Public Law and Judicial Process  
GOVT 301-001, Spring 2019  
George Mason University

Prof. Jonathan Crock  
Schar School of Policy and Government  
[Contact information and office location will be provided separately.]

Office Hours: Tuesdays and Thursdays 10:45 – 11:45 am, and by appointment

Class Held: Tuesdays and Thursdays 12:00 noon – 1:15 pm, Sandbridge Hall 107 (Fairfax)

Course Description

This course covers U.S. judicial organization and operation, the role of the U.S. Supreme Court in policy formation, and selected U.S. constitutional principles. A theme running throughout this course is the critical comparison of dominant schools of jurisprudence, feminist jurisprudence, critical race theory, critical class theory, intersectionality in jurisprudence, and critical legal studies on a range of public law issues. Topics the course will examine include: federal and state court systems, comparative judicial selection and removal, the legal establishment and legal education, access to justice, the criminal and civil systems, alternative dispute resolution, the appellate system and judicial policymaking, the democratic legitimacy of public law, lay participation in court systems, the public law of money, the relationship of public law to private law, the interconnection of U.S. public law and global law, extraterritoriality, and civil disobedience. The course will have a particular focus on the impact of rapid technological change on the future of the legal system.

Student Learning Outcomes

Upon successful completion of this course, you will be able to:

1. Comparatively describe and critique the organization and operation of U.S. federal and state judicial systems from the trial to appellate levels.
2. Explain and critique the operation of the criminal and civil systems and the growth of adjudication systems outside of the courts.
3. Critically assess the strengths and weakness of the U.S. legal system and judicial policymaking from orthodox, feminist, critical race, critical class, critical legal studies, human rights, and other perspectives.
4. Explain, problematize, and critique the division between public and private law.
5. Explain and critique the interconnections between domestic and international law.
6. Describe how money is a creation of public law and critically apply the public law of money to issues of political economy before the courts.
7. Understand and assess the impact of rapid technological change on the future of the legal system.
8. Independently conduct public law research using appropriate sources and research methods.
**Required Books (3)**


The Cato Institute makes the following book available for free download:


**Grading**

10% Participation:
   - 5% Classroom Participation
   - 1% Leading One Discussion in Class
   - 1% Moot Court 1
   - 1% Moot Court 2
   - 1% Imagining the Future of Public Law (in-class project)
   - 1% Research Presentation in Class

28% Exam 1

28% Exam 2

34% Research Paper:
   - 2% Paper Topic Submission
   - 32% Research Paper

**Assignments**

Participation (10%):

- **Classroom Participation (5%)**: This course is based on discussion. The required readings are essential, and you should come prepared to discuss the readings and answer questions in class. I will call on students to discuss the readings.

- **Leading Discussion in Class (1%)**: You will sign up for one day during the course when you will be called on to lead class discussion.
  
  1. You will first provide critical commentary on the readings. What do you think of the author’s arguments? In what ways do you agree or disagree with the author and why? How does this topic relate to you personally or people you know?
  
  2. You will prepare two questions to ask the class to spur discussion of the readings.

- **Moot Courts 1 and 2 (1% each)**: There will be two in-class moot courts for all students to participate in. The moot court dates are listed in the class schedule below.

- **Imagining the Future of Public Law (1%)**: There will be an in-class project on imagining the future of public law in the face of rapid technological change (see class schedule below).

- **Research Presentation in Class (1%)**: At the end of the course, all students will present their research project to the class (for 5 minutes) and participate in a question and answer session.
Exam 1 (28%): Exam 1 will cover the first part of the course. The exam date is listed in the class schedule below.

Exam 2 (28%): Exam 2 will focus on the second part of the course, but you will be expected to apply material from the entire course. The exam date is listed in the class schedule below.

Research Paper (34%):

In this course you will produce a research paper of 3,000 to 4,000 words on a public law topic of your choosing and submit it for publication to an appropriate forum (e.g., undergraduate law or public policy journal, etc.). Citations are included in the word count; use the citation format of the journal you intend to submit to. All due dates are listed below in the class schedule.

More ambitious research papers may be done as joint, co-authored projects. This requires pre-approval.

(1) Paper Topic Submission (2%): A two hundred word summary will be submitted on Blackboard along with a paper title, outline (the outline should be less than one page), and at least two ideas for places to submit the final article (listing each specific forum by name with a link to that forum’s specific instructions on how to submit); submit this as one Microsoft Word document (make sure the file has the .doc or .docx extension, particularly if you are using a Mac). Feedback will be provided on this submission. The due date is listed in the class schedule below.

(2) Final Paper and Submission (32%): A final paper of 3,000 to 4,000 words will be submitted to me and at the same time will be submitted to the identified publication forum. The paper should be submitted on Blackboard with proof the paper has been submitted to the identified publication forum (post a copy of the email submitting your paper or a screen shot of proof of your submission). Make sure the file you submit is a Microsoft Word document with the .doc or .docx extension (especially important for Mac users). The due date is listed in the class schedule below.

**Grading Scale**

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<tr>
<th>Grade</th>
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<td>A-</td>
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<td>B+</td>
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Rounding: Final grades are rounded to the nearest integer with half-way values rounded up (e.g., 89.50% is rounded to 90%; 89.49% is rounded to 89%).
Use of Technology in the Classroom

During lectures, you can use devices to take notes and reference information relating to the class. When your fellow students are making presentations or engaging in discussion in class, your use of tech devices can make it seem like you are ignoring and disrespecting your classmates—even if you are taking notes or looking up something related to the presentation or discussion. When your fellow students are speaking, give them your full attention and refrain from using your devices.

Inclusive Classroom

I seek to foster a learning environment that supports mutual caring and understanding and that promotes the full inclusion of every student and diverse voices in the course. Diverse perspectives and experiences are essential to critical thinking and learning and are a necessary part of working to end the reproduction of exploitative power relations.

All gender expressions and gender identities are welcome. I am happy to use your preferred pronouns. Please feel free to talk to me about having an inclusive classroom and course curriculum.

Disability Resource Center

Students with disabilities are most welcome in this course, and I will work with you and the Disability Resource Center to help you succeed. If you are a student with a disability and you need academic accommodations, please see me and contact the Disability Resource Center at 703-993-2474. All academic accommodations must be arranged through the Disability Resource Center.

Academic Integrity

Faculty in the Schar School have zero tolerance for academic dishonesty and will strictly enforce George Mason University’s honor code.

The Writing Center

The Writing Center offers free writing support. The center works with writers through all stages of the writing process from brainstorming and organizing to revising and polishing. To schedule an appointment, see: https://writingcenter.gmu.edu/
Class Schedule and Reading Assignments

Readings must be completed before the class under which they are listed.

[Below is a tentative reading list. The final reading list will be distributed in class.]

1. Tuesday, January 22: Introduction

2. Thursday, January 24: The Future of Public Law – Artificial Intelligence and the Future of the Legal Profession, Privatization of Public Law, Crises of Legitimacy: Democratic vs. Technocratic Legitimacy of the Judiciary
   **Read:**
   - Richard Susskind, *Tomorrow’s Lawyers: An Introduction to Your Future* (excerpts)
   - Pierre Bourdieu, “The Force of Law”

3. Tuesday, January 29: U.S. Constitution, Sources of Law
   **Read:**
   - Charles Beard, *An Economic Interpretation of the Constitution of the United States* (excerpts)

4. Thursday, January 31: Legal Reasoning, Feminist Jurisprudence, Class Crits
   **Read:**
   - Martha Chamallas, *Introduction to Feminist Legal Theory* (excerpts)

5. Tuesday, February 5: Critical Race Theory, Intersectionality, Critical Legal Studies (CLS)
   **Read:**
   - Chapter 1, “Protecting Minorities,” *The Case Against the Supreme Court*
   - Kimberlé Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color”

6. Thursday, February 7: Federal and State Court Systems, Judicial Selection and Removal
   **Read:**
   - Chapter 3, “Judicial Organization and Administration,” *The Judicial Process*
   - Chapter 4, “Judicial Selection and Removal,” *The Judicial Process*

7. Tuesday, February 12: The Legal Establishment, American Bar Association (ABA), Legal Education, Legal Ethics
   **Read:**
   - Chapter 5, “The Practice of Law,” *The Judicial Process*
   - Duncan Kennedy, “Legal Education and the Reproduction of Hierarchy”
8. Thursday, February 14: Access to Justice
   **Read:**
   - Chapter 6, “Access to Courts and Justice,” *The Judicial Process*
   - Documentary: *13th*, 2016

9. Tuesday, February 19: Criminal System
   **Read:**
   - Plea bargaining reading
   - Bill Black, financial crimes reading

10. Thursday, February 21: Civil System
    **Read:**
    - Chapter 8, “Trial Courts: Civil Cases and Litigation,” *The Judicial Process*
    - Legal equality reading

11. Tuesday, February 26: Alternative Dispute Resolution (ADR), privatized public law adjudication, investor-state dispute settlement (ISDS)
    **Read:**
    - ADR reading

12. Thursday, February 28: Appellate System, Judicial Policymaking
    **Read:**
    - Chapter 9, “Appellate Courts and Decision Making,” *The Judicial Process*
    - Chapter 10, “The Scope and Limits of Judicial Power,” *The Judicial Process*

13. Tuesday, March 5: Exam 1

14. Thursday, March 7: Public Law of Democracy
    **Read:**

**Spring Break**

15. Tuesday, March 19: Lay Participation—Lay Judges, Juries
    **Read:**
    - Clay S. Conrad, *Jury Nullification: The Evolution of a Doctrine*
   **Read:**
   - Puerto Rico debt crisis cases

17. Tuesday, March 26: Moot Court 1 (Puerto Rico debt case)
   **Read:**
   - Moot court packet readings

18. Thursday, March 28: Public/Private Law Binary
   **Read:**
   - Property law reading
   - Public/private binary reading

19. Tuesday, April 2: Domestic/International Law Binary, International Law in U.S. Public Law, U.S. Public Law as Global Law, Extraterritoriality
   **Read:**
   - History of U.S. courts overseeing China (Ruskola, *Legal Orientalism*)
   - Meng Wanzhou case
   - Alien Tort Statute reading

20. Thursday, April 4: Moot Court 2 (environmental law case, rights of future generations)
   **Read:**
   - Moot court packet readings

21. Tuesday, April 9: Civil Disobedience and Control of Popular Protest
   **Read:**
   - Thoreau, *On the Duty of Civil Disobedience*
   - King, “Letter from Birmingham Jail”
   - Protest case

22. Thursday, April 11: Can computers decide cases? Democratic vs. Technocratic Legitimacy
   **Read:**
   - Richard Susskind, *Tomorrow’s Lawyers: An Introduction to Your Future* (excerpts)
   - Reading on case outcome prediction algorithms

23. Tuesday, April 16: Imagining the Future of Public Law (in-class project)
24. Thursday, April 18: Exam 2

25. Tuesday, April 23: Research Discussions

26. Thursday, April 25: Research Discussions

27. Tuesday, April 30: Research Discussions

28. Thursday, May 2: Research Discussions

**Final Paper Due: Wednesday, May 15 by 6:00 pm**