

PSC 374: Law and Society

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Office Hours: Th 4-5:30pm

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Lectures: TTh 12:30-1:50pm

Classroom: Watson Theater

TA Office Hours: Wednesday 1-3pm

1 Overview

How and when can law prompt social change? As recent discourse surrounding judicial appointments and policing reminds us, legal institutions and actors can have a substantial influence over both elite politics and individuals' day-to-day lives. In this course, we will discuss various ways of understanding law's complex role in the societal and individual domains as a constitutive, regulative and coercive force. We will also consider the interests that legal institutions serve, and the ability as well as the inclination of legal actors to enact long-term social change. We will study these topics across a variety of policy areas, primarily within the United States. When appropriate, we will also conduct comparisons between the American legal system and examples drawn from elsewhere in the world.

The course will be organized into two main components. We will begin with an overview of the American legal system, in which we will consider the powers of judges and lawyers, the limits of those powers, and the social and cultural context in which they operate. We will then turn to a series of case studies, including criminal justice, civil rights, environmental protection, and immigration. In each of these case studies, we will seek to answer the core questions of the course: what segments of society are empowered by "legalization" of public policy? When does "legalization" occur? And, under what circumstances can law prompt lasting social change?

2 Readings

The readings for the course are a mix of court opinions, law review articles, and academic articles from political science, economics, and history. There is also one required book for the course, which is available through the campus bookstore.

- Rosenberg, Gerald N. *The Hollow Hope: Can Courts Bring About Social Change?* University of Chicago Press, 2008.

Be sure to get the 2008 edition, **not** one of the earlier editions!

Since we'll be reading articles from a variety of disciplinary backgrounds, some advice on reading may be helpful:

- **Law review articles:** Law review pieces are written for “lay lawyers”; in other words, readers with legal training but no specific expertise in the area of law under discussion. As a result, law review articles are filled with footnotes, extra references, and asides for readers interested in reading further. This writing style makes law review articles great for surveying the literature, but occasionally frustrating to read. Read the introduction and the main text of assigned law review articles carefully to grasp the main argument, and try not to get lost in the footnotes and supplemental information.
- **Academic articles:** By contrast, academic articles are written for specialists. They use field-specific jargon, and offer minimal background and context. When approaching an academic article, read the introduction carefully, and identify the main argument of the piece. Then, skim the theory, data, results, and conclusion sections to gain a broad sense of the article's structure. Finally, loop back and read the internal sections more carefully. Though counter-intuitive, reading academic articles in this fashion can help you build a mental map of the article's argument, which will help you follow the article more easily.
- **Judicial opinions:** Opinions issued by judges vary wildly. Some are dense and technical, while others are broad and non-specific. I've edited out as much legal jargon as possible in the judicial opinions that we'll read, but inevitably, some will remain. See Kerr (2007) for a general description of the structure and terminology in legal opinions. Try to focus on the sections of each opinion that contain the judge's main arguments, and don't worry about the rest until you grasp the structure of the opinion.

3 Assignments

- **Paper (55%):** The cornerstone of this class will be an original research paper (~ 15 pages), in which students will apply the ideas we've developed in this course to analyze and compare two or more legal cases or controversy of their choosing. Potential topics can federal court cases, state litigation, family or immigration court hearings, or even arbitration or mediation settlements. To encourage everyone to start early on the paper, students will be required to submit 4 two-page memoranda throughout the semester (5% of the final grade each), which correspond to the four primary elements of the research paper: topic selection, factual background, and analysis (x2). Students can (and should) draw upon these memoranda in writing their final paper (35% of the final grade).
- **Midterm (35%):** There will be one midterm in the course, which will largely consist of definitions and short answer questions. This midterm is intended to give students practice applying the ideas we've discussed in class to legal cases and controversies we've covered in class, before they apply these ideas to their own topics of interest. The midterm will be take-home, and students will have 24 hours to complete it.

- **Participation (10%):** During lectures, we'll regularly break to discuss the readings and the week's topics. Students' participation grades will depend on their involvement in these conversations. To facilitate discussion, a rotating group of students will be eligible to be "cold-called" during each lecture. I'll call on people in the list if there are no volunteers, or if the same group of students are repeatedly volunteering.

4 Paper Topic Selection

The goal of this course is to understand how and when law can prompt social change. As a result, I encourage you to select a paper topic with some relation to your personal lived experiences, rather than an abstract, famous case. Famous cases in the US Supreme Court and other federal courts get a lot of attention, but most of the real day-to-day action in the American legal system happens in state and local courts, or even outside of courtrooms entirely. If at all possible, try to select a legal case, arbitration dispute, mediated settlement, or other legal controversy that didn't receive national-level media attention. Instead, pick an issue that you find personally interesting or important, and use the cases to you select to analyze how and whether the legal system enabled or inhibited social change on that issue.

To identify cases, start with any personal relationships you have. Many of you will have friends or family who have interacted with the justice system through estate conflicts, traffic violations, personal injury, business disputes, or other civil or criminal matters. If their experiences interest you, consider using their cases (or others like them) for your paper. If you know anyone who works in the legal profession, ask them to share interesting cases or disputes they've come across in their careers, or ask them to refer you to their colleagues if their expertise doesn't match your interests. Lawyers, paralegals, academics, or journalists are all good sources here. Campus advocacy organizations, local nonprofits, and state and local governments can also be great sources for potential cases, especially if you have preexisting ties with the organization or work experience with local leaders.

5 Research Resources

Over the course of the semester and for your research papers, we'll use various resources provided by the Syracuse University library system and instructional technology services. I've included a list of links and instructions for these services below.

- New York Times digital repository (see [here](#) for signup instructions).
- [Westlaw](#) (court cases)
- [HeinOnline](#) (court cases and law review articles)

6 COVID Guidelines

Health guidelines permitting, I will be holding in-person lectures throughout the semester. These lectures will also be live-streamed, and I'll interact with both the in-person and virtual

audiences during the lectures. Students should feel free to attend virtually or in person.

To ensure that we meet social distancing guidelines, I'll circulate a poll before the start of the semester to gauge students' plans regarding in-person lecture attendance. Our in-person social distancing capacity is 36, so if more than 36 students are interested in attending in-person, I'll create a rotation to allow everyone to attend.

7 Late Submissions

Late submissions will be penalized **five percentage points** from the grade they would have received for each day after the deadline that they are submitted. For example, a memorandum submitted two days after the deadline that would have received an 85% will instead receive a 75%.

If unforeseen circumstances arise and you need an extension on an assignment, **reach out to me!** I'm happy to work with you if personal circumstances prevent you from submitting an assignment, but I need to talk to you to figure out an arrangement.

8 Academic Integrity

See the [Syracuse Academic Integrity Policy](#) for university-wide expectations regarding academic honesty. In sum: don't plagiarise, or otherwise violate the academic integrity expectations.

You have my permission to re-cycle language from your memoranda in your final paper, but this permission **does not** extend to other assignments in the course. You should not, for example, recycle language from your midterm exam on your final paper, or from your memoranda to your midterm. You should also not recycle language from my lecture slides or your readings on your midterm exam. If you copy language from lecture slides or readings to your midterm exam, you will receive a zero for each question in which you copy language, and I may refer your case to the Center for Learning And Student Success for further action.

9 Schedule

1. Introduction

- **2/09:** Syllabus and Course Overview

- **2/11:** Courts as Policymakers

Chayes, Abram. "The Role of the Judge in Public Law Litigation". *Harvard Law Review* 89 (1976): 1281-1316.

Dahl, Robert A. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker". *Journal of Public Law* 6 (1957): 279-295.

- **2/16:** The American Legal System

Shapiro, Martin. *Courts: A Comparative and Political Analysis*. University of Chicago Press, 1981. Ch. 1.

Kagan, Robert. *Adversarial Legalism: The American Way of Law*. Harvard University Press, 2003. Ch. 1-2.

- **2/18:** Theories of Judicial Decision-making

Harris, Allison P., and Maya Sen. "Bias and Judging." *Annual Review of Political Science* (2019): 241-259.

Glynn, Adam N., and Maya Sen. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" *American Journal of Political Science* 59, no. 1 (2015): 37-54.

- **2/23:** Law for Whom?

Galanter, Marc. "Why the Haves Come Out Ahead: Speculations on the Limits of Legal Change." *Law & Society Review* 9, no. 1 (1974): 95-160.

Rosenberg, Gerald N. *The Hollow Hope: Can Courts Bring About Social Change?* University of Chicago Press, 2008. Ch. 1.

- **2/25:** *Class visit: Christine Demetros, Syracuse Law Library*

Kerr, Orwin. "How to Read a Legal Opinion: A Guide for New Law Students". Autumn, 2007.

2. Criminal Justice

- **3/02:** The Case of the Alabama Prisons

Pugh v. Locke. Read opinion, [UM case history](#); skim accompanying order.

Trigger warning: descriptions of inhumane treatment, violence, and sexual assault. Please reach out to me if you're concerned.

- **3/04:** Prison Overcrowding and Reform

Plata v. California

Petersilia, Joan. "California Prison Downsizing and its Impact on Local Criminal Justice Systems". *Harvard Law and Policy Review* 8 (2014): 327-357.

Boylan, Richard T., and Naci Mocan. "Intended and Unintended Consequences of Prison Reform". *The Journal of Law, Economics, and Organization* 30, no.3 (2014): 558-586. Read §1-3, 6 carefully; skim remainder.

Saloner, Brendan, et al. "COVID-19 Cases and Deaths in Federal and State Prisons". *Journal of the American Medical Association* 324, no.6 (2020): 602-603.

- **3/09:** *Guest Lecture: Gay Grunfeld, Rosen Bien Galvan & Grunfeld LLP*
- **3/11:** Right to Representation

Gideon v. Wainwright

Bright, Stephen B., and Sia M. Sanneh. "Fifty Years of Defiance and Resistance After *Gideon v. Wainwright*". *Yale Law Journal* 122 (2012): 2150-2174.

Richardson, L. Song, and Phillip Atiba Goff. "Implicit racial bias in public defender triage". *Yale Law Journal* 122 (2012): 2626-2649.

Oppel Jr, Richard A., and Jugal K. Patel. "One Lawyer, 194 Felony Cases, and No Time". *New York Times*, 31 January 2019.

- **3/16:** Jury Reform

Dann, B. Michael, and George Logan III. "Jury Reform: The Arizona Experience". *Judicature* 79 (1995): 280-286.

Diamond, Shari Seidman, and Mary R. Rose. "The Contemporary American Jury". *Annual Review of Law and Social Science* 14 (2018): 239-258.

- **3/18:** Police Reform

Simmons, Kami Chavis. "The Politics of Policing: Ensuring Stakeholder Collaboration in the Federal Reform of Local Law Enforcement Agencies". *The Journal of Law and Criminology* 98, no.2 (2008): 489-586.

Rushin, Stephen. "Structural Reform Litigation in American Police Departments". *Minnesota Law Review* 99 (2014): 1343-1422.

3. Civil Rights

- **3/23:** Wellness day (**no class**)
- **3/25:** Legal Strategy and the NAACP

Meier, August, and John H. Bracey. "The NAACP as a Reform Movement, 1909-1965: 'To Reach the Conscience of America'." *The Journal of Southern History* 59.1 (1993): 3-30.

Tushnet, Mark V. *The NAACP's Legal Strategy Against Segregated Education, 1925-1950*. University of North Carolina Press, 1987. Ch. 8.

Brown v. Board of Education I

- **3/30:** The Aftermath of *Brown v. Board of Education*

Brown v. Board of Education II

Pinderhughes, Dianne. "Black Interest Groups and the 1982 Extension of the Voting Rights Act." In Perry, Huey L. and Wayne Parent (eds.) *Blacks and the American Political System*. University of Florida Press, 1995: 203-224.

Rosenberg (2008), Ch. 2.

- **4/01:** Reproductive Rights

Roe v. Wade

Rosenberg (2008), Ch. 6.

Ginsburg, Ruth Bader. "Speaking in a judicial voice." *New York University Law Review* 67 (1992): 1185-1209.

- **4/06:** Gender Discrimination

Rosenberg (2008), Ch. 7.

- **4/08:** Guest Lecture: Nilesch Sinha, Syracuse University

4. Midterm Examination

- **4/13:** Review Session

- **4/15:** Midterm Exam (no class)

5. Expertise and Environmental Protection

- **4/20:** Litigation as a Policy Choice

Farhang, Sean. *The Litigation State: Public Regulation and Private Lawsuits in the U.S.* Princeton University Press, 2010. Ch. 2 and 4.

- **4/22:** Climate Change

Massachusetts v. EPA

Juliana v. United States

Markell, David and J.B. Ruhl. "An Empirical Assessment of Climate Change In The Courts: A New Jurisprudence Or Business As Usual?" *Florida Law Review* 64, no. 1 (2012): 15-86.

- **4/27:** Biodiversity Protection

Tennessee Valley Authority v. Hill

Epstein, Yaffa. “Adversarial Legalism and Biodiversity Protection in the United States and the European Union”. *Transnational Environmental Law Review* (2018) 7, no. 3: 491-513.

- **4/29:** *Guest Lecture: Kassie Siegel, Center for Biological Diversity*

6. Judicial Specialization

- **5/04:** Specialization and Immigration

Baum, Lawrence. “Judicial Specialization and the Adjudication of Immigration Cases”. *Duke Law Journal* (2010): 1501-1561. Read Introduction, §2-3 carefully; skim §1.

Fatima, Marouf E. “Implicit Bias and Immigration Courts”. *New England Law Review* (2011): 417-448.

Lu, Denise and Derek Watkins. “Court Backlog May Prove Bigger Barrier for Migrants Than Any Wall”. *New York Times*, 24 January 2019.

- **5/06:** Specialization Abroad

Preston, Brian J. “Benefits of Judicial Specialization in Environmental Law: The Land and Environment Court of New South Wales as a Case Study”. *Pace Environmental Law Review* (2012) 29, no. 2: 396-440.

7. Conclusion

- **5/11:** Courts and the Policy Process
 - *Rosenberg (2008)*, Epilogue
- **5/13:** Research Paper Open Discussion