

LAW AND POLICY

RPOS/RPUB328

Tentative Syllabus

Professor: Ann Johnson

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Location: 137 Humanities

Course Times: Tues and Thurs. 10:15-11:35

Office Hours: Tues. and Thurs. 11:45 to 1:00 and by appointment

Course Description:

The law is a system of rules and procedures designed for the common good of a particular nation or society. The stability of our democracy is largely due to our collective faith in the structure of the U.S. legal system and its ability to function fairly. To fully comprehend how the system operates, understanding how the judges make their decisions is crucial.

However, which cases are chosen by the Supreme Court and how laws are interpreted greatly affects public policy. It is also important to understand how other government and nongovernment actors interact with the court system. In this class you will learn about the origins of the U.S. Supreme Court as a separate branch and read milestone cases that established many of the policies that we currently have. You will reflect on journal articles debating the role of the court and other branches and the effect of the court on public policy. Finally you will write a research paper demonstration how law and public policy have interacted for a particular issue.

Course objectives:

In this course you will:

- Discuss the relationship between statutes and case law.
- Gain and practice legal reasoning and analysis skills.
- Evaluate public opinion and the role of the court.

- Analyze the power relationship between the governmental branches.
- Identify stakeholders and power players who may invest time and resources in shaping public policy.
- Assess the strength of legal arguments in cases by recognizing and analyzing how case precedent was used and applied to the facts of the case.
- Investigate the effect of influential members of the Supreme Court.

Course Materials:

Journal Articles Available on JSTOR and Handouts

Making Policy Making Law Miller A. and Barnes J. (ed.) 2004. Washington, D.C. Georgetown University Press. ISBN: 1589010256

The Hollow Hope: Can Courts Bring About Social Change? Second Edition. ISBN: 0226726711

Forrest Maltzman, Paul J. Wahlbeck, and James F. Spriggs, II. 2000. Crafting Law on the Supreme Court. New York: Cambridge University Press. ISBN: 0521783941

Scheingold, Stuart A. 2004. The Politics of Rights: Lawyers, Public Policy, and Political Change. Ann Arbor: University of Michigan Press. ISBN: 0472030051

Available at Judy's Bookstore or amazon.com

Instructional Approaches:

Instruction in this course will involve a combination of Socratic Method, class discussion and debate based on the readings, and relevant materials. These approaches are designed to support the learning goals by having students go through the process of examining policies that have occurred through many dimensions, employing legal and social science analysis to articulate arguments and identify ways in which judges' judicial philosophies and ideology as well as politics and outside actors may influence the result of a decision.

Assignments:

Students are given a choice of six reaction papers to articles assigned during the semester. These articles are meant to be challenging reading and prepare students as they move on in their education. Students will become familiar with the use library databases resources to retrieve these articles in preparation for the research paper. The term paper is to be 10-15 pages with legal and APA citations (see below) and is to be on a law and policy topic of the

student's choice. The paper will allow students to apply knowledge from broad topics to specific sets of examples in order to reinforce knowledge of the material and to incrementally practice analytical skills. Both the assignments and the final paper must use correct citations. The term paper must reference the articles 15 times to be acceptable.

Late Work Policy:

Assignments are due at the beginning of class. Each day an assignment is late there is a 10% reduction in the grade. After five days the assignment will no longer be accepted.

Accessing cases and laws:

You can easily access all court cases and state and federal laws discussed in class and in the final assignment. These are available in their full format from Lexis-Nexis. Go to *University Library*, then to *Database Finder*, then the letter "L", then choose *Lexis-Nexis academic universe*. In *Lexis-Nexis*, select *Law*. In *Law*, you will find the necessary links. To find a case, simply type the name or citation into the appropriate dialog box. All articles and cases have their full citation listed in this syllabus. Recent law review articles can also be accessed with *Lexis* or *Westlaw*.

Accessing some articles:

In addition to the version on Blackboard, you can easily access many of the articles discussed in class. These are available in their full format from JSTOR. Go to *University Library*, then to *Database Finder*, then the letter "J", then choose *JSTOR*. In *JSTOR*, it is best to select journals from the fields of Political Science and Sociology. Recent law review articles can also be accessed with *Lexis* or *Westlaw*.

Examples of Correct In-Text Citations:

Legal Citations:

On May 20, 1974, the Court of Appeals of Washington (Division One) in *Singer v Hara* (11 Wn. App. 247 at 264) "concluded that the state's denial of a marriage license to [same sex] appellants is required by our state statutes and permitted by both the state and federal constitutions." While state courts in Minnesota (in *Baker v. Nelson* 191 N.W.2d 185), New York (in *Anonymous v. Anonymous* 67 Misc. 2d 982, and later in *Kenney v Kenney* 76 Misc 2d 927), and Kentucky (in *Jones v. Hallahan* 501 S.W.2d 588) had previously issued opinions that denied marriage to lesbian and gay couples, the legal claim in *Singer v Hara* was the first of the challenges to state policies that prohibited same sex marriage to rely primarily on state constitutional provisions rather than rights associated with the US Constitution.

Academic Citations:

As Scheingold (1998, 124) notes "according to some critics of left-activist cause lawyering, legal challenges to the foundations of established authority are counter-productive as well as ineffectual." Through the use of law, the state protects certain social, political, and economic configurations (Abel 1998) or, in this case, a certain sexual configuration.

Assessment / Grading:

Points and Percentages:

Reactions to Articles 50%

Policy Paper 50%

Academic Conduct:

All work turned in is expected to be your own work. Students must follow the Academic Code of Conduct. Any violation of this standard will be reported to the Office of Judicial Affairs.

ADA Statement:

If you have a need for disability-related accommodations or services, please inform me or the coordinator of the Disabilities Resource Center. Reasonable and effective accommodations and services will be provided to students if requests are made in a timely manner, with appropriate documentation, in accordance with university guidelines.

Cell Phone Policy:

Please turn off your cell phone while in class. If you have extenuating circumstances, inform me prior to class, put the phone on silent (not vibrate) and refrain from texting. This will allow you and the other students to focus on what is occurring in the class. It will afford everyone a break from the outside world and an opportunity to connect with and learn from the professor and each other.

Course Schedule:

(The course schedule is subject to change as necessary).

Class 1: Introduction and syllabus

Class 2: Federalist Papers, 78 Dahl, Robert A. 1957. "Decision making in a Democracy: The Supreme Court as a National Policy-Maker." *Journal of Public Law* 6: 279-295.

Class 3: Casper, Jonathan D. 1976. "The Supreme Court and National Policy Making." *American Political Science Review* 70: 50-63. Kagan, "American Courts and the Policy Dialogue" (Making Policy, Making Law 13-34).

Class 4: Graber, Mark "The Non-Majoritarian Difficulty: Legislative Deference to the Judiciary" Lovell, George, and Scott E. Lemieux. 2006. "Assessing Juristocracy: Are Judges Rulers or Agents?" *65 Maryland Law Review* 100 "Is Judicial Policymaking Countermajoritarian?" (Making Policy, Making Law 189-201).

Class 5: "The Supreme Court and Congress: Reconsidering the Relationship" (Making Policy Making Law 107-122) Zemans, Frances Zahn. 1983 "Legal Mobilization: The Neglected Role of the Law in the Political System." *American Political Science Review* 77: 690-702.

Reaction 1 due

Who Determines Policy

Class 6: Goldman, Sheldon, Elliot Slotnick, Gerard Gryski, Gary Zuk, and Gary Zuk. 2003. "Clinton's Judges: Summing Up the Legacy" *Judicature* 84 (5): 228-254.

Class 7: Barnum, David. 1985. "The Supreme Court and Public Opinion: Judicial Decision Making in the Post-New Deal Period." *Journal of Politics* 47: 652-666.

Class 8: Funston, Richard. 1975. "The Supreme Court and Critical Elections," *American Political Science Review* 69: 795- 811.

Interest Groups

Class 9: Caldeira, Gregory A., and John R. Wright. 1988. "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82: 1109-1127.

Class 10: O'Connor, Karen, and Lee Epstein. 1983. "The Rise of Conservative Interest Group Litigation." *Journal of Politics* 45: 479-489.

Reaction 2 due

Class 11: Caldeira, Gregory A., and John R. Wright. 1990. "Amici Curiae before the Supreme Court: Who Participates, When, and How Much?" *Journal of Politics* 52: 782-806.

Class 12: Chomsky, Daniel, and Scott Barclay. 2006. "Shaping the Same Sex Marriage Discussion: Mass Media, Government Action, Social Demographic Factors, and Public Opinion in the States."

Advocacy Litigation

Class 13: Abel, Richard. 1998. "Speaking Law to Power: Occasions for Cause Lawyering."

Class 14: Hilbink, Thomas M. 2004. "You know the Type.....: Categories of Cause Lawyering." *Law & Social Inquiry* 29: 657-698.

Reaction 3 due

Judicial Strategies and Policy

Class 15: Segal, Jeffrey A. and Harold J. Spaeth. 2002. *The Supreme Court and the Attitudinal Mode Revisited*. Cambridge: Cambridge University Press –excerpts

Murphy, Walter F. Elements of Judicial Strategy. (excerpts)

Class 16: Forrest Maltzman, Paul J. Wahlbeck, and James F. Spriggs, II. 2000. Crafting Law on the Supreme Court. Cambridge University Press. (excerpts)

Public Opinion

Class 17: McGuire, Kevin T., and Barbara Palmer. 1995. "Issue Fluidity on the U.S. Supreme Court." American Political Science Review 89: 691-702.

Class 18: Murphy, Walter F. and Joseph Tanenhaus. 1968. "Public Opinion and the United States Supreme Court." Law & Society Review 2: 357-384.

Reaction 4 due

Class 19: Caldiera, Gregory A., and James L. Gibson. 1992. "The Etiology of Public Support for the Supreme Court." American Journal of Political Science 36: 635-664.

Class 20: Spriggs, James F. 1997. "Explaining Federal Bureaucratic Compliance with Supreme Court Opinions." Political Research Quarterly 50: 567-593.

Politics and Rights

Class 21: Scheingold, Stuart A. 2004. The Politics of Rights: Lawyers, Public Policy, and Political Change. Ann Arbor: University of Michigan Press - Part One

Class 22: Scheingold, Stuart A. 2004. The Politics of Rights: Lawyers, Public Policy, and Political Change. Ann Arbor: University of Michigan Press - Part Two

Reaction 5 due

Class 23: Marshall, Anna-Maria. 2005. Confronting Sexual Harassment: The Law and Politics Of Everyday Life. London: Ashgate Press – Chapter One

Class 24: McCann, Michael. 1994. Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization. Chicago: University of Chicago Press.

Debate of Class and Legal Rights and Policy

Class 25: McCann, Michael. 1994. Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization. Chicago: University of Chicago Press.

Class 26: (Distorting the Law) Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change." Law and Society Review 9: 950-997.

Class 27: Charles Epp, "The Two Motifs of 'Why the 'Haves' Come out Ahead' and its Heirs" Richard Lempert, "A Classic at 25."

Class 28: Marc Galanter, "Farther Along."

Reaction 6 due

Political Change and Resistance

Class 29: Gerald Rosenberg, The Hollow Hope - chapters on desegregation.

Class 30: Continuation of Gerald Rosenberg, The Hollow Hope - chapters on abortion
Neal Devins, "Judicial Matters" (review of The Hollow Hope, first edition).

Class 31: Barclay, Scott. In Search of Judicial Activism in the Same Sex Marriage Cases:
Sorting the Evidence from Courts, Legislatures, Initiatives and Amendments.

Class 32: Dan Pinello, America's Struggle with Same Sex Marriage (excerpts).

Bowers v. Hardwick 478 U.S. 186 (1986).

Lawrence v. Texas 123 S. Ct. 2472 (2003).

Gerald Rosenberg, The Hollow Hope - chapters on same sex marriage.

Catch up and Review

Final Paper due in Political Science Contact Office (Humanities B16) by 2 pm