

**Princeton University  
Woodrow Wilson School**

**WWS 458 – Law and Public Affairs  
Spring 1999**

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Thursdays, 1:30-4:20 pm  
Room 11, Robertson Hall  
office hours: Tuesdays, 1:30-3:30 pm

This course will examine the law as an independent force within a larger governmental and political system. It will explore questions of how the law is made, how it is made to respond to particular situations, how it is changed, and what difference it makes for social relations. One significant site of legal creation, implementation and accommodation is the judiciary, and the course will also examine the courts as an alternative policy-making institution within American politics. From this perspective, the law is the political product of implicit and explicit negotiations between multiple political actors. Its ultimate purposes, utility and effectiveness cannot be assumed.

This course places law within an institutional context, particularly the context of the courts. The law does not simply exist in the abstract, as a mere textual artifact written in statute books. The law is shaped through political disputes and responds to social circumstances. This course is concerned with how the law is made to respond to external events and the interaction between politics and society and the law. The law is often seen as a coercive force intervening into society, and the courts in particular have been singled out as a “countermajoritarian” institution within an otherwise democratic society. What is the basis of these assumptions and how well do they describe our actual historical experience? Some have taken the potentially countermajoritarian and extrasocial features of the law and the courts as a significant problem, something to be explained and minimized within a democracy. Others have taken the political independence of the law as an asset, a potential vehicle for achieving social justice. This course includes extensive consideration of the role of law as a political force in American society, with particular attention to litigation as a political strategy for realizing social change.

The course pursues an extended case study of the problem of desegregation and racial civil rights. Desegregation has been the most prominent instance of judicial intervention into political debates in the twentieth century and involved the law in a substantial effort to reform existing social, economic and political structures. The weekly reading assignments will focus on particular problems of legal reform. These readings stand on their own and provide detailed studies of specific puzzles, including the responsiveness of the law to political events, the development of legal understandings, the relationship between the courts and litigants, the relationship between the law in practice and those subject to the law, and the problems of the formulation of legal remedies to complex social problems. These readings place these particular issues within a common substantive context. This will allow you to develop greater expertise and understanding of this substantive area over the course of the semester and help you draw connections across weeks, but you should be aware that these same issues arise in other substantive contexts as well and that the analytical focus of the course is not on race or desegregation per se but on the role of the law and the judiciary.

Schedule:

The Law in a Political System

1. Introduction (Feb. 4)
2. Judicial Politics (Feb. 11)
  - Walter F. Murphy Elements of Judicial Strategy ch. 1-4
  - Dennis J. Hutchinson “Unanimity and Desegregation: Decisionmaking in the Supreme Court, 1948-1958,” Georgetown Law Journal 68 (1979): 1-96.

3. Responsiveness of the Law (Feb. 18)
  - Robert Dahl "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker," Journal of Public Law 6 (1957): 279-295.
  - Rogers M. Smith "Political Jurisprudence, the "New Institutionalism," and the Future of Public Law," American Political Science Review 82 (1988): 89-102.
  - Gary Zuk, Gerard Gryski, and Deborah Barrow, "Partisan Transformation of the Federal Judiciary, 1869-1992," American Politics Quarterly 21 (1993): 439-457.
  - Girardeau Spann Race Against the Court ch. 1-3
4. Developing the Law (Feb. 25)
  - Richard Kluger Simple Justice ch. 2-4, 13-15, 21, 25
5. Later Developments (March 4)
  - Harvie Wilkinson From Brown to Bakke ch. 4, 6, 8-9, 11
  - Civil Rights Act of 1964
  - Richmond v. Croson
  - California Civil Rights Initiative
  - Hopwood v. Texas

#### The Law as a Political Object

6. The *Brown* Model (March 11)
  - Robert Cover "The Origins of Judicial Activism in the Protection of Minorities," Yale Law Journal 91 (1982): 1287-1316
  - Gerald Rosenberg The Hollow Hope ch. 1-5
7. The Law and Legal Change (March 25)
  - Girardeau Spann Race Against the Court ch. 6-7, 9
  - Michael Klarman "Rethinking the Civil Rights and Civil Liberties Revolution," Virginia Law Review 82 (1996): 1
  - Michael McCann "Reform Litigation on Trial," Law and Social Inquiry 17 (1993): 715
8. Litigation and Civil Rights (April 1)
  - Mark Tushnet The NAACP's Legal Strategy Against Segregated Education, 1925-1950 ch. 3, 5-8
  - Derrick Bell "Serving Two Masters: Integration Ideas and Client Interests in School Desegregation Litigation," Yale Law Journal 85 (1976): 470
  - P. Burstein and K. Monaghan, "Equal Employment Opportunity and the Mobilization of the Law," Law and Social Inquiry 20 (1986): 355
9. Law in Practice (April 8)
  - Jack Peltason 58 Lonely Men ch. 1, 3-4, 6-7, 9 (skim ch. 8 and epilogue)
  - Robert Glennon, "The Role of Law in the Civil Rights Movement," Law and History Review 9 (1991): 59-112
  - Michael Giles and Thomas Walker, "Judicial Policy-Making and Southern School Segregation," Journal of Politics 37 (1975): 319
10. The Political Response (April 15)
  - The Southern Manifesto
  - Edward Keynes and Randall Miller The Court vs. Congress ch. 8
  - Ronald Formisano Boston Against Busing ch. 8
  - Edward G. Carmines and James A. Stimson, Issue Evolution ch. 2
  - Stephen Wasby "A Transformed Triangle: Court, Congress and the Presidency in Civil Rights," Policy Studies Journal 21 (1993): 565

11. The Legal Formation of Political Identity (April 22)  
Ian Haney Lopez White By Law
12. The Efficacy of the Law (April 29)  
Kristin Bumiller The Civil Rights Society ch. 1, 4, 6  
Stephen Halpern On the Limits of the Law pp. 1-14, 236-282, 309-321

Materials:

The following books are available for purchase:

Gerald Rosenberg The Hollow Hope  
Mark Tushnet The NAACP's Legal Strategy against Segregated Education  
Jack Peltason 58 Lonely Men  
Girardeau Spann Race Against the Court  
Richard Kluger Simple Justice  
Ian Haney Lopez White by Law  
Walter Murphy Elements of Judicial Strategy

The remaining readings are contained in a packet available from Pequod's. All required readings are also available on reserve in the library.

Requirements:

The requirements for the course include both written and oral components. All students are expected to come to class fully prepared to be active participants. A seminar cannot work unless all of its participants are prepared to make useful contributions, and you will not be able to take full advantage of the seminar if you are not prepared. Participation will be a significant component of your final grade. You will also be expected to give two scheduled oral presentations.

The oral presentations will accompany two short papers (5-10 pages) examining the issues in a given week's readings. The bulk of your grade will be determined by a take-home final exam. This "exam" will take the form of a longer paper (15-25 pages) on a question I will provide. You may substitute a research paper on a topic of your own choosing with prior approval. The final exam will be due in the Politics Department on Thursday, May 13 by 5:00 pm.

Final Paper	50%
Two Short Papers	25%
Oral Presentation	5%
Class Participation	20%