

**LAW AND AMERICAN POLITICAL DEVELOPMENT  
POLITICAL SCIENCE 729**

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**COURSE DESCRIPTION**

This course will address the intersection of legal studies and American political development. What do considering the institutional aspects of law and studying it through historical and developmental lenses enable us to understand about law as a political phenomenon? If we understand judges and other legal actors to be institutionally bounded and historically contextualized, how does this change the way we comprehend legal decision-making and legal change? What additional purchase can we gain on regimes, legal time, law's interactions with ideology and culture, and the relationship between law and power through these types of analyses? And what can thinking about law in an institutional sense bring back to the study of American politics?

**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 and possibly on political development. 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. You will be expected to keep up with the reading throughout the term.

The main writing assignment for the course is to write a series of response papers. Each student must complete response papers during eight weeks of the term. I will provide questions to guide your responses; usually I will have 3-4 options and you will be expected to select and write on two of these. These papers will be collected and graded periodically, but the bulk of the grade will be based on the final versions students submit at the end of the term.

Each student will also be expected to give a presentation twice during the term. For each presentation, you will distribute your response paper before the class meeting. You will then spend ten to fifteen minutes presenting and discussing your paper, and you will help to facilitate the day's discussion.

Students will also write a book review. For this assignment, you are free to choose any relatively recently published book dealing with law and APD. Guidelines will be distributed, but basically, you will write a professional book review of no more than 2500 words summarizing, situating, and critiquing the book you have chosen.

Finally, students will complete a mock comprehensive examination at the end of the term. For the mock comp, students will receive a question similar in difficulty to what might

appear on a comprehensive examination and be expected to complete a satisfactory answer within a short time frame.

If anyone is interested in completing a substantial research paper in lieu of the other writing assignments, discuss this with me by the third week of the term.

The weights of your various obligations are detailed below:

Class participation	10%
Presentations on the readings	20%
Journal entries	5%
Book review	15%
Mock comp	20%
Final journal	30%

Papers are due in class at the beginning of class where indicated in the syllabus.

## 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 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.

*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 the professor 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 even if you are not using that person's words. 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*.

## MATERIALS

You should purchase or borrow the following books for the course. All are available for purchase at Mary Jane's: Karen Orren, *Belated Feudalism*, Keith Whittington, *Political Foundations of Judicial Supremacy*, Cornell Clayton and Howard Gillman, *The Supreme Court and American Politics: New Institutional Approaches*, Gretchen Ritter, *The Constitution as Social Design*, and Paul Frymer, *Black and Blue*. If you haven't purchased it already, you should get a copy of Ronald Kahn and Ken Kersch, *The Supreme Court and American Political Development*. The other course materials will be available in PDF format on the course's Blackboard site. You will need access to Blackboard to get copies of the syllabus and course assignments.

## SYLLABUS

### January 23 Institutionalism and Public Law

Rogers Smith, "Political Jurisprudence, 'The New Institutionalism,' and the Future of Public Law"

### February 6 Applying Institutionalism

David Robertson, "The Return to History and the New Institutionalism in American Political Science"

Mark Graber, "The Non-Majoritarian Difficulty: Legislative Deference to the Judiciary"

### February 13 Focusing on Institutionalism

Phillip J. Eddington and Eileen L. McDonagh, "The Common Space of Social Science Inquiry"

Stephen Skowronek, "Order and Change"

Karen Orren, "Ideas and Institutions"

Theda Skocpol, "Why I am an Historical Institutionalism"

Morris Fiorina, "Rational Choice and the New (?) Institutionalism"

Dorothy Ross, "The Many Lives of Institutionalism in American Social Science"

James T. Kloppenberg, "Institutionalism, Rational Choice, and Historical Analysis"

Terrence J. McDonald, "Institutionalism and Institutions in the Stream of History"

Rogers Smith, "Ideas, Institutions, and Strategic Choice"

### February 20 New Institutionalism, Courts, and The Exceptionalism Debate

Karen Orren, *Belated Feudalism*

TURN IN AT LEAST ONE JOURNAL ENTRY

### February 27 Law and New Institutionalism Comes into its Own

Clayton/Gillman chapters 1, 2, 5

### March 5 Investigating Law and Institutionalism

Clayton/Gillman chapters 9-13

March 12      Regime Theory

Howard Gillman, “Regime Politics, Jurisprudential Regimes, and Unenumerated Rights”

Mark Tushnet, “The Supreme Court and the National Political Order”

Ken Kersch, “The New Deal Triumph as the End of History?”

TURN IN BOOK REVIEW

March 19      Judicial Supremacy

Keith Whittington, *The Political Foundations of Judicial Supremacy*

April 2      Gender and Ordering

Gretchen Ritter, *The Constitution as Social Design*

April 9      Law and the Structuring of Citizenship

Ariela Dubler, “Governing Through Contract: Common Law Marriage in the Nineteenth Century”

Reva Siegel, “Equality Talk: Anti-subordination and Anti-classification Values in Constitutional Struggles over *Brown*”

April 16      Law on the Ground

George Lovell, “Justice Excused: The Deployment of Legal Claims in Everyday Political Encounters”

TURN IN AT LEAST TWO MORE JOURNAL ENTRIES

April 23      Legal Development through Race

Kathleen Sullivan, “Charleston, the Vesey Conspiracy, and the Development of State Power”

Pamela Brandwein, “A Judicial Abandonment of Blacks? Reconsidering the State Action Cases of the Waite Court”

Daniel Martinez-HoSang, “School Desegregation, Busing, and the Triumph of Racial Innocence”

April 30      Race, Labor, and Litigation

Paul Frymer, *Black and Blue*

May 7      Whither Law and APD?

Ronald Kahn, “The Difference between Legal and Political Time and the future of APD”

Julie Novkov, “Legal Archaeology”

Pamela Brandwein, “Studying the Careers of Knowledge Claims: Bringing Science Studies to Legal Studies”

FINAL JOURNAL DUE

MOCK COMP DISTRIBUTED