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
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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.
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:**


**RECOMMENDED:**


*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).*
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:**

RECOMMENDED:

9/17 – Courts as Political Institutions

REQUIRED:

RECOMMENDED:

9/24 – Examining Courts from the Interbranch Perspective

REQUIRED:

**RECOMMENDED:**


**10/1 – Law and Judicial Decision-Making**

**REQUIRED:**

RECOMMENDED:


Part Two: Constitutionalism and Judicial Review

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

REQUIRED:


**RECOMMENDED:**


**10/15 – Issues of Constitutional Design**

**REQUIRED:**

RECOMMENDED:

10/22 – Debating Judicial Review in a Democracy

REQUIRED:

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).
**10/29 – Constitutional Change and Development**

**REQUIRED:**

**RECOMMENDED:**

**Part Three: Courts, Litigation, and the Political Process**

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

**REQUIRED:**

**RECOMMENDED:**


**11/12 – Foundations of the Judicialization of Politics**

**REQUIRED:**


**RECOMMENDED:**


**11/19 – Mobilizing the Law to Shape the State**

**REQUIRED:**


**RECOMMENDED:**


11/26 – Examining the Societal Impact of Legal Change

REQUIRED:

RECOMMENDED:

12/3 – Conclusion and Paper Presentations