

DARTMOUTH COLLEGE
Government 81.4/Public Policy 81.2
Spring 2013
LAWYERS AND PUBLIC POLICY

Professor Carol Bohmer

Office Hours: Mon 9-10, Th 1-2 or by appointment

224 Silsby (6-3469)

Class hours: Tuesday/Thursday 2-3.50 p.m., and some X hours (Wednesday 4.05- 4.55).

Seminar Description

This class will focus on the role of lawyers in the creation of public policy in the United States. We will use historical, sociological, legal, and political sources to examine the ways in which lawyers have engaged in both representing their clients, and pursuing justice and social change through law. We will discuss how lawyers have resolved tensions between these two goals, as well as look at the pressures from other sources, such as the government and legal organizations. We will use case studies in a number of different areas as a way of learning more about connections among lawyers, the courts, government agencies, and political institutions.

Required Texts

Stone, Deborah. Policy Paradox. (3rd ed. 2012). NY: W. W. Norton & Co.
Moats, David. (2004) Civil Wars: A Battlefield for Gay Marriage. NY: Harcourt, Inc.
Graetz, Michael J. and Ian Shapiro. Death by a Thousand Cuts: the Fight Over Taxing Inherited Wealth. (2005). Princeton, NJ: Princeton University Press.

Recommended Texts

Carp, E. Wayne. Adoption Politics: Bastard Nation and Ballot Initiative 58. (2007). Lawrence KS: University of Kansas Press.
Gonen, Julianna S. Litigation as Lobbying: Reproductive Hazards and Interest Aggregation (2003). Columbus, OH. Ohio State University.
Rhode, Deborah. In the Interests of Justice (2000). NY: Oxford University Press.
Litowitz, Douglas (2006). The Destruction of Young Lawyers Akron, OH: The University of Akron.
Strickland, Rennard and Frank T. Read (2008) The Lawyer Myth: A Defense of the American Legal Profession Athens, OH: Swallow Press.
Dierenfield, Bruce J. (2007) The Battle over School Prayer: How Engel v. Vitale Changed America. Lawrence, KS: University of Kansas.

All other materials are available on Blackboard. Articles are available in the digital library.

Class Format

The class meets twice a week for discussion. Relevant lectures by visitors will also be a required part of the course, as will occasional X hours for the showing of films or make up classes.

Course Requirements

- 1) As this is primarily a reading class, students will be responsible for all the reading. On days where there is a lot of reading, students will share the reading assignments. They will be expected to attend class regularly and to have done all the reading in advance of class. Students are expected to participate in class discussions and to be called on to respond to questions.
- 2) Each student will lead the discussion once during the quarter as part of the participation grade. Come prepared with a 4-5 page, typed, double spaced paper that provides a description of the material, a critique, and a discussion of at least two questions you plan to ask the class with the reasons for your choice of questions. This paper is to be handed in at the end of the class.
- 3) For the class on **Nov 3**, students will select one of the books on the list and will come prepared to answer several questions handed out in advance. These books are on 24 hour reserve in the library. Students might want to purchase a copy of the book they are reading for this class.
- 4) Short paper: A five page (approx) paper due on **April 18** which will apply one (or more) of Stone's chapters to a recent policy issue/problem selected by you.
- 5) Students will also be expected to write a research paper of 20-25 pages to be handed in on **May 28**. A short outline of their chosen topic (a thesis statement, a description of the paper, and a bibliography will be due on **April 25**. Students will meet with me during the week of **May 6-10** to discuss their papers. At the last two classes, students will informally present a summary of their papers to other members of the class.

Grades will be assigned as follows:

Class participation, facilitation and write-up: 30%

Short paper: 20%

Final research paper: 50%

COURSE OUTLINE

I. CONSTRUCTING PUBLIC POLICIES

Class 1 March 26 Introduction to the course. No reading.

Class 2 March 28 Values and goals in public policy
Graetz and Shapiro, 3-40, 50-61, 74-84, 107-130, 221-288.
Stone, 1-62. See also The Future of Tax on Inheritance in:
http://en.wikipedia.org/wiki/Estate_tax_in_the_United_States

Class 3 April 2

Problem definition and public policy

Moats. Read Chs. 1, 4 (after 104), 5, 6, 7. Skim the rest
Stone, 157-205. Also read update on current situation in:

http://en.wikipedia.org/wiki/Same-sex_marriage_in_the_United_States

Class 4 April 4

Causes and interests

1) Stone, 206-247.

2) Students will read either:

a) http://en.wikipedia.org/wiki/Criticism_of_government_response_to_Hurricane_Katrina

OR b) http://en.wikipedia.org/wiki/Deepwater_Horizon

II. LITIGATION, RIGHTS, AND SOCIAL CHANGE: WHAT IS THE RELATIONSHIP?

Class 5 April 9

1) Albiston, Catherine R. "Bargaining in the Shadow of Social Institutions: Competing Discourses and Social Change in Workplace Mobilization of Civil Rights" 39(1) Law and Society Review (2005): 11-49.

2) Stone, 331-353.

Class 6 April 11

Rights consciousness

1) Dudas, Jeffrey R. "In the Name of Equal Rights: 'Special' Rights and the Politics of Resentment in Post-Civil Right America" 39 (4) Law and Society Review (2005): 723-757.

2) Stone, 289-330.

Class 7 April 16

Disability; The Federal Law

1) Switzer, Jacqueline Vaughn. Disabled Rights. Washington D.C.: Georgetown University Press. (2003). Ch. 1, pp 68-86, 128-143, 209-230.

2) Zaleski, Annie (2010) "You think the ADA has leveled the Playing Field?" <http://www.riverfronttimes.com/2010-12-09/news/americans-with-disability-act-twentieth-year-cerebral-palsy/>

3) Minow, Martha Making All the Difference: Inclusion, Exclusion, and American Law Ithaca, NY: Cornell University Press. 20-21.

4) <http://askjan.org/bulletins/adaaa1.htm>

Class 8 April 18

School Prayer: the First Amendment

Dierenfield, Bruce J. (2007) The Battle over School Prayer: How Engel v. Vitale Changed America. Lawrence, KS: University of Kansas. Everyone read Chs 5, 6, 9, and pp. 213-222, 219-226 and ONE of Chs. 4, 7 and 8.

SHORT PAPER DUE

III LITIGATION, REGULATION, INTEREST GROUPS AND PUBLIC POLICY

- Class 9 April 23
- Death: Assisted Suicide: Terri Schiavo and others
- 1) Caplan, Arthur L., James J. McCartney, and Dominic A. Sisti (eds.) The Case of Terri Schiavo Amherst, NY: Prometheus Books. 19-22, 71-75, 103-121, 123-127, 151-159, 180-188, 264-273, 325-345
 - 2) Lindsay, Ronald A. "Oregon's Experiences Evaluating the Record." in The Price of Compassion: Assisted Suicide and Euthanasia. (2010) Ontario, Canada: Broadview Press. Pp.273-293.
- Class 10 April 25
- The Role of Interest Groups
- Gonen, Julianna S. Litigation as Lobbying: Reproductive Hazards and Interest Aggregation (2003). Columbus, OH. Ohio State University. Read all except Ch. 2, and students will read EITHER Ch 4 or 5.
- OUTLINES FOR RESEARCH PAPER DUE**
- Class 11 April 30
- State Legislation: A Case Study
- E. Wayne Carp. Adoption Politics: Bastard Nation and Ballot Initiative 58 (2007). Lawrence KS: University of Kansas Press.
- Class 12 May 2
- Case Study: Tort Law
- 1) Nagareda, Richard A. Mass Torts in a World of Settlement (2007) Chicago, IL: University of Chicago Press. pp vii-xvi, 1-28.
 - 2) Redish, Martin H.(2009) Wholesale Justice: Constitutional Democracy and the Problem of the Class Action Lawsuit. Stanford, CA: Stanford University Press. Ch 1.
- Class 13 May 7
- Class Action Suits
- Select **one** of the following:
- 1) Schuck, P. Agent Orange on Trial (1987). Cambridge, Mass.: Harvard University Press.
 - 2) Harr, Jonathan A Civil Action (1995) New York: Vintage Books.
 - 3) Bacigal, Ronald J. The Limits of Litigation: the Dalkon Shield Controversy (1990) Durham, North Carolina: Carolina Academic Press.
 - 4) Sanders, Joseph. Bendectin on Trial: A Study of Mass Tort Litigation (1998) Ann Arbor, MI: University of Michigan Press.
 - 5) Pringle, Peter. Cornered: Big Tobacco at the Bar of Justice. (1998) NY: Henry Holt.
 - 6) Angell, Marcia Science on Trial (1996) NY: W.W. Norton & Co.
 - 7) Mundy, Alicia Dispensing with the Truth (2001) New York, NY: St Martin's Press.

8) Nesi, Thomas J. Poison Pills: The Untold Story of the Vioxx Drug Scandal (2008). New York, NY: Thomas Dunne Books. St. Martin's Press.

IV: LAWYERS: IDEALS, ROLES AND PRACTICES

- Class 14 May 9 Cause Lawyering and its connections to the political climate.
1) Scheingold, Stuart A. and Austin Sarat. Something to Believe in. (2004) Stanford, CA: Stanford University Press. Ch. 1.
2) Southworth, Ann. "Professional Identity and Political Commitment among Cause Lawyers for Conservative Causes" in Sarat, Austin and Stuart A. Scheingold (eds) The Worlds Cause Lawyers Make. (2005) Stanford, CA: Stanford University Press. Ch. 3.
3) Shdaimah, Corey. "Dilemmas of 'Progressive' Lawyering: Empowerment and Hierarchy" in Sarat and Scheingold, Ch 8
Students will be read Ch 1 of Scheingold and Sarat and either 2) or 3).
- Class 15 May 14 The Legal Profession
1) Litowitz Chs 1 and 4
2) Strickland and Read, Chs 1 and 3
All students will read Chs 1 of both the above books. Students will read EITHER Litowitz, Ch 4 OR Strickland and Read, Ch 3.
- Class 16 May 16 Case Study: Immigration and Asylum Advocacy
Guest Speaker: Dan Berger
1) Schain, Martin A (2008) The Politics of Immigration in France, Britain, and the United States New York, NY: Palgrave Macmillan. Ch 8
2) To be announced
- Class 17 May 21 Structure and Regulation of the Legal Profession
1) Rhode Chs 3 and 6
2) Rhode, Deborah L. "Rethinking the Public in Lawyers Public Interest: Strategic Philanthropy and the Bottom Line" in Grafield, Robert and Lynn Mather Private Lawyering and the Public interest: The Evolving Role of Pro Bono in the Legal Profession. Oxford: OUP 2009 Ch 12.
- Class 18 May 23 Paper Presentations

Class 19 May 28

Paper presentations (cont.) and wrap up.
FINAL PAPER DUE