

**SWRK 770: Social Welfare and the Law**  
**School of Social Policy & Practice**  
**University of Pennsylvania**  
**Summer Session I 2012**

Day & Time: Tuesdays & Thursdays, 6.45 – 9.15pm

Class Location: Caster A17

Instructor:

Office Hours:

Office Location:

Email:

**Course Description**

This course will explore the role of law in influencing social welfare policy in the United States and its use as a mechanism for social change during the 20<sup>th</sup> century. First, we will examine the substance of law, the structure of courts, and legal actors in selected areas to understand how law is shaped by broad social, cultural, economic and political trends and how law and the legal system shapes that social context. Attention will be directed towards establishing a theoretical basis for the intervention of the courts into on-going political activities, which many commentators have argued is best left for the legislative and executive arenas. Second, we will look at the role of judges, attorneys, and the people and groups who try to use the courts to further their political and ideological goals. Third, we will consider the impact of the courts on policy and problems implementing court decisions. Finally, we will analyze various policies of interest to social policymakers and how these policies have been influenced by the courts.

Due to the enormous amount of subjects that can be considered under social welfare and law, I have intentionally chosen to focus on a handful of topics where the courts have played a major role in shaping social policy, including race and civil rights, abortion and the rights of women, conservative political activism, same-sex marriage, juvenile justice, and child welfare. Since the course covers policy changes in broad topical areas during the 20<sup>th</sup> century, students will be introduced to the value of a historical perspective on legal, social policy, and social welfare questions. Much of this course will involve substantial reading and vigorous classroom discussion. These discussions are critically important to the functioning of the class; quality is essential, not quantity. In other words, we do not want summaries of the reading; we want your thoughts about the reading. Although I will endeavor to let students know as far in advance as possible, please note that the instructor reserves the right to alter this syllabus at any time.

**Course Objectives**

By the end of the semester, students should be able to:

1. Demonstrate an understanding of law with regard to its role, the values it reflects, the social context out of which it arises, and the terms of its social functions;

2. Critically analyze the use of law as a tool and vehicle for advocacy, empowerment, and entitlement;
3. Describe historical and contemporary examples of law and the courts in action in addressing social problems;
4. Critically evaluate the effectiveness of the courts in influencing social policy development and implementation, including understanding and applying the Dynamic Court and Constrained Court frameworks;
5. Research electronically the sources of law at the federal, state and local levels and at the executive, legislative and judicial branches of government;
6. Demonstrate an ability to craft a cogent argument for a particular policy option that may be addressed in the courts.

### **Required Text**

Gerald N. Rosenberg, *The Hollow Hope, Can Courts Bring About Social Change?* 2nd ed. (Chicago: University of Chicago Press, 2008).

### **Supplemental Text (highly recommended)**

Robert A. Carp, Ronald Stidham, & Kenneth L. Manning, *Judicial Process in America*, 4th ed. (Washington, DC: CQ Press, 2011).

### **Additional Readings**

In addition to the required books, I will assign additional articles and court opinions that will be available on Blackboard: <https://courseweb.library.upenn.edu/>. These will be posted at least one week before class.

### **Assignments and Grades**

#### **Class Participation (40% of final grade)**

Because this class meets twice per week in a shortened session, it is essential that you come on time, stay for the entire class, and come prepared. Students are expected to participate in class discussions each week as a part of their overall grade. Class discussion formats will involve both small group and large group discussions. Class participation will be evaluated by:

1. Your overall attendance;
2. The quality of your five (4) reflective essays;
3. The quality of your in-class presentations on weekly assigned readings; and
4. The quality of your participation in class discussions.

## Reflective Essays

In addition to general in-class discussion, students are required to write four one-page reflective essays during the semester. Each essay should focus on the assigned reading for that week, although they may incorporate outside readings that enhance the assigned ones. Reflective essays must:

- a. Summarize the main ideas of the reading(s); and
- b. Analyze some dimension of the author's argument including evidence, logic, implications, etc.

The purposes of these essays are to help stimulate your thinking and imagination and get your ideas on paper. They will be graded pass/fail; they do not have to be grammatically precise, but they should be interesting. Essays should focus on the main ideas of the authors and your interpretation and/or assessment of those ideas. My hope is that in thinking through the readings this way, your classroom participation will be all the better. We want to encourage deep, critical, and systematic thinking, not coverage.

**You will hand in electronically four reflective essays during the summer session (one per week except for the final two weeks). Reflective essays are due every Friday.**

## **Policy Briefs (60% of final grade)**

### Overview and Elements of a Policy Brief

The policy brief is a document which outlines the rationale for choosing a particular policy alternative or course of action in a current policy debate. It is usually produced in response to a request from a decision-maker (such as a legislator or agency director) within an organization that is considering advocating for the position detailed in the brief.

There are usually two kinds of policy briefs, the "objective" brief and the "advocacy" brief. The objective brief provides a discussion of the policy issues and alternatives without arguing for a particular one; the advocacy brief provides an argument for the adoption of a particular policy. In most cases, however, the purpose of a policy brief is to convince the target audience of the need to address a particular problem and adopt recommendations outlined in the brief.

In preparing to write a policy brief, you must think about your target audience – who are you writing for and why? You must also research what are the strengths, weaknesses, opportunities, and threats (sometimes referred to as "SWOT" in business-speak) concerning the issue and decide what your key message is. The policy brief should be *focused* on achieving the goal of convincing your target audience; it should be written in *professional, understandable, and accessible, not academic*, language; it should be an *evidence-based argument* that the problem exists and what the *policy alternatives and consequences* are; it should be *limited* to the particular problem or part of the problem; it should be *short and succinct*, usually 5-8 double-spaced pages total (although I have seen policy briefs anywhere from as short as 1 page to 30-40

pages long); and it should be *practical and feasible*, with recommendations that seem realistic to the target audience.

There are a variety of ways of writing a policy brief, but in general a brief should contain the following elements:

- a. Title – Your title should aim to capture the reader’s attention, so try for something catchy but descriptive.
- b. Executive summary – This should be a short 1-2 paragraph description that summarizes your description of the policy problem; your statement on why the current policy (in this course a judicial ruling) needs to be changed; and your recommendations for action.
- c. Description of the problem – Your description should start with a statement of the problem or issue; an overview of the root causes of the problem; and a statement of the policy implications of the problem. This should be written clearly and succinctly, but with enough evidence to convince your audience that there is a problem.
- d. Critique of current policy approaches – This section aims to critique the shortcomings of current approaches to the problem; it usually includes a short overview of the policy in focus and argues why and how the current policy or approach fails. In this course, this should focus on why a court ruling needs to be changed or fails to address the problem. Although you are an advocate, you should recognize all opinions/positions on the issue.
- e. Policy recommendations – Your brief should end with a breakdown of specific steps or measures that can be implemented and include a closing paragraph that sums up.
- f. Appendices and references – Sometimes a policy brief will include an appendix to further support an argument along with a recommended list of readings for readers and researchers.

**You will write two policy briefs of 5-8 pages each during the session and hand them in to me electronically. Due dates are June 5 and June 29.**

#### Paper topics for policy briefs

For your policy briefs, you will analyze a particular U.S. Supreme Court case, another federal court case, or a state Supreme Court case, outline its importance and implications for social policy, and provide policy recommendations as described above. In the first brief, I ask you to pick from a pre-selected list provided below; in the second brief, you may choose any subject or case (including from the list below).

- a. *Citizens United v. Federal Election Commission* (2010) – The U.S. Supreme Court ruled that political donations are a protected form of free speech; while the government can ban donations by corporations or unions directly to candidates, it cannot limit spending by corporations or unions in advertisements that target a particular candidate or campaign.

- b. *Kelo v. City of New London* (2005) – New London, CT seized land through eminent domain from one private owner and donated it to a developer for purposes of economic development (Pfizer was to build a new pharmaceutical plant resulting in over 3,000 jobs); the U.S. Supreme Court ruled the seizure did not constitute a taking that violated the 5th Amendment’s clause limiting eminent domain only to public use.
- c. *McDonald v. Chicago* (2010) – The Court ruled the 2nd Amendment’s right to bear arms is applied to the states through the 14th Amendment and that Chicago’s handgun registration laws violated the 2nd Amendment; the decision brings into question all gun control laws at the state and local level.
- d. *Padilla v. Kentucky* (2010) – Jose Padilla had been a lawful resident for 40 years when he was arrested for transporting marijuana; his lawyer told him to accept a plea bargain in exchange for a lenient sentence and that he did not have to worry about his immigration status; Padilla was immediately put on a deportation list, and he claimed his 6th Amendment right to counsel had been violated; the U.S. Supreme Court reversed the lower court decision and ruled criminal defense attorneys must advise their non-citizen clients that pleading guilty to a crime in order to receive a lesser sentence could result in deportation.

### **Class Schedule**

May 22: Course Introduction, Research Basics, & the Foundations of U.S. Law

- Basics of the course and approaches to thinking about law
- *Chauvin, et al v. State Farm* (distributed on email)

May 24: The American Court System: Dynamic vs. Constrained Courts?

- The Hollow Hope, Introduction & Chapter 1

#### **Essay #1 due Friday, May 25 by email**

May 29: Race and Civil Rights: Jurisdiction and Policymaking

- The Hollow Hope, Chapters 2 & 3
- Optional readings: *Brown I* (1954) and *Brown II* (1955); *Milliken v. Bradley* (1974); on Blackboard

May 31: Desegregation and Resegregation: The Background of Federal Judges

- The Hollow Hope, Chapters 4 & 5
- Optional readings: *Gratz v. Bollinger*, *Grutter v. Bollinger* (2003); *Parents Involved in Community Schools v. Seattle School District*, *Meredith v. Jefferson County Board of Education* (2007); *Ricci v. DeStefano* (2010); on Blackboard

#### **Essay #2 due Friday, June 1 by email**

- June 5: Abortion and the Rights of Women: Linking the Courts with Social Policy
- The Hollow Hope, Chapters 6 & 7
  - Optional readings: *Roe v. Wade* (1973); *Planned Parenthood v. Casey* (1992); on Blackboard

**First Policy Brief due Tuesday, June 5 by email**

- June 7: Abortion and the Rights of Women: Litigants in the Courts
- The Hollow Hope, Chapters 8 & 9
  - Optional readings: *Stenberg v. Carhart* (2000); 2003 Partial-Birth Abortion Ban Act; *Gonzales v. Carhart* (2007); on Blackboard

**Essay #3 due Friday, June 8 by email**

- June 12: Conservative Legal Activism and Judicial Decision-Making
- McGarity, The Preemption War, p. xi-110 (on Blackboard)
  - Optional readings: Speeches by Edwin Meese, William Brennan, John Paul Stevens, and Robert Bork (1985); Federalist Paper #78; “What Is The Federalist Society?” (1992); on Blackboard

- June 14: Same-Sex Marriage and the Policing of Sexuality
- The Hollow Hope, Chapters 12 & 13
  - Optional readings: *Romer v. Evans* (1996); *Lawrence v. Texas* (2003); on Blackboard

**Essay #4 due Friday, June 15 by email**

**Classes Cancelled June 19 & 21**

- June 26: “Super Predators,” Juvenile Crime, and State Judicial Systems
- Butterfield, All God’s Children, p. 131-227 (on Blackboard)
  - Optional readings: “The Coming of the Super Predators” (1995); “Adolescent Development and the Regulation of Youth Crime” (2008); *Roper v. Simmons* (2005); *Graham v. Florida* (2010); on Blackboard\

- June 28: Child Welfare, State Judges, and the Civil Court Process
- Bernstein, Lost Children of Wilder, p. xi-101 (on Blackboard)
  - Optional readings: *Santosky v. Kramer* (1982); *Mississippi Band of Choctaw Indians v. Holyfield* (1989); 1994 Multiethnic Placement Act; 1997 Adoption and Safe Families Act; *Greene v. Camreta* (2010) (on Blackboard)

**Second Policy Brief due Friday, June 29 by email**