

POSC 6954: Research Seminar in Law, Courts, and Constitutionalism

Marquette University
Fall 2012
Prof. Paul Nolette

Class Time: Monday 4:00-6:40pm
Class Location: WW138
Office Hours: Monday 10-12, Wednesday 1-3, and by appointment
Office Location: WW454
Email: paul.nolette@marquette.edu

COURSE DESCRIPTION

One of the striking things about politics in the contemporary era is the growing impact of law and legal institutions in the political process. This has been true not just in the United States but increasingly on a global scale as well. In the US, the legal process has become a battleground for many different areas of public policy. Democratization worldwide has been accompanied by a dramatically increased role for courts, including specialized constitutional courts. With this "judicialization of politics" comes the ever-greater relevance of law and courts to the broader study of politics.

This graduate-level course examines several of the main areas of interest in the scholarly study of law and courts. We will consider the nature of law and judicial decision-making; the functions and origins of courts; the interactions between the judiciary and other political institutions; the role of law and litigation in public policy; and issues of constitutionalism and constitutional design. We will also discuss classic questions that have animated much of the literature in the study of law and courts, including fundamental questions about the legitimacy of judicial review in democracies and the efficacy of the law in driving political and social change. We will explore these issues from a variety of scholarly perspectives, including law and society, judicial behavior, law and economics, comparative courts and constitutionalism, constitutional theory, and American constitutional development. Because we cover a good deal of ground in this course, note that we will be reading a considerable amount of material.

While much of the literature in this course examines the role of law and courts in America, there is a strong comparative element to the course as well. For that reason, this course may count towards either American or comparative politics course credit for the purposes of fulfilling the requirements for the Master's program in political science.

REQUIRED AND RECOMMENDED BOOKS

There are a total of nine required books for this course and one recommended book. All are available at Bookmarq, and all should be readily available (and presumably cheaper) online.

REQUIRED:

- (1) Martin Shapiro, Courts: A Comparative and Political Analysis, University of Chicago Press (1986) (ISBN: 978-0226750439)
- (2) Robert A. Kagan, Adversarial Legalism: The American Way of Law, Harvard University Press (2003) (ISBN:978-0674012417)
- (3) Dennis C. Mueller, Constitutional Democracy, Oxford University Press (2000) (ISBN: 978-0195144079)
- (4) John Hart Ely, Democracy and Distrust: A Theory of Judicial Review, Harvard University Press (1980) (ISBN: 978-0674196377)
- (5) Bruce Ackerman, We the People: Foundations, Harvard University Press (1993) (ISBN: 978-0674948419)
- (6) Steven M. Teles, The Rise of the Conservative Legal Movement: The Battle for Control of the Law, Princeton University Press (2010) (ISBN: 978-0691146256)
- (7) Charles R. Epp, The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective, Chicago University Press (1998) (ISBN: 978-0226211626)
- (8) Charles R. Epp, Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State, Chicago University Press (2010) (ISBN: 978-0226211657)
- (9) Sean Farhang, The Litigation State: Public Regulation and Private Lawsuits in the U.S., Princeton University Press (2010) (ISBN: 978-0691143828)

RECOMMENDED:

- (1) Robert G. McCloskey and Sanford Levinson, The American Supreme Court, Fifth Edition, University of Chicago Press (2010) (ISBN: 978-0226556871)

Note: I highly recommend the McCloskey book to anyone interested in the history and inner workings of the U.S. Supreme Court. Consider reading it throughout the semester to help get a better picture of the Supreme Court's place in American politics. The edition listed above is the most recent version and is available at Bookmarq, though you are welcome to use earlier editions as well (though I would not recommend earlier than the third edition).

COURSE REQUIREMENTS AND ASSIGNMENTS

As this is a graduate-level seminar, your active participation and engagement with the readings each week is essential. The readings below are split into "required" and "recommended" readings. Everybody will read all of the required readings each week and prepare a short (~1-3 page) paper critiquing the readings and raising questions for discussion in class. The paper should not simply be a summary but should instead reflect your thoughtful responses to each week's reading. Though not required, feel free to incorporate at least one of the recommended readings for the week into your paper. You will distribute your papers to the entire class no later than noon on Monday.

Half of your grade will be determined by your participation, which includes your weekly short papers. The other 50% of your grade will consist of a substantial final paper (about 15-25 pages). This may take the form of either a research paper on any topic in the field of law and politics or a review essay critiquing the key literature in one area of law and courts. A formal paper prospectus will be due in class on October 22 and the final paper will be due by December 14. The last class on December 3rd is reserved for discussion of these papers/review essays, though a final draft of your paper is not due at this time. I will provide more information about the final paper in the first couple weeks of the course.

CLASS AND READING SCHEDULE

Part One: Introduction to the Study of Law and Courts

8/27 – Course Introduction

9/3 – NO CLASS (Labor Day)

9/10 – Perspectives on the Meaning of Law

REQUIRED:

- (1) H. L. A. Hart, "Positivism and the Separation of Law and Morals," in Joel Feinberg and Hyman Gross (eds.), Philosophy of Law, 2nd ed. (Encino, CA: Dickenson Publishing Co., 1975): 40-59.
- (2) Ronald Dworkin, "The Model of Rules," in Joel Feinberg and Hyman Gross (eds.), Philosophy of Law, 2nd ed. (Encino, CA: Dickenson Publishing Co., 1975): 74-92.
- (3) Lon Fuller, "The Case of the Speluncean Explorers," *Harvard Law Review* 62 (1949): 616-645.
- (4) Gordon Silverstein, Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics (Cambridge, MA: Cambridge University Press, 2009): 63-70.
- (5) Austin Turk (1976). "Law as a Weapon in Social Conflict." *Social Problems* 23: 276-291.

RECOMMENDED:

- (1) Lief Carter and Thomas Burke, Reason in Law, 7th ed. (New York: Person Longman, 2006), chapters 1 and 6.
- (2) José Maria Maravall, "The Rule of Law as a Political Weapon" in Maravall and Przeworski eds., Democracy and the Rule of Law (Cambridge University Press, 2003): 261-301.
- (3) Barry Weingast (1997). "The Political Foundations of the Rule of Law." *American Political Science Review* 91: 245-263.
- (4) Karl Llewellyn, The Bramble Bush: The Classic Lectures on the Law and Law School (Oxford University Press, 2008 [1930]), pp. 3-36 and 115-127.
- (5) Jerome Frank, Courts on Trial: Myth and Reality of American Justice (Princeton University Press, 1949).

9/17 – Courts as Political Institutions

REQUIRED:

- (1) Martin Shapiro, Courts: A Comparative and Political Analysis (Chicago: University of Chicago Press, 1986), pp. 1-64 and at least two of the four case studies.
- (2) Abram Chayes (1976). "The Role of the Judge in Public Law Litigation," *Harvard Law Review* 89: 1281-1316.
- (3) Donald Horowitz, The Courts and Social Policy (Brookings Institution Press, 1977), chapter 2.

RECOMMENDED:

- (1) Rogers Smith (1988). "Political Jurisprudence, the 'New Institutionalism,' and the Future of Public Law," *American Political Science Review* 82: 89-108.
- (2) Martin Shapiro and Alec Stone Sweet. On Law, Politics, and Judicialization (Oxford University Press, 2002), pp. 1-54.
- (3) Robert G. McCloskey and Sanford Levinson, The American Supreme Court, Fifth Edition, University of Chicago Press (2010), chapters 1-3, Epilogue, and Coda.
- (4) David O'Brien, Storm Center: The Supreme Court in American Politics, 9th ed. (W.W. Norton, 2011), chapters 1-3, 6.

9/24 – Examining Courts from the Interbranch Perspective

REQUIRED:

- (1) Jeb Barnes (2007). "Bringing the Courts Back In: Interbranch Perspectives on the Role of Courts in American Politics and Policy Making." *Annual Review of Political Science* 10: 25-43.
- (2) Howard Gillman (2002). "How Political Parties Can Use the Courts to Advance Their Agendas: Federal Courts in the United States, 1875-1891." *American Political Science Review* 96: 511-24.
- (3) Anna Harvey and Barry Friedman (2009). "Ducking Trouble: Congressionally Induced Selection Bias in the Supreme Court's Agenda." *Journal of Politics* 71: 574-592.

- (4) Robert A. Dahl (1957). "Decision-Making in a Democracy: The Supreme Court as a National Policy Maker," *Journal of Public Law* 6: 279-95.
- (5) Jonathan D. Casper (1976). "The Supreme Court and National Policy Making," *American Political Science Review* 70: 50-63.
- (6) Mark Miller and Jeb Barnes, Making Policy, Making Law (Georgetown University Press, 2004), chapters 3-5.

RECOMMENDED:

- (1) Jeffrey Segal (1997). "Separation-of-Powers Games in the Positive Theory of Congress and Courts." *American Political Science Review* 91: 28-44.
- (2) Matthew McCubbins, Roger Noll, Barry Weingast (1989). "Structure and Process, Politics and Policy: Administrative Arrangements and the Political Control of Agencies." *75 Virginia Law Review* 75: 431-482.
- (3) R. Shep Melnick, Between the Lines: Interpreting Welfare Rights (Brookings Institution Press, 1994), chapters 1-3 and 11-13.
- (4) Howard Gillman, "Party Politics and Constitutional Change," in Ronald Kahn and Ken Kersch (eds.), The Supreme Court and American Political Development (University Press of Kansas, 2006), 138-168.
- (5) Jeb Barnes, Overruled: Legislative Overrides, Pluralism, and Contemporary Court-Congress Relations (Stanford University Press, 2004).
- (6) Cornell Clayton and J. Mitchell Pickerill (2006). "The Politics of Criminal Justice: How the New Right Regime Shaped the Rehnquist Court's Criminal Justice Jurisprudence," *Georgetown Law Journal* 94: 1385-1426.
- (7) Keith Whittington (2005). "Interpose Your Friendly Hand: Political Supports For the Exercise of Judicial Review by the United States Supreme Court," *American Political Science Review* 99(4): 583-596.
- (8) Thomas M. Keck (2007). "Party, Policy, or Duty: Why Does the Supreme Court Invalidate Federal Statutes?" *American Political Science Review*, 101(2): 321-338.

10/1 – Law and Judicial Decision-Making

REQUIRED:

- (1) Harold J. Spaeth (2005). "Chief Justice Rehnquist: 'Poster Child' for the Attitudinal Model." *Judicature* 89(3): 108-115.
- (2) Jeffrey Segal and Harold Spaeth, The Supreme Court and the Attitudinal Model Revisited (Cambridge University Press, 2002), chapter 2 and pp. 86-97.
- (3) Howard Gillman (2001). "What's Law Got to Do with It? Judicial Behavioralists Test the 'Legal Model' of Judicial Decision Making." *Law and Social Inquiry* 26(2): 465-504.
- (4) Lee Epstein, Jack Knight, and Andrew Martin (2001). "The Supreme Court as a Strategic National Policy Maker." *Emory Law Journal* 50: 583-611.
- (5) Barry Friedman (2006). "Taking Law Seriously." *Perspectives on Politics* 4:261-276.

RECOMMENDED:

- (1) Forrest Maltzman, James Spriggs II, & Paul Wahlbeck, Crafting Law on the Supreme Court: The Collegial Game (Cambridge University Press, 2000), chapters 1, 3, 4, and 7.
- (2) Michael Bailey and Forrest Maltzman, The Constrained Court: Law, Politics, and the Decisions Justices Make (Princeton University Press, 2011).
- (3) Paul J. Wahlbeck, James F. Spriggs II, and Forrest Maltzman (1998). "Marshalling the Court: Bargaining and Accommodation on the United States Supreme Court." *American Journal of Political Science* 42: 294-315.
- (4) Michael A. Bailey and Forrest Maltzman (2008). "Does Legal Doctrine Matter? Unpacking Law and Policy Preferences on the U.S. Supreme Court." *American Political Science Review* 102: 369-384.
- (5) Herbert Kritzer and Mark Richards (2003). "Jurisprudential Regimes and Supreme Court Decision Making: The Lemon Regime and Establishment Clause Cases." *Law & Society Review* 37: 827-840.
- (6) Lee Epstein and Jack Knight (2000). "Toward a Strategic Revolution in Judicial Politics: A Look Back, a Look Ahead." *Political Research Quarterly* 53: 625-661.
- (7) H.W. Perry, "Indices and Signals," in Deciding to Decide: Agenda Setting in the United States Supreme Court (Cambridge, MA.: Harvard University Press, 1991): chapter 5.
- (8) Thomas W. Merrill (2003). "The Making of the Second Rehnquist Court: A Preliminary Analysis." *Saint Louis Law Journal* 47: 569-658.
- (9) Joseph Tanenhaus, Marvin Schick, Matthew Muraskin, and Daniel Rosen, "The Supreme Court's Certiorari Jurisdiction: Cue Theory," in Judicial Decision-Making, ed. Glendon Schubert (New York: Free Press, 1963): 111-132.
- (10) Gregory A. Caldeira, John R. Wright, & Christopher J.W. Zorn (1999). "Sophisticated Voting and Gate-Keeping in the Supreme Court." *Journal of Law, Economics and Organization* 15: 549-572.
- (11) Martin Shapiro, "The Supreme Court from Early Burger to Early Rehnquist," in The New American Political System, 2nd ed., Anthony King (ed.) (AEI Press, 1990): 66-85.

Part Two: Constitutionalism and Judicial Review

10/8 – Constitutionalism and the Spread of the Independent Judiciary

REQUIRED:

- (1) Jürgen Habermas (2001). "Constitutional Democracy: A Paradoxical Union of Contradictory Principles?" *Political Theory* 29: 766-781.
- (2) Bonnie Honig (2001). "Dead Rights, Live Futures: A Reply to Habermas's 'Constitutional Democracy'." *Political Theory* 29: 792-805.
- (3) Ran Hirschl (2000). "The Political Origins of Judicial Empowerment through Constitutionalization: Lessons from Four Constitutional Revolutions." *Law & Social Inquiry* 25: 91-149.
- (4) Bruce Ackerman (1996). "The Rise of World Constitutionalism." *Virginia Law Review* 83(4): 771-797.
- (5) Dennis C. Mueller, Constitutional Democracy (Oxford University Press, 2000), chapter 19.

RECOMMENDED:

- (1) Ran Hirschl, Towards Juristocracy: The Origins and Consequences of the New Constitutionalism (Harvard University Press: Cambridge, 2004).
- (2) Thomas Ginsburg, "The Global Spread of Constitutional Review" in Keith E. Whittington, R. Daniel Kelemen and Gregory A. Caldeira, eds., The Oxford Handbook of Law and Politics (New York: Oxford University Press, 2008): 81.
- (3) Tom Ginsburg, Judicial Review in New Democracies: Constitutional Courts in Asian Cases (New York: Cambridge University Press, 2003).
- (4) J. Mark Ramseyer (1994). "The Puzzling (In)Dependence of Courts: A Comparative Approach." *Journal of Legal Studies* 23: 721-747.
- (5) Matthew Stephenson (2003). "The Political Foundations of Independent Judicial Review." *Journal of Legal Studies* 32: 59-89.
- (6) Richard H. Pildes (2004). "The Constitutionalization of Democratic Politics." *Harvard Law Review* 118: 28-154.
- (7) Emilia Justyna Powell and Sara McLaughlin Mitchell (2007). "The International Court of Justice and the World's Three Legal Systems." *The Journal of Politics* 69: 397-415.
- (8) Jürgen Habermas (2001). "Why Europe Needs a Constitution." *New Left Review* 11: 5-26.
- (9) Marc Plattner (2003). "Competing Goals, Conflicting Perspectives." *Journal of Democracy* 14: 42-56.
- (10) Grainne De Burca and Oliver Gerstenberg (2006). "The Denationalization of Constitutional Law." *Harvard International Law Journal* 47: 243-262.
- (11) Lee Epstein, Jack Knight, and Olga Shvetsova (2001). "The Role of Constitutional Courts in the Establishment and Maintenance of Democratic Systems of Government." *Law and Society Review* 35: 117-163.
- (12) Gregory Caldeira and James Gibson (1995). "The Legitimacy of the European Court of Justice in the European Union: Models of Institutional Support." *American Political Science Review* 89: 356-376.

10/15 – Issues of Constitutional Design

REQUIRED:

- (1) Dennis C. Mueller, Constitutional Democracy (Oxford University Press, 2000), chapters 3-10 and pp. 314-326.
- (2) Donald Horowitz, "Constitutional Design: Proposals versus Processes," in Andrew Reynolds, ed. The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy (Oxford University Press, 2002): 15-36.
- (3) Arend Lijphart (2004). "Constitutional Design for Divided Societies." *Journal of Democracy* 15: 96-109.
- (4) Cass Sunstein, The Second Bill of Rights: FDR's Unfinished Revolution and Why We Need it More Than Ever (Basic Books, 2004), chapters 1-2 and 10-12.

RECOMMENDED:

- (1) Arend Lijphart, "The Wave of Power-Sharing Democracy" in Andrew Reynolds, ed. The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy (Oxford University Press, 2002): 37-54.
- (2) Ahkil Amar (1992). "The Bill of Rights as a Constitution." *Yale Law Journal* 100: 1131-1210.
- (3) Donald Horowitz, "The Federalist Abroad in the World" in *The Federalist*, Ian Shapiro ed. (Yale University Press, 2009) 502-532.
- (4) Paul Nolette (2003). "Lessons Learned from the South African Constitutional Court: Towards a Third Way of Judicial Enforcement of Socio-Economic Rights." *Michigan State Journal of International Law* 12: 91-120.
- (5) Juan J. Linz, "The Perils of Presidentialism," in The Global Resurgence of Democracy, 2nd edition, eds. L. Diamond and M. F. Plattner (The Johns Hopkins University Press, 1996).

10/22 – Debating Judicial Review in a Democracy

REQUIRED:

- (1) John Hart Ely, Democracy and Distrust: A Theory of Judicial Review (Harvard University Press, 1980).
- (2) Annabelle Lever (2009). "Democracy and Judicial Review: Are They Really Incompatible?" *Perspectives on Politics* 7: 805-822.
- (3) Marbury v. Madison, 5 U.S. 137 (1803).

RECOMMENDED:

- (1) Robert Dahl, How Democratic is the American Constitution? (Yale University Press, 2001).
- (2) Alexander Bickel, The Least Dangerous Branch: The Supreme Court at the Bar of Politics (Yale University Press, 1962).
- (3) Herbert Wechsler (1959). "Toward Neutral Principles of Constitutional Law." *Harvard Law Review* 73: 1-35.
- (4) James Gibson and Gregory Caldiera (2003). "Defenders of Democracy? Legitimacy, Popular Acceptance, and the South African Constitutional Court." *Journal of Politics* 65: 1-30.
- (5) Mark Graber (1993). "The Nonmajoritarian Difficulty: Legislative Deference to The Judiciary." *Studies in American Political Development* 7: 35-73.
- (6) Terri Jennings Peretti, In Defense of a Political Court (Princeton University Press 1999).
- (7) Paul Frymer (2003). "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions, 1935-85." *American Political Science Review* 97: 483-499.

10/29 – Constitutional Change and Development

REQUIRED:

- (1) Bruce Ackerman, We the People: Foundations (Harvard University Press, 1993): pp. 3-80, 165-229, 266-322.

RECOMMENDED:

- (1) Bruce Ackerman, We the People: Transformations (Harvard University Press, 1998).
- (2) Larry Kramer, The People Themselves: Popular Constitutionalism and Judicial Review (Oxford University Press, 2004).
- (3) Larry Alexander and Frederick Schauer (1997). "On Extrajudicial Constitutional Interpretation." *Harvard Law Review* 110: 1359-1387.
- (4) Keith Whittington (2002). "Extrajudicial Constitutional Interpretation: Three Objections and Responses." *North Carolina Law Review* 80: 773-851.
- (5) Thomas Keck (2002). "Activism and Constraint on the Rehnquist Court: Timing, Sequence and Conjuncture in Constitutional Development." *Polity* 35: 121-152.
- (6) Oona Hathaway (2001). "Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System." *Iowa Law Review* 86: 601-65.
- (7) Paul Frymer (2008). "Law and American Political Development." *Law and Social Inquiry* 33: 779-803.
- (8) Howard Gillman (1997). "The Collapse of Constitutional Originalism and the Rise of the Notion of the 'Living Constitution' in the Course of American State-Building." *Studies in American Political Development* 11: 191-247.
- (9) Jon Elster (1995). "Forces and Mechanisms in the Constitution-Making Process." *Duke Law Journal* 45: 364-396.
- (10) Karl Llewellyn (1934). "The Constitution as an Institution." *Columbia Law Review* 34: 1-40.

Part Three: Courts, Litigation, and the Political Process

11/5 – Adversarial Legalism, Courts, and the Judicialization of Politics

REQUIRED:

- (1) Robert A. Kagan, Adversarial Legalism: The American Way of Law (Harvard University Press, 2003), preface and chapters 1, 2, 4-7, 9-11.
- (2) Sean Farhang, The Litigation State: Public Regulation and Private Lawsuits in the U.S. (Princeton University Press, 2010), introduction and chapter 1.

RECOMMENDED:

- (1) Thomas Burke, Lawyers, Lawsuits, and Legal Rights: The Battle Over Litigation in American Society (University of California Press, 2002), chapter 1.
- (2) Marc Galanter (1983). "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: 4-71.

- (3) Susan M. Olson (1990). "Interest Group Litigation in Federal District Court: Beyond the Political Disadvantage Theory." *Journal of Politics* 52: 854-882.
- (4) Gregory A. Caldeira and John R. Wright (1990). "Amici Curiae Before the Supreme Court: Who Participates, When and How Much?" *Journal of Politics* 52: 782-806.
- (5) Jeb Barnes (2009). "In Defense of Asbestos Litigation." *Law & Social Inquiry* 34: 5-30.

11/12 – Foundations of the Judicialization of Politics

REQUIRED:

- (1) Charles R. Epp, The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective (Chicago University Press, 1998), chapters 1-4, 11 and at least one of the three case studies.
- (2) Robert A. Kagan, Adversarial Legalism: The American Way of Law (Harvard University Press, 2003), chapter 3.
- (3) Sean Farhang, The Litigation State: Public Regulation and Private Lawsuits in the U.S. (Princeton University Press, 2010), chapters 2-5, 7.
- (4) Paul Nolette, "The Public Face of the Litigation State: Federal Empowerment of State Litigation" (working paper)

RECOMMENDED:

- (1) Robert L. Rabin (1976). "Lawyers for Social Change: Perspectives on Public Interest Law." *Stanford Law Review* 28: 207-261.
- (2) Stuart Scheingold, The Politics of Rights: Lawyers, Public Policy, and Social Change, 2nd ed. (University of Michigan Press, 2004), chapter 1.

11/19 – Mobilizing the Law to Shape the State

REQUIRED:

- (1) Steven M. Teles, The Rise of the Conservative Legal Movement: The Battle for Control of the Law (Princeton University Press, 2010), introduction and chapters 1-3, 5, 7 and conclusion.
- (2) Emily Zackin (2008). "Popular Constitutionalism's Hard to Do When You're Not Very Popular: Why the ACLU Turned to Courts." *Law & Society Review* 42: 367-396.
- (3) Gregory A. Caldeira and John W. Wright (1988). "Organized Interests and Agenda Setting in the U.S. Supreme Court." *American Political Science Review* 82(4): 1109-1127.
- (4) Ian Ayres (2000). "Using Tort Settlements to Cartelize." *Valparaiso Law Review* 34: 595-608.

RECOMMENDED:

- (1) Daniel Ernst, Lawyers Against Labor: From Individual Rights to Corporate Liberalism (University of Illinois Press, 1995), chapter 1.
- (2) Mark Tushnet, The NAACP's Legal Strategy Against Segregated Education, 1925-1950 (University of North Carolina Press, 1987), chapters 7 and 8.

- (3) Patricia A. Cain, Rainbow Rights: The Role of Lawyers and Courts in the Lesbian and Gay Civil Rights Movement (Westview Press, 2000), chapters 2, 6-9.
- (4) Kim Lane Scheppelle and Jack L. Walker, Jr., "The Litigation Strategies of Interest Groups," in Mobilizing Interest Groups in America: Patrons, Professionals, and Social Movements, ed. Jack L. Walker, Jr. (Ann Arbor: University of Michigan Press, 1991): chapter 9.
- (5) Peter H. Irons, The New Deal Lawyers (Princeton University Press, 1993): pp. 75-107, 234-300.
- (6) Martha Derthick, Up In Smoke: From Legislation to Litigation in Tobacco Politics, 2nd ed. (Washington: Congressional Quarterly Press, 2004): chapters 1, 5, 7, 9, 10.
- (7) Michael Greve (2003). "Compacts, Cartels, and Congressional Consent." 68 *Missouri Law Review* 68: pp. 285-286, 346-364, 382-387.

11/26 – Examining the Societal Impact of Legal Change

REQUIRED:

- (1) Gerald Rosenberg, The Hollow Hope: Can Courts Bring About Social Change? 2nd ed. (University of Chicago Press, 2008), introduction and chapter 1.
- (2) Charles R. Epp, Making Rights Real: Activists, Bureaucrats, and the Creation of the Legalistic State (Chicago University Press, 2010).

RECOMMENDED:

- (1) Michael McCann, Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization (University of Chicago Press, 1994), chapters 1 and 2.
- (2) Michael W. McCann (1992). "Reform Litigation on Trial" (Review of The Hollow Hope), *Law & Social Inquiry* 17: 715-743.
- (3) Kevin T. McGuire (1995). "Repeat Players in the Supreme Court: The Role of Experienced Lawyers in Litigation Success." *Journal of Politics* 57: 187-196.
- (4) Susan Brodie Haire, Stefanie A. Lindquist, & Roger Hartley (1999). "Attorney Expertise, Litigant Success, and Judicial Decisionmaking in the U.S. Courts of Appeals." *Law & Society Review* 33: 667-685.
- (5) R. Shep Melnick, Between the Lines: Interpreting Welfare Rights (Washington: Brookings Institution Press, 1994): chapters 5 and 6.
- (6) Lynn Mather (1998). "Theorizing about Trial Courts: Lawyers, Policymaking, and Tobacco Litigation." *Law & Social Inquiry* 23: 897-940.

12/3 – Conclusion and Paper Presentations