



RPOS 326: Introduction to Public Law (Fall 2017)

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appointment

Acknowledgments

Materials and structure are borrowed and adapted from a course originally developed by Prof. Julie Novkov. Simulation format is also from Prof. Novkov, but 2017 materials are my own; please do not circulate without permission.

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 and group activities. During the lecture times, students can expect a mixture of lecturing by the professor, discussion with the professor and other students in the class, and group activities structured around readings and other assignments. Because class discussions and group work 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!

Materials

The main text for this course is:

- Bonsignore, John J., Ethan Katsch, Peter D'Errico, Ronald M. Pipkin, Stephen Arons, Janet Rifkin. 2006. *Before the Law: An Introduction to the Legal Process* (8th ed.). Belmont, CA: Wadsworth Cengage Learning.

This text will be supplemented with several additional materials which I will generally provide for you on Blackboard. The text, *Before the Law*, is available for purchase at campus bookstore 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: You will need to use Blackboard to gain access to all of the assigned readings, research your papers, and participate in classroom activities (e.g., mock lawsuit). Be sure your email address in the Blackboard system is configured to reach you.

Requirements

You are expected to stay current with the reading, attend class, and participate in class discussions and activities. I do not take attendance every day, but I reserve the right to take attendance at random. 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 any 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 at least two 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 have a range of 5-8 pages (minimum of 5; maximum of 8). 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% for draft, 25% for final version).

Students will also take four online tests: three quizzes during the semester and a final examination at the end of the semester. Prof. 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. These unannounced quizzes are in addition to the scheduled quizzes below, could take place *on any day*, and no make-ups will be permitted without a legitimate and documented excuse (see below). If

these quizzes take place, each will constitute 5% of your grade, which will come proportionally from the allocations for the other assignments (mainly participation).

The approximate allocation of weight for your various obligations (subject to change) is as follows:

Participation	15%
Quiz One	5%
Quiz Two	5%
Quiz Three	5%
Performance in mock lawsuit	20%
Rough Draft of Paper	5%
Final Paper	25%
Final Exam	20%

CLASS POLICIES

Classroom conduct. You are expected to promote a classroom environment that makes it easy for you and 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 electronic devices off during class. Texting and any other kind of messaging or emailing during class is unacceptable. Laptop use is allowed for taking notes and other activities relevant to class, but sending emails, messaging, checking social media, or watching videos online is unacceptable. If you engage in any of these activities, or otherwise use 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 communicate after class and discuss what happened at a later time. If this happens a second time, you will receive a zero (0) for your participation grade for the semester. Again, if you are asked to leave twice, the highest grade you can obtain is a “B” (85%). 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 on a regular basis. You are responsible for material sent by email.

Late Work and Missed Assignments. Quizzes and any other written work must be turned in at the beginning of class (i.e., first 10 minutes) – 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 10 minutes of class, or after 5pm on days there is no class unless a specific due date/time is stated; 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 or shaping your research, you must provide a citation that explicitly acknowledges the source of those ideas. In short, don’t take credit for other people’s words, work, or ideas. If you have any questions about plagiarism, please contact me before you submit the assignment for grading. Plagiarism or cheating will result, at a minimum, in a failing grade for the

assignment and the submission of your name to the Office of Conflict Resolution. Ignorance of this policy 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.

Counseling and Psychological Services (CAPS). If you are going through a difficult time (e.g., stress, anxiety, depression, relationship issues, traumatic experience), there are resources on campus to help you. The office on campus that houses these resources is Counseling and Psychological Services (CAPS). Services are free during the academic year, and confidential. Phone: 518-442-5800. Email: consultation@albany.edu. Web: http://www.albany.edu/counseling_center/

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.

Changes to Syllabus. I will modify and update this syllabus throughout the semester. I will announce these updates, and the current version of the syllabus will always be on Blackboard.

CLASS SCHEDULE

WEEK 1

Introductions

Aug 29 Introductions; review syllabus and expectations

What is Law?

Aug 31 Law and Legal Reasoning

- Kafka, "Before the Law" (F.1) (this week's materials are all on Blackboard)
- Kafka, "Dialogue Between a Priest and K" (F.2)
- Kafka, "The Problem of Our Laws" (F.3)
- Kafka, "Couriers" (F.4)

WEEK 2

September 5 Founding the American Republic

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

September 7 Refounding the American Republic

- United States Constitution (Blackboard)

WEEK 3

September 12 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)

September 14 Other domestic and international legal landmarks

NOTE: divide reading among two groups; if your last name starts with letter A-M, read materials for Group 1; if your last name starts with letter N-Z, read materials for Group 2.

- Group 1
 - Women's rights
 - Declaration of Sentiments (1948)
 - Petition for Suffrage (1866)
 - Declaration of Right of the Women of the U.S. (1876)
 - France
 - Declaration of Rights of Man (1789)
- Group 2
 - International Bill of Rights
 - UDHR (1948)
 - ICCPR (1976)
 - ICESCR (1976)

WEEK 4

Sep 19 Review and conclude law and founding documents

Questions to consider:

- What is the law?
- What is the role of written laws (constitutions and legislation)?
- What is the role of individuals, groups, institutions?
- What is the role of time?
- What is the role of ideas (norms, attitudes, values, ideology)?

Sep 21 NO CLASS

*** Classes Suspended; Rosh Hashanah ***

WEEK 5 Judging and Interpretation

September 26 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 28 Modes of Legal Reasoning: Introduction

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

WEEK 6 Modes of Legal Reasoning

Oct 3 Modes of Legal Reasoning: Textualism and Originalism

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

Oct 5 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)

WEEK 7

Oct 10 Modes of Legal Reasoning: Legal Realism 1

- *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

Oct 12 Modes of Legal Reasoning: Legal Realism 2 (Attitudinalism)

- Review and synthesize previous materials
- Reading TBA

WEEK 8

***** Mon (Oct 16) is Mid-Semester Point *****

The Adversarial System in the United States

October 17 The Adversarial Process

- Frank, “The ‘Fight’ Theory versus the ‘Truth’ Theory” (13.2)
The Adversarial Process: A Grimmer View
- Mills, “I Have Nothing to Do with Justice” (13.3)

QUIZ ONE DUE BY START OF CLASS TODAY

October 19 GROUP SESSION 1

- Read simulation materials prior to start of this class session

WEEK 9

October 24 **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 26 GROUP SESSION 2

- Review simulation materials; you should be very familiar with them by now
- Plaintiffs should be identifying specific complaints and drafting complaint brief, and Defendant’s should be anticipating specific defenses and drafting response brief accordingly.

WEEK 10

Lawyers, Their Training, and Their Ethical Challenges

Oct 31 Law School and its Structural Purposes

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

Nov 2 Personal reflections on law school

Potential visit from former student now in law school

- Other readings: TBA

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

WEEK 11

Nov 7 Lawyers’ Work

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

QUIZ TWO DUE BY START OF CLASS TODAY

Nov 9 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)

***** DEFENDANTS' ROUGH DRAFTS OF RESPONSE BRIEF DUE *****

WEEK 12

Nov 14 SETTLEMENT CONFERENCE I

QUIZ THREE DUE BY START OF CLASS TODAY

Nov 16 SETTLEMENT CONFERENCE II

- Complete settlement discussions
- Reflect on Settlement Conferences (structure discussion around document due later)

WEEK 13 Law and Inequality

Nov 21 Structural Inequality

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

***** ROUGH DRAFTS OF JUDGES' MEMORANDA DUE *****

Nov 23 NO CLASS

*** Classes Suspended (Thanksgiving Break) ***

WEEK 14

Nov 28 **Juries and Their Role in the Legal System**

Jury Selection and Discrimination: Race and Gender

- *Strauder v West Virginia* (Blackboard)
- *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)
- *Foster v Chatham* (Blackboard)
 - Group 1: SC decision 2016, focus on case summary
 - Group 2: amici brief from prosecutors in favor of defendant, pp. 4-11
- *Pena-Rodriguez v Colorado* in-class exercises:
 - Everyone:
 - *Pena-Rodriguez v Colorado*, summary of case on first 4 pages (Blackboard)
 - Group 1 (majority):
 - *Pena-Rodriguez v Colorado*, majority opinion 1-21, especially pp. 13-21 (Blackboard)
 - What are main arguments?
 - Can you detect mode(s) of legal reasoning?

- Group 2 (dissenters):
 - Pena-Rodriguez v Colorado, Thomas dissent, 1-6, and Alito dissent, 1-22 (Blackboard)
 - What are main arguments?
 - Can you detect mode(s) of legal reasoning?
- Liptak 2017 on Pena-Rodriguez case (Blackboard)

***** REFLECTION ON SETTLEMENT CONFERENCE DUE *****

Nov 30 Power of Juries

NOTE: divide reading among two groups; if your last name starts with letter A-M, read materials for Group 1; if your last name starts with letter N-Z, read materials for Group 2.

Group 1: 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](#))

Group 2: 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*

WEEK 15

Dec 5 **Disobeying the Law**

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)

December 7 Last Day of Class

Review

***** Final Day of Class is Dec 7 *****

***** ALL FINAL BRIEFS DUE *****

FINALS EXAM PERIOD: Dec 13-19

***** FINAL EXAMINATION SCHEDULE: WEDNESDAY DECEMBER 13, 10:30 AM -12:30 PM *****