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 – a take home 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
(Books are available at the UAlbany 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)

Other Materials
In addition to the books for the course, we will be also looking at various articles from the popular press as well as academic journals. I will try and make most of these articles available to you in advance either via the class Blackboard page (BB) or through e-mail. You should check BB each week to see if there are any updates for the class (discussion questions, etc).

Course Outline and Assignments

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

<table>
<thead>
<tr>
<th>Class Meeting Schedule</th>
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I. Introduction: Law, courts, and public policy – Classes #1 and #2

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

   A. Criminal law
      9/9 David Cole, *No Equal Justice*

   B. Private law
      9/16 Lawrence Friedman, *Total Justice*

   C. Torts
      9/30 Peter Bell and Jeffrey O’Connell, *Accidental Justice*

   D. Regulation
      10/7 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

      10/14 – Midterm Exam (take home)

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

   A. Courts, tort law, and public policy
      10/21 *Lawrence Friedman, *History of American Law*, (chapter on torts)
      ch. 4
      *Peter Schuck, “The New Judicial Ideology of Tort Law,” in Walter Olson,
      ed., *New Directions in Liability Law* (Academy of Political Science,
      1988)
      *Thomas Church and William Wilkerson, “The Gorilla in the Closet: Joint
      and Several Liability and the Cleanup of Hazardous Waste Sites,” 11
B. Courts and statutory interpretation
10/29  *Richard Posner, *How Judges Think* (Chapters 1 & 2)

C. Courts and control of administrative agencies

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

E. Assessing Judicial Policy Making Evaluation II
11/18 Gerald Rosenberg, *The Hollow Hope*, Parts 3 and 4
   *Obergefell et al. v. Hodges* -- [http://1.usa.gov/1J1znI0](http://1.usa.gov/1J1znI0)

F. Review and Summary