

Syllabus

Legal Studies 138: The Supreme Court and Public Policy

Professor: Kevin Quinn
GSIs: Ryan Copus and Cait Unkovic
Spring Semester 2013

Class Room
LeConte 2
12:30pm to 2:00pm
Tuesday & Thursday

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Preliminaries

Overview

Most commentators assume that Supreme Court decisions have a direct and substantial impact on public policy. However, such a move ignores many of the realities of the policy process. For instance, how will lower courts interpret the decision? How will other governmental actors implement the decision? How will the U.S. population at large respond to the decision? Will the relevant actors comply with the decision? Even if the decision is faithfully implemented will there be unintended consequences?

To get some traction on these questions, and the broader question of whether the Supreme Court really can be an engine for major social change, we will examine the legal and political science literature on the implementation and impact of judicial decisions. In addition, we will read many of the relevant opinions themselves.

Class Requirements

Students are required to: attend lecture and section, carefully read any assigned material *before* lecture or section, and to participate appropriately. Your section syllabus will have more detailed information about what your GSI expects from you.

Students' final grades will be based on the following three factors:

- mid-term examination (30% of final grade)
- final examination (50% of final grade)
- section attendance and participation (20% of final grade)

I do not participate in grade disputes. If you would like to challenge a grade received from your GSI, please refer to your section syllabus for how to do so.

Incompletes will not be given in this course

Attendance will be taken during the first two weeks of class during lecture and section. Students who do not attend lecture and/or section in the first two weeks may be dropped from the class roster to make room for students on the waitlist who have been attending.

You must attend the section in which you are enrolled. Furthermore, all class and section registrations must be done through Telebears. There is one exception: If two students in different sections would like to switch sections with one another, they should email both Ryan rwcopus.gsi@gmail.com and Cait cait.unkovic.gsi@gmail.com to request a switch

Office Hours and Availability

Professor Quinn will hold office hours on Wednesdays from 11:00am to noon. Please sign up for office hours using the signup form on bSpace.

Professor Quinn's email address is kquinn@law.berkeley.edu. He checks his email once per day and will try to respond within 48 hours. Professor Quinn will not answer substantive questions about the reading or lecture via email. Those questions can, and should, be raised during office hours. To ensure your email gets the attention it deserves, please put the course number (LS 138) in the subject line.

The GSIs will also hold office hours. These office hours will be announced during section meetings. Please see your section syllabus for your GSI's email policy.

Course Website

The course website is available via bSpace.

Course Reading

There are three required books for this course. They are:

Required Books

Ansolahehere, Stephen and James M. Snyder. 2008. *The End of Inequality: One Person, One Vote and the Transformation of American Politics*. New York: W. W. Norton & Company.

Canon, Bradley C. and Charles A. Johnson. 1998. *Judicial Policies: Implementation and Impact* (2nd edition). Washington, DC: CQ Press.

Murphy, Walter F., C. Herman Pritchett, Lee Epstein, and Jack Knight. 2006. *Courts, Judges, & Politics: An Introduction to the Judicial Process*. 6th Edition. Boston: McGraw Hill.

Rosenberg, Gerald. 2008. *The Hollow Hope: Can Courts Bring About Social Change?*. 2nd Edition. Chicago: University of Chicago Press.

In addition, the required reading for some weeks will include a small number of academic articles and / or court opinions. These are available on the course website.

Preliminary Schedule

The following is a preliminary schedule of course topics. It is a rough guide to what we will be covering and may well undergo some changes over the semester.

Tue. January 22: Course Overview

Required Reading

Chapter 1 of Murphy et al.

Thur. January 24: Background Normative Issues

Required Reading

Chapter 2 of Murphy et al.

Tue. January 29: The Organization of the U.S. Judicial System

Required Reading

Chapter 3 of Murphy et al.

Thurs. January 31: Access to Judicial Power

Required Reading

Chapter 6 of Murphy et al.

Tue. February 5: Instruments of Judicial Power

Required Reading

Chapter 7 of Murphy et al.

Thurs. February 7: Checks on Judicial Power

Required Reading

Chapter 8 of Murphy et al.

Tue. February 12: Statutory Interpretation

Required Reading

Chapter 11 of Murphy et al.

Ferejohn, John A. and Barry R. Weingast. 1992. "A Positive Theory of Statutory Interpretation." *International Review of Law and Economics*. 12: 263-279.

Thurs. February 14: Constitutional Interpretation

Required Reading

Chapter 12 of Murphy et al.

Tue. February 19: The Interpreting Population I

Required Reading

Chapter 2 of Canon and Johnson

Thurs. February 21: The Interpreting Population II

Required Reading

Regents of the University of California v. Bakke, 438 U.S. 265 (1978)

No Author. 1997. "Recent Cases: Constitutional Law. Equal Protection. Fifth Circuit Holds That Educational Diversity Is No Longer a Compelling State Interest. *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.), Cert. Denied, 116 S. Ct. 2581 (1996)." *Harvard Law Review*. 110: 775-780.

Gratz v. Bollinger 539 U.S. 244 (2003)

Grutter v. Bollinger 539 U.S. 306 (2003)

Tue. February 26: The Implementing Population I

Required Reading

Chapter 3 of Canon and Johnson

Thurs. February 28: The Implementing Population II

Required Reading

School District of Abington Township v. Schempp, 374 U.S. 203 (1963)

Birkby, Robert H. 1966. "The Supreme Court and the Bible Belt: Tennessee Reaction to the Schempp Decision." *Midwest Journal of Political Science*. 10: 304-319.

Mapp v. Ohio, 367 U.S. 643 (1961)

Tue. March 5: The Consuming Population I

Required Reading

Chapter 4 of Canon and Johnson

Miranda v. Arizona 384 U.S. 436 (1966)

Thurs. March 7: The Consuming Population II

Required Reading

Cassell, Paul G. 1996. "Miranda's Social Costs: An Empirical Reassessment." *Northwestern University Law Review*. 90: 387-499.

Schulhofer, Stephen. 1996. "Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs." *Northwestern University Law Review*. 90: 500-563.

Tue. March 12: Midterm Exam

Thurs. March 14: The Secondary Population I

Required Reading

Chapter 5 of Canon and Johnson

Tue. March 19: The Secondary Population II

Required Reading

Roe v. Wade, 410 U.S. 113 (1973)

Canon and Johnson, 1998, pp. 3-16

Meier, Kenneth, Donald P. Haider-Markel, Anthony J. Stanislawski, and Deborah R. Mcfarlane. "The Impact of State-Level Restrictions on Abortion." *Demography*. 33: 307-312.

Hansen, Susan B. 1980. "State Implementation of Supreme Court Decisions: Abortion Rates Since *Roe v. Wade*." *The Journal of Politics*. 42: 372-395.

Thurs. March 21: The Secondary Population III

Required Reading

Franklin, Charles H., and Liane C. Kosaki. 1989. "Republican Schoolmaster: The U.S. Supreme Court, Public Opinion, and Abortion." *American Political Science Review*. 83: 751-771.

Hoekstra Valerie J., and Jeffrey A. Segal. 1996. "The Shepherding of Local Public Opinion: The Supreme Court and the Lamb's Chapel." *The Journal of Politics*. 58: 1079-1102.

McGuire, Kevin T. and James A. Stimson. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Opinion." *The Journal of Politics*. 66: 1018-1035.

Tue. March 26: Spring Break

Thurs. March 28: Spring Break

Tue. April 2: The Impact of Judicial Decisions I (Conceptual Issues)

Required Reading

pp. 1-36 of Rosenberg

Thurs. April 4: The Impact of Judicial Decisions II (Civil Rights)

Required Reading

Chapters 2 and 3 of Rosenberg

Tue. April 9: The Impact of Judicial Decisions III (Civil Rights)

Required Reading

Chapters 4 and 5 of Rosenberg

Thurs. April 11: The Impact of Judicial Decisions IV (Abortion and Women's Rights)

Required Reading

Chapters 6 and 7 of Rosenberg

Tue. April 16: The Impact of Judicial Decisions V (Abortion and Women's Rights)

Required Reading

Chapters 8 and 9 of Rosenberg

Thurs. April 18: *Baker v. Carr* and Redistricting (Background)

Required Reading

Chapters 1, 2, 3, and 4 of Ansolabehere and Snyder

Tue. April 23: *Baker v. Carr* and Redistricting (Judicial Action)

Required Reading

Chapters 5, 6, 7, and 8 of Ansolabehere and Snyder

Thurs. April 25: *Baker v. Carr* and Redistricting (Consequences)

Required Reading

Chapters 9, 10, 11, and 12 of Ansolabehere and Snyder

Tue. April 30: Event Studies

Required Reading

Lax, Jeffrey R. and Mathew D. McCubbins. 2006. "Courts, Congress, and Public Policy, Part I: The FDA, the Courts, and the Regulation of Tobacco." *Journal of Contemporary Legal Issues*. 15: 163-198.

Lax, Jeffrey R. and Mathew D. McCubbins. 2006. "Courts, Congress, and Public Policy, Part II: The Impact of the Reapportionment Revolution on Congress and State Legislatures." *Journal of Contemporary Legal Issues*. 15: 199-218.

Thurs. May 2: Review