

PSC 374: Law & Society
Tuesdays and Thursdays, 11:00-12:20
Eggers Hall 111

Instructor:

Paul Gardner

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Office: 100B Eggers Hall

Office Hours: Tuesdays 1:00-2:20, Wednesdays 2:15-3:35, and by appointment

Course Summary

This course will examine the American legal system in a political and social context. We will begin with the proposition that in the United States, courts resolve bilateral legal disputes. That is, in both civil and criminal lawsuits, there is a plaintiff and a defendant, and a court only hears a case when the plaintiff decides to make a formal legal complaint. Within this framework, courts make legal decisions that affect the lives of individuals, or that affect policy across the United States. The course will cover the great number of factors that affect the usage of courts in different contexts, with a particular focus on how the institutional features of courts both support and inhibit their use in service of social and political goals and changes. The main themes of the course will focus on the potential of the law for promoting change and guiding policy, as well as how individual citizens interact with the law.

Learning Objectives

This course has two kinds of objectives. The first is to gain substantive knowledge about law and politics, and the second is to acquire skills that you acquire as a university student, including speaking and writing skills. The specific outcomes are as follows:

- 1) Understand how individuals and political actors interact with the legal system in the United States,
- 2) Understand the political impact that the courts and other legal actors have on American government and society,
- 3) Develop analytical skills to evaluate the effectiveness of legal policy,
- 4) Improve research and writing skills through analysis of legal and political science literature, and
- 5) Communicate effectively about law and politics in a small group setting.

Course Readings

There are three required texts for the course:

- Haltom, William, and Michael McCann. 2009. *Distorting the Law: Politics, Media, and the Litigation Crisis*. University of Chicago Press.
- Harr, Jonathan. 2011. *A Civil Action*. Vintage Books.
- Kagan, Robert. 2003. *Adversarial Legalism*. Harvard University Press.

Each of the required books are available at the SU Bookstore, and are also widely available both new and used on your favorite bookstores on the web (for as little as \$5 for *Distorting the Law* and a penny for *A Civil Action*, last time I checked). If you prefer, you may access *Adversarial Legalism* as an e-book through the Syracuse University Library instead of purchasing it.

The remainder of the course readings will be academic legal or political science articles and popular newspaper and magazine articles drawn from the web. Other readings can be found on Blackboard. Refer to the course calendar, Blackboard notifications, and emails from the instructor for updates on the reading schedule and where to find materials.

Readings on the syllabus should generally be read BEFORE the class for which they are listed, but I will let you know which pieces to prioritize first during heavier reading weeks.

Course Requirements

This course has a heavy load of reading and writing. Grades are *earned* based on the quality of work submitted, not given. You are encouraged to see me if you are unsure about the expectations for any assignment. I will go over the paper in detail at the time it is assigned.

There are four written of the course. There will be one midterm exam and one final exam. The midterm will be held on March 11th in class. The final exam will be held from 8am to 10am on Friday, May 5th in our normal classroom, Eggers Hall 111. There will also be one 8-12 page paper focused on the book *A Civil Action*, which will be graded in two parts. The first part will be a proposal and annotated bibliography due March 24th. The final paper will be due April 21st.

There will also be a graded oral component. Twice during the semester, we will have a 40-minute, small-group discussion section. You will be expected to come prepared for an in-depth discussion of that day's material. The two graded discussions will together be 15% of the final grade. **No electronics will be permitted on discussion days.** Please plan accordingly by printing notes and readings.

All grading of written work will be done anonymously. This means that written work must be submitted with a **title page on which your name appears**, and then **your name should not appear on any other page**. All written work should include page numbers. Plagiarism will not be tolerated—see Academic Integrity in Course Policies, below.

Grades will be assigned based on the following rubric:

Midterm Exam	20%
Paper Proposal	5%
Term paper	25%
In-class discussions	15%
Final Exam.....	30%
Attendance and Participation	5%

Course Policies

Laptops and other electronic devices: During class, your jobs are to listen actively, take careful notes, reflect on the concepts we are discussing, and participate in those discussions when you have something to say. None of these jobs requires a laptop, a tablet, or a phone, and the use of such devices during class can be quite distracting to students sitting nearby. However, since many of our readings are available electronically and having them available during class can be useful, I will allow laptops or tablets for note taking and accessing course readings *only*. Use of laptops or tablets for other purposes will result in laptops being forbidden for the remainder of the semester. Phones should not be used in class for any purpose. **No electronics will be permitted on discussion days.**

Late paper policy: Deadlines will be extended only under unusual circumstances, and only with my explicit permission. If you must be absent for one of the exams, you must inform me as early as possible, but in no case later than two weeks before the exam. Late papers will be reduced by a third of a grade for each day that they are late.

Grading policy: All grading of written work will be done anonymously. This means that written work must be submitted with a title page on which your name appears, and then your name should not appear on any other page. If you have any questions about written assignments, either before or after they are due, you are welcome to speak with either me. Grades may be appealed in rare circumstances. To do so, you should submit a clean copy of the paper to me, along with an explanation for the reason why you think you deserve a higher grade than you received (1 page). I will then re-grade the paper from scratch. This means that you could receive a grade that is lower, higher, or the same as the grade originally assigned.

Academic support services: SU provides a variety of tutoring and academic support services, and I encourage you to avail yourself of these resources. Doing so may help you learn the course material better, determine the best strategies for studying that material, improve your writing skills, and have less stress about your success in the course. Tutoring centers include the Tutoring & Study Center (TSC), the Writing Center, the Math and Calculus Clinics, the Physics Clinic, the Chemistry Clinic, and the Athletics Academic Services Center. Details at <<http://tutoring.syr.edu>>.

Academic integrity: The Syracuse University Academic Integrity Policy holds students accountable for the integrity of the work they submit. This means that it is your responsibility to be familiar with the Policy in general and to learn about the specific expectations of each of your instructors regarding proper citation of sources in written work. The policy also governs the integrity of work submitted in exams and assignments as well as the veracity of signatures on attendance sheets and other verifications of participation in class activities, and it prohibits students from submitting the same written work in more than one class without receiving written authorization in advance from both instructors. The presumptive penalty for a first offense by an undergraduate student is course failure, accompanied by a transcript notation indicating that the failure resulted from a violation of Academic Integrity Policy. For more information and the complete policy, see <<http://academicintegrity.syr.edu>>.

Reasonable accommodation: If you believe that you need accommodations for a disability, please contact the Office of Disability Services (ODS), located at 804 University Avenue, room 309 (443-4498). ODS is responsible for coordinating disability-related accommodations and will issue Accommodation Authorization Letters when appropriate. Since accommodations may require early planning and generally are not provided retroactively, please contact ODS as soon as possible. Visit the Office of Disability Services website for more details <<http://disabilityservices.syr.edu/>>.

Religious holidays: In accordance with SU's Religious Observances Policy, I will excuse any absences that result from religious observances, provided that you submit the required on-line notification form via MySlice during the first two weeks of the semester.

Office hours and email communication: My regular office hours are listed above, but you are welcome to make an appointment for some other time. If you just have a quick question, I encourage you to reach me by email. In addition, I will regularly use Blackboard's announcement and mail feature to contact all members of the class. As such, all students are responsible for regularly checking their SU email accounts throughout the semester.

Course Calendar

(This is for rough guidance of how we will progress through the semester. You should *always* consult Blackboard or my emails to the class for changes in the schedule.)

January 19: Course Introduction: Why study the law? What does “law and society” mean?

Optional: Galanter, Marc. 1984. “Reading the landscape of disputes: What we know and don't know (and think we know) about our allegedly contentious and litigious society.” *UCLA Law Review* 31: 4. [BB]

January 21: Functions of the law and legal authority

Read: Paul R. Milgrom, Douglass North and Barry R. Weingast. 1990. The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs. *Economics and Politics* 2(1). [BB] **N.B. Skim Sections 2, 3, and 5. Don't worry about the math.**

Recommended: Harr, *A Civil Action*, pp. 1-50

January 26: Functions of the law and legal authority, continued

Read: Martin Shapiro. 1981. *Courts*. University of Chicago Press. [BB] Chapter 1.

January 28: Litigation in the United States

Read: Kagan, *Adversarial Legalism*. Chapters 1 & 2.

Recommended: Harr, *A Civil Action*, pp. 51-82

February 2: Litigation in the United States, continued

Read: Haltom, William, and Michael McCann. 2009. *Distorting the Law: Politics, media, and the litigation crisis*. University of Chicago Press. Chapters 2 & 3.

Recommended: Harr, *A Civil Action*, pp. 83-119

February 4-9: Access to courts

Read: Galanter, Marc. 1974. “Why the ‘haves’ come out ahead: Speculations on the limits of legal change.” *Law and Society Review*: 95-160. [BB] **N.B. Read pp. 95-119, remainder strongly recommended.**

In-class video: *Hot Coffee*

Recommended: Harr, *A Civil Action*, pp. 120-193

February 11: IN-CLASS DISCUSSION: Are lawyers burning America?

GROUP A: 11:00-11:40

GROUP B: 11:40-12:20

Read: “Are Lawyers Burning America?” 1995. *Newsweek*. [BB]

Recommended: Harr, *A Civil Action*, pp. 194-232

February 16: Judges and the law

Read: Posner, Richard. 1995. "What Do Judges Maximize?" *Overcoming Law*. Harvard University Press. [BB] **N.B. Skim 126-135, read the rest.**

February 18: The role of lawyers in the American legal system

Read: Bell, Derrick A. 1976. "Serving two masters: Integration ideals and client interests in school desegregation litigation." [BB] **Read pages 470-493, 512-516. The remainder is optional.**

February 23: Lawyers and agenda setting in courts of law

Read: Haltom & McCann. 2009. *Distorting the Law*. Chapter 4.

Read: Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. University of Chicago Press. [BB] Chapter 4 (Chapter 3 optional)

February 25-March 1: Legal consciousness and public perceptions of the law

Read: Ewick, Patricia and Susan S. Silbey. 1998. *The Common Place of Law: Stories from Everyday Life*. University of Chicago Press. [BB] **N.B. Read pp. 1-17, 45-53. Pages 18-44 are optional.**

March 3: The role of the media in constructing legal consciousness

Read: Haltom & McCann. 2009. *Distorting the Law*. Chapter 5.

Optional: Christenson, Dino P., and David M. Glick. "Chief Justice Roberts's Health Care Decision Disrobed: The Microfoundations of the Supreme Court's Legitimacy." *American Journal of Political Science* 59.2 (2015): 403-418. [BB]

March 8: TBA

March 10: MIDTERM EXAM

March 13-19: SPRING BREAK—NO CLASS

Recommended: Finish *A Civil Action*.

March 22: Courts and the punishment of wrongs

Read: Gopnik, Adam. "The Caging of America: Why do we lock up so many people?" 2012.

The New Yorker. <http://www.newyorker.com/magazine/2012/01/30/the-caging-of-america>

Read: Rakoff, Jed S. 2014 "Why the Innocent Plead Guilty." The New York Review of Books.

<http://www.nybooks.com/articles/archives/2014/nov/20/why-innocent-people-plead-guilty/>

Optional: Kagan, *Adversarial Legalism*. Chapters 4 & 5.

March 24-29: Intersection of race and criminal law in America

****PROPOSAL DUE MARCH 24th AT THE BEGINNING OF CLASS****

Read: Alexander, Michelle. 2012. *The New Jim Crow: Mass incarceration in the age of colorblindness*. The New Press. [BB]

Optional: Murakawa, Naomi. 2014. *The First Civil Right: How Liberals Built Prison America*. Oxford University Press. (excerpts) [BB]

March 31: What are rights? How are new rights recognized?

Read: Kirkland, Anna. 2008. "Think of the hippopotamus: Rights consciousness in the fat acceptance movement." *Law & Society Review* 42.2: 397-432. [BB]

Review: Epp, Charles R. 1998. *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. University of Chicago Press. [BB]

April 5: IN-CLASS DISCUSSION: What's wrong with rights?

GROUP A: 11:00-11:40

GROUP B: 11:40-12:20

Read: Glendon, Mary Ann. 2008. *Rights Talk: The impoverishment of political discourse*. Simon and Schuster. [BB] Chapters 2 & 4.

April 7: Policy enforcement through the courts: The benefits and drawbacks

Read: Frymer, Paul. 2003. "Acting when elected officials won't: Federal courts and civil rights enforcement in US labor unions, 1935–85." *American Political Science Review* 97.3: 483-499.

Read: Kagan, *Adversarial Legalism*, Chapter 10.

April 12: Why adversarial legalism?

Read: Kagan, *Adversarial Legalism*. Chapter 3.

Read: Farhang, Sean. 2010. *The Litigation State: Public Regulation and Private Lawsuits in the United States*. Princeton University Press. [BB] Chapter 1 (excerpt).

Optional: Epp, Charles R. 2010. *Making rights real: activists, bureaucrats, and the creation of the legalistic state*. University of Chicago Press. [BB] Chapter 9.

April 14: Law and social change

Read: Rosenberg, Gerald N. *The Hollow Hope: Can courts bring about social change?* University of Chicago Press, 2008. [BB]

Read: *Brown v. Board of Education* (1954). [BB]

Review: Frymer, Paul. 2003. "Acting when elected officials won't: Federal courts and civil rights enforcement in US labor unions, 1935–85." *American Political Science Review* 97. 3: 483-499.

Optional: McCann, Michael W. 1994. *Rights at work: Pay equity reform and the politics of legal mobilization*. University of Chicago Press. [BB]

April 19: Conditions for social change

Read: *Roe v. Wade* (1973). [BB]

Read: *Bowers v. Hardwick* (1986). [BB]

Read: *Lawrence v. Texas* (2003). [BB]

Read: *Reynolds v. Sims* (1964). [BB]

April 21: Backlash and retrenchment

*****PAPER DUE APRIL 21st AT THE BEGINNING OF CLASS*****

Read: Haltom, William, and Michael McCann. 2009. *Distorting the law: Politics, media, and the litigation crisis*. University of Chicago Press.

Optional: Keck, Thomas M. 2009. "Beyond backlash: Assessing the impact of judicial decisions on LGBT rights." *Law & Society Review* 43(1): 151-186. [BB]

Optional: Staszak, Sarah. "Institutions, rulemaking, and the politics of judicial retrenchment." *Studies in American Political Development* 24.02 (2010): 168-189. [BB]

April 26-28: Courts as political actors

Read: Silverstein, Gordon. 2009. *Law's allure: how law shapes, constrains, saves, and kills politics*. Cambridge University Press. Chapters 2 & 3.

May 3: In-class review

May 5: FINAL EXAM, 8:00 AM to 10:00 AM, 111 Eggers Hall