

Syllabus

Legal Studies 138: The Supreme Court and Public Policy

Professor: Kevin Quinn
GSIs: Ryan Copus and Abby Wood
Fall Semester 2011

Class Room

Birge 50
12:30pm to 2:00pm
Tuesday & Thursday

Office

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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.

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

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.

Thur. August 25: Course Overview

Required Reading

Chapter 1 of Murphy et al.

Tue. August 30: Background Normative Issues

Required Reading

Chapter 2 of Murphy et al.

Thurs. September 1: No Class

Tue. September 6: The Organization of the U.S. Judicial System

Required Reading

Chapter 3 of Murphy et al.

Thurs. September 8: Access to Judicial Power

Required Reading

Chapter 6 of Murphy et al.

Tue. September 12: Instruments of Judicial Power

Required Reading

Chapter 7 of Murphy et al.

Thurs. September 15: Checks on Judicial Power

Required Reading

Chapter 8 of Murphy et al.

Tue. September 20: Statutory Interpretation

Required Reading

Chapter 11 of Murphy et al.

Thurs. September 22: Constitutional Interpretation

Required Reading

Chapter 12 of Murphy et al.

Tue. September 27: The Interpreting Population I

Required Reading

Chapter 2 of Canon and Johnson

Thurs. September 29: 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. October 4: The Implementing Population I

Required Reading

Chapter 3 of Canon and Johnson

Thurs. October 6: 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. October 11: The Consuming Population I

Required Reading

Chapter 4 of Canon and Johnson

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

Thurs. October 13: Midterm Exam

Tue. October 18: 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.

Thurs. October 20: The Secondary Population I

Required Reading

Chapter 5 of Canon and Johnson

Tue. October 25: 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. October 27: 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. November 1: The Impact of Judicial Decisions I (Conceptual Issues)

Required Reading

pp. 1-36 of Rosenberg

Thurs. November 3: The Impact of Judicial Decisions II (Civil Rights)

Required Reading

Chapters 2 and 3 of Rosenberg

Tue. November 8: The Impact of Judicial Decisions III (Civil Rights)

Required Reading

Chapters 4 and 5 of Rosenberg

Thurs. November 10: The Impact of Judicial Decisions IV (Abortion and Women's Rights)

Required Reading

Chapters 6 and 7 of Rosenberg

Tue. November 15: The Impact of Judicial Decisions V (Abortion and Women's Rights)

Required Reading

Chapters 8 and 9 of Rosenberg

Thurs. November 17: The Impact of Judicial Decisions VI (The Environment, Reapportionment, and Criminal Law)

Required Reading

Chapters 10 and 11 of Rosenberg

Tue. November 22: The Impact of Judicial Decisions VII (Same-Sex Marriage)

Required Reading

Chapters 12 and 13 of Rosenberg

Thurs. November 24: No Class

Tue. November 29: Assessing Rosenberg's Argument

Required Reading

Chapter 14 of Rosenberg

<http://www.press.uchicago.edu/books/rosenberg/index.html>

Thurs. December 1: Review