

Fall 2017.01

**LAW & SOCIETY**

POL-UA. 335 *and* LWSOC-UA.1

**[Professor Christine Harrington](#)**

*Office Hours:* Mon. & Tues. 3:00-4:00, by appointment

Politics Department

19 West 4th St., 2nd Floor, Rm 207

**Teaching Assistants**

**Jessica Tarantine**

[jpt340@nyu.edu](mailto:jpt340@nyu.edu)

*Office Hours:* Mon. & Wed. 9:30-10:30

Politics Department, room

**Sharon Turret**

[sharon.turret@law.nyu.edu](mailto:sharon.turret@law.nyu.edu)

*Office Hours:* Thurs. 1:30-3:30

Politics Department, room 316

**What have you signed up for?**

This course examines the politics of law and legal institutions. We approach law from multiple disciplinary standpoints, investigating the relationships between law, politics, culture, economics, and social forces. We are particularly interested in the development and transformation of juridical practices (historical-institutional + doctrinal-ideology) and their effects on forging, as well as opposing, democratic and non-democratic forms of governance.

We will study the mobilization of rights, the use of litigation, and vernacular legal discourses, largely within the context of the United States but with references to transnational struggles.

As social scientists, some of the big questions we seek to address in this course include: Under what conditions is law a political resource for those who develop and mobilize litigation strategies? What particular political and doctrinal ideologies are at work in forming (and dismantling) legal rights, transforming claims into disputes, motivating procedural reforms, as well as producing remedies?

As students in this course, you will learn how sociolegal scholars and researchers address these questions: What theoretical assumptions, research methods and approaches do we invent and employ; and to what end? Particular attention will be given to:

- Power struggles and judicial competition (interbranch dynamics, social movements) and within the legal profession;

- Legislating and litigating different conceptions of equality in educational opportunity;
- Political, administrative, and judicial handling of employment discrimination disputes.

### **Evaluation and Grading:**

Please read all required material *before* class and be prepared to critically engage, respond to questions, as well as ask questions relevant to the course. You are also encouraged to read recommended materials mentioned in lectures and recitations, which will be posted on *NYU Classes*.

- 10% is based on attendance and participation in recitations
- 30% is based on an in-class Mid-Term Examination, consisting of 2 essay questions and 4 short-identifications; **Monday, October 30<sup>th</sup>**
- 60% is based on an in-class Final Examination, covering all of the course material; **Monday, December 18, 10:00-11:50**
- And the quality of your participation in class will be taken into account.

### **Required Books:**

Christopher P. Banks and David M. O'Brien (2016) *The Judicial Process: Law, Courts, and Judicial Politics*. Sage Publishing: CQ Press.

Stuart A. Scheingold (2004) *The Politics of Rights: Lawyers, Public Policy, and Political Change*. University of Michigan Press.

Steven M. Teles ((2008) *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Princeton University Press.

Michael Paris (2010) *Framing Equal Opportunity: Law and the Politics of School Finance Reform*. Stanford University Press.

Ellen Berry, Robert L. Nelson and Laura Beth Nielson (2017) *Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality*. University of Chicago Press.

All other required material will be posted on *NYU Classes*

## Course Outline

### I. Law as a Political Process (4 weeks)

#### A. Jurisprudence

September 11, 13 & 15

- Banks and O'Brien (2016) *The Judicial Process: Law, Courts, and Judicial Politics*. Chapters 1 & 2.
- Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change*. Chapters 1 & 2.

#### B. Adjudication & the Federal Courts

September 20 & 25

- Administrative Office of the United States "Courts: Understanding the Federal Courts."
- Banks and O'Brien, chapter 3 & 4

#### C. Justices & Judges

September 27 & October 2

- Banks and O'Brien, chapter 4

#### D. Legal Professions

October 2 & 4

- Banks and O'Brien, chapter 5
- Scheingold, chapters 3-6

\*Fall Recess, no class Monday, Oct. 9<sup>th</sup>

### II. Political Competition: Juridical Style

October 11, 16, 18, 23 & 25

- Scheingold, chapters 9-11 [skim chapters 7-8]
- "Two Approaches to Legal Mobilization by Social Movements"
- Steven M. Teles (2008) *The Rise of the Conservative Legal Movement: The Battle for Control of the Law*. Introduction & chapters 1-7
- Banks and O'Brien, "Organized Interests and Strategic Litigation," chapter 6

**MID-TERM EXAMINATION: Monday, October 30<sup>th</sup>**

### III. Civil Rights: Equality and Opportunity

#### A. Constitutional Equality (14<sup>th</sup> Amendment) November 1

- 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendments to the US Constitution
- Force Acts and the Ku Klux Klan Act (1871)

#### B. Exclusionary Legalities November 6

- *Civil Rights Cases*, 109 US 3 (1883) 8-1, Justice Bradley; dissent by Harlan
- *Plessy v. Ferguson*, 163 US 537 (1896) 7-1, Justice Brown; dissent by Harlan

#### C. Constructing Civil Rights

November 8

- *Korematsu v. U.S.*, 323 US 214 (1944) 6-3, Justice Black; dissents by Roberts, Murphy and Jackson
- *Brown v. Board of Education*, 347 U.S. 483 (1954) 9-0, Chief Justice Warren

*Recommended:*

Mark V. Tushnet (1987) *The NAACP's Legal Strategy Against Segregated Education, 1925-1950*. University of North Carolina Press. Chapters 1-2

November 13

- Civil Right Act 1964
- *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1 (1973) 5-4, Justice Powell; dissents Douglas, Brennan, White and Marshall

#### D. Funding Equal Opportunity November 15 & 20

- Michael Paris (2010) *Framing Equal Opportunity: Law and the Politics of School Finance Reform*. Stanford University Press.
- Courts cases TBA

### IV. Employment Litigation and Antidiscrimination Policies

#### A. Are Americans “Litigious” & Is there a “Litigation Crisis”? November 27

- Banks and O’Brien: pp. 20-21; 233-240; and 247-248.
- *Merchants of Doubt*, [the film](#)

**B. Exercising Rights at Work** November 29, December 4, 6, 11 & 12

- Ellen Berry, Robert L. Nelson and Laura Beth Nielson (2017) *Rights on Trial: How Workplace Discrimination Law Perpetuates Inequality*. University of Chicago Press.

**V. “Justice” in Law & Society** December 13

- Banks and O’Brien, chapter 10
- Scheingold, chapter 12

**FINAL EXAMINATION: Monday, December 18, 10:00-11:50**