



RPOS 326: Introduction to Public Law (Fall 2015)

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Location: AS 014
Time: TTh 1:15 – 2:35
Office hours:
TTh: 11:00-12:30 (Contact Office
or Uncommon Grounds on Western
Ave.) and by appointment

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, and (3) to construct and defend legal arguments effectively in oral and written form. The major group activity and associated writing assignment will also introduce students to a particular area of American law in the form of a simulation designed as a lawsuit.

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. In addition, students will meet in smaller groups frequently to work through some of the issues presented in the lectures and to organize their work on the mock lawsuit. Students will be expected to work independently on the mock lawsuit through a Blackboard conference website. This sounds worse than it is; you will get plenty of help.

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; you will also be expected to participate actively in the mock lawsuit. 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

You are expected to stay current with the reading, attend class, and participate in class discussions and activities. If you are missing class, I will notice and this will affect your participation grade. If you are missing class, you will also likely miss random quizzes (see below), which will also affect your participation grade since you are absent.

In order to help students to better understand the operation of the legal system, the course incorporates a simulation of a legal dispute. All students will choose to be lawyers or judges; the lawyers will represent either the plaintiff or the defendant in the dispute. The judges will manage negotiations between plaintiffs and defendants and will either approve settlements or conduct trials and write opinions adjudicating their cases. Most of this work will take place through Blackboard discussion boards, though some class sessions will be devoted to the simulation. Failure to participate in the simulation either in class or through Blackboard will have a highly negative impact on a student's final grade.

The course has one major writing assignment connected with the simulation. The writing assignment involves a hypothetical case that will be made available later in the term. Students will be asked to write complaints, responses, or memoranda outlining settlements or judgments. All students will write rough drafts, which will be evaluated by Prof. Ingram. These papers will most likely range between eight and ten pages. Students may then revise the rough draft or keep the grade they received. The writing component of the course (draft and final paper) will comprise 30% of your total grade (5% + 25%).

Students will also take four examinations: three quizzes during the semester and a final examination at the end of the semester. Professor Ingram will discuss the format and expectations for these tests as they approach, but the quiz 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 are in addition to the scheduled quizzes below, 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 3.5% of your grade, which will come proportionally from the allocations for the other assignments.

The approximate allocation of weight for your various obligations is as follows:

| | |
|-----------------------------|-----|
| Quiz One | 5% |
| Quiz Two | 5% |
| Quiz Three | 5% |
| Rough Draft of Paper | 5% |
| Participation | 10% |
| Performance in mock lawsuit | 20% |
| Final Paper | 25% |
| Final Examination | 25% |

POLICIES

Classroom conduct. You are also expected to promote a classroom environment that makes it easy for your peers to engage with the material. In this regard, please keep distractions to a minimum. With regards to **technology in the classroom**, please turn your phones and other handheld devices off during class. Texting during class is unacceptable. Laptop use is allowed for taking notes and other activities relevant to class, but sending emails, instant messaging, checking social media, or watching videos

online is unacceptable. If you are texting, on social media sites, watching videos, or otherwise using technology inappropriately in the classroom, you will be asked to leave for the day. If you are asked to leave, please do so promptly and without disrupting the class further; if you would like to discuss why you were asked to leave, we can do so at a later time. If this happens a second time, you will receive a zero (0) for your participation grade for the semester. If you have extraordinary circumstances that justify keeping your phone on during class (e.g., family or medical urgency), please let me know ahead of time, before class starts that day.

Course website. If you are enrolled in this course, you should be automatically enrolled in the Blackboard site for the course. All readings that are not in the assigned books (see above) will be posted on this site. Also, quizzes may be administered through this site. You should be familiar with this site.

Email. I expect you to check your email. You are responsible for material sent by email.

Late Work and Missed Assignments. Quizzes must be turned in at the beginning of class – no exceptions. No late exams will be given. If you have a legitimate reason for missing class (e.g., medical or family emergency), this explanation must be documented. Without a legitimate and documented explanation, late work will be penalized 10% (i.e., one letter grade) for each day it is late, up to a maximum deduction of 50%, and it is considered late if turned in beyond the time limits above (i.e., after the first 5 minutes of class, or after 5pm on days there is no class; this includes weekends and holidays).

Academic Integrity. All students must familiarize themselves with the *Standards of Academic Integrity* on the University's website and pledge to observe its tenets in all written and oral work, including oral presentations, quizzes and exams, and drafts and final versions of essays. The full standards and examples of dishonest behavior are available at:

http://www.albany.edu/undergraduate_bulletin/regulations.html.

The most common violation of academic integrity is *plagiarism or cheating*. My advice is 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.

Americans with Disabilities Act (ADA). Qualified students with disabilities needing appropriate academic adjustments should contact me as soon as possible to ensure your needs are met in a timely manner. Please request that the Counselor for Students with Disabilities send a letter verifying your disability.

Miscellaneous. If you feel you need any help or simply want clarification on any of the material, please do not hesitate to raise your question in class or approach me outside of class. I will hold regular office hours throughout the summer session. If you cannot arrange to come talk with me during these hours, please call or email me, or contact the Department of Political Science administrative offices, so that we can set up an appointment.

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 Mary Jane's and at several online booksellers. I will also post updates on information and assignments on Blackboard. If there is a change to this syllabus, I will announce this in class or via email and post the updated syllabus to 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 readings, research your papers, and participate in the mock lawsuit. Be sure your email address in the Blackboard system is configured to reach you.**

CLASS SCHEDULE

WEEK 1

August 27 Introductions; review syllabus

WEEK 2 **Introduction: What is Law?**

September 1 Law and Legal Reasoning

- Kafka, "Before the Law" (F.1)
- Kafka, "Dialogue Between a Priest and K" (F.2)
- Kafka, "The Problem of Our Laws" (F.3)
- Kafka, "Couriers" (F.4)

September 3 Founding the American Republic

(** **NOTE** **: PROF. INGRAM AT APSA MEETING; DO THE READING, BUT CLASS WILL NOT MEET ON THIS DAY)

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

WEEK 3

September 8 Refounding the American Republic

- United States Constitution (Blackboard)

September 10 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)

WEEK 4

Judging and Interpretation

September 15 Judging

- Llewellyn, “The Bramble Bush” (1.1)
- State v. Pendergrass through State v. Mabrey (1.2 – 1.6)
- Llewellyn, “The Bramble Bush (continued)” (1.7)
- State v. Oliver (1.8)
- Frank, “The Judging Process and the Judge’s Personality” (2.1)

September 17 Modes of Legal Reasoning: Introduction

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

WEEK 5

September 22 Modes of Legal Reasoning: Textualism and Originalism

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

September 24

(** Prof. Ingram possibly in Mexico City **)

WEEK 6

September 29 Modes of Legal Reasoning: Doctrinal Reasoning and Natural Law/Aspirationalism

- *Plessy v. Ferguson* (1896) (Blackboard)
- *Gaines v. Canada* (1938) (Blackboard)
- *Sipuel v. Oklahoma State Board of Regents* (1948) (Blackboard)
- *Sweatt v. Painter* (1950) (Blackboard)
- *Rochin v. California* (1952) (aspirationalism) (Blackboard)
- *Goodridge v. Department of Human Services* (2003) (aspirationalism) (Blackboard)

October 1 Modes of Legal Reasoning: Legal Realism

- *Perez v. Sharp* (1948) (legal realism) (Blackboard)
- *Perry v. Schwarzenegger* (2009) (legal realism) (Blackboard)
- *Atkins v. Virginia* (2002) (legal realism) (Blackboard)
- excerpt from *Hall v. Florida* (2014): Kennedy majority relying on scientific evidence, and dissent criticizing this approach
- coverage regarding *Panneti* case (mental illness and death penalty)
 - Judge-made “junk science” and doctrine VS. blend of law and scientific evidence

WEEK 7

The Adversarial System in the United States

October 6 The Adversarial Process

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

QUIZ ONE TODAY

October 8 The Adversarial Process: A Grimmer View

- Mills, “I Have Nothing to Do with Justice” (13.3)
- TBA (Thalman?)

WEEK 8

October 13 Structuring Disputes

- Menkel-Meadow, “The Transformations of Disputes by Lawyers” (18.1)
 Also: Naming, Blaming, and Claiming: The Funnel
- Felstiner, Abel, and Sarat, “Naming, Blaming, and Claiming” (Blackboard)
- TBA (comparative reflections?)

October 15 GROUP SESSION

WEEK 9

Lawyers, Their Training, and Their Ethical Challenges

October 20 Law School and its Structural Purposes

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

October 22 Lawyers’ Work

- ABA Model Rules of Professional Conduct (Blackboard)
- Grutman and Thomas, “The Big Casino” (11.3)
- Hadfield, “The Price of Law” (11.4)

WEEK 10

October 27 Advocacy and Ethics

- Curtis, “The Ethics of Advocacy” (13.1)
- Subin, “The Criminal Lawyer’s ‘Different Mission’” (Blackboard)
- Pierce, “Rambo Litigators” (Blackboard) *Swidler & Berlin v. US* (Blackboard)
- Newspaper report on *Atkins v. Virginia* (Blackboard)
- Review ABA Model Rules of Professional Conduct (Blackboard)

QUIZ TWO TODAY

October 29 GROUP SESSION

*** PLAINTIFFS’ ROUGH DRAFTS OF COMPLAINT BRIEF DUE ***

WEEK 11

Juries and Their Role in the Legal System

November 3 Jury Selection and Discrimination: Race and Gender

- *Batson v. Kentucky* (16.5)
- Lawrence, “The Id, the Ego, and Equal Protection” (16.6)
- *Miller-El v. Cockrell* (16.7)
- *J.E.B. v. Alabama* (Blackboard)
 The Power of the Jury
- Schefflin, “Jury Nullification” (15.4)
- Schefflin and Van Dyke, “Merciful Juries” (15.5)

- *Crown v. John Peter Zenger* (1736) (Blackboard)
 - Also available online at Historical Society of New York Courts ([here](#))
- Review materials online at Fully Informed Jury Association ([FIJA](#))

November 5 Should the Jury Know its Power?

- Jury Instructions (15.6)
 - *United States v. Dougherty* (15.7)
 - Chapter 17 (Decline of Jury) – ALL sections
 - O'Donnell 2012: Review of William Stuntz, *Collapse of American Criminal Justice*
- *** DEFENDANTS' ROUGH DRAFTS OF COMPLAINT BRIEF DUE ***

WEEK 12

November 10 SETTLEMENT CONFERENCE I

November 12 SETTLEMENT CONFERENCE II
Reflections on Settlement Conferences

WEEK 13

Law, Power, and Coercion

November 17 Force and Violence in Law

- Cover, "The Violence of Legal Acts" (8.1)
 - D'Errico "The Law is Terror Put into Words" (9.1)
- REFLECTION ON SETTLEMENT CONFERENCE DUE

November 19 Structural Inequality

- Galanter, "Why the 'Haves' Come Out Ahead" (4.1)
- QUIZ THREE

WEEK 14

Conflict Resolution: Power in Context

November 24 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)
- Justice in Transition booklet (Blackboard)

ROUGH DRAFTS OF JUDGES' MEMORANDA DUE

November 26 **NO CLASS; THANKSGIVING HOLIDAY**

WEEK 15

December 1 Community Justice, cont.

- Community Policing (TBA)

- Truth and Reconciliation Commissions
 - U.S. examples: North Carolina (Blackboard) and TBA

December 3 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)

*** ALL FINAL BRIEFS DUE ***

WEEK 16

Disobeying the Law

December 8 Perspectives on Civil Disobedience

- Thoreau, *On the Duty of Civil Disobedience* (Blackboard)
- King, “Letter from Birmingham Jail” (9.2)
- Murphy-Ellis, “I Support Sabotage” (Blackboard)

*** **Final Day of Class** ***

*** FINAL EXAMINATION THURSDAY DECEMBER 17, 8:00 AM -10:00 AM ***