to Law</td>
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<tr>
<td>September 12, 2012</td>
<td>#3 -- Legal Tools I – Criminal Law</td>
</tr>
<tr>
<td>September 19, 2012</td>
<td>#4 -- Legal Tools II – Private Law (paper #1 due)</td>
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<tr>
<td>October 3, 2012</td>
<td>#5 -- Legal Tools III – Torts</td>
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<tr>
<td>October 10, 2012</td>
<td>#6 -- Legal Tools IV – Regulation (paper #2 due)</td>
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<td>October 17, 2012</td>
<td>Mid-term exam</td>
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<tr>
<td>October 24, 2012</td>
<td>#7 -- Courts as Policy Makers I</td>
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<td>October 31, 2012</td>
<td>#8 -- Courts as Policy Makers II</td>
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<tr>
<td>November 7, 2012</td>
<td>#9 -- Courts as Policy Makers III</td>
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<td>November 14, 2012</td>
<td>#10 -- Courts as Policy Makers IV</td>
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<td>November 28, 2012</td>
<td>#11 -- Courts as Policy Makers V (paper #3 due)</td>
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<tr>
<td>December 5, 2012</td>
<td>#12 -- Review and Summary</td>
</tr>
<tr>
<td>December 12, 2012</td>
<td>Final Exams Due at 5pm</td>
</tr>
</tbody>
</table>
I. Introduction: Law, courts, and public policy – Classes #1 and #2
8/29 and 9/5 Robert Kagan, Adversarial Legalism, chs. 1-2

II. Legal Tools of Public Policy – Classes #3-6

A. Criminal law
9/12 David Cole, No Equal Justice
Robert Kagan, Adversarial Legalism, chs. 4,5

B. Private law
9/19 Lawrence Friedman, Total Justice
Robert Kagan, Adversarial Legalism, ch. 3

C. Torts
10/3 Peter Bell and Jeffrey O’Connell, Accidental Justice
Robert Kagan, Adversarial Legalism, chs. 6,7

D. Regulation
10/10 Ernest Gellhorn and Ronald Levin, Administrative Law in a Nutshell, Intro, ch. 1
Robert Nakamura and Thomas Church, Taming Regulation
Robert Kagan, Adversarial Legalism, chs. 8-10

10/17 – Midterm Exam

III. Courts as Policy Makers – Classes #7-12

A. Courts, tort law, and public policy
10/24 *Lawrence Friedman, History of American Law, (chapter on torts)
*John Noonan, Persons and Masks of the Law (Farrar, Straus and Giroux, 1976), ch. 4

B. Courts and statutory interpretation
10/31 Richard Posner, How Judges Think

C. Courts and control of administrative agencies
11/7 Ernest Gellhorn and Ronald Levin, Administrative Law in a Nutshell, Chap 3, 10

D. Assessing Judicial Policy Making Evaluation I
11/14 Gerald Rosenberg, The Hollow Hope, Parts 1 and 2

E. Assessing Judicial Policy Making Evaluation II
11/28 Gerald Rosenberg, The Hollow Hope, Parts 3 and 4

F. Review and Summary
12/5 Robert Kagan, Adversarial Legalism, conclusion