

PO 300 – Fall 2011
Professor David Glick
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Number 203
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Office hours: Wednesdays 9:00-12:00

Law, Politics, and Society:

In this class we will study “law in action” and which is connected to, but often very different from, “law on the books.” At times we will take a look at the interactions between law and individuals. We will ask questions such as “what makes us follow the law?” and “how does law affect our daily lives?” At other times we will study interactions between law and organizations such as firms, interest groups, and social movements. We will take a broad look at all of the places we can find law, and at all of the ways that we shape law and that law shapes us. We will touch on topics including crime, Constitutional rights claims, small town practice, legal culture, informal norms, social movements, legal implementation, and property rights. We will also come across a wide range of case studies and applications including parking, divorce, smoking, unions, war powers, school financing, and music piracy.

Course Objectives:

- Understanding of the role that law and legal institutions play in our lives, culture, and political system
- Assessing the realities of “law in action”
- Considering the strengths and weaknesses of using the legal system vs. other methods for achieving goals
- Get comfortable working through academic articles and analysis

Readings and Discussion: On most days, you will read a couple of pieces related to the same topic. These pieces will often disagree with each other, or otherwise leave us all with room to interpret, synthesize, and analyze. This is not a course where there are a lot of basics or facts to learn. There is not a textbook, though on some days I will give you a textbook-like chapter as background. Nearly everything we read will be sophisticated academic analysis primarily directed at other academics. Our job will be to take it all apart and put it all together in interesting ways and to apply the general ideas to a broader set of contexts and topics.

I expect you to come to class prepared to answer questions, evince understanding, and speak intelligently about the day’s materials. Rather than use short reading quizzes, I will freely call on people and expect you to have something to contribute. To help, I may send out a few questions the night before class to guide your thinking. On those days, I will expect you to be able to offer answers to these questions if called upon at an absolute minimum. If you cannot, I will consider you unprepared that day.

Books for Purchase:

Robert Kagan, *Adversarial Legalism: The American Way of Law*, Harvard University Press, 2003

Lawrence Friedman, *American Law: An Introduction (2nd edition)*, WW Norton and Co, 1998

Assignments and Grade Components: The final grade for the course will be based on your participation in class and your performance on assignments and exams.

There will be shortish **midterm and final exams**. Both will be open note and designed to test both your understanding of basics and your ability to put course ideas together in interesting ways.

The other major piece of work in this class with is a substantial (15-22 pages), hands-on, applied, research paper that you will ideally do with one or two other people. I will provide more details later. One option is to identify a real legal dispute (most likely in the Boston area – for example, a landlord-tenant dispute), interview the participants, conduct other research, and then analyze “law in action” in your case. The other option is to identify a law, rule, or regulation (again, most likely in Boston – for example, fire safety in bars) and use it as a case study to test one or more of the theories about law in action that we encounter. This may mean essentially replicating a study we read using a different case or modifying other work to fit the case you are interested in. The key question is how the law or rule you study affects behavior and how this case supports or conflicts with class readings. There will interim deadlines to keep you on track and the final assignment is due at the end of the term.

You can also get **extra credit** (at my discretion) for emailing me news paper and/or magazine articles which relate to class content. It is hard to pick up a newspaper (local or national) and not find interesting stories which match up to what we are doing in class and I would like you to keep your eyes open. Please send me stories that you think fit. I will share some with the class and we will probably even discuss some when they fit really well with a given day’s readings.

Your grade for the course will be based on your performance on the above assignments, as well as your preparedness for and participation in class.

- Midterm Exam 22.5%
- Final Exam 25%
- Semester Long Project 40%
- **Class Participation 12.5%**

Grades for Written Work and Exams: For written work, the A range will comprise only work which features strikingly original thinking and/or argumentation, expressed in clear, cogent, error-free writing. Only students that go well beyond class materials and discussions (in thought,

not extra research) will be considered for an A grade. Papers and examinations in the B range exhibit mastery of the course materials and discussions, expressed in clear, cogent, error-free writing. Papers and examinations in the C range exhibit inadequate understanding of the course materials and discussions and/or deficient, error-plagued writing. Papers and examinations in the D range exhibit wholly inadequate understanding of the course materials combined with deficient, error-plagued writing. Hopefully the D range and worse will not be an issue. Pluses, minuses, or flat grades within any of these ranges reflect the instructors' judgment of the merits of the paper or examination relative to other papers in the same range. All late assignments will be reduced 1/3 of a grade for every day they are late. Students may appeal grades they feel they received in error but we reserve the right to increase or decrease their grade upon reconsideration.

Other Practical Matters:

Email: The most efficient way to reach me is via email. No promises, but I'll try to respond quickly. If you write and don't hear back in 24 hours, please write again.

Office Hours: My official office hours are listed at the top of the syllabus, but I aim to be around and as accessible as possible. If you cannot make it to the scheduled office hours, email with some times that work for you. **I'd rather you come to office hour and say you don't understand a reading before class, than to sit through class without contributing or learning because you didn't understand the reading.**

Laptops: While understanding that there are benefits to having laptops in class, at this point, our experience suggests that the negatives outweigh the positives. Thus, I will prohibit their use. If you are taking enough notes to need a laptop, you're spending too much time taking notes and not enough engaging with the materials, the instructor, and your classmates.

1. 9/6 - Introduction:

- Mark Graber, "Law and Sports Officiating: A Misunderstood and Justly Neglected Relationship," *Constitutional Commentary*, Vol. 16, (1993) **pp. 293-302**
- M. Puzo, *The Godfather* (1969), **pp. 1-2**
- Abby Goodnough, "Making it Clear That a Parking Space Isn't," *The New York Times*, 12/28/10 <http://www.nytimes.com/2010/12/29/us/29boston.html>

Part I: Foundations

2. 9/8 - Law's Scope: From Constitutionalism to Parking Rules

- Keith Whittington, "Constitutionalism," in *The Oxford Handbook of Law and Politics*, (Keith E. Whittington, Daniel E. Kelemen, and Gregory A. Caldeira eds), Oxford University Press, 2008, **pp. 281-299**
- Richard Epstein, "The Allocation of the Commons, Parking on Public Roads," *The Journal of Legal Studies* 31, S2, **515-544**

3. 9/13 - The Rule of Law

- Friedman Chapter 1
- Rebecca Bill Chavez, "The Rule of Law and Courts in Democratizing Regimes," in *The Oxford Handbook of Law and Politics*, (Keith E. Whittington, Daniel E. Kelemen, and Gregory A. Caldeira eds), Oxford University Press, 2008, **pp. 63-80**
- Hernando De Soto, *The Other Path*, Basic Books, 1989, **Chapter 1, pp. 62-71, Chapter 5** (long, but "easy" reading)

4. 9/15 - The Rule of Law and its American Variant?

- Kagan, Chapter 1
- Friedman, Chapter 2

5. 9/20 - Legal Disputes

- William Felstiner, Richard Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming and Claiming," *Law and Society Review* 15 (1980-1981): 631
- Beth Quinn, "The Paradox of Complaining: Law, Humor, and Harassment in the Everyday Work World," *Law and Social Inquiry* 25 (2000): 1151

Part II: Law in Our Lives

6. 9/22 - Disputes With and Without Law

- Robert Ellickson, *Order Without Law* (excerpts)
- Sally Engle Merry, "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood," (excerpt in MFM¹)
- Matt Glassman, "Getting Your Way: Lessons from Pick-Up Hoops Dispute Resolution", <http://www.mattglassman.com/?p=226>

7. 9/27 - Compliance: Deterrence and Legitimacy

- Friedman Chapter 11
- Tom R. Tyler, Stephen Schulhofer, Aziz Z. Huq, "Legitimacy and Deterrence Effects in Counterterrorism Policing: A Study of Muslim Americans," *Law & Society Review* Volume 44, Issue 2, pages 365–389
- Steven Levitt, "White-Collar Crime Writ Small: A Case Study of Bagels, Donuts, and the Honor System," *The American Economic Review*, Vol. 96, No 2. (2006) pp. 290-294
- Katie Hafner, "Wrestling With the Gift of Grab," *NY Times* 6/14/05, <http://www.nytimes.com/2005/07/14/fashion/thursdaystyles/14THEFT.html?8dpc>

8. 9/29 - Social Bases of Compliance

- Friedman Chapter 12
- Mark F. Schultz, "Fear and Norms, "What Jambands Can Teach Us About Persuading People to Obey Copyright Law," (excerpt in MFM)
- Raymond Fisman and Edward Miguel, "Corruption, Norms, and Legal Enforcement: Evidence From Diplomatic Parking Tickets," *Journal of Political Economy*, Vol 115, No. 6 (2007) (tough paper, do your best)

9.10/4 - Legal Culture, Torts, and Variations of the Rule of Law Revisited

- Michael McCann, William Halton, and Anne Bloom, "Java Jive, Genealogy of a Juridical Icon," (MFM)
- Takao Tanase, "The Management of Disputes, Automobile Accident Compensation in Japan," *Law and Society Review*, Vol. 24, No. 3 (1990), pp 651-692

¹ Stewart Macaulay, Lawrence M. Friedman, and Elizabeth Mertz, "Law in Action: A Socio-Legal Reader," Foundation Press, 2007 – excerpts of articles and chapters

Part III: Law's Potential and Effects

10. 10/6 - Social "Engineering"

- John Darley, Paul H. Robinson, and Kevin M. Carlsmith, "The Ex Ante Function of Criminal Law," *Law and Society Review*, Vol. 35. pg 165. (MCM)
- R. Kagan & J. Skolnick, "Banning Smoking: Compliance without Coercion," in R. Rabin & S. Sugarman, eds., *Smoking Policy: Law, Policy and Politics* (1993), pp. **69-94**

11. 10/11 - Regulating Economic Activity

- L. Friedman, *Law in America* (2002), pp. 35-55 (Ch. 3, "Economy and Law in the Nineteenth Century")
- Michael Maher, "On Vino Veritas? Clarifying the use of Geographic References on American Wine Labels," *California Law Review*, Vol 89. No. 6 (2001). **Pg. 1881-1887 and 1900-1919, and conclusion**
- Susan Rose Ackerman, "Law and Regulation," in *The Oxford Handbook of Law and Politics*, (Keith E. Whittington, Daniel E. Kelemen, and Gregory A. Caldeira eds), Oxford University Press, 2008, **pp. 576-594**

12. 10/13: Protections from Politics ("Rights")

- Friedman, Chapter 10
- Mary Ann Glendon, *Rights Talk*, (1991) **Chapter 1, pp 76-89**
- Shawn Francis Peters, *Judging Jehovah's Witnesses: Religious Persecution and the Dawn of the Rights Revolution*, (2000) pp. 1-18
- *West Virginia v. Barnette* (1942)

13. 10/18 - Regulating Politics and Political Power

- Richard H. Pildes, "The Legal Structure of Democracy," in *The Oxford Handbook of Law and Politics*, (Keith E. Whittington, Daniel E. Kelemen, and Gregory A. Caldeira eds), Oxford University Press, 2008, **pp. 321-339**
- Ansolabehere, Stephen and Samuel Issacharoff. 2004. "The Story of *Baker v. Carr*." In Dorf, Michael C. Ed., *Constitutional Law Stories*. New York: Foundation Press, **297-323**
- Kagan preface (vi-x)
- *US v. Nixon* and *Bush v. Gore*, excerpts

14. 10/20 - *Midterm Exam Day*

Part IV: The Complex Interactions Between Law and Society

15. 10/25 - Judges and Policy Making

- Leif Carter and Tom Burke, Reason in Law, Chapter 3
- Gordon Silverstein, Law's Allure, Cambridge University Press, (2008), **Chapter 1**
- Brian Tamanaha, Law As a Means to an End, (2006) **pp 172-189** (Chapter 10)
- *Buck v. Bell* (1927)
- *Brown v. Board of Education* (1954)
- M. Goodman and W. Rempel, "In Las Vegas They're Playing With a Stacked Deck," *Los Angeles Times*, 6/8/06

16. 10/27: Agencies As Law Makers

- Friedman Chapter 6
- Kagan Chapter 9
- W. Bogdanich & N. Phillips, "The Disability Board That Couldn't Say No," *New York Times*, Dec. 15, 2008
- The Forest Ranger from MFM
- Sarah Lynch and Christopher Doering, "Bruised Regulators Brace for Dodd-Frank Court Fights," Reuters, 8/4/11 <http://www.reuters.com/article/2011/08/04/us-financial-regulation-courts-idUSTRE7730K220110804>

17. 11/1 - Politicians Filling in the Gaps

- Keith Whittington, Constitutional Construction, Chapter 6
- Gordon Silverstein, Law's Allure, Chapter 8
- Terrance Halliday, "Crossing Oceans, Spanning Continents: Exporting Edelman to Global Lawmaking and Market-Building," *Law and Society Review*, Vol. 38 No. 2 2004, pp. **213-220**
- Victor Williams, "House GOP Can't Block Recess Appointments," law.com, 8/15/11

18. 11/3 - The Complex Interactions....

- Lauren Edelman, Sally Riggs Fuller, and Iona Mara-Drita, "Diversity Rhetoric and the Managerialization of Law," (MFM)
- R. Kagan et al, "Explaining Corporate Environmental Performance: How Does Regulation Matter?" *Law & Society Review* 37: **51-89** (2003)
- D. Barstow, "A Trench Caves In," *New York Times*, Dec. 21, 2003

Part V: Law, Lawyers, and Public Policy

19. 11/8 - Lawyers, Disputes, and Social Control

- Friedman Chapter 13
- Robert Kagan, "Do Lawyers Cause Adversarial Legalism?" *Law and Social Inquiry* 19: 6-9, **15-38** (1994)
- Lynn Mather, Craig A. McEwen, and Richard J. Maiman, "Divorce Lawyers at Work: Varieties of Professionalism in Practice," (2001) in MCM

20. 11/10 - Semester project workshop - **3-5 Page Progress Report / Outline DUE**

21. 11/15 - Fairness and Power: Institutions?

- M. Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," *Law and Society Review* 9: 95-151 (1974) (**read only through p. 124**)
- Yoav Dotan, "Do the 'Haves' Still Come out Ahead? Resource Inequalities in Ideological Courts: The Case of the Israeli High Court of Justice," *Law and Society Review* 33-4 1999
- Jeffrey Rosen, "Supreme Court Inc." *the New York Times Magazine*, 3/16/08
- http://www.huffingtonpost.com/2011/06/21/walmart-case-supreme-court-aids-powerful_n_881301.html
- <http://www.slate.com/id/2297364/pagenum/all/#p2>
- S. Freedman, "Bronx Child's Fatal Fall Retraces Sad Pattern," *New York Times*, July 31, 1986

22. 11/17 - Fairness and Power: Individuals and the Law

- Patricia Ewick and Susan Silbey, "Common Knowledge and the Ideological Critique: The Significance of Knowing That the Haves Come Out Ahead," *Law and Society Review*, 33-4, 1999
- Milner, Neal (1993). "Ownership Rights and the Rites of Ownership", 18 *Law and Social Inquiry*, 227

23. 11/22 - Using the Law for Policy Change

- Charles Epp, *the Rights Revolution* 1-25
- Michael Paris (2010). *Framing Equal Opportunity Law and the Politics of School Finance Reform*, **Chapter 4**
- Steven Teles (2007). "Conservative Mobilization Against Entrenched Liberalism," in *The Transformation of American Politics: Activist Government and the Rise of Conservatism* (Paul Pierson and Theda Skocpol editors). (**Intro and Law Section only**)

24. 11/29 - Limits on Law's Impact

- Gerald Rosenberg, "Tilting at Windmills: Brown II and the Hopeless Quest to Resolve Deep-Seated Social Conflict through Litigation," *Law and Inequality*, Vol 24 No. 31, 2006
- Cass Sunstein, "Did Brown Matter," *The New Yorker*, May 3, 2004
http://www.newyorker.com/archive/2004/05/03/040503crbo_books?printable=true
- Michael McCann, "Reform Litigation on Trial," *Law and Social Inquiry*, Vol. 17 1992
- Helena Silverstein. "'Honey, I Have No Idea': Court Readiness to Handle Petitions to Waive Parental Consent for Abortion," with Leanne Speitel. *Iowa Law Review* (Volume 88, Number 1, October 2002), pp. 75-120.

25. 12/1 - Law's Ability to Affect Social Policy and Outcomes

- Paul Frymer. "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in US Labor Unions, 1935-85," *American Political Science Review* 97: 483-99 (August 2003)
- Kagan Chapter 10

26. 12/6 - Thu. 5/26 – The Complicated Mix of Law and Politics

- Silverstein, Ch. 9
- Kagan Chapter 7

27. 12/8 - Paper Presentations / Final workshop