Law and Politics in Multicultural Democracies

Instructor: Dr. Ofrit Liviatan
Fall, 2016

Office Address:
6 Prescott Street 2nd floor Room 20
Tel: 617-495-0770
E-mail: oliviatan@gov.harvard.edu

Office Hours:
By appointment on
Mondays, 10am-12pm

Seminar’s Description:
The seminar aims to introduce students to the political function of the legal process in the governance of cultural diversity. With ethno-cultural diversification challenging political coexistence across the world, law and courts have become pivotal players in democratic governance. The seminar will provide a forum for thinking about law from a critical, sociological perspective rather than a purely legalistic approach. Drawing on examples from the USA, Western Europe, Canada, India, South Africa, Northern Ireland and Israel, the seminar will introduce major questions at the intersection of law, politics and culture, such as: (1) why is the legal process inherently political? (2) what happens when ideas of “rights” and “liberties” conflict with one another? (3) how is law mobilized and deployed by different agents and actors (judges, legislators, activists, etc.)? (4) is the legal system a feasible vehicle to resolve conflicts? and (5) under what conditions is it possible to use law to change society?

Seminar’s Organization –
Our exploration of the intersection of law, politics and culture will proceed in three parts. The first component of the seminar will focus on a theoretical introduction to the role of law in the governance of diversity and consider the leading debates on multiculturalism, the nature of law and its role in democratic societies. In the second part we will delve into the relationship between constitutionalism and democracy, the distinct features of the judicial process across different legal systems and the ability of courts to bring about social and political change. The final part of the seminar will be dedicated to a critical
examination of the disparity between “law in books” and “law in action” by way of case-study analysis of controversies over abortion, same-sex marriage, religious symbols in the public square, the treatment of minorities and other topics. Through these examples we will also explore law’s impact as a mechanism of conflict-resolution.

Requirements and Expectations:
(1) Each student is expected to attend all sessions, prepare all the readings prior to each session and contribute by active and thoughtful participation. Be sure to allow plenty of time to complete all the assigned readings and to give them adequate attention, otherwise you will find it difficult to keep up with the seminar’s themes or prepare the individual assignment. Moreover, some of the sessions include oral exercises that draw directly on the readings. Failure to prepare will limit your ability to substantially contribute to these discussions.
(2) One short individual assignment (5-6 pages) on the semester’s materials is due in hard copy at the beginning of the session on September 27. The assignment will be distributed in class one-week prior.
(3) Each student will submit a term paper (15-20 pages) by Thursday, December 1st at 2pm. Students may write on a topic of their choosing relevant to the interaction of law and politics, upon prior agreement with me. To jumpstart your term paper and allow for its revision in a friendly and non-graded setting, several stages will precede its final submission on the last day of class. A one-paragraph statement of your topic is due by Tuesday, October 18. An optional one-page outline of your paper is due on Tuesday, November 1st. The outline should introduce the topic, state the thesis/research question, and preview the relevant literature, data, research design, preliminary conclusions and bibliography (not included in the one-page limit). On Monday, November 14, I will hold optional individual meetings to discuss your outline, refine your ideas and to set forth a plan for a successful completion of the final paper. Finally, you will hold a 10-minute presentation of your work-in-progress in class on either on November 22 or November 29.
(4) All written assignments should be doubled spaced with 1” margins on all sides, 12 pt fonts and submitted as hard copies (not as an electronic submission). Sources should be accurately cited. Please consult the section on “Citing Your Sources” in the seminar's online Library Guide. You are free to follow your preferred citation style as long as you are systematic.

Grading and Assessment:
The final grade will be calculated as follows:
Regular attendance and active participation – 20%
Term Paper – 70%
Individual Assignment – 10%.
Late submission of written assignments will result in grade deduction – ½ letter grade for every 24 hours.
**Office Hours:**
Students are encouraged to make use of my office hours as much as needed for clarifications, testing and developing possible ideas for the term paper or for any other matter. Time slots during office hours tend to fill up quickly. Prior to coming in, please send me an email to schedule a specific time slot. If the designated office hours are not convenient for you, I will gladly make appointments at other times.

**Electronic Devices:**
During class sessions cell phones and other noise makers must be turned off. Laptops can be used for seminar-related purposes, but since they are often distracting to the user and to others it is highly recommended to keep them shut for the duration of the sessions.

**Academic Integrity:**
Students should be aware that in this course collaboration of any sort on any work submitted for formal evaluation is not permitted. This means that you may not discuss any of the paper assignments with other students. All work should be entirely your own and must use appropriate citation practices to acknowledge the use of books, articles, websites, lectures, discussions, etc., that you have consulted to complete your assignments.

**Readings:**
The following books have been ordered for purchase at the Harvard COOP:


Jeffrey A. Segal & Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Cambridge: Cambridge University Press, 2002). (Make sure to get the 2002 edition with the word “Revisited” in the title, and not the earlier version from 1993 entitled: *The Supreme Court and the Attitudinal Model.*)

All other assigned readings are available through the seminar’s website and in a reader that should be purchased at Gnomon Copy.

**Research Guide:**
A research guide, specifically designed to help students with their research for this class, is available on the Seminar’s website.
Schedule of Meetings:

Introductory Session (Wednesday August 30, 1-2 pm in CGIS K262) – Law’s Role in Society


Session II - The Challenges of Multiculturalism (Sept. 6)


Session III - The Functions of Law in Society (Sept. 13)

Plato, Crito (360 B.C.) Translated by Benjamin Jowett, pp. 1-9.

Karl L. Llewellyn, The Bramble Bush: Some Lectures on the Law and Its Study (New York, 1930), 1-15 (Ch. 1), 109-21 (Ch. 7).


Session IV - Constitutionalism vs. Democracy: The Counter-Majoritarian Dilemma

Federalist Papers # 78.


**Individual assignment will be distributed in class.**

Session V – Contemplating Constitutional Review Comparatively (Sept. 29)


Individual assignment due at the beginning of the session. Please bring a hard copy of your assignment to class. Late submission will result in grade deduction.

Session VI - The Impact of Judicial Review on Policy Making  
(Oct. 4)


Session VII - Constitutional Review in Practice  
(Oct. 11)

*Wisconsin v. Yoder* 406 U.S. 205 (1972)


**Read:** pp. 72-97.

*The Supreme Court and the Attitudinal Model Revisited*, **Read:** pp. 44-114, 349-351. **Skim:** 312-349.

Session VIII – The Rights Debate in Practice: Abortion and Same Sex Marriage  
(Oct. 18)


Topic (one paragraph) due.

Session IX – Religious Symbols in Public Spaces –
(Oct. 25)


*Lautsi and Others v. Italy* [2011] (Application no. 30814/06) European Court of Human Rights.

*R (Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15 (Great Britain).

Session X - Law, Politics, Gender and Religion
(Nov. 1)


The Muslim Women (Protection of Rights on Divorce) Act, 1986 (India).


Optional paper outline due. Late submission will not be accepted.

Session XI – The Function of Law in Deeply Divided Societies:
(Nov. 8) Northern Ireland and Israel


**Nov 14 - Optional Individual Meetings on Term Paper – My Office**

**Session XII – Conclusion – Law in Books vs. Law in Action.**  
(Nov. 15)


**Read:** pp. 95-124.


**Session XIII – Individual Presentations of Research Project**  
(Nov. 22)

**Session XIII - Individual Presentations of Research Projects**  
(Nov. 29)

**Hard Copies of Term Paper due in my mailbox at the Government Dept. on Thursday, Dec. 1 by 2pm. Late submission will result in grade deduction.**