

University of Pennsylvania
School of Social Policy and Practice

LAW and SOCIAL POLICY MSSP 631 Section 1
Spring 2019

Contact: Please contact your lead teacher by email to discuss questions or if you want to set up a meeting and we will respond promptly. We do not have offices at SP2 but we can arrange a place to meet. If we do not respond within 48 hours during the work week, please email again in case the email has been lost. In an emergency, you can contact Catherine Carr at 215-603-0211, and Michael Froehlich at 215-779-4166.

Course Description:

This course introduces students to the basics of the American legal system, focusing on how the law and legal process impact and shape social policy and social change, and how law intersects with the work of non-lawyer professionals and other leaders working for policy change. Students will learn how law, and particularly case law, is made and changed, and how to read case law and evaluate precedent; they will be introduced to legal vocabulary, reasoning and argument. The role of regulations and administrative agencies in shaping and enforcing law will be explored. The complexity of using the law to change social policy together with other methods of cultural change, such as messaging, media work, and building collaborations and movements, will be discussed.

Students will study the structure of court systems at both state and federal levels, constitutional, statutory and regulatory law, the interaction of litigation with legislation, and the process and the role of law, lawyers and courts in shaping and addressing social policy issues, with a particular look at public interest lawyers and their work. The class will look at several areas of substantive law and their intersection with social policy, with an eye toward consideration of how that law has been and can be used to both effect and block social change. In addition, the class will address the role that can be played by local government as an alternative to change at a state or federal level.

The course will be co-taught by the two professors, who will alternate delivering the lectures and leading the discussions on several topics. Several experienced lawyers who have done outstanding legal work on social policy will serve as visiting lecturers; the two course sections will meet together for these visitors.

As some students will come with experience of other nations' governments and legal systems, we will include some comparative law discussions, looking at how different governments and legal cultures have addressed particular social policy issues, using different legal traditions and systems. Students will be encouraged to think about social policy issues of importance to them and how the law and legal system impacts on those issues.

Attendance and Readings:

Students will be expected to attend all classes, have with them and be prepared to discuss assigned readings, and participate in class activities and discussions. Class discussions are an important part of the learning process and all are expected to participate. While some readings are intended for background purposes and will not be discussed directly, you are expected to read them as well. If you must miss a class, you are required to notify your professor in advance by email. While you may use your laptop in class for class related work, you may not engage in email or messaging or other unrelated online activity.

Some reading assignments are included on this syllabus, but these will be added to and adjusted as we move through the semester. Students must check Canvas each week for both reading and written assignments. Make sure your Canvas settings will notify you of announcements. In addition to the textbook, many of the readings will be available in the Files section of Canvas. Others are available online.

Students will be expected to speak in class discussions and in front of the class as part of the semester's work. This will include a weekly presentation on current events; at each class two students will prepare together and do a five minute presentation on a current event in the news which involves social policy and the law. Details will be provided in class and on Canvas.

The impact of the law on social policy is an ongoing, vibrant and dynamic process. In the current volatile and polarized political environment, national discussions of law and legal change will be part of the public discourse during the semester. Students are expected to read the national and local press and keep up with current events. We will work current constitutional and legal issues into our class discussions.

Written Assignments:

Students will be assigned several writing assignments over the course of the semester, including two longer papers, one due in the middle of the semester which will require briefing a case and analyzing its relationship with social policy, and one final paper. Details will be provided in Canvas.

All written work is expected to be your own, although discussions with your classmates about the readings and work we are doing is encouraged. If you are new to American universities and have any questions about what constitutes unacceptable copying of others' work or online texts, a serious academic infraction, please check with your instructor. Students are expected to conduct themselves in a manner consistent with the University of Pennsylvania's Code of Academic Integrity, which presents standards regarding plagiarism, multiple submissions and other actions. Students are expected to be familiar with the Code, which can be found at the following link:

[http://www.upenn.edu/academic integrity/](http://www.upenn.edu/academic%20integrity/)

Evaluation and Grading:

There will be three elements to the final grading of this course: 1) class attendance and well-prepared thoughtful participation in class discussions and activities, including an assigned presentation to the class (30%); 2) a midterm paper which will include a case brief (30%); and 3) a final paper due at the end of the semester (40%).

Text:

We are assigning a number of readings from one required text: Ellen S. Podgor and John F. Cooper, *Overview of U.S. Law*, Newark, NJ.: Matthew Bender 2009, ISBN 978-1-4224-2144-4. I have ordered the book at Penn Bookstore, but you can purchase it wherever and in whatever format you like. It is a comprehensive, well organized overview of U.S. Law which will serve as a resource and background. We will not be going over in class all the material assigned, but it is important that you read it to understand what we are discussing. It does not particularly discuss law in relationship to Social Policy, so we will use other readings to address those issues, but understanding the American legal system and how it works is essential for our discussions on its relationship to policy.

Additional readings will be listed on Canvas, including Supreme Court opinions, law review and other articles. Some of the Court opinions will be edited to make them easier to read, but students can find the full Supreme Court opinions on line on various websites if they want to see the original versions.

Class 1: Wednesday, January 16,

Discussion of Class Requirements and Expectations; introductions of ourselves and our interests in law and social policy.

An Overview of Law and the American Legal System: Where does law come from and what purpose does it serve? How is law made? What law has priority? How are judicial decisions made? What is the role of precedent and stare decisis? How does law intersect with social policy?

Readings:

The U.S. Constitution (Articles and Amendments only) <http://constitutionus.com/>

The PA Constitution <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/00/00.HTM>

The Philadelphia Home Rule Charter <http://www.coj.net/city-council/docs/consolidation-task-force/2014-01-09-philadelphiacharter.aspx>

Note: Please read the full U.S Constitution. You need not read the texts of the PA Constitution and the Philadelphia Home Rule Charter, but rather review their tables of contents and provisions that interest you, with an eye to what they cover and how the three documents interrelate.

Podgor and Cooper, Ch. 1. pp. 1-21 and Ch. 7 pp. 170-188

Alabama Chief Justice Story at <https://www.npr.org/sections/thetwo-way/2016/09/30/496089488/alabamas-chief-justice-roy-moore-loses-case-over-same-sex-marriage-stance>

Assignment: A brief self-introduction will be due on Sunday, January 20. Details will be provided in Canvas.

Class 2: Monday, January 28

Overview of Law and American Legal System, continued

Reading a Case and Understanding Judicial Review and Constitutional Analysis

Readings:

Griswold vs. Connecticut, at pp. 1342-1353 of *Processes of Constitutional Decisionmaking*, Brest et al.

Loving v. Virginia, at pp. 959-966 of Brest et al.

Podgor and Cooper, Ch. 7. pp. 21-38 and 188-195

Jay Feinman, *Law 101*, Chapter 2, pp. 9-26 (In Canvas files)

Class 3: Monday, February 4 (Michael Froehlich)

Procedural Issues and Limitations on Access to the Courts:

Jurisdiction, Case and Controversy, Standing, Ripeness, Mootness

Class Action Certification

Basic Steps of Civil Court Action

Appellate Review

Readings:

Podgor and Cooper: pp. 121-140

"Trump's Suit Against Writer is Dismissed," *New York Times*, July 16, 2009.

<https://dealbook.nytimes.com/2009/07/16/trumps-suit-against-writer-is-dismissed/>

Deposition of Donald J. Trump, December 19, 2007. pp. 1-7 (read through page 25, line 18 of the deposition)

<https://assets.documentcloud.org/documents/2430267/trumps-lawsuit-on-net-worth.pdf>

"Arbitration Everywhere, Stacking the Deck of Justice," *New York Times*, October 31, 2015.

<https://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html>

Nora Freeman Engstrom, *The Diminished Trial*, 86 *Fordham L. Rev.* 2131 (2018).

William Penn Sch. Dist. v. Pennsylvania Dep't of Educ., 642 Pa. 236 (2017).

Please read the following sections of the majority opinion only: I. Background; II. Issues Presented & Standard of Review; III. B. Justiciability & the Political Question Doctrine; and IV. Conclusion. You are not required to read the other portions of the majority opinion or the concurring and dissenting opinions.

Class 4: Monday, February 11

From Loving to Gay Marriage: Law and a Social Policy Movement

Readings:

DOMA <https://www.gpo.gov/fdsys/pkg/PLAW-104publ199/html/PLAW-104publ199.htm>

Obergefell v. Hodges

https://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf

"How Gay Marriage Became a Constitutional Right"

<http://www.theatlantic.com/politics/archive/2015/07/gay-marriage-supreme-court-politics-activism/397052/>

10 Reasons Women are Losing While Gays Keep Winning

<http://www.thedailybeast.com/articles/2014/07/06/ten-reason-women-are-losing-while-gays-keep-winning.html>

Pew Research Center, May, 2017, "Intermarriage in the U.S. 50 Years After Loving v. Virginia"

<http://www.pewsocialtrends.org/2017/05/18/intermarriage-in-the-u-s-50-years-after-loving-v-virginia/>

Class 5: Monday, February 18 (Michael Froehlich)

The Role of Administrative Agencies and Regulations:

Readings:

Podgor and Cooper, Chapter 15, pp. 355-380

"The Curveball in the Gorsuch Nomination," Jeffrey Pojanowski writing for [cnn.com](http://www.cnn.com). February 2, 2017. Available at <https://www.cnn.com/2017/02/02/opinions/curveball-in-gorsuch-nomination-pojanowski/>

"Here are the Ways the FCC's Move to Kill Net Neutrality will be Challenged in Court," April Glaser writing for [slate.com](http://www.slate.com). December 14, 2017. Available at <https://slate.com/technology/2017/12/heres-how-the-fccs-move-to-kill-net-neutrality-will-be-challenged-in-court.html>

Recommended Reading

American Law, An Introduction by Friedman and Hayden, Chapter 6 on Administrative Agencies and Law

Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 Brook. L. Rev. 861 (1990).

Class 6: Monday, February 25 (Both Sections)

Poverty and the Law, and The Work of a Welfare Lawyer

Speaker: Kristen Dama, Managing Attorney, Community Legal Services

Readings:

Goldberg v. Kelly in [Brest, P. et al., \(2006\). Processes of Constitutional Decisionmaking, p. 1667-1673.pdf](#) (In Canvas files)

Mathews v. Eldridge <https://supreme.justia.com/cases/federal/us/424/319/>

Failing and Rosser, the Poverty Cannon at pp 219-231

Cimini, Welfare Entitlements in the Era of Devolution, pp. 89 to 104

Read CBPP, An Introduction to TANF at <https://www.cbpp.org/research/policy-basics-an-introduction-to-tanf>

Assignment: Midterm Paper due Friday, March 1, 2019

March 4: Spring Break

Class 7 Monday, March 11 (Both Sections)

Race and the Law

Speaker: Rasheedah Phillips

"For people of color, banks are shutting the door to homeownership," Aaron Glantz and Emmanuel Martinez for Reveal from the Center for Investigative Reporting. February 15, 2018. Available at <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>

City of Philadelphia v. Wells Fargo Co. and Wells Fargo, No. 2:17-cv-02203-LDD (E.D.P.A.) filed May 15, 2017. See attached.

"The Case for Reparations," Ta-Nehisi Coates writing in The Atlantic. June 2014. Available at <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/>

Class 8: Monday, March 18 (Michael Froehlich)

The Role of the Public Interest Lawyer

What is meant by "public interest law"? Who defines the "public interest"?

What are the duties of a public interest lawyer to their clients and to the public?

What is the role of legal aid organizations? How can non-lawyers collaborate with and use these organizations? What is the role of a social justice "leader"?

Readings:

Patricia Wald, *Whose Public Interest is it Anyway?* 47 Me. L. Rev. 4 (1995)

James E. Moliterno, *The Lawyer As Catalyst of Social Change*, 77 Fordham L. Rev. 1559 (2009)
<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4421&context=flr>

Jeffrey Rosen: *Supreme Court Inc.*, *How the Nation's Highest Court has Come to Side with Business*, NY Times Magazine, March 16, 2008 at 39-71

Tyner, *Planting People, Growing Justice*; pages 219 -226 and 240-263 : [TynerPlantingPeople.pdf](#)



David Cole Op ed on the NRA and making change:

https://www.nytimes.com/2016/03/11/opinion/what-liberals-can-learn-from-the-nra.html?_r=0

Recommended:

Catherine C. Carr, *Legal Services and an Anti-Poverty Agenda*, Univ. of PA Journal of Law and Social Change, Vol 14, No. 3, 2011 <https://www.law.upenn.edu/live/files/2592-carr14upajlampsocchange3532011pdf>

Class 9: Monday, March 25, 2018

The Movement for a Civil Right to Counsel

Readings:

Gideon v. Wainwright, 372 U.S. 335 (1963), majority opinion, through page 345 of the Court's opinion, at <https://supreme.justia.com/cases/federal/us/372/335/>
Turner v. Rogers, 564 U.S. 431 (2011) at <https://supreme.justia.com/cases/federal/us/564/431/>
John Pollock, "Where We've Been, Where We're Going", MIE Journal, Summer 2012
David Rogers, "Child Migrants Lose Major Case in Federal Court", Politico, 9/20/16
at <https://www.politico.com/story/2016/09/child-migrants-immigration-228432>

Recommended:

Oliver Last Week Tonight piece on immigration courts: at
<https://www.youtube.com/watch?v=9fB0GBwJ2QA&t=923s>

Class 10: Monday, April 1 (Both Sections)

The Challenges of Reforming the Criminal Justice System

Speakers: Michael Hollander, Philadelphia District Attorney's Office

Everett Gillison, PA Board of Probation and Parole Member, former Philadelphia Deputy Mayor

Readings:

Podger and Cooper, pp. 105-119

Lynn Adelman, [*Criminal Justice Reform: The Present Moment*](#), Wisconsin Law Review 2015
<http://wisconsinlawreview.org/wp-content/uploads/2015/05/Adelman-Final.pdf>

"The Legacy of Lynching, On Death Row", The New Yorker, August 22, 2016

<http://www.newyorker.com/magazine/2016/08/22/bryan-stevenson-and-the-legacy-of-lynching>

Bruce A. Green, Access to Criminal Justice: Where Are the Prosecutors?, 3 Tex. A&M L. Rev. 515, 515-16 (2016)

Forman, James Jr, " RACIAL CRITIQUES OF MASS INCARCERATION: BEYOND THE NEW JIM CROW" (2012). Faculty Scholarship Series. Paper 3599, published in NYU Law Review, Vol 87, p.101

at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4599&context=fss_papers

Deborah Tuerkheimer, "Criminal Justice and the Mattering of Lives", Michigan Law Review, forthcoming at

<https://poseidon01.ssrn.com/delivery.php?ID=30100212007106411607012607209609710503202702306701103800602501007207907906802909710102101811111510301004300502709209812610209309807408700705311910011700109800108700501402302007112302908807908507100300110>

Class 11: Monday, April 8

Reproductive Rights

Readings:

Roe v. Wade, as abridged in Sullivan and Gunther, Constitutional Law, Chapter 8, pp 558-564.
Planned Parenthood of SEPA vs. Casey as abridged in Sullivan and Gunther, Constitutional Law, Chapter 8 at pp 574 -587. (Optional: the discussion of reproductive rights decisions at pp 564-574.)

Whole Woman's Health et al. v. Hellerstedt, the majority opinion only, skipping sections II and VI at <https://supreme.justia.com/cases/federal/us/579/15-274/opinion3.html>

Motherless: A legacy of loss from illegal abortion, video at <https://watchmotherless.org>

Ferguson v. Charleston, 532 U.S. 67 (2001) Syllabus only at <https://supreme.justia.com/cases/federal/us/532/67/>

In the Interest of L.J.B., PA Supreme Court, majority opinion (in Canvas files "LJB Majority Opinion")

Class 12: Monday, April 15 (Mike Froehlich)


Housing: Addressing the legal problems of low income homeowners and tenants

Readings:

Matt Desmond's "Evicted" from the New Yorker Magazine at <http://www.newyorker.com/magazine/2016/02/08/forced-out>

The Reinvestment Fund Report on Philadelphia Evictions at https://www.reinvestment.com/wp-content/uploads/2017/01/Evictions_in_Philadelphia_brief_Final.pdf

Bezdek, Silence in the Courts at http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1238&context=fac_pubs

Foscarinis et al., The Human Right to Housing, Clearinghouse Review, July-August 2004 at [HumanRtHousing.pdf](#) 

Assignment: Paper proposals due before or on April 19 for instructor review.

Class 13: Monday, April 22 (Both Sections)

Juvenile Sentencing: The Supreme Court and State Criminal Justice Systems

Speaker: Joanna Visser Adjoian, Co-Director, Youth Sentencing & Reentry Project (YSRP)

Readings:

Roper v. Simmons, 543 U.S. 551 (2005) at <https://supreme.justia.com/cases/federal/us/543/551/opinion.html>

Policy Brief: Juvenile Life Without Parole by Josh Rovner, the Sentencing Project, Updated October, 2017

Class 14: Monday, April 29

Wrapping up

Jeffrey Toobin, The Conservative Pipeline to the Supreme Court, The New Yorker, April 17, 2017
at <http://www.newyorker.com/magazine/2017/04/17/the-conservative-pipeline-to-the-supreme-court>