

Law and Public Policy— Fall 2019

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Office: Smullin 320; Kaneko
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Class Time: Tuesday/Thursday 1:50-2:20
Office Hours: Tues/Thurs 10:30-11:15 or by appointment

The first thing we do, let's kill all the lawyers.

-Shakespeare
King Henry VI, Act IV, Scene 2

We have the heaviest concentration of lawyers on earth . . . three times more than England, four times more than in Germany, twenty-one times more than in Japan. We have more litigation; but I am not sure we have more justice. No resources of talent and training in our society, not even medical care, are more wastefully or more unevenly distributed than legal skills. Ninety percent of our lawyers serve ten percent of our people. We are over-lawyered, and under-represented.

-President Jimmy Carter,
Speech before the Los Angeles Bar Association, 4 May, 1978

This is a court of law, young man, not a court of justice.

-Oliver Wendell Holmes, Jr.

There is no more ridiculous opinion than to believe that all customs and laws of nations are inherently just.

-Cicero, *Laws*

Course Objectives:

The objective of this course is to examine the effect of the legal system on American public policy and ask how this system actually creates public policy. This examination will consist of three components. First, we will discuss what law, the public good and justice are and how they are best achieved. Second, we will examine three specific components of the legal system that affect public

policy. Finally, we will analyze two separate contemporary public policy issues as a group: fetal rights, and the evolution of the law relating to sexual orientation. As part of our group debates we will examine the death penalty and gun control.

Student Learning Outcomes:

By the end of this course the students should:

- Understand the legal system and how it affects public policy.
- Have a grasp of legal ethics and understand why those ethics are incongruent with the ethics of society.
- Understand the procedural framework of civil and criminal cases.
- Have a firm grasp on the following public policy issues: fetal rights, the death penalty and the legal status of gay marriage.
- Be able to argue principles involved in Constitutional cases.

Textbooks:

G. Alan Tarr, Judicial Process and Judicial Policymaking, 6th ed. (2014).
Richard Zitrin and Carol M. Langford, The Moral Compass of the American Lawyer (1999).
Selected Readings (on Wise or via email).

Attendance:

As you might expect, attendance is extremely important. Not only will you have a hard time understanding the case holdings when you are absent, but class discussions cannot occur absent a class. This is particularly important because our class meets only two times during the week. Attendance is therefore expected and is required to satisfactorily complete this course. My attendance policy is as follows: you may miss 2 classes without an excuse, but your participation grade will decrease by 5% for each additional unexcused absence. You may be absent for an unlimited amount of time with a valid excuse. I will make the final call, but it does include the following: a genuine personal or family emergency, sickness or health issues, and mandatory university activities. While class is important, it will never be more important than a **true** family or personal emergency. I do expect students to communicate with me when they will be absent. Unexcused absences on exams or failure to return a take-home final exam or paper by the deadline will result in a failing grade. Tests which are missed on a day with an unexcused absence will not be able to be made up.

Assignments:

Debate and Position Paper (30%)
Policy Analysis Paper (30%)
Class Participation (20%)
Quizzes, Tests or Responsive Writing (20%)

Grading:

98-100% = A+(*)	94-97% = A	90-93% = A-
87-89% = B+	83-86% = B	80-82% = B-
77-79% = C+	73-76% = C	70-72% = C-
67-69% = D+	63-66% = D	60-62% = D-
59% or below = F		

Late Policy:

My late policy is as follows: every day an assignment is late, 1/3 of a grade will be deducted from it. I will not accept papers more than one week late.

Weekly Readings:

Week 1.

Tuesday, 27 August – *Justice, Law and the Moral Order*

- **Intro:** go over syllabus, course expectations; introduction to Politics 334
- ***What is Justice?***

Thursday, 29 August — *Courts and Law; The Federal and State Court System; Judges*

- **Judicial Process:** Chapters 1-3
- **Taking Sides:** Issue 1: Should Lawyers be Prohibited from Presenting a False Case?

Week 2.

Tuesday, 3 September — *Lawyers, Trials and Appeals, Criminal Justice and the Courts*

- **Moral Compass:** Intro, Chapters 1 and 2
- **Judicial Process:** Chapter 4-5

Thursday, 5 September — *Proposal; Judicial Decision and Policymaking*

- **Discuss Proposal**
- **Judicial Process:** Chapters 6-7

Week 3.

Tuesday, 10 September — *Quiz*

- **QUIZ NO. 1**—covers all material to this point (readings and lectures)

- **Moral Compass**: Chapters 3-4 (student presentations)

Thursday, 12 September — *Discovery and the Culture of Firms; The Legal Profession; Whistleblowers*

- **Moral Compass**: Chapter 5 (student presentations)
- **Judicial Process**: Chapters 8-10 (student presentations)
- **PROPOSAL DUE**

Week 4.

Tuesday, 17 September — *Abortion; Proposals*

- **Judicial Process**: Chapter 11
- **Constitutional Law for a Changing America, 5th ed.**: *Roe v. Wade*
- **Discuss Proposals with individual students**

Thursday, 19 September — *Abortion/Fetal Rights—federal*

- **Constitutional Law for a Changing America, 5th ed.**: *Casey v. Planned Parenthood*
- ***Gonzales v. Carhart***, 550 U.S. 124 (2007).

Week 5.

Tuesday, 24 September — *Quiz; Fetal Rights—state*

- **QUIZ NO. 2**—covers all material between the last quiz and readings on Thursday, 20 Sept.
- ***Kentucky v. Morris***, Supreme Court of Kentucky (2002).
- ***People v. Taylor***, Supreme Court of California (2004).

Thursday, 26 September — *Fetal Rights—state and federal*¹

- **Oregon Legislative History/ORS**: Fetal Rights
- **Congressional Legislative History**: Fetal Rights
- **Lacey-Conner Bill/Law**
- **Fetal Rights in Other States**

Week 6.

Tuesday, 1 October— *Moral Compass, Judicial Process*

- **Moral Compass**: Chapters 6-7

¹ Specific readings for Thursday, 24 September, are TBD. I will get them on Wise by the weekend of the 20th.

Thursday, 3 October — *Moral Compass*

- **Moral Compass**: Chapters 8-9
- **WRITTEN REFLECTION #1—in class**

Week 7.

Tuesday, 8 October — WORK DAY

Thursday, 10 October — WORK DAY

Week 8.

Tuesday, 15 October – WORK DAY

- **ROUGH DRAFT CHECK DUE**

Thursday, 17 October — *Sexual Orientation and the Law*

- **Constitutional Law for a Changing America, 5th ed.**: *Romer v. Evans, Bowers v. Hardwick* and *Lawrence v. Texas*.

Week 9.

Tuesday, 22 October — *PAPERS DUE!!!; Sexual Orientation and the Law*

- ***Baker v. Vermont***, Supreme Court of Vermont, 170 Vt. 194 (2000).
- ***Goodridge v. Massachusetts Department of Public Health***, Supreme Judicial Court of Massachusetts, 440 Mass. 309 (2003). (and advisory opinions)
- **POLICY PAPER DUE!!!**

Thursday, 24 October — *Sexual Orientation and the Law*

- **Oregon Marriage Law** (Oregon State statutes re marriage; other states' laws, etc. *See WISE*)
- ***Misc. Readings: TBD***

Week 10.

Tuesday, 29 October — *Sexual Orientation and the Law*

- ***Obergefell v. Hodges***, 576 U.S. _____ (2015).
- **Debate topics for review**

Thursday, 31 October— Quiz; *In Class Work—Debates*

- **QUIZ NO. 3** — covers all material on Sexual Orientation and the law
- **Debate topics assigned/In-Class Work—Debates**

Week 11.

Tuesday, 5 November — *In Class Work Day—Debates*

Thursday, 7 November —

- **Debate No. 1: TBA**

Week 12.

Tuesday, 12 November — *Debate*

- **Debate No. 2: TBA**

Thursday, 14 November — *Debate*

- **Debate No. 3: TBA**

Week 13.

Tuesday, 19 November — *Debate*

- **Debate No. 4: TBA**

Thursday, 21 November — *Debate*

- **Debate No. 5: TBA**

Week 14.

Tuesday, 26 November — THANKSGIVING VACATION—NO CLASSES

Thursday, 28 November— THANKSGIVING VACATION—NO CLASSES

Week 15.

Tuesday, 3 December — *Secret Agreements and Class Actions*

- **Moral Compass:** Chapter 10 and conclusion

Thursday, 5 December— *Reflection; Evaluations*

- **WRITTEN REFLECTION #2—in class**
- **Class Evaluations**

