POLITICS, LAW AND SOCIETY

Course Description: This course is designed to provide you with an introduction to the American legal system. We begin by exploring the sources of law, examining how legal norms emerge from each of our branches of government and what happens when these norms clash. We then turn to the key institutional components of our legal system, focusing on the structure of the US court system and the players within it. We will compare the federal and state courts, looking at the differences in how judges are selected and how cases proceed through the system. We will pay particular attention to the inherent conflict between the desire for independence and accountability within our judiciary and will assess how well we have done in balancing these goals. We will also look at the alternatives to courts and investigate why they emerged and how they are currently being used. We will put all of this knowledge to use by studying the disputing process in the civil (non-criminal) context. We will start by developing a framework for how disputes evolve and what tends to encourage and/or discourage people from pursuing grievances. After Thanksgiving, we will explore two case studies of civil disputes. The first is one of the most well-known “test” cases, namely the case that culminated with the landmark Supreme Court decision in Brown v. Board of Education that ended segregation based on race in US public schools. The second is the class action dispute memorialized in the bestseller, A Civil Action.

Course Requirements: Students are expected to attend class regularly and to take part in class discussion and group exercises. There will be mid-term and final examinations, as well as a quiz on A Civil Action. There will be two writing assignments. For the first, students will be required to write an essay (7-8 pages) analyzing a dispute with which they are familiar. More information is available on the course website. Papers are due in class on Dec. 7th. For the second, students will be required to write a short essay (3-4 pages) reflecting on the readings for one class meeting. A schedule for this assignment will be posted on the course website. Discussion questions for every class are posted on the website. Two cautionary notes: (1) these essays must be turned in during the class period for which the readings being discussed are assigned, and (2) students will be expected to participate actively in the class discussion on the day the essay is due (the portion of the final grade based on class participation will be determined largely on the basis of participation on this day).

Grades: Final grades will be calculated on the following basis: final exam (30%), mid-term exam (25%), Quiz (5%), Paper on Disputing (20%), Participation Paper (10%), class participation (10%).

Readings: The 2 books listed below are available at the University Bookstore. The remaining readings have been gathered for your convenience in a Course Reader that is available for purchase from the Copy Center at the Law School (located on the ground floor of the law school). The cost is $31.60

READING ASSIGNMENTS:

Part I: Sources of Law
Thursday, September 7: Introduction
Baum, American Courts, 2-4

Tuesday, September 12: Legal Culture & the Role of Informal Norms

Thursday, September 14: Judicial Opinions
Baum, American Courts, pp. 10-16
Li v. Yellow Cab Co. of California, 13 Cal.3d 804 (1975)
Riggs v. Palmer, 22 NE 188 (1889)

Tuesday, September 19: Judicial Review
Justice, “The Two Faces of Judicial Activism,” Judges on Judging, pp. 225-34
Kivirist, et al. v. Wisconsin Department of Agriculture, May 31, 2017
Updates to Wisconsin cookie bill battle

Optional but Interesting:
“Kittens Kick the Giggly Blue Robot All Summer,” podcast from Radiolab Presents: More Perfect: explores the role of the US Supreme Court, starting with Marbury v. Madison. Available at: http://www.wnyc.org/story/giggly-blue-robot [you could listen to this instead of reading the actual opinion in Marbury]

Thursday, September 21: Judicial Reasoning
Burnham, Introduction to the Law and Legal System of the United States, pp. 53-63 [use new]
NLRB v. Canning, US SCt 2014
Tuesday, September 26: Legislatures
Jacob, Law and Politics in the United States, pp. 241-54
Lilly Ledbetter Fair Pay Act of 2009
Bernstein, “California, the Cradle of Reckless Referendums,” Bloomberg View, July 7, 2016

Thursday, September 28: Administrative Agencies
Burnham, Introduction to the Law and Legal System of the United States, pp. 196-206
Chevron, USA, Inc. v. Natural Resources Defense Council, 467 U.S. 837, 1984

Tuesday, October 3: Rule of Law
Fuller, The Morality of Law, pp. 33-41
Mirman, letter complaining about parking ticket, July 2015

Part II: Key Components of the U.S. Legal System

Thursday, October 5: An Overview of U.S. Courts
Baum, American Courts, pp. 5-10, 20-49
Federalist Papers, No. 78
“What is Judicial Independence?” 80 Judicature 73-83
Compare the structures of the Wisconsin and New York court systems:
http://www.wicourts.gov/courts/overview/moves.htm
http://www.courts.state.ny.us/courts/structure.shtml
**Tuesday, October 10: Judges**

Baum, *American Courts*, pp. 124-46


Mihalopoulos, “Why Cook County judge quite after just 142 days,” Chi Sun Times, 5 May 17


**Thursday, October 12: Selecting Judges for Federal Courts**

Baum, *American Courts*, pp. 94-102


Maclaren, “The Supreme Court’s Baffling Tech Illiteracy is Becoming a Problem,” *Salon*, June 28, 2014


**Tuesday, October 17: Selecting Judges for State Courts**

Baum, *American Courts*, pp. 101-118


Check out website with information about judicial selection rules for all 50 states:

http://www.judicialselection.us/


**Thursday, October 19: Judicial Accountability**

Baum, *American Courts*, pp. 142-45


Steinhauer, “Senate, for Just the 8th Time, Votes to Oust a Federal Judge,” *New York Times*, December 8, 2010


California Commission on Judicial Performance, Order on Judge Williams, July 17, 2017


Wisconsin procedure for disciplining judges:

http://www.wicourts.gov/courts/committees/judicialcommission/index.htm


Tuesday, October 24: A View of Judging from the Front Lines
Guest Speaker: Judge JoAnne Kloppenberg, Presiding Judge, Wisconsin Court of Appeals, District IV

Thursday, October 26: Lawyers
Baum, American Courts, pp. 54-85
ABA Lawyer Demographics, 2015
Wisconsin “Diploma Privilege”: WI Supreme Court Rule 40.03: http://www.wicourts.gov/sc/scrule/DisplayDocument.html?content=html&seqNo=1073

Tuesday, October 31: Juries: Myths and Realities
http://www.usconstitution.net/xconst_Am7.html
Supplementary comments on Sullivan from Danzig, The Capability Problem in Contract Law, pp. 16-44

Optional but interesting:
“Object Anyway,” podcast from Radiolab Presents: More Perfect: provides background information about Batson v. Kentucky, a Supreme Court case that tackled the role of race on juries. Available at: http://www.wnyc.org/story/object-anyway

Thursday, November 2: Building a Test Case – the Story of Gill v. Whitford
Guest Speaker: Bill Whitford, Emeritus Professor, UW Law School
Whitford, Outline of remarks
Whitford, “Why Wisconsin is Not a Democracy,” Time, June 23, 2017
**Tuesday, November 7: Alternative Dispute Resolution**
Baum, *American Courts*, pp. 217-21


Chart – Benefits of Different ADR Processes
Copy of legal policy from General Mills website; Strom, “General Mills Reverses Itself on Consumers’ Right to Sue,” *New York Times*, April 21, 2014
Zevtoonian, “Compliance More Likely if Cases Are Mediated,” *Dispute Resolution Counsel*, March 8, 2011

**Thursday, November 9: Midterm Exam**

**Part III: Understanding the Disputing Process**

**Tuesday, November 14: The Structure of Disputes**
Baum, *American Courts*, pp. 72-79, 210-17, 222-30

**Thursday, November 16: The Alleged “Litigation Explosion”**
Garry, *A Nation of Adversaries*, pp. 15-23, 66-76

**Tuesday, November 21: Formal Constraints on Disputing**
Political questions: *Mora v. McNamara* (U.S. 1967)
*Griswold v. Connecticut*, 381 U.S. 479 (1965)
Judicial distaste for issue: *Miller v. Miller*, 78 Iowa 177 (1889)
Zelon, “From Mom to Not in 7 Minutes: Inside Family Court,” *City Limits*, June 1, 2012
Class actions: [http://www.classactionlitigation.com/faq.html](http://www.classactionlitigation.com/faq.html)
Thursday, November 23: Thanksgiving – no class

Part IV: Constructing Disputes

**Case Study 1: Putting Together a “Test” Case – Brown v. Board of Education**

Tuesday, November 28: The Starting Point & the Struggle to Get to the Supreme Ct & the Decision-Making Process and the Decision

Film: “Simple Justice”

Plessy v. Ferguson (1896)

“The Development of Segregation in the Public Schools,” from Constitutional Law and Judicial Policy Making, pp. 297-99

Kluger, Simple Justice, pp. 3-26, 315-21, 330-35

Williams, Thurgood Marshall: American Revolutionary, pp. 209-27

Kluger, Simple Justice, pp. 657-99


Optional but Interesting:

“The Imperfect Plaintiffs,” podcaset from Radiolab Presents: More Perfect: provides background information about Lawrence v. Texas, a 2003 Supreme Court case in which the Texas law outlawing sodomy was struck down. Like Brown, it was a test case and this podcast highlights some of the difficulties in finding “ideal” plaintiffs. [http://www.wnyc.org/story/imperfect-plaintiff](http://www.wnyc.org/story/imperfect-plaintiff)

“The Road to Brown,” documentary that emphasizes the role of Charles Hamilton. This link will require you to log in with your netid & password.


“Mr. Civil Rights: Thurgood Marshall and the NAACP”


Thursday, November 30: The Aftermath of the Decision

Brown v. Board of Education of Topeka, 349 U.S. 294 (1955) [Brown II]


Rosenberg, The Hollow Hope, excerpt reprinted in Law & Society: Readings on the Social Study of Law, pp. 574-91


Demby, “Two Justices Debate the Doctrine of Colorblindness,” NPR, April 23, 2014

Optional but Interesting:

“Separate and Unequal,” documentary about racial divisions in U.S. schools.


**NOTE: YOU SHOULD HAVE COMPLETED READING A CIVIL ACTION BY THIS POINT IN THE SEMESTER. THERE WILL BE AN IN-CLASS QUIZ ON THE BOOK ON DECEMBER 5TH.**

Case Study 2: An “Ordinary” Civil Case

Tuesday, December 5: How the Case Arose

Harr, A Civil Action, pp. 1-146
Thursday, December 7: The Build-Up to the Trial & the Trial
Harr, *A Civil Action*, pp. 149-376
Complaint filed by Schlichtman
Answer filed by W.R. Grace
Motion from W.R. Grace regarding Schlichtman’s conduct
Voir Dire Questions
Special Interrogatories to the Jury

**Disputing Papers Are Due in Class on December 7, 2017**

Tuesday, December 12: The Aftermath of the Trial
Harr, *A Civil Action*, pp. 379-492
Kix, “In the Shadow of Woburn,” *Boston Magazine*, October 2009

Saturday, December 16: FINAL EXAM from 5:05pm to 7:05pm [room TBA]