

**Introduction to Public Law
Political Science 326
Spring 2019**

Professor Nathaniel Williams
TTH 1:15-2:35 HU 20
Office Hours: 2:45 PM-3:45 PM Tuesdays and
12 PM-1 PM Thursdays (Contact office) or by appointment
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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.

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.

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. 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. An attendance sheet will be passed around at each class to record attendance. 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.

Students will take four examinations: two quizzes during the semester, a mid term and a final examination at the end of the semester. Students will also be asked to hand in periodical, short journal entries

on material covered in class. Professor Williams will discuss the format and expectations for the journal entries and tests as they approach, but the 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:

Attendance	10%	Journals	20%
Quiz one	10%	Midterm	20%
Quiz two	10%	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 journal entries. 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 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 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. 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. Be sure your email address in the Blackboard system is configured to reach you.**

SYLLABUS

Introduction: What is Law?

January 24 Introductions and Overview

January 29 Law and Legal Reasoning

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

January 31 Founding the American Republic

- Declaration of Independence (Blackboard)
- Articles of Confederation (Blackboard)

February 5 Refounding the American Republic

- United States Constitution (Blackboard)

February 7

Constitutional Moments

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

Judging and Interpretation

February 12

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

February 14 Modes of Legal Reasoning: Introduction

- Farber and Sherry, “The Constitutional Foundations of Shirley Edelman’s Latkes” (Blackboard)
- Lon Fuller, “The Speluncan Explorers”

February 19 Modes of Legal Reasoning: Textualism and Originalism

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

February 21 Modes of Legal Reasoning: Doctrinal Reasoning

- *Plessy v. Ferguson* (1896) (Blackboard)
- *Missouri ex rel Gaines v. Canada* (1938) (Blackboard)
- *McLaurin v. Oklahoma Board of Regents* (1950) (Blackboard)

February 26 Modes of Legal Reasoning: Natural Law/Aspirationalism and Legal Realism

- *Rochin v. California* (1952) (natural law/aspirationalism) (Blackboard)

- *Goodridge v. Department of Human Services* (2003) (aspirationalism) (Blackboard)
- *Atkins v. Virginia* (2002) (legal realism) (Blackboard)

The Adversarial System in the United States

February 28 The Adversarial Process

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

March 5 The Adversarial Process: A Grimmer View

- Mills, “I Have Nothing to Do with Justice” (13.3)
- Jed Rakoff, “Why You Won’t Get Your Day in Court”

March 7 Structuring Disputes

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

March 12

- Midterm

Lawyers, Their Training, and Their Ethical Challenges

March 14 Law School and its Structural Purposes

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

March 26 Lawyers’ Work and Lawyers’ Ethics

- Grutman and Thomas, “The Big Casino” (11.3)
- Hadfield, “The Price of Law” (11.4)

March 28 Curtis, “The Ethics of Advocacy” (13.1)

- ABA Model Rules of Professional Conduct (Blackboard)
- Subin, “The Criminal Lawyer’s ‘Different Mission’” (Blackboard)

April 2 Applying Ethical Rules

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

April 4 Jury Selection and Discrimination: Race and Gender

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

Juries and Their Role in the Legal System

April 9 The Power of the Jury

- Schefflin, “Jury Nullification” (15.4)

- Schefflin and Van Dyke, “Merciful Juries” (15.5)

April 11 Should the Jury Know its Power?

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

Law, Power, and Coercion

April 16 Force and Violence in Law

- Cover, “The Violence of Legal Acts” (8.1)
- Darrow, “Address to the Prisoners in the Cook County Jail” (8.2)

April 18 Force and Violence in Law

- D’Errico “The Law is Terror Put into Words” (9.1)

April 23 Structural Inequality

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

Disobeying the Law

April 25 Perspectives on Civil Disobedience

- Thoreau, *On the Duty of Civil Disobedience* (Blackboard)

April 30 Perspectives on Civil Disobedience

- King, “Letter from Birmingham Jail” (9.2)
- Murphy-Ellis, “I Support Sabotage” (Blackboard)

Conflict Resolution: Power in Context

May 2 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)

May 7 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)

- FINAL EXAMINATION WEDNESDAY, MAY 15, 1:00 PM -3:00 PM