

Syllabus/Law & Society

Law & Society
Government 107
Wesleyan University
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John E. Finn
PAC 319
Ext 2493
jfinn@wesleyan.edu

Syllabus

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I Introduction

This course introduces students to law and society in the United States. It focuses upon the nature of legal reasoning--or what I shall typically call "legal logic"--and the structure of the legal process, both in federal and in state courts. We shall examine how the law works to resolve private disputes between citizens (especially through the law of torts) and disputes between the state and citizens (especially through the criminal law). We shall also examine how the participants in the process understand their roles and how the logic of the legal process influences not only the participants, but all of us.

The course proceeds in three parts. In the first, we will consider simple questions that have unimaginably complicated answers. We shall want to know, for example, what law is. Some scholars have argued that law is a complex of general and objective rules to regulate behavior. Others have suggested that the law is a habit of obedience. Still others have argued that the law is justice achieved. We shall see.

In the second section of the course we shall explore how the trial process actually works. We shall learn how trials proceed by examining them in great detail—one civil, one criminal. Our first case involves Helen Palsgraf, who had the misfortune to find herself injured while waiting for a train at the Long Island Rail Road station, and the still greater misfortune to find herself involved in a civil lawsuit bedeviled by questions about the nature of "legal liability" in tort law. In the *Palsgraf* case, we shall focus upon the internal dynamics of the legal process and the nature of legal reasoning. We shall, in other words, have little or no interest in the personalities of the players.

Our second cases involve a variety of criminal prosecutions with high profile defendants. In these cases,

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personality, passion, and pathos will be the main object. Our concern will be less with trial procedure and more on the relationship between law, society, the media, and popular culture.

In the third section of the course we will consider a few selected topics in the law more generally. Some of the issues we will explore include the relationship between law and race, between law and gender, between law and politics, and between law and morality. We shall see that these are fluid, overlapping categories. Consider: When, if ever, should the law regulate the moral beliefs of the community? What relationship has law to political orthodoxy? And finally, what has the law to do with life and death?

II Books to Purchase

Copies of all required readings are available at the University bookstore and on reserve at Olin Library.

Required:

Steve Bogira, *Courtroom 302: A Year behind the Scenes in an American Criminal Courthouse*.

Robert Carp, et al. *American Courts: Process & Policy* (6th ed).

Anthony Kronman, *The Lost Lawyer*.

George Anastaplo, *On Trial: From Adam & Eve to O. J. Simpson*

Jerome Frank, *Courts on Trial*.

III Schedule of Papers

There are three short (4-6 pages) papers due in this course. Each is worth 10 per cent of the final grade, but failure to complete each and every paper will result in a failing grade for the course. Papers are due in class on the date in question.

Paper #1--on *Maine v. Kargar*, is due on Sept. 23.

Paper #2--on *Palsgraff* or criminal trials, is due on Nov. 11.

Paper #3--on critical race theory or feminist legal theory, is due on Dec. 2.

IV Attendance, Grades and Examinations

Attendance:

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Class attendance is your responsibility. I do not take roll, and I do not require explanations for your absences. I do not penalize poor attendance, but it will factor into the grade I assign for class participation.

Examinations:

There will be a mid-term examination on Oct. 21.

There will be a final examination on a date to be determined by the registrar.

Failure to complete both examinations will result in a failing grade for the course.

Grading:

Each paper is worth 10 per cent of the course grade.

Each examination is worth 30 per cent of the course grade.

Class participation is worth 10 per cent of the course grade.

V. Seminar Topics and Assignments

I have organized the readings around a series of ten distinct but interrelated topics. I intend to follow the chronology listed below, but experience has taught me that it is impractical to assign specific dates to specific topics. Different classes want and sometimes need to spend more or less time with different subjects--this framework gives us the flexibility we need to make adjustments as we go along.

September 2: Introduction

Assigned: Please read the syllabus.

TOPIC ONE: WHAT IS LAW?

Assigned: *Maine v. Kargar* (1996)

[http://www.pierceatwood.com/files/452_State%20v.%20Kargar%20\(W1066587\).PDF](http://www.pierceatwood.com/files/452_State%20v.%20Kargar%20(W1066587).PDF)

Frank, chapter 23; 26

Carp, chapter 1

Anastaplo, Intro; chapter 1; 3-5

Frank, chapters 23-26

TOPIC TWO: WHAT ARE COURTS?

Assigned: Shapiro, "Courts," (copy)
Frank, chapters 1-4
Carp, chapters 2-4
Kronman, chapter 6
Bogira, Prologue; chapters 1-2

TOPIC THREE: WHO IS THE LAW?

Assigned: Noonan, "Persons and Masks of the Law," (copy)
Frank, chapters 5, 10, 16-19
Carp, chapters 5-6; 8
Bogira, chapters 3-5; 7-8
Kronman, Intro; chapters 1; 3-5

TOPIC FOUR: THE LIMITS OF LAW

Assigned: Regina v. Stephens (1884) http://www.justis.com/titles/iclr_bqb14040.html
United States v. Baker & Gonda (1996)
http://www.isc.meiji.ac.jp/~sumwel_h/doc/cases/Baker_1995_SD_Michigan.htm
Fuller, "Case of the Speluncean Explorers"
<http://www.nullapoena.de/stud/explorers.html>

TOPIC FIVE: THE CIVIL TRIAL--TORTS, TRAINS, AND MRS. PALSGRAFF

Assigned: Noonan, "Persons and Masks of the Law" (copy)
Palsgraf v. Long Island Railroad Company/Decision & Record (1928) (copy)
Carp, chapter 11

TOPIC SIX: THE CRIMINAL TRIAL

Assigned: Bogira, chapters 10-11; 12-15
Anastaplo, chapter 12
Carp, chapters 9-10

TOPIC SEVEN: LAW AND POLITICS

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Assigned: Thoreau, "Civil Disobedience"

http://www.wsu.edu:8080/~wldciv/world_civ_reader/world_civ_reader_2/thoreau.html

Frank, chapters 21, 31

Carp, chapters 14-15

Collins, "Marxism & the Law" (copy)

TOPIC EIGHT: LAW AND RACE

Assigned: *Korematsu v. United States* (1944)

http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html

Brown v. Board of Education (1954) <http://supreme.justia.com/us/347/483/case.html>

Bell, "Brown & the Interest Convergence Dilemma"

<http://phobos.ramapo.edu/~jweiss/laws131/unit3/bell.htm>

Bogira, chapter 16 & skim entire book

Anastaplo, chapters 9; 13

TOPIC NINE: LAW AND GENDER

Assigned: Crenshaw, "Mapping the Margins"

<http://www.wcsap.org/Events/Workshop07/mapping-margins.pdf>

Anastaplo, chapter 8

Schneider, *Battered Women & Feminist Lawmaking*, chapters 1-3 (photocopy)

Schuetz, *The Logic of Women on Trial*, chapters 1, 2, 9, 10 (photocopy)

United States v. Virginia (1996) <http://supreme.justia.com/us/518/515/case.html>

State v. Scruggs (Ct. Supreme Court, 2006)

[http://campus.westlaw.com.ezproxy.wesleyan.edu:7790/search/default.wl?spa=ICONN-WLU-2000&rs=WLW8.07&eq=welcome%2fCampusLaw&action=Search&fn=_top&sv=Split&method=TNC&query=TI\(state+%26+scruggs\)&db=ALLCASES&vr=2.0&rp=%2fsearch%2fdefault.wl&mt=CampusLaw](http://campus.westlaw.com.ezproxy.wesleyan.edu:7790/search/default.wl?spa=ICONN-WLU-2000&rs=WLW8.07&eq=welcome%2fCampusLaw&action=Search&fn=_top&sv=Split&method=TNC&query=TI(state+%26+scruggs)&db=ALLCASES&vr=2.0&rp=%2fsearch%2fdefault.wl&mt=CampusLaw)

State v. Scruggs (Ct. Superior Court, 2004)

[http://campus.westlaw.com.ezproxy.wesleyan.edu:7790/search/default.wl?tf=770&method=TNC&fn=_top&tc=1001&mt=CampusLaw&rs=WLW8.07&query=\(STATE+%26+SCRUGGS\)+%26+DA\(BEF+2005\)&db=CT-CS&action=Search&sv=Split&cnt=DOC&vr=2.0&origin=Search&service=Search&effdate=1%2f1%2f0001+12%3a00%3a00+AM&ssrc=264&rp=%2fsearch%2fdefault.wl&sp=ICONN-WLU-2000&rfti=1&eq=Welcome%2fCampusLaw](http://campus.westlaw.com.ezproxy.wesleyan.edu:7790/search/default.wl?tf=770&method=TNC&fn=_top&tc=1001&mt=CampusLaw&rs=WLW8.07&query=(STATE+%26+SCRUGGS)+%26+DA(BEF+2005)&db=CT-CS&action=Search&sv=Split&cnt=DOC&vr=2.0&origin=Search&service=Search&effdate=1%2f1%2f0001+12%3a00%3a00+AM&ssrc=264&rp=%2fsearch%2fdefault.wl&sp=ICONN-WLU-2000&rfti=1&eq=Welcome%2fCampusLaw)

TOPIC TEN: LAW AND MORALITY

Assigned: *Berman v. Allen* (1979)

[http://campus.westlaw.com.ezproxy.wesleyan.edu:7790/search/default.wl?tf=770&method=TNC&fn=_top&tc=1001&mt=CampusLaw&rs=WLW8.07&query=\(BERMAN+%26+ALLEN\)+%26+DA\(BE](http://campus.westlaw.com.ezproxy.wesleyan.edu:7790/search/default.wl?tf=770&method=TNC&fn=_top&tc=1001&mt=CampusLaw&rs=WLW8.07&query=(BERMAN+%26+ALLEN)+%26+DA(BE)

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[CS&action=Search&sv=Split&cnt=DOC&vr=2.0&origin=Search&service=Search&effdate=1%2f1%2f0001+12%3a00%3a00+AM&ssrc=41&rp=%2fsearch%2fdefault.wl&sp=ICONN-WLU-2000&rlti=1&eq=Welcome%2fCampusLaw](#)

Application of Georgetown College (1964) <http://cases.justia.com/us-court-of-appeals/F2/331/1000/446076/>

Cruzan v. Director, Mo. Health Dept. (1990)

<http://supreme.justia.com/us/497/261/case.html>

Griswold v. CT (1963) <http://supreme.justia.com/us/381/479/case.html>

Bowers v. Hardwick (1986) <http://supreme.justia.com/us/478/186/case.html>

Texas v. Lawrence (2003) <http://supreme.justia.com/us/539/558/case.html>

December 2: Conclusion

Assigned: Fuller, "The Grudge Informer"

<http://www.hku.hk/philodep/courses/law/Grudge%20Inform%20Text.htm>

Auden, "Law Like Love" <http://www.poemhunter.com/poem/law-like-love/>