

**Syllabus POLS 359: Topics in Public Law—Law and Inequality
Spring 2015 Prof. Evan McKenzie**

Catalog course description: *POLS 359 Topics in Public Law 3 hours. Selected problems arising in public law and judicial arenas. May be repeated to a maximum of 6 hours if topics vary. Prerequisite(s): POLS 190 or POLS 200 or POLS 258.*

Meetings: T/Th 930-1045 in Taft Hall 120

Contact information:

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Office hours: T/Th 11:00am- 12:00 noon

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Required text:

Macaulay, Stewart, Friedman, Lawrence M., and Mertz, Elizabeth. 2007. *Law in Action: A Socio-Legal Reader*. New York: Foundation Press. (referred to as “MFM” in the rest of the syllabus).

A few other readings will be available on the course Blackboard site in the Course Documents folder, and there is a wiki for this course that will contain research materials. The wiki is linked from the Blackboard page main panel. The URL is <http://mckenziepols.wikispaces.com>

About the course:

The course is titled "Topics in Public Law," and the topic we will focus on this semester is inequality. The overall research question for us is this: **what is the relationship between law and inequality?** Our materials are social scientific studies of law and courts as they actually work in practice that address two main questions: *what is the impact of society on law, and what is the impact of law on society?*

You will learn some legal principles, but our focus will not be on learning law as we do in POLS 353, 354, and other case law course. This is sometimes called an “**inside**” perspective because learning to use legal doctrines is the basic tool of judges, lawyers and law professors. Instead, in this course we will be emphasizing an “**outside**” perspective, meaning that we will focus our attention on how the law really works in action, and how people with “law jobs” actually behave. Most people understand that the actions of police, lawyers, and judges involve more than a mechanical application of “the law.” Discretion is always involved, and these legal actors are just human beings with differing experiences, emotions, values, and other attributes that affect their decisions. People also understand that the things these legal actors do affect our society in complex ways. The outside perspective is in large part just a way of analyzing the human aspect of law in a systematic, social scientific way.

Courses like this are routinely offered in second and third year law school curricula, and in fact our main text is a law school textbook. My own legal education at UCLA Law School involved courses in law and psychiatry, law and anthropology, law and philosophy, and related coursework. Some of my old professors wrote articles that are in this casebook, including Richard Abel and William Felstiner. The things I learned in these courses were, and still are, enormously valuable to me as a teacher, researcher, and practicing attorney. So please

understand that you will be learning things that are not only academically important, but directly related to understanding what really happens in courtrooms, police stations, and law firms all over this nation. The value of developing that understanding should be apparent to anybody who is thinking seriously about taking any job in the legal system.

Law and Inequality

Joining the course wiki is mandatory for all students and it must be done **by Friday, January 16**, the last day of the first week of classes. You must be a member of the wiki in order to edit the pages. I have sent an email from this wiki to everybody who is enrolled in the course. The email tells you what to do in order to join. It is very simple.

One of the main premises of a society based on law is that all are supposedly equal before the law. But to what extent is this true? Are people actually treated equally in our courts and by our legal system? And going a step further, to what extent does the law actually promote equality and inequality in different areas of our lives?

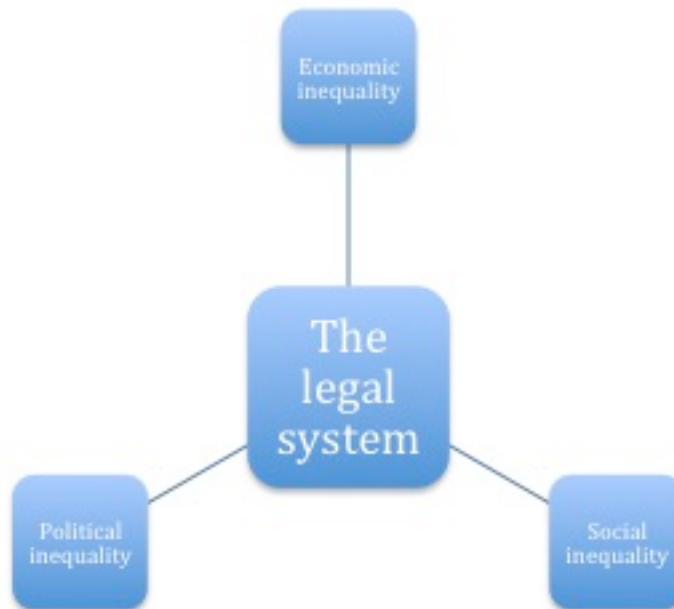
The French writer Anatole France characterized the relationship between law and inequality this way: "*La majestueuse égalité des lois, qui interdit au riche comme au pauvre de coucher sous les ponts, de mendier dans les rues et de voler du pain.*" In English: "*In its majestic equality, the law forbids rich and poor alike to sleep under bridges, beg in the streets and steal loaves of bread.*" (Anatole France, *Le Lys Rouge* [The Red Lily] (1894), ch. 7)

In order to approach this question, we first need to break down our terms and define them.

1. We will confine ourselves mostly to the United States of America, but there will be an occasional excursion into comparative studies.
2. **The term "law" should be understood as "the legal system."** The term "**system**" is a metaphor that portrays something as being similar to a biological organism. A system is a set of component parts that interact with each other to perform certain functions. In the case of the legal system, it performs the function of conflict resolution, and it also works to perpetuate itself and the larger society of which it is a part. It may perform other functions as well, and that is something we will be talking about.
3. The legal system includes the **institutions** of law, courts, and all the **people who produce, interpret, and apply law** in our society. This means we are also talking about people with "law jobs," including legislators, judges, lawyers, police, academics, and bureaucrats.
4. **Systems exist and operate in environments.** The textbook we are using is premised and organized around the principle that **the legal system is embedded in society**, and that the system and the society affect each other. The legal system affects the society of which it is a part, and the society affects the legal system.
5. **Inequality** for our purposes has three dimensions, and you will be working in groups that will focus on one of these three dimensions. Remember that in all cases we are talking about group inequality. The dimensions are as follows, with some examples (not exhaustive) of what each dimension might include
 - Economic inequality:** how does the legal system contribute to equality and inequality of income, wealth, opportunity, and social class
 - Social inequality:** how does the legal system contribute to equality and inequality of race, religion, gender, sexual orientation, age, and disability?
 - Political inequality:** are people really equal in our courts and before the law? To what

extent does the legal system contribute to equality and inequality of political power, and how?

6. We need to consider as well the ways in which **these three dimensions of inequality are related to each other**. How does economic inequality contribute to social and political inequality? What is the relationship between political inequality and other forms of inequality?



Assignments and grades:

Summary of assignments and points:

Midterm examination: 30% (300 points)

Final examination: 30% (300 points) Note: if you do better on the final examination than you do on the midterm, your final examination grade will count for both exams.

Attendance: 5% (50 points)

Participation: 10% (100 points)

Presentations and writing: 25% (250 points)

(Extra credit opportunities will be offered, with the details depending upon campus presentations and other events that are relevant to the course.)

1. Examinations

There are two examinations, both of which will be taken in class, closed book, without notes. You will receive a study guide one week before each examination. The final examination is not strictly speaking a comprehensive exam, because I won't ask you questions that focus entirely on first-half materials, but it will have a comprehensive element to it in that concepts from the first half of the course will be part of the final exam. If you do better on the final than you do on the midterm, your final exam grade will be your grade for both exams.

2. Attendance

Attendance will be taken at every class session. Attendance counts for 5% of your course grade. Attendance is measured by signing the attendance sheet that is circulated at the start of class. You need to be on time to get full credit for attendance. If you are late, you get half credit. If you are not present, you do not get points for attendance, regardless of the reason you are not here. There are no excused absences as far as your attendance points are concerned.

3. Participation

Participation is worth a total of 10% of your grade, or 90 points. Ultimately I will assign a point score that reflects my assessment of your overall contribution to the quality of the classroom discussion throughout the semester. I will be calling on people as well as inviting comments by volunteers. Several students will be assigned to present the reading selections and help us discuss them. These are brief oral presentations that will lead to longer discussions among the students in which everybody will participate. Please understand that you are not to read these presentations to the class. I want you to talk to and with the other students and, I hope, engage them in a discussion. There are no makeups for these assignments, because if one reading selection is badly presented because of a no-show or two, it is not compensated for by having four or five people present a different reading selection later.

I will also deduct 2 points from the participation grade for every classroom session where I determine that a student is unprepared to discuss the matters at hand when called on, whether assigned or not. All I expect from you is a sincere effort to read and understand the materials.

4. Research and writing

There are two research and writing assignments, as follows:

a. Individual paper and contribution to group project (250 points)

We will be working on group research projects that will explore law and inequality. There will be three groups, each focusing on one of the three areas where we will study law and inequality—the economy, society, and politics. Your group will make a presentation to the class, and each student will turn in an individual paper on a specific topic, approved by me and within your group's subject, of 5-10 double-spaced pages exclusive of reference pages. The group will anonymously grade each other's contribution to the overall project, and that will influence your grade of up to 100 points on the group portion. The individual paper is worth up to 150 points. A major part of your group score will be your contribution to the wiki, which is a research base for all of us to use.

b. Extra credit: you will have opportunities to do extra credit. The first one is a short paper on comparative constitutional law that is described in the Course Content section of your Blackboard site. The due date is in the course schedule below.

Reading schedule and assignments:

Week / T-Th	Units	Readings: Tuesday	Readings: Thursday
1 Jan. 13/15	<i>Introduction</i> <i>MFM Ch. 1</i>	No readings. Explanation of the course.	MFM pages 1-30. Stuart Macaulay, "Images of Law in Everyday Life" MFM pp.1-30
2 Jan. 20/22	<i>The legal system at work: what we know and how we know it</i> <i>MFM Ch. 2</i>	<i>Miranda v. Arizona</i> (on Blackboard); Richard A. Leo, "Miranda' Revenge: Police Interrogation as a Confidence Game," MFM at pp. 58-75.	H. Laurence Ross, "Settled Out of Court: The Social Process of Insurance Claims Adjustment" MFM pp. 92-100;
3 Jan. 27/29		Read David R. Mayhew, "Congress: The Electoral Connection." MFM pp. 115-125	Robert A. Kagan, "Adversarial Legalism: The American Way of Law," MFM pp. 125-141
4 Feb. 3/5	<i>The Impact of Society on Law</i> MFM Ch. 3	MFM pp. 143-161Introduction; Sally Engle Merry, "Going to Court: Strategies of Dispute Management in an American Urban Neighborhood."	MFM pp. 161-186—Max Reinstein, ed., "Max Weber on Law in Economy and Society" Extra credit paper on Comparative Constitutional Law due at start of class
5 Feb. 10/12		How does social change affect legal change? Read MFM pp. 186-195—"The social context of legal change"	Lawrence Friedman and Jack Ladinsky, "Social Change and the Law of Industrial Accidents"; MFM pp. 195-213
6 Feb. 17/19		Scandals and crises; manufacturing public opinion; "Note: Upton Sinclair, <i>The Jungle</i> , and the Background of the First Food and Drug Act"; Michael McCann et al., "Java Jive: Genealogy of a Juridical Icon." MFM pp. 213-251	Law as the product of legal culture; Lawrence Friedman, "Legal Culture and the Welfare State," MFM pp. 260-270

Week / T-Th	Units	Readings: Tuesday	Readings: Thursday
7 Feb. 24/26		Case studies of the production of law: read intro on "Changing America's Divorce Laws," and Herbert Jacobs, "Silent Revolution", MFM pp. 285-313	Catch up and review
8 Mar. 3/5	<i>Midterm exam, and then we start The Impact of Law on Society MFM Ch. 4</i>	Midterm examination; closed book, no notes	Introduction; Jack Gibbs, "Deterrence Theory and Research"; Robert Weisberg, "The Death Penalty Meets Social Science," MFM pp. 367-397
9 Mar. 10/12		Peer pressure and social sanctions; Charles R. Tittle and Alan R. Rowe, Moral Appeal, Sanction Threat, and Deviance" MFM 422-431	Legitimacy and public mistrust: Tom Tyler, "Public Mistrust of the Law," MFM pp. 466-486
10 Mar. 17/19 (UIC Spring Break is the week of March 23-27)		Obedience to authority: read Stanley Milgram, "Obedience to Authority: An Experimental View," MFM pp. 508-515	Implementing the law; rape law reform; read Julie Horney and Cassia Spohn, "Rape Law Reform and Instrumental Change in Six Urban Jurisdictions," MFM pp. 565-600
11 March 31/Apr. 2	<i>The Legal System as a Social System MFM Chapter 5</i>	Implementation, Ch. 4 cont.: Gerald Rosenberg, "Tilting at Windmills: Brown II and the Hopeless Quest to Resolve Deep-Seated Social Conflict Through Litigation," MFM 600-614	Begin ch. 5: Read introduction, MFM pp. 651-655, and Bron McKillop, "Anatomy of a French murder case," MFM pp. 669-681
12 Apr. 7/9		Lawrence M. Friedman, "Legal Rules and the Process of Social Change,"	The roles of actors: judges; read Sheldon Goldman et al., "W. Bush's Judiciary: The

Week / T-Th	Units	Readings: Tuesday	Readings: Thursday
		MFM 686-699	First Term Record," MFM pp. 729-752
13 Apr. 14/16		Cass Sunstein, et al., "Ideological Voting on Federal Courts of Appeals," MFM pp. 752-777	Richard A. Posner, "The case against strict constructionism" MFM, pp. 777-789
14 Apr. 21/23		Lawyers: John M. Conley and Scott Baker, "Review Essay: Fall From Grace or Business as Usual?" MFM pp. 789-827	Group presentations
15 Apr. 28/30		Group presentations	Catch up and review—individual papers on group project due in class
16 May 4-8	<i>Finals week</i>	Final exam as scheduled by university; in class, closed book, without notes	

Additional policies:

No late work, no makeup exams

Please be advised that I will not accept late papers or other assignments, and I will not administer makeup exams, except in cases of documented emergencies. "Documented" means written proof from a third party, such as a letter from a physician in the case of medical emergencies. "Emergencies" means last-minute occurrences that make attendance impossible. If you know before an exam that you can't make it on the scheduled date, see me, and you may be allowed to take the exam early, but you will not be allowed to take the exam after the scheduled date for any reason that you knew about before the exam. The same rules apply for turning in written assignments.

Civility

You must be a good classroom citizen at all times. This means not doing things like letting your phone make noise or even looking at it during class; eating in class (a violation of campus rules); talking to the people sitting next to you; watching YouTube videos or web surfing and thereby distracting your classmates; arriving late; leaving early; showing a lack of respect for other people or their statements; disobeying instructions from instructors; and other breaches of good manners. Students who create these situations will receive one warning, after which points will be deducted up to 100 points (your entire participation grade), and ultimately students who cannot remain quiet and non-disruptive in class will be required to leave.

Academic Integrity Policy

In this course there is a zero tolerance policy for academic dishonesty, including plagiarism. For those who are unfamiliar with the definition of plagiarism, here it is, from the UIC Academic Integrity Policy (emphasis added):

“A student who submits work, at any stage of the writing process, which in whole or part has been written by someone else or which contains passages quoted or paraphrased from another’s work without acknowledgment (quotation marks, citation, etc.) has plagiarized. Each student should maintain his or her integrity when completing assignments and be overzealous to give credit where it is due. If a student is ever unsure about what constitutes plagiarism or academic dishonesty, he or she should ask the instructor. Students who are found to have plagiarized work may be subject to various disciplinary actions, including a failing grade on a particular assignment, failure of the entire course, and possible expulsion from the university.”

Religious Holidays

Students who wish to observe their religious holidays must notify me by the tenth day of the semester of the date when they will be absent unless the religious holiday is observed on or before the tenth day of the semester. In such cases, you must notify me at least five days in advance of the date when you will be absent. I will make every reasonable effort to honor the request. This is especially important for examination dates, when you must observe the notice requirements if you want an accommodation.

<http://www.uic.edu/depts/oe/docs/ReligiousHolidaysFY20122014.pdf>

Disability Accommodation

The University of Illinois at Chicago is committed to maintaining a barrier-free environment so that students with disabilities can fully access programs, courses, services, and activities at UIC. Students with disabilities who require accommodations for access to and/or participation in this course are welcome, but must be registered with the Disability Resource Center (DRC). You may contact DRC at 312-413-2183 (v) or 312-413-0123 (TTY) and consult the following:

http://www.uic.edu/depts/oa/disability_resources/faq/accommodations.html.

Technology

This course has a Blackboard site, and you have been subscribed to it. Blackboard is a course management system. There are materials and links on the site that we will be using. Use of a computer and internet access are required to access the Blackboard site. You are also welcome to record class sessions using your own recorder, but if you are in small group sessions you must have the consent of the other students in your group.

Policy on Collaboration

Studying with your fellow students in pairs or groups is fine. However, you must do your own written work without collaboration on the content, unless it is explicitly a group project.

Policy regarding format for written assignments

No handwritten papers will be accepted. All papers must be submitted using 11 or 12 point fonts and double-spaced. For work containing citations, you must use the American Political Science Association citation format. You can read about how to do that at <http://library.tamu.edu/help/help-yourself/citing-sources/files/Using%20APSA%20Format.pdf>, or find that document on your Blackboard site under “Course Documents,” “APSA Format.”

Final Examinations

The dates and times of the exams are scheduled by the Office of Classroom Scheduling and are arranged so that a student, ideally, will have no more than two exams in a day. Any student having more than two final examinations scheduled in one day is entitled to rescheduling. For a schedule of exams and exam policies see:

http://www.uic.edu/depts/oar/current_students/calendars/final_exam_schedule.html

Seeking help

If you find yourself having difficulty with the course material or any other difficulties in your student life, don't hesitate to ask for help! Come to me, or if it is about an issue beyond this class, please contact your college advisors, or get help from any number of other support services on campus. You can get a referral to the right place, or help on the spot, from concerned advisor in the Undergraduate Success Center (USC) at usc@uic.edu. If you are would like help with your writing, contact the UIC Writing Center. You can read about it at <http://www.uic.edu/depts/engl/writing/>

