Course Syllabus: Legal Studies 319
Law and the Regulatory State
Fall 2017 - 4 credits

Class Meeting: Tues & Thurs 2:30-3:45pm – Machmer Hall E-33
Course Webpage: moodle.umass.edu

Prof. Leila Kawar
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Office Hours: Thursdays 3:45-6pm and by appointment

Course Description
A key premise of modern governance is that the state has a responsibility to assure social welfare. Yet most constitutions say little about how social policy considerations should co-exist with traditional limits on state authority. Moreover, social policy making is often carried out by specialized administrators who are given substantial discretion to implement legislative directives, which raises a number of questions about the place of legality within the social state. This course is organized (roughly) chronologically, beginning at the turn of the 20th century with debates about the constitutionality of social policy and finishing with contemporary debates about the aims and values of social policy in the 21st Century.

Learning Objectives
By the end of the semester, you will be able to do the following:
• describe how the idea of “social rights” has developed over the 20th century
• follow the administrative rulemaking and adjudication processes through which the social state operates
• apply juridical frameworks to determine whether a given social policy violates private rights
• apply juridical frameworks to assess the legality of social policy administration
• critically evaluate proposals for delegating social policy administration to private economic actors

Texts
Required readings for this course are available as a course-pack purchased from Campus Design and Copy (403 Student Union). Additional readings will be posted on the course website.

Evaluations and Assessments Summary
Class Preparation and Engagement (10%)
Online reading responses (20%)
Short research assignments (25%)
Essay midterm exam (20%)
Final exam (25%)
Calendar of Major Assessments
Sept. 15 - Assignment 1
Sept. 29 - Assignment 2
Oct. 13 - Essay Midterm Exam Due
Oct. 27 - Assignment 3
Nov. 8 - Assignment 4
Dec. 8 - Assignment 5
December 19 - Final Essay Exam

SCHEDULE
(subject to change upon reasonable notice)

Introduction
9/5: What are the goals of social policy? What are our social policy priorities? Why would we want to regulate how employers treat their workers? Why would we want the government to provide a social “safety net”? Is there such a thing as a social right?

Comparing Strikes and Worker’s Compensation as Social Policy Tools
9/7: Debs, “The Federal Government and the Pullman Strike” (1904)

9/12: New York Central R. Co. v. White, 243 U.S. 188 (1917)

9/14: *Assignment #1 Due, upload to Moodle by 10am. Bring copy to class.

Wage and Hours Legislation as a Social Policy Tool
Themes: What was the relation of early 20th Century U.S. jurisprudence to laissez-faire political-economy? How did U.S. courts during this period involve themselves in political debates between laissez-faire and social regulation?

9/19: "The Case of the Stubborn Baker" in Urofsky, Constitutional Law Stories
Lochner v. NY (1905)
Justice Brewer, "The Nation's Safeguard" (1893)

9/21: *Assignment #2 Due, upload to Moodle by 10am. Bring copy to class.
Muller v. Oregon (1908); Adkins v. Children’s Hospital (1923); West Coast Hotel v. Parrish (1937)

The New Deal and "Industrial Democracy"
Themes: What were the aspirations of those who developed the New Deal’s regulatory state? How did they understand the role of "experts"? How did U.S. courts during this period supervise the New Deal’s newly-created institutional structures for regulating industrial relations and adjudicating industrial disputes? Which groups were left out of these new social policies?
9/26: Arnold, “Philosophy for Politicians” (1935)

9/28: National Labor Relations Board v. Fansteel, 306 U.S. 240 (1939); International Association of Machinists v. NLRB, 311 U.S. 72 (1940)

10/3: No class


Midterm Assessment

10/10: No class

10/12: Midterm Exam - No Class

The Birth of the Welfare State
Themes: To what extent did the post-WWII Welfare State guarantee social and economic rights? What procedural rules were put in place to govern the administration of these policies? What criticisms did welfare recipients formulate regarding the form of social policy administration?

10/17: President F.D. Roosevelt, “Address at Soldiers’ Field, Chicago, Illinois” (1944)

10/19: The Administrative Procedure Act (1946)

10/25: *Assignment #3 Due, upload to Moodle by 10am. Bring copy to class.
DeWitt, “The 1937 Supreme Court Rulings on the Social Security Act”
https://www.ssa.gov/history/court.html

Streaming video: “Welfare: a documentary by Frederick Wiseman”

Who Guards the Guardians?
Themes: How might courts supervise the individualized justice of administrative officials? Why did reformers in the 1960s and 1970s believe that a more assertive and searching form of judicial review of administration was a good thing?
To what extent have courts been willing to create justiciable social and economic rights?


Farina, "Due Process at Rashomon Gate: The Stories of Mathews v. Eldridge" in *Administrative Law Stories*

*Assignment #4 Due, upload to Moodle by 10am.* Bring copy to class.

11/7: *DeShaney v Winnebago County Dept of Social Services*, 489 U.S. 189 (1989)


**Facilitating and Stabilizing Flexible Employment Relations**
Themes: What is cost-benefit analysis? What were the aims of President Reagan and his supporters in limiting regulatory action to instances where it could be shown that benefits outweigh the costs of regulation? What are the advantages and disadvantages of having government administrators delegate regulatory tasks to private economic actors in the name of flexibility? How have courts contributed to ensuring flexible employment relations?


NY Times, “Neomi Rao, the Scholar Who Will Help Lead Trump’s Regulatory Overhaul” (July 9, 2017): [https://nyti.ms/2uZKubk](https://nyti.ms/2uZKubk)


11/30: *Assignment #5 Due, upload to Moodle by 10am.* Bring copy to class.

**Social Policy in the 21st Century: Precarious work, grey zones, and a return to grassroots organizing**

12/5: Bisom-Rapp and Coquaud, “The Role of the State towards the Grey Zone of Employment”

12/7: Fine and Lyon, “Segmentation and the Role of Labor Standards Enforcement in Immigration Reform”

**Conclusion**

12/12: Wrap-up and synthesis

**The final exam is due at 3:30pm on Monday, December 18.**
ASSESSMENTS AND EVALUATIONS

Class Preparation and Engagement (10%)

- I will take attendance at each class. If you miss more than four classes unexcused your grade may be lowered. If you miss more than six classes unexcused you risk receiving a failing grade in the course. Absences will be excused only for documented illness, documented family crisis, religious observance, and the like.
- I expect this classroom to be a participatory learning environment, with students listening and responding to one another respectfully. If you are not actively speaking and participating in class discussions, you can also receive participation points by coming to my office hours or arranging something with me to discuss the readings.
- At various points in the semester, you will do in-class work in small groups to provide you with hands-on experience in working through problems and questions. Part of your “preparation and participation” grade will be determined by how well your group functions, and how much you contribute to the group’s work.
- It is expected that you will bring a copy of the readings with you to class since they are the foundation upon which our class discussions will be built. We will refer to the readings often. Not having the readings with you will impact your “preparation and participation” grade.

Online Reading Responses (20%)

Before most classes, I will post a question on Moodle based on the assigned readings. You are responsible for answering this question in 200-250 words by 10am on the date for which the readings are assigned. A total of 17 questions will be posted over the course of the semester. The responses will be marked as satisfactory/unsatisfactory and allocated letter grades as follows:

- 16 or more satisfactory responses: A
- 14-15 satisfactory responses: B
- 12-13 satisfactory responses: C
- 10-11 satisfactory responses: D
- 9 or fewer satisfactory responses: F, and ineligible for a passing grade in the course

You may rewrite up to two “unsatisfactory” responses and submit them to me via email for re-grading. Rewrites will be accepted if they are submitted within one week of the date for which the readings were assigned.

Short Research Assignments for In-Class Discussion (25%), five total

Students will write five short essay assignments (750-1000 words) on topics that are distributed. The assignments aim to help you synthesize and extend the concepts covered in the course readings. Assignment due dates are listed on the syllabus and are graded on a simple 0-3 scale, where 0 = failed to turn anything in, or what was turned in was patently not a serious attempt to carry out the assignment, 1 = an attempt to meet the goals of the assignment that fails in some significant way, 2 = a good to excellent performance on the assignment, and 3 = exceptional effort. You can get an A on the assignments if you get all 2s and also participate actively in class discussion and debate on the day the assignment is due.
(the 3 is offered as an option for those who wish to apply extra effort to recover from one or more 0s or 1s, it will not put you over 100% on this portion of your grade). There are no make-ups for the assignments but you can always shoot for a 3, to partially make up lost points. Those wishing to shoot for a 3 on a given assignment should tell the instructor one class in advance in order to receive the relevant instructions. You should bring a hardcopy of the assignment to class and should also upload your assignment to Moodle by 10am on the date of the relevant class session.

Take-Home Midterm (20%)
There will be one take-home midterm. The midterm will include short-answers and short essays, and will invite you to synthesize the readings and material covered in class up until that point. You will have five days to complete the midterm. A midterm must be submitted to pass the course.

Final Exam (25%)
There will be a take-home final exam distributed on the last day of classes and due at the beginning of exam week on Moodle's Turnitin. The final exam will consist of two essays, each with word limits. While the exam will focus on the second half of the course, it will be difficult to complete without reference to course materials from the first part of the course.

Late Policy: The grade on an exam will be reduced 1/3 of a letter grade for every 24 hours it is late. Late work will be accepted only with the prior approval of Prof. Kawar. Requests for late submission must be made at least 48 hours in advance of the due date/time.

Essay and Assignment Formatting: Exam essays and assignments should be double-spaced, paginated, and fully referenced using the “in-text reference + list of works cited” method described in the “Guide to Referencing” handout posted on the course website.

A Word on Grammar: Students often ask whether they will be “graded on grammar.” The answer is both no and yes. “No” in the sense that grammar alone is not a grading criterion. But “yes” in the sense that bad grammar and awkward style detract from the argument and presentation. Errors in grammar make it difficult for a reader to follow an argument and go through the text. You are responsible for understanding the rules governing Standard Written English.

A Note on Grades: Please come to me with any questions or problems you may have with the class material. If you have concerns regarding your grade at any point, please see me as soon as possible to help find ways to improve. The sooner you contact me regarding concerns, the more I can do for you. I will not be able to accommodate students who contact us at the end of the semester with concerns about their grades. Extra credit is not offered for grade improvement.
CLASSROOM POLICIES AND PROCEDURES

Cell Phones/Texting/Computers
All cell phones must be turned off before entering the class. As a reminder: texting is distracting to your instructors and fellow classmates, not to mention impolite. If there is some reason that you need to have your phone out during the class period (i.e. expecting a call from a doctor or about an emergency situation), please speak to me about it before class begins.

Use of computers is discouraged in this course. Studies demonstrate that hand writing notes leads to better comprehension and retention of material. Computers are also distracting to the professor and other students. If you'd like to take notes on your computer, please let me know via email.

Academic Integrity
Plagiarism and cheating are violations of academic integrity and they will automatically result in failure in the course.

Scholastic dishonesty includes, but is not limited to, the submission of a piece of work that is, in part or whole, not one's own. When writing essays, sources must be cited and quotation marks must be used. As a general rule, scholastic dishonesty involves one of the following acts: cheating, plagiarism, collusion and/or falsifying academic records. Plagiarism – from the web or from any other source – and all other acts of scholastic dishonesty will be reported to the university.

Sharing Course Materials
Because grades are determined in part by course exams and homework assignments, sharing course materials or exam questions with other students is prohibited in this class. Violation of these guidelines may constitute academic dishonesty, which is prohibited by the Code of Student Conduct and subject to disciplinary action.

Barrier-Free Campus
If you need an accommodation for a disability, please let Prof. Kawar know at least two weeks prior to the time when the accommodation will be needed. Some aspects of this course, the assignments, the in-class activities, and the way the course is usually taught may be modified to facilitate your participation and progress. As soon as you make me aware of your needs, we can work with the Office of Disability Services (tel. 413-545-0892 Voice/TTY; http://www.umass.edu/disability) to help us determine appropriate academic accommodations. Disability Services typically recommends accommodations through a Verified Individualized Services and Accommodations (VISA) form. Any information you provide is private and confidential and will be treated as such.

Email
I will use the class list to communicate with the class and I expect that you will check your school email address regularly. E-mail is also the best way to get in touch with me. Please be aware that it may take me up to 24 hours to respond to your e-mail and that I check email less frequently on weekends. On the night before exams or other assignments are due, I can guarantee that I will answer any questions that I receive by email before 10pm. After that, I may or may not be able to answer the question before the assignment/exam is due.