

POSC 130g

LAW, POLITICS AND PUBLIC POLICY

TTh 11:00 - 12:20

Spring 2000

Website URL: http://learn.usc.edu/courses/POSC_130_67010_001

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In the United States and beyond, law and the questions of public policy it often raises pervade contemporary society. Although law frequently supplies a means to improve society, it has also served for much of its history as an instrument of repression. This course offers an introduction to law and legal institutions in the United States and an overview of the ways that political forces and social interests shape legal processes and outcomes in this country. At the same time we will consider some of the basic issues of social justice and public policy that legal decision-making has both generated and helped to resolve. How have courts and law treated equality between races and genders? What can law do to address the poverty and exclusion of ghettos? What kind of respect has the legal system shown for science? How can law be mobilized in defense of environmental quality? In treating these questions we will also pay attention to how law and its politics in the United States resembles and differs from practices at other times in this country and in other parts of the world today.

Following an initial overview, the first half of the course will examine the main components of the legal system in the United States. Separate weeks will focus on the judicial system in general, on lawyers and judges, on criminal law and prisons, on civil law and juries, and on the Supreme Court and other appellate courts. In the second half we will turn to such issues as compulsory sterilization and eugenics, statistical evidence and the death penalty, racial and gender discrimination, law and electoral politics, environmental law and litigation, law and democratic transitions, and international human rights and war crimes. In-depth analysis of these questions should provide you with concrete insights into the relations between legal institutions and their political and social contexts. At the same time it will offer you a chance to develop the critical analytical skills that are essential to understand and participate actively in contemporary law and policy.

The following required readings will be available at the USC Store:

Lawrence Baum, *American Courts: Process and Policy*. Fourth Edition. Boston: Houghton

Mifflin Company, 1998.

David L. Kirp, John P. Dwyer and Larry A. Rosenthal, Our Town: Race, Housing and the Soul of Suburbia. New Brunswick, New Jersey: Rutgers University Press, 1997.

Antjie Krog, Country of My Skull: Guilt, Sorrow and the Limits of Forgiveness in the New South Africa. New York: Random House, 1998.

Course reader.

Grading will be based on the following weights: Initial Paper 10%, Midterm 20%, Term Paper 20%, Section Participation 15%, Final 35%.

The term paper will be due on November 29. For this 8 to 10 page assignment you will undertake an in-depth legal, policy or political analysis of one of the problems we will discuss in class. Further information about this assignment will be distributed shortly.

The **website** (listed above underneath the course hours) will serve as a resource for lecture notes, course assignments, staff information and external links on related topics. Registered students should be able to access the website by typing their unix userid as both their ID and their password at the prompts. For security reasons, you should also switch your password as soon as possible. For the first weeks of the course, you may also login by entering "guest" as both your ID and your password.

OUTLINE OF SESSIONS

I. Introduction to the Course (January 11, January 13)

Film: To Kill a Mockingbird

II. Introduction to Law (January 18, January 20)

How law differs from justice; sociological and jurisprudential roots of law; politics and legal institutions; how the legal system of the United States differs from others: the death penalty decisions as an example of the relation between ethics and law.

David Neubauer, Judicial Process, 2nd Edition. Fort Worth: Harcourt Brace College Publishers, 1997, pp. 22-51.

Hugo Adam Bedau, The Death Penalty in America (183-209) (including excerpts from opinions in *Furman v. Georgia*, 408 U.S. 238 (1972); *Gregg v. Georgia*, 428 U.S. 153

(1976); *Woodson v. North Carolina*, 428 U.S. 280 (1976)).

Paper assignment on “To Kill a Mockingbird” (3-4 pages, due January 25 in class)

Answer one of the following questions:

1. What social rules (or norms) thwart the doing of justice through law in the trial of Tom Robinson? What evidence does the film give of these norms? How did these social norms subvert the law?

2. In the film, Atticus Finch expresses the view that the law and legal system are just despite the injustice of the decision against Tom Robinson. How does Atticus reconcile this view of law with the facts in this case? Do you agree with his assessment of the legal system he confronted? Why or why not?

III. Federalism and American Courts (January 25, January 27)

The judiciary in the U.S. system of government; overview of state and federal courts and their organization; federalism as a governmental system; the politics of law in California.

Baum, Chs. 1-2 (pp. 1-58).

United States v. Lopez, 115 S.Ct. 1624 (1995).

(Optional) Peter Schrag, Paradise Lost. Berkeley: University of California Press, 1998, pp. 44-106.

IV. Lawyers and Judges (February 1, February 3)

The social roles of lawyers; legal education and the separation of law from morality; the influence of power and wealth on the legal profession; conflicts between duties to clients and to the court; law and discretion in judicial decisionmaking; the selection of judges as a matter merit versus politics.

Baum, Chs. 3-5 (pp. 59-164).

Norman Roy Grutman and Bill Thomas, Lawyers and Thieves. New York: Simon & Schuster, 1990, pp. 51-82.

Nix v. Whiteside, 475 U.S. 157 (1985).

Video: Justice for Sale , about elections as a means for selection of judges.

V. Criminal Justice (February 8, February 10)

Aims of the criminal law; control of crime and civil liberties; plea bargaining and the presumption of innocence; the politics of sentencing and prisons.

Baum, Ch. 6 (pp. 165-216).

Florida v. Bostick, 111 S.Ct. 2382 (1991).

Herbert Packer (1988). Two Models of the Criminal Process. In George F. Cole (Ed.), Criminal Justice: Law and Politics (pp. 15-31).

Eric Schlosser, The Prison-Industrial Complex, Atlantic Monthly (December 1998), pp. 51-77.

Film: The Farm: Angola, about life in Angola State Penitentiary (Louisiana).

VI. Civil Justice and Jury Trial (February 15, February 17)

The nature of a civil trial; forms of civil litigation; the controversy over litigiousness; the right to a jury trial as a fundamental liberty; whether juries can nullify the law.

Baum, Ch. 7 (pp. 217-262).

Batson v. Kentucky, 476 U.S. 79 (1986).

Joan Biskupic, In Jury Rooms, Form of Civil Protest Grows, Washington Post, February 8, 1999, p. A1.

United States v. Dougherty et al., 473 F.2d 113 (1972).

VII. Introduction to Appellate Processes and Judicial Policymaking (February 22)

Baum, Ch. 8 (pp. 263-309), Ch. 9 (optional) (pp. 310-343)

MIDTERM EXAMINATION (in class) (February 24)

VIII. Science in Legal Proceedings (February 29, March 2)

Scientific evidence in court; legal justifications for compulsory sterilization, from the early twentieth century to the present.

McCleskey v. Kemp, 481 U.S. 279 (1987).

Buck v. Bell, 274 U.S. 200 (1927).

E. Fuller Torrey (1992). Freudian Fraud (pp. 39-59, 84-103). New York: HarperCollins.

Claude S. Fischer, *et al.*, Inequality by Design. Princeton: Princeton University Press, 1996, pp. 3-21.

IX. Race and Courts in the United States (March 7, March 9)

Racism and the development of rules against it; the role of judicial activism; the social scientific data employed in *Brown*; the legacy of *Brown*.

Korematsu v. United States, 323 U.S. 214 (1944).

Brown v. Board of Education I, 347 U.S. 483 (1954); *Brown v. Board of Education II*, 349 U.S. 294 (1955).

Freeman v. Pitts, 503 U.S. 467 (1992).

Film: *Unfinished Business* (documentary about the Japanese American internment).

(SPRING RECESS)

X. Affirmative Action and Minority Rights (March 21, March 23)

The controversy over affirmative action for minorities; sources and interpretations of gender equality; the law of sexual harassment.

Ronald Dworkin. *Bakke's Case: Are Quotas Fair?*. In Ronald Dworkin, *A Matter of Principle* (pp. 293-303). Cambridge, Massachusetts: Harvard University Press, 1985.

Abigail Thernstrom and Stephen Thernstrom, *America in Black and White*. New York: Free Press, 1998, pp. 530-545.

William Julius Wilson, *Affirming Opportunity*, *American Prospect*, 46 (September-October 1999), pp. 61-64.

Michael M. v. Superior Court of Sonoma County, 450 U.S. 464 (1981).

Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*. *Women's Rights Law Reporter* 7 (1982) 175-200.

Catharine A. MacKinnon, *Difference and Dominance: On Sex Discrimination*. In MacKinnon, *Feminism Unmodified* (pp. 32-45). Cambridge, Massachusetts: Harvard University Press.

Harris v. Forklift Systems, Inc., 114 S.Ct. 367, 510 U.S. 17 (1993).

XI. Law and the Ghetto (March 28, March 30)

Efforts to extend rights to the poor; the persistence of segregation and ghettos in American metropolitan areas; the *Mount Laurel* solution of judicially mandated fair housing in the suburbs; virtues and shortcomings of legally mandated reforms.

Baum, p. 331 (text box).

David L. Kirp, John P. Dwyer and Larry A. Rosenthal, *Our Town*. New Brunswick, New Jersey: Rutgers University Press, 1997.

XII. Justice and Environmental Litigation (April 4, April 6)

Civil damage suits versus public administration as solutions to environmental issues; rights to sue in public environmental law; difficulties of proof and other realities in environmental litigation; the controversy over environmental justice for minorities and the poor.

Sierra Club v. Morton, 307 U.S. 727 (1972).

Robert Bullard, Anatomy of Environmental Racism and the Environmental Justice Movement. In Robert Bullard (ed.), Confronting Environmental Racism (pp. 15-39). Boston: South End Press, 1993.

Ann Bowman, Environmental (In)Equity: Race, Class, and the Distribution of Environmental Bads. In Sheldon Kamieniecki, George Gonzalez and Robert Vos (eds.), Flashpoints in Environmental Policymaking (pp. 155-175). Albany: SUNY Press, 1997.

Film: A Civil Action (you are responsible for viewing outside class as an assignment).

XIV. Election Law (April 11, April 13)

Intersections of constitutional and legislative rights with the practice of electoral democracy in such areas as campaign contribution limits, corporate political participation and race conscious redistricting.

Buckley v. Valeo, 424 U.S. 1 (1976).

Shaw v. Reno, 113 S.Ct. 2816 (1993).

Robert Richie and Steven Hill, The Case for Proportional Representation, Boston Review, <http://bostonreview.mit.edu/BR23.1/richie.htm> (December 14, 1999).

TERM PAPER due in class (April 18)

XV. Law, Race and Democratization in South Africa (April 18, April 20)

The role of law and courts in transitions to democracy; the political and jurisprudential dilemmas of justice between regimes; law in a post-apartheid society.

Antjie Krog, Country of My Skull: Guilt, Sorrow and the Limits of Forgiveness in the New South Africa. New York: Random House, 1998.

Video: In Search of Cynthia Mthebe, about everyday life in the new South Africa

XIII. International Law (April 25, April 27)

Origins and sources of international law; prosecution of war criminals; international regulation of trade.

Gerhard von Glahn, Law Among Nations: An Introduction to Public International Law. 7th Edition. Boston: Allyn and Bacon, 1996, pp. 2-33.

Jeremy Colwill, From Nuremberg to Bosnia and Beyond: War Crimes Trials in the Modern Era. Social Justice 22(3), 1995, pp. 111-128.

World Trade Organization, WTO in Brief,
<<http://www.wto.org/wto/inbrief/inbr00.htm>> (December 14, 1999).

James Flanigan, Debacle in Seattle Was a Defeat for the World's Poor, Los Angeles Times, December 8, 1999).

Lori Wallach, Testimony Regarding U.S. Preparations for the World Trade Organization's 1999 Ministerial Meeting, May 14, 1999,
<<http://www.citizen.org/pctrade/gattwto/Testimon.htm>>.

FINAL EXAMINATION (at officially determined time)