

GVPT 331: Law and Society

Spring 2010

Class Hours: Mon. & Wed. 11:00am-12:15pm

Classroom: III-4206

Instructor: Sung-Wook Paik

Office: III-5101

Office Hours: Mon. & Wed. 10:00am-10:50am and By Appointment

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Course Description

This course is a general introduction to law and the legal system of the United States. The course is organized into four parts. The first is an introduction to basic legal concepts such as the nature, sources, and function of law. There is, however, a critical element in learning these concepts as the readings will offer alternative (namely, *political*) understandings that revisit popular preconception about law and courts. The second part will examine the evolution of the judicial function in American constitutional development. A common error today is to equate judicial review with judicial supremacy. As we shall see, the expansion of judicial power is better understood as a result of a long historical process involving incremental political change rather than something that was firmly established from the founding. The third part will consider two extreme cases where the Supreme Court is considered to have demonstrated its very best and very worst judgment: *Dred Scott v. Sanford* and *Brown v. Board of Education*. The inquiry driving the analyses of these case studies is whether courts can bring about social change. By understanding the complex political and social context in which these cases were decided, students will gain a richer outlook on the court's actual capacity for broad reform. Finally, the course will come to a close with a very basic consideration in jurisprudence as well as in our everyday lives, namely our reasons for expressing fidelity and obedience to law.

By the end of this course, students will have gained a better understanding than most individuals of American law, and of its role in supporting, shaping and responding to social order in the United States. Your mastery of basic legal concepts, cases and enactments will enable you to read, understand, analyze, argue and act more effectively as a citizen, scholar, and educated professional.

Required Texts

There are two required texts for the course which are available for purchase at the Shady Grove campus bookstore. These will also be placed on reserve at the Shady Grove library.

Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge University Press, ISBN-13: 978-0521728577)

Michael Klarman, *Brown v. Board of Education and the Civil Rights Movement* (Oxford University Press, ISBN-13: 978-0195307634)

A significant number of the required readings (marked [ELMS] in the course outline below) will be available in electronic format on Blackboard at: <http://bb.shadygrove.umd.edu/>. Students are **responsible to check the syllabus prior to class and read the assignment for that class/week in accordance with the class schedule.**

Course Requirements and Grading Standards

The final grade will be determined by the following distribution:

Class participation	10%
Quizzes	15%
Midterm Exam	25%
Book Review	20%
Final Exam	30%

Class participation (10%): Students are expected to attend class regularly, do the reading carefully in advance, and participate responsibly during class discussions. Given the size of this course, every class session will most likely be a mixture of lecture and interactive discussion. Active participation will thus entail frequent and thoughtful contributions to the class discussions.

Pop-Quizzes (15%): As an incentive to come to class and read more carefully, there will be four pop-quizzes—that is, surprise, unannounced quizzes. These quizzes will ask very basic questions intended to simply test your comprehension of the reading material assigned for that day. Your response will be evaluated on the basis of whether you provide an accurate description of the text with an attention to detail. **Each quiz is worth 5% of your course grade for a total of 15%.** (Quizzes will be graded according to the following formula: A=5, B=4.2, C=3.4, D=2.6, F=0; No plus or minus on the quizzes.) Students who have taken all four quizzes will be able to drop their lowest quiz grade. Alternatively, you may choose to take a ‘free pass’ on one of the four quizzes in case of an unexcused absence. As a general policy, “make-up” quizzes WILL NOT be offered unless the student can present official documentation regarding a legitimate excuse recognized by University policy.

Book Review (20%): The book review will consist of a 5-7 page critical analysis of *one of the two* required books with a specific focus on the role and effect of law on society (and/or vice versa). Alternatively, students may choose a different book from a list that will be posted on ELMS no later than the end of the third week. Details for the assignment (such as, format) will be discussed in greater length during class as we approach the deadline. This assignment is due **Friday, April 30.**

Midterm (25%) and Final Exams (30%): The mid-term and final exams will test your understanding of and ability to analyze material from the reading assignments and lectures. Both exams will be a combination of short answers along with one or two short essay(s). The short answer portion will be straightforward and will consist of multiple

questions regarding the reading assignments and lectures. For the essay portion, be prepared to write a clear, concise, and well-supported response to challenging questions that require thought and analysis. The midterm will be held on **Wednesday, March 10** and the final will be held on **Monday, May 10**.

Your course grade will be assessed on an absolute scale according to which: 90-100=A, 80-89=B, 70-79=C, 60-69=D, 0-59=F. There will be NO CURVE.

Other Issues and Policies

1. **Academic Integrity**: The University of Maryland has a nationally recognized Code of Academic Integrity, administered by the Student Honor Council. This Code sets standards for academic integrity for all undergraduate and graduate students. As a student you are responsible for upholding these standards for this course. Academic dishonesty will be treated seriously in this class and will be reported as necessary. Students are expected to familiarize themselves with the information and resources that the University provides in this area during the first week of class. For more information, please visit the Student Honor Council website (<http://www.studenthonorcouncil.umd.edu/students.html>) and the library website (<http://www.lib.umd.edu/guides/honesty.html>).

2. **Accommodations**: Students with special needs related to a disability should: (1) inform me of their needs at the beginning of the semester; (2) contact the Disability Support Service (<http://www.counseling.umd.edu/DSS/>) as soon as possible for official documentation regarding appropriate accommodations. I will make every effort to accommodate students who are registered with the DSS office and who provide me with a University of Maryland DSS Accommodation form. This form must be presented to me no later than March 1, 2010.

Every reasonable effort will be made to accommodate students' requests to make up tests or other assignments missed due to attendance of religious observances. I will strictly adhere to University policy in this regard. Note, however, that it is the student's responsibility to inform the instructor of any intended absences for religious observances in advance. Notice should be given as soon as possible but no later than the end of the schedule adjustment period.

3. **Personal Technology Devices**: Use of cellular telephones, PDAs, etc. in class is strictly prohibited. Laptops are permitted, but for *note-taking purposes only*. Following a warning, violations of this policy may be referred to the appropriate board of student conduct.

Course Outline

Monday, January 25: Course Overview

Reading: Please read the syllabus carefully in preparation for class.

I. Introduction: Basic Concepts

Wednesday, January 27: What Is a Legal System?

Reading: Lawrence Friedman, *American Law*, Chapter 1, pp. 15-28 [ELMS].

Monday, February 1: The Nature of Law (1)

Reading: Jeffrie Murphy and Jules Coleman, *Philosophy of Law*, Chapter 1, pp. 6-33 [ELMS].

Wednesday, February 3: The Nature of Law (2)

Reading: Jeffrie Murphy and Jules Coleman, *Philosophy of Law*, Chapter 1, pp. 33-55 [ELMS].

Monday, February 8: The Features of Rule-based Decision Making

Reading: Frederick Schauer, *Playing By the Rules*, Chapter 7, pp. 135-166 [ELMS].

Wednesday, February 10: Law/Legalism as Ideology?

Reading: Judith Shklar, *Legalism*, Introduction, pp. 1-28 [ELMS].

Monday, February 15: The (In-)Stability of Courts as Dispute Resolver (I)

Reading: Martin Shapiro, *Courts*, Chapter 1, pp. 1-37 [ELMS].

Wednesday, February 17: The (In-)Stability of Courts as Dispute Resolver (II)

Reading: Martin Shapiro, *Courts*, Chapter 1, pp. 37-64 [ELMS].

II. Understanding the Judicial Function

Monday, February 22: The Classic Account

Reading: *The Federalist* #78, 84

[Available online at: http://avalon.law.yale.edu/subject_menus/fed.asp].

Wednesday, February 24: The Classic Challenge

Reading: *Essays of Brutus*, XI-XII, XV-XVI

[Available online at: <http://www.constitution.org/afp/brutus00.htm>].

Monday, March 1: The Call for Judicial Self-Restraint

Reading: James Bradley Thayer, “The Origin and Scope of the American Doctrine of Constitutional Law” [ELMS]; James Bradley Thayer, *John Marshall*, Chapter 5, pp. 102-110 [ELMS]

Wednesday, March 3: The “Countermajoritarian” Problem

Reading: Alexander Bickel, *The Least Dangerous Branch*, Chapter 1, pp. 1-28 [ELMS].

Monday, March 8: The Classic Solution to the “Countermajoritarian” Problem

Reading: John Hart Ely, *Democracy and Distrust*, Chapter 4, pp. 73-104 [ELMS]

Wednesday, March 10: **MIDTERM EXAM**

Monday, March 15 & Wednesday, March 17: *** SPRING BREAK: NO CLASS ***

Monday, March 22: Challenging Judicial Supremacy

Reading: Jeremy Waldron, “The Core of the Case Against Judicial Review,” pp. 1348-1359, 1369-1401, 1406 [ELMS].

Wednesday, March 24: The Political Account of Judicial Empowerment

Reading: Mark Graber, “The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary,” pp. 35-45, 65-73 [ELMS]

III. Law and Social Change

Monday, March 29: Law and Social Change: An Overview

Reading: Lawrence Friedman, *American Law*, Chapter 14, pp. 292-315 [ELMS].

Wednesday, March 31: *Dred Scott*: The Most Infamous Case in History?

Reading: *Dred Scott v. Sanford*, 60 U.S. 393 (1856)

[Read Justice Taney's opinion and both Justice McLean and Curtis' dissent]

Monday, April 5: The Problem of Constitutional Evil

Reading: Graber, *Dred Scott and the Problem of Constitutional Evil*, pp. 1-89.

Wednesday, April 7: Understanding the Antebellum Constitution

Reading: Graber, *Dred Scott and the Problem of Constitutional Evil*, pp. 91-114, 167-171.

Monday, April 12: Constitutional Peace or Constitutional Justice?

Reading: Graber, *Dred Scott and the Problem of Constitutional Evil*, pp. 173-254.

Wednesday, April 14: *Brown*: The Most Famous Case in History?

Reading: *Brown v. Board of Education*, 347 U.S. 483 (1954)

Brown v. Board of Education, 349 U.S. 294 (1955)

Monday, April 19: Before Brown: The Jim Crow Era and WW II

Reading: Michael Klarman, *Brown v. Board of Education and the Civil Rights Movement*,
Chapters 1-2, pp. 3-53.

Wednesday, April 21: Examining Brown

Reading: Klarman, *Brown v. Board of Education and the Civil Rights Movement*,
Chapters 3-6, pp. 55-148.

Monday, April 26: Brown's Backlash and Counterbacklash

Reading: Klarman, *Brown v. Board of Education and the Civil Rights Movement*,
Chapters 7-9 & Conclusion, pp. 149-231.

IV. Fidelity and Obedience to Law

Wednesday, April 28: How to Demonstrate Fidelity?

Reading: *Schneiderman v. United States*, 320 U. S. 118 (1943)

*****Book Review is due Friday, April 30.*****

Monday, May 3: Why Do We Obey?

Reading: Plato, *Crito*, 43a-54e [ELMS]

Wednesday, May 5: Civil Disobedience

Reading: "Civil Disobedience" *Stanford Encyclopedia of Philosophy* online.

[Available online at: <http://plato.stanford.edu/entries/civil-disobedience/>]

Monday, May 10: **FINAL EXAM**