

# Law, Rights, and Public Policy in Education

Instructor: David Glick (David.M.Glick@Dartmouth.edu)

Meetings: Tuesday, Thursday 2A

Office Hours: Thursdays 10-12, Silsby 121B

**Course Description:** This course will investigate the differences between law and public policy, and the overlaps and interactions between them. We will engage with broad themes and precise empirical questions. We will do so by reading a wide variety of materials ranging from philosophical pieces about rights to Supreme Court decisions to statistical analyses in economics journals. We will approach all of these materials in the most accessible ways possible and students are not expected to be comfortable with all of them at the beginning of the semester.

In the **first part** of the course we will contemplate general questions such as:

- What are rights?
- What happens when rights and policy concerns conflict?
- Can courts effectively protect rights?
- Are public interest legal campaigns useful public policy tactics?
- Do changes in the law produce policy outcomes on the ground?
- Should judges consider policy impacts and realities?
- Are legal and policy questions separable? In what ways?

The readings will largely come from political science, sociology, and law books and articles. While we will consider education issues such as public school integration after *Brown v. Board*, education will not be the focus of the first part of the course. Instead, we will think about law and policy generally. Doing so will help us think through the concrete issues in part II.

In the **second part** of the course, we will apply these ideas to two important and contemporary issues in education policy. These two issues are 1) affirmative action in higher education, and 2) public school funding and rights to k-12 education. The general ideas in the first part will help us think through these cases. We will also reconsider and reevaluate the general claims about law and policy in light of the concrete applications and data. For each of the two issues we will do three things:

- Read and debate the relevant landmark Supreme Court cases to understand the theoretical and normative issues at stake
- Read modern empirical analyses of the relevant policy impacts, outcomes, and considerations

- Revisit the general questions above in light of I and II.

For example, we will try to understand both the legal arguments concerning higher education and the policy consequences of affirmative action programs to reach some conclusions about the intersection of law and policy. We will ask: do the Constitutional rights claims affect policy realities on the ground? Do the realities on the ground match the legal arguments and rights claims? Should the law and the courts incorporate these policy realities? The readings in the second part of the course will include Supreme Court opinions, and articles, largely from economics journals, about policy impact.

**Goals:** This course has four major goals. The first is to equip students to think critically about the similarities and differences between law and public policy. The second is to make them think about the balance between principled legal arguments and practical policy consequences. The third goal is to develop the skills necessary to carefully read and assess empirical public policy papers. Substantive issues such as affirmative action and educational opportunity which are already familiar to students from their own experiences should make difficult and abstract empirical analyses more accessible. Working with these issues should help students think through the challenges of empirical analysis and assess the strengths and weaknesses of contemporary social scientific articles. The fourth goal is for students to critically synthesize, differentiate, and adjudicate different readings on similar topics. There is no course text. Students are expected to make sense of multiple and conflicting scholarly readings about each topic.

**Readings:** This course is a seminar. There are no course texts and that the reading and discussion expectations are substantial. The reading list comprises many articles and book chapters. These will be available on Blackboard. When possible, I have tried to put the heavier reading days on Tuesdays so that you have more time.

The required books for the class are:

William Bowen and Derek Bok, "The Shape of the River," 1998

Stuart Schiengold, "The Politics of Rights," 1974

Gerald Rosenberg, "The Hollow Hope," 1991

Jonathan Kozol, "Savage Inequalities," 1991

Michael Rebell, Courts and Kids, 2009

All but the Rebell book are older and should be available used at minimal cost.

**Assignments:** Consistent participation in the discussions, and regular displays of engagement with, and mastery of, the readings is crucial. In addition, students will complete two 5-6 page papers (one of them, "tutorial style")<sup>1</sup> presented in a one hour session with discussant (another

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<sup>1</sup> Students will be assigned to pairs. One student will present a paper at the end of the affirmative action section in a one hour session with their partner (acting as a critical discussant) and the instructor (who will also ask

student) and the instructor, a very short (1-2 pages) reaction memo for the last class of the quarter, and a research project or proposal (10-15+ pages). You should discuss ideas for this paper early in the quarter, but almost anything related to the class is fair game. I want it to be something you are interested in. We will set up a couple of times during the quarter for students to present and get feedback about their research project. We will set aside some X-hours for this and have a night of food and research paper discussions at the end of the quarter. Students will also participate in an in class debate which will be evaluated separately from seminar participation in general. The assignments and their contributions to the final grade are:

- Response Paper (written for one session in part one – signups at the first class) – 18%
- Tutorial style response paper (written about one of the issues in part two) – 18%
- Tutorial discussant (about partner's tutorial paper) -8%
- Constitutional case debates - 5%
- Short concluding paper - 4%
- Research Paper - 25%
- Class Participation - 22%

**Grades for Written Work:** For written work, the A range will comprise only work which features strikingly original thinking and/or argumentation, expressed in clear, cogent, error-free writing. Only students that go well beyond class materials and discussions (in thought, not extra research) will be considered for an A grade. Papers and examinations in the B range exhibit mastery of the course materials and discussions, expressed in clear, cogent, error-free writing. Papers and examinations in the C range exhibit inadequate understanding of the course materials and discussions and/or deficient, error-plagued writing. Papers and examinations in the D range exhibit wholly inadequate understanding of the course materials combined with deficient, error-plagued writing. Hopefully the D range and worse will not be an issue. Pluses, minuses, or flat grades within any of these ranges reflect the instructor's judgment of the merits of the paper or examination relative to other papers in the same range. All late assignments will be reduced 1/3 of a grade for every day they are late. Students may appeal grades they feel they received in error but I reserve the right to increase or decrease their grade upon reconsideration.

**Participation/Discussion Grades:** Participation grades will be assigned on the basis of knowledge of the readings, before class preparation, and in-class discussion. The class participation part of the grade is not meant to be free points to bump your final grade. My guidelines for participation grades are as follows:  
A-Outstanding: Repeated and excellent comments demonstrating preparation and engagement with the material.  
B-Good: Good, solid participation.  
C-Satisfactory: Some comments but shows lack of preparation.

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questions). The roles will be reversed after the school funding section so that each student writes once and discusses once.

D-Poor: Came to class but did not contribute.

F-Failing:

**Other Practical Matters:**

**Email:** The most efficient way to reach me is via email which I check frequently throughout the day. No promises, but I'm usually pretty quick. If you write and don't hear back in 24 hours, please write again.

**Office Hours:** My official office hours are Thursday mornings from 10-12, but I aim to be around and as accessible as possible. Just let me know some times that work for you.

**Technology:** Please, turn off the phones and computers. Phones should be obvious. I know some people like to take notes on their laptops. I know I am not disciplined enough to avoid Facebook, G-Chat and fantasy baseball when I have a computer in front of me and I think this is pretty typical. More importantly, I don't think taking a lot of notes (on a computer or with paper and pen) is consistent with the seminar. If you are taking a lot of notes, you are missing out on the discussion and missing the point of the course. You shouldn't be writing more than an occasional quick thought, idea, or question during the discussion. You should be listening and engaging with your classmates. Thus it will be hard to convince me of the benefits of having your laptop in class.

Part One: Introduction: Law in Policy and Policy in Law

- March 30<sup>th</sup> – Compulsory Vaccinations: Public Health, Practical Realities, and Personal Liberty
  - Rob Stein, "Mandatory Flu Shots Hit Resistance," *The Washington Post*, 9/26/09  
<http://www.washingtonpost.com/wp-dyn/content/article/2009/09/25/AR2009092503854.html>
  - CBS2 New York (online report), "Judge Halts Flu Vaccine Mandate for Health Workers", 10/16/09  
<http://wcbstv.com/breakingnewsalerts/mandatory.h1n1.vaccine.2.1252672.htm>  
[!](#)
  - Mark Finch, "Point: Mandatory Influenza Vaccination for All Health Care Workers? Seven Reasons to Say "No", " *Clinical Infections Diseases*, 4/15/06

- Howard Backer, “Counterpoint: In Favor of Mandatory Influenza Vaccine for All Health Care Workers”, *Clinical Infections Diseases*, 4/15/06
- Michael Willrich, “The Least Vaccinated of Any Civilized Country...”, *The Journal of Policy History*, Vol. 20, No. 1, 2008
- Introduction to Reading a Case –  
<http://www.albany.edu/~jn293713/profession/caseguid.pdf>
- Jacobson v. Massachusetts, U.S. Supreme Court, 1905 (excerpt)
- April 1<sup>st</sup> – What are Rights?
  - Ronald Dworkin –*Taking Rights Seriously*, 1978, 90-101
  - Mary Ann Glendon, *Rights Talk*, 1991, Chapters 1, 4, 7
  - Richard Primus, *The American Language of Rights*, 2000, Chapter 1, Conclusion
  - Robert Cooter, *The Strategic Constitution*, 2000 – Chapters 10 and 11 (“The Value of Rights and Philosophies of Rights”)
    - Don’t worry about the technical stuff. Just do your best to get a grasp on this different perspective of rights especially rights as welfare and rights as trumps.
- April 6<sup>th</sup> - Rights, Politics, and Brown v. Board
  - Stuart Schiengold, *The Politics of Rights*, 2004, 1-3, 6, 8, 12 (Short chapters with few words on the pages)
  - Robert McCloskey, *The American Supreme Court*, 2000 (Selection about Brown v. Board for context)
  - Brown v. Board of Education, U.S. Supreme Court, 1954
  - Michael Klarman, “Rethinking the Civil Rights and Civil Liberties Revolution” (excerpt) in David O’Brien, *Civil Rights and Civil Liberties*, 2003
  - Gerald Rosenberg, *The Hollow Hope*, 1991 Introduction, Chapter1, and Part I (Civil Rights)
- April 8<sup>th</sup> - Law and Impact Continued
  - Michael McCann, “Reform Litigation on Trial,” *Law and Social Inquiry*, Vol. 17 1992

- Malcolm Feeley, "Hollow Hopes, Flypaper, and Metaphors," *Law and Social Inquiry*, Vol. 17, 1992
- Jon Gould, "The Precedent That Wasn't: College Hate Speech Codes and the Two Faces of Legal Compliance," *Law and Society Review*, 2001
- April 13th- Politics and Policy In Court
  - Michael Klarman, "Brown v. Board of Education: Law or Politics?" in Peter Lau, *From the Grassroots to the Supreme Court: Brown v. Board of Education and American Democracy*, 2004
  - Herbert Garfinkle, "Social Science Evidence and the School Segregation Cases," *the Journal of Politics*, Vol 21. 1959
  - Richard Posner, "Pragmatic Adjudication," *Cardozo Law Review*, Vol. 18, 1997
  - Ronald Dworkin, *Taking Rights Seriously*, 1978, Chapter 4 ("Hard Cases")
- April 15<sup>th</sup> – Judging and Rights: Pragmatism, Policy, and Principle continued
  - Richard Posner, *Overcoming Law*, 1995, Chapter 5 ("Legal Reasoning from the Top Down and the Bottom Up") - some will be repetitive from previous Posner, skim as needed
  - Martha Minow, "Religion and the Burden of Proof: Posner's Economics and Pragmatism in Metz v. Leininger," *Harvard Law Review*, 2006
  - Jeffrey Rosen, "Overcoming Posner," *Yale Law Journal*, 1995
  - Buck v. Bell, U.S. Supreme Court, 1927
  - John Conley, "The First Principle of Real Reform: The Role of Science in Constitutional Jurisprudence," *North Carolina Law Review*, Vol 65, 1986
- April 20<sup>th</sup> - **Assignment: In class graded debate – Students will come to class prepared (with notes) to argue pro or con and then assigned a side at the beginning of class.**
  - Regents of the University of California vs. Bakke (1978), U.S Supreme Court
  - Grutter (Gratz) vs. Bollinger (2003), U.S Supreme Court
  - William Bowen and Derek Bok, *The Shape of the River*, 1998, Chapter I "Historical Context"

- Thomas Keck, “From Bakke to Grutter: The Rise of Rights-Based Conservatism,” in *The Supreme Court and American Political Development* (Ronald Kahn and Ken Kersch eds.) 2006
- April 22<sup>th</sup> - Affirmative Action in Higher Education: Politics, Mobilization, and the Policy Considerations
  - Roland Fryer and Glenn Loury, “Affirmative Action and its Mythology,” *Journal of Economic Perspectives*, Vol. 19, 2005
  - Alan Kruger et. al., “Race, Income, and College in 25 Years: The Continuing Legacy of Segregation and Discrimination”, *American Law and Economics Review*, Vol. 8, 2006
- April 27<sup>th</sup> – Affirmative Action in Higher Education: Trying to Estimate Impact and Effects
  - William Bowen and Derek Bok, *The Shape of the River*, 1998, [Introduction](#), [Preface](#), [Chapters 2, 3, 4, 9, 10](#)
  - Marianne Bertrand et. al. “Affirmative Action in Education: Evidence From Engineering Colleges Admissions in India
  - **OPTIONAL** - Jesse Rothstein and Albert Yoon, “Affirmative Action in Law School Admissions: What Do Racial Preferences Do?” *University of Chicago Law Review*, 2008
- April 29<sup>th</sup> – Affirmative Action Effects Continued...and Race Alternatives
  - Roland Fryer et. al., “An Economic Analysis of Color Blind Affirmative Action,” *Journal of Law, Economics and Organization*, Vol 24, 2008
  - Tienda et. al. “Closing the Gap?: Admissions and Enrollments at the Texas Public Flagships Before and After Affirmative Action,” (policy brief), [http://theop.princeton.edu/reports/briefs/wws\\_brief\\_closinggap.pdf](http://theop.princeton.edu/reports/briefs/wws_brief_closinggap.pdf)
  - Sunny X. Niu and Marta Tienda, “The Impact of the Texas Top 10% Law on Flagship Enrollment: A Regression Discontinuity Approach,” *Journal of Policy Analysis and Management*, Forthcoming (2010)

- Eric Furstenberg, "Academic Outcomes and the Texas 10% Law, *The Annals of the American Academy of Political and Social Science*, 2010
- **OPTIONAL** - Kalena Cortes, "College Quality and the Texas Top 10% Plan: Implications for Minority Students," *Working paper*, 2008
- May 4<sup>th</sup> Affirmative Action continued – Peripheral Policy Issues and Considerations:
  - Emily Bazelon, "The Next Kind of Integration," *The New York Times Magazine*, 2008
  - Marta Tienda and Sunny Niu, "Texas' 10-Percent Plan: The truth Behind the Numbers," *the Chronicle of Higher Education*, January 23, 2004
  - "Race and university admissions," *The Economist*, 2/26/09
  - Bruce Sacerdote, Peer Effects With Random Assignment: Results for Dartmouth Roommates," *The Quarterly Journal of Economics*, 2001
  - Catherine Hill and Gordon Winston, Low-Income Students and Highly Selective Private Colleges: Searching and Recruiting
  - Eric P. Bettinger et. al. "The Role of Simplification and Information in College Decisions: Results From the H&R Block FAFSA Experiment," *NBER Working paper*, 2009
- May 6<sup>th</sup> and 7<sup>th</sup> – **Tutorial Paper One – Students meet in groups of two with instructor for one hour**
- May 11<sup>th</sup> - School Finance and Access to Public Education
  - Jonathan Kozol, *Savage Inequalities*, 1991, Chapters 1, 3, 4, 6
  - Michael Paris, *Framing Equal Opportunity*, 2009, Chapter 2
  - Serrano vs. Priest, California Supreme Court, 1971
  - San Antonio v. Rodriguez, U.S. Supreme Court, 1973
- May 13<sup>th</sup> Realities, Challenges, Practicalities, and Politics
  - Michael A. Rebell, *Courts and Kids*, 2009, Introduction – Chapter 3
  - Eric Hanushek, *Courting Failure*, 2006, Chapter 1 (The March of Folly)
  - Eric Hanushek and Alfred Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 2009, Chapters 4, 5,7

- May 18<sup>th</sup> – School Finance: Law, Politics, and Pursuing Reform
  - Michael Paris, *Framing Equal Opportunity*, 2009, Chapter 3, 4, 5
  - Michael A. Rebell, *Courts and Kids*, 2009, Chapters 4,5
  - Douglas Reed, *On Equal Terms*, 2001, Chapters 5, 7
- May 20<sup>th</sup> – Have the Courts Altered Education Finance?
  - Douglas Reed, “Twenty-Five Years after Rodriguez: School Finance Litigation and the Impact of the New Judicial Federalism,” *Law and Society Review*, Vol. 32, 1998
  - William Fischel, “How Serrano Caused Proposition 13,” *Journal of Law and Politics*, Vol 12, 1996
  - **OPTIONAL** - William Evans et. al. “Schoolhouses, Courthouses and Statehouses after Serrano,” *Journal of Policy Analysis and Management*, 1997
  - Christine Roch and Robert Howard, “State Policy Innovation in Perspective, Courts, Legislatures, and Education Finance Reform,” *Political Research Quarterly*, 2008
  - **OPTIONAL** - Caroline Hoxby, “All School Finance Equalizations are Not Created Equal,” *The Quarterly Journal of Economics*, Vol 116, 2001 – This one is long and technical, try to get the main ideas though
- May 25<sup>th</sup> – Links Between Educational Finance and Outcomes?
  - Eric Hanushek and Alfred Lindseth, *Schoolhouses, Courthouses, and Statehouses*, 2009, Chapter 6
  - **OPTIONAL** - Thomas Downes, School Finance Reform and School Quality: Lessons From Vermont, Working Paper, 2002
  - David Card and Alan Krueger, “School Resources and Student Outcomes: An Overview of the Literature and New Evidence from North and South Carolina,” *The Journal of Economic Perspectives*, 1996
  - Latika Chaudhary, “Education Inputs, Student Performance, and School Finance Reform in Michigan”, *Economics of Education Review*, 2009
- May 27<sup>th</sup> and 28<sup>th</sup>

- **Tutorial Paper II – Students meet in Pairs with Instructor. Roles Reversed From Previous Time.**
- June 1 - **Short (1 page) “Wrap Up” memo Due in Class:** Is Conventional Policy Making Any Different? Is There Anything Special About Law and Policy?
  - Gordon Silverstein, *Law’s Allure*, 2009, Introduction, Part I, Chapter 9 -
  - Eric Patashnik, *Reforms at Risk: What Happens After Major Policy Changes Are Enacted*, 2008, Intro, Chapter 1, Airline Regulation Chapter (7)
- Last week of class, dinner and remaining research presentations at instructors home on a night TBD