

POLS 383: Law and the Governmental Process

Tuesdays 11:30-12:50 and Fridays 1:00-2:20

Nicol Hall 321

Instructor:

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Office Hours: Tuesdays 2:00-3:00, Wednesdays 3:00-4:00, and by appointment

Course Summary

This course will examine how a legal system functions in a political and social context. We will begin with the proposition that courts resolve bilateral legal disputes. That is, in both civil and criminal lawsuits, there is a complainant and a defendant, and a court only hears a case when the complainant decides to make a formal legal complaint. Within this simple framework, courts make legal decisions that affect the lives of individuals in ways large and small. 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. The course will be international in concept, but will primarily draw from the U.S. and Canadian cases.

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 common law jurisdictions,
- 2) Understand the political impact that the courts and other legal actors have on government and society,
- 3) Develop analytical skills to evaluate the effectiveness of legal policy, and
- 4) Improve research and writing skills through analysis of legal and political science literature.

Course Readings

There is required text and one recommended text for the course:

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

Recommended: Hausegger, Lori, Matthew Hennigar and Troy Riddell. 2014. *Canadian Courts: Law, Politics, and Process*. Oxford University Press. 2nd Edition. (HHR)

Each of the books are available at the Campus Bookstore, and are also widely available both new and used on your favorite bookstores on the web. The books have also been placed on 3-hour reserve at the Stauffer Library.

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 OnQ. 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 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. Reading and writing assignments are central to the course. Keeping up with the syllabus is essential to success in the course. Grades are *earned* based on the quality of work submitted. You are encouraged to see me if you are unsure about the expectations for any assignment. I will go over the paper assignments in detail when they are assigned. Use of office hours is highly encouraged—students who come to office hours to discuss assignments are much more likely to succeed.

Graded Work: There are two major written components in the course—a term paper (5-7 pages) and a final exam. The longer paper will involve applying the tools of political science to evaluate an observational experience of Canadian law. The paper will be assigned on **February 5th** and due **March 29th**. The final exam will be according to the university schedule, see below.

In addition, there will be three (3) out-of-class quizzes consisting of multiple choice, fill-in-the-blank, and short answer questions. The quizzes will be administered through OnQ, will be one hour in length, and will be open book and open note. You will have a 24-hour window to complete the quiz. **You may not consult with anyone about the content of your answers during the 24-hour window.** Discussion of quiz content during the quiz window will be subject to a minimum sanction of a zero (0) on the quiz and referral to the Associate Dean. Severe violations may result in a grade of zero (0) in the course.

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:

| | |
|------------------------------------|-----|
| Quizzes (3) | 30% |
| Term paper | 30% |
| Final Exam | 35% |
| Attendance and Participation | 5% |

Final Exam: The exam dates for each Term are listed on the Faculty of Arts and Science webpage under “Important Dates.” Students should delay finalizing any travel plans until after the examination schedule has been posted. Exams will not be moved or deferred to accommodate employment, travel/holiday plans or flight reservations. Also, as indicated in Academic Regulation 8.3, students must write all final examination in all on-campus courses on the Kingston campus.

Grading: In this course, some components will be graded using numerical percentage marks. Other components will receive letter grades, which for purposes of calculating your course average will be translated into numerical equivalents using the Faculty of Arts and Science approved scale (see below). Your course average will then be converted to a final letter grade according to Queen’s Official Grade Conversion Scale (see below).

Arts & Science Letter Grade Input Scheme

| Assignment mark | Numerical value for calculation of final mark |
|-----------------|---|
| A+ | 93 |
| A | 87 |
| A- | 82 |
| B+ | 78 |
| B | 75 |
| B- | 72 |
| C+ | 68 |
| C | 65 |
| C- | 62 |
| D+ | 58 |
| D | 55 |
| D- | 52 |
| F48 (F+) | 48 |
| F24 (F) | 24 |
| F0 (0) | 0 |

Queen's Official Grade Conversion Scale

| Grade | Numerical Course Average (Range) |
|-------|----------------------------------|
| A+ | 90-100 |
| A | 85-89 |
| A- | 80-84 |
| B+ | 77-79 |
| B | 73-76 |
| B- | 70-72 |
| C+ | 67-69 |
| C | 63-66 |
| C- | 60-62 |
| D+ | 57-59 |
| D | 53-56 |
| D- | 50-52 |
| F | 49 and below |

Grade appeals: 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.

Turnitin: This course makes use of Turnitin, a third-party application that helps maintain standards of excellence in academic integrity. Normally, students will be required to submit their course assignments to through

onQ to Turnitin. In doing so, students' work will be included as source documents in the Turnitin reference database, where they will be used solely for the purpose of detecting plagiarism.

Turnitin is a suite of tools that provide instructors with information about the authenticity of submitted work and facilitates the process of grading. Turnitin compares submitted files against its extensive database of content, and produces a similarity report and a similarity score for each assignment. A similarity score is the percentage of a document that is similar to content held within the database. Turnitin does not determine if an instance of plagiarism has occurred. Instead, it gives instructors the information they need to determine the authenticity of work as a part of a larger process.

Please read Turnitin's Privacy Pledge, Privacy Policy, and Terms of Service, which governs users' relationship with Turnitin. Also, please note that Turnitin uses cookies and other tracking technologies; however, in its service contract with Queen's Turnitin has agreed that neither Turnitin nor its third-party partners will use data collected through cookies or other tracking technologies for marketing or advertising purposes. For further information about how you can exercise control over cookies, see Turnitin's Privacy Policy:

Turnitin may provide other services that are not connected to the purpose for which Queen's University has engaged Turnitin. Your independent use of Turnitin's other services is subject solely to Turnitin's Terms of Service and Privacy Policy, and Queen's University has no liability for any independent interaction you choose to have with Turnitin.

Notetaking: You are encouraged to take reading notes so that you are prepared to participate in class discussions. You may take notes using whatever format is most useful for you, but using the following format should result in useful notes:

- Evaluate the **source** of the argument. Is this a detached academic source or does the author have an agenda?
- Identify the **argument**. What is the main idea that the author wants to relay to the reader? What assumptions does the author make? Are important terms clearly defined?
- Identify the **evidence**. What kinds of evidence does the author use to support his/her claims? Is this evidence reliable?
- Evaluate the **conclusion**. Are you convinced by the argument? Why or why not?
- Consider the **implications**. If you accept that the authors conclusions are true, what impact does this have on our understanding of American politics? Does it affect who wins and who loses?

Course Policies

Academic integrity: Academic Integrity is constituted by the six core fundamental values of honesty, trust, fairness, respect, responsibility and courage (see www.academicintegrity.org). These values are central to the building, nurturing and sustaining of an academic community in which all members of the community will thrive. Adherence to the values expressed through academic integrity forms a foundation for the "freedom of inquiry and exchange of ideas" essential to the intellectual life of the University (see the Senate Report on Principles and Priorities <http://www.queensu.ca/secretariat/policies/senate/report-principles-and-priorities>).

Students are responsible for familiarizing themselves with the regulations concerning academic integrity and for ensuring that their assignments conform to the principles of academic integrity. Information on academic integrity is available in the Arts and Science Calendar (see Academic Regulation 1 <http://www.queensu.ca/artsci/academic-calendars/regulations/academic-regulations/regulation-1>), on the Arts and Science website (see <http://www.queensu.ca/artsci/academics/undergraduate/academic-integrity>), and from the instructor of this course. Departures from academic integrity include plagiarism, use of unauthorized materials, facilitation, forgery and falsification, and are antithetical to the development of an academic community at Queen's. Given the seriousness of these matters, actions which contravene the regulation on academic integrity carry sanctions that can range from a warning or the loss of grades on an assignment to the failure of a course to a requirement to withdraw from the university.

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.

Late assignment policy: Deadlines will be extended only under unusual circumstances, and only with Dr. Gardner's 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.

Academic support: Queen's University is committed to providing academic consideration to students experiencing extenuating circumstances that are beyond their control and are interfering with their ability to complete academic requirements related to a course for a short period of time, not to exceed three months. Students receiving academic consideration must meet all essential requirements of a course. The

Senate Policy on Academic Consideration for Students in Extenuating Circumstances was approved at Senate in April, 2017 (see [policy here](#)). Each Faculty has developed a protocol to provide a consistent and equitable approach in dealing with requests for academic consideration for students facing extenuating circumstances.

Reasonable accommodation: Queen's University is committed to achieving full accessibility for people with disabilities. Part of this commitment includes arranging academic accommodations for students with disabilities to ensure they have an equitable opportunity to participate in all of their academic activities. The Senate Policy for Accommodations for Students with Disabilities was approved at Senate in November 2016 (see [policy here](#)). If you are a student with a disability and think you may need academic accommodations, you are strongly encouraged to contact the Queen's Student Accessibility Services (QSAS) and register as early as possible. For more information, including important deadlines, please visit the QSAS website at: <http://www.queensu.ca/studentwellness/accessibility-services/>

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 onQ's announcement and mail feature to contact all members of the class. As such, all students are responsible for regularly checking their Queen's email accounts throughout the semester.

Course Calendar

January 8: Course Introduction: Why study the law? What does “law and society” mean?

Recommended: HHR Chapter 1

January 11: 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). [OnQ] **N.B. Skim Sections 2, 3, and 5. Don’t worry about the math.**

January 15: Functions of the law and legal authority, continued

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

January 18: Legal Basics: Sources and Structures

Read: HHR Chapter 2 [OnQ]

January 22: Legal Basics: Comparative Legal Systems

Read: Kagan, Robert. 2003. *Adversarial Legalism*. Harvard University Press. 18-33, 220-224 [OnQ]

Recommended: HHR Chapter 3

January 25: Access to Justice

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

Recommended: HHR Chapter 10

January 27: QUIZ 1 [OnQ]

January 29: Setting the agenda in courts of law

Read: Smith, Miriam. 2005. “Social Movements and Judicial Empowerment: Courts, Public Policy, and Lesbian and Gay Organizing in Canada.” *Politics and Society* [OnQ].

Recommended: HHR Chapter 7

February 1: Lawyers and agenda setting in courts of law

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

February 5 & 8: Judges and the law

Read: Songer, Donald R., and Susan W. Johnson. 2007. “Judicial decision making in the Supreme Court of Canada: Updating the personal attribute model.” *Canadian Journal of Political Science* (40): 911-934.

Recommended: HHR Chapter 4

February 12: CANCELLED

February 15: 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. [OnQ] **N.B. Read pp. 1-17, 45-53. Pages 18-44 are optional.**

February 18-22: READING WEEK—NO CLASS

February 24: QUIZ 2 [OnQ]

February 26: CANCELLED

March 1: Legal consciousness and public perceptions of the law, continued.

March 5 & 8: Courts and the punishment of wrongs

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/>

Recommended: Di Luca, Joseph. 2005. “Expedient McJustice or Principled Alternative Dispute Resolution? A Review of Plea Bargaining in Canada.” *Criminal Justice Quarterly* 50: 14-66. [OnQ]

Recommended: HHR Chapter 9

March 12 & 15: Intersection of race and criminal law in America

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

Read: Owusu-Bempah, Akwasi and Scot Wortley. 2014. “Race, Crime and Justice in Canada.” *The Oxford Handbook of Ethnicity, Crime, and Immigration*. Oxford University Press. [OnQ]

March 19: 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. [OnQ]

Recommended: HHR Chapter 11

March 22: The Rights Revolution in the United States

Read: Epp pp. 1-25, 44-70

March 24: QUIZ 3 [OnQ]

March 26: The Rights Revolution in Canada

Read: Epp pp. 156-196

March 29: The Rights Revolution in India

Read: Epp pp. 71-110

April 2: Law and social change

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

Read: Riddell, Troy Q. 2004. "The Impact of Legal Mobilization and Judicial Decisions: The Case of Official Minority-Language Education Policy in Canada for Francophones Outside Quebec." *Law & Society Review* 38: 583-610.

April 5: Courts as political actors