

University of California, Berkeley
Department of Political Science

Fall Semester 2007
Professor R. Kagan

Political Science 150
The American Legal System

Reading in Reader for sale via Odinreaders.com or at Ned's Books on Bancroft Ave., just west of Telegraph. Shaded readings not in printed Reader, but will be posted on B-Space for this course.

Week 1

I. THE AMERICAN LEGAL SYSTEM AND AMERICAN GOVERNMENT

Overviews

- Geoffrey Hazard & Michele Taruffo, *American Civil Procedure: An Introduction* (1993), Ch. 2, "The Legal System and the Structure of Government," pp. 29-50
Robert A. Kagan, "Adversarial Legalism and American Government," in Marc Landy & Martin Levin, *The New Politics of Public Policy* (1995) pp. 88-93

Week 2

II. THE POTENTIAL OF LAW

A. Social Control and Orderly Dispute Settlement

William K. Muir, Jr. (2003) "Anarchy" from *An Understanding of Democracy*, pp 1-9, 29-32

Mario Puzo, *The Godfather* (1969), pp. 1-2.

W. Stevens, "Philadelphia Trash Haulers Ordered Back To Work," *NY Times*, July 17-20, 1986

"Gilmore v. Columbia Falls Aluminum Co," from Robert A. Kagan, *Adversarial Legalism* (Harvard University Press, 2001) pp. 100-102

B. Regulating the Struggle for Political Power

Charles Lindblom, *Politics and Markets* (1977), pp. 119-130.
U.S. v. Nixon, 418 U.S. 683 (1974).

C. Promoting Social Change

Lawrence M. Friedman, *American Law in the 20th Century* (2002) pp. 284-94, 297-302

D. Regulating The Struggle for Economic Power and Resources

Leon Litwack, ed., *The American Labor Movement* (1962) pp. 15-25, 84-90, 120-121, 151-152.

Susan Seager, "Saving the Earth." *California Lawyer*, Apr. 1991, pp. 33-43.

Week 3

III. THE LIMITS OF LAW

A. Political Power and The Fragility of Legality

Guy Chazan, "Benched: In Russia's Courts, A Judge Speaks Up -- And Gets Fired," *Wall St. Journal*, August 5, 2004; Page A1

"A Necessary Evil?" *The Economist*, July 12, 2003, pp. 26-28

R.A. Kagan, *Adversarial Legalism* (2001): pp. vi-x

B. The Limits of Judicial Authority

Gerald Rosenberg, *The Hollow Hope* (1991, excerpt from S. Macaulay et al, *Law & Society* (1995), pp. 574-89

C. The Costs of Justice and Legal Inefficacy

J. Sexton, "Opening the Doors on Family Court's Secrets," *NY Times*, Sep.13, 1997, p.1

S. Freedman, "Bronx Child's Fatal Fall Retraces Sad Pattern," *NY Times*, July 31, 1986.

T. Walker, "Crusade to Replace Unsafe Security Bars," *S. F. Chronicle*, June 17, 1997

D. How Legal Complexity Engenders Injustice

Hamlin Garland, "The Lion's Paw" from E. Curren-Garcia & W. Patrick, eds., *American Short Stories* (1964) pp. 296-309

Marc Galanter, "Why the 'Haves' Come Out Ahead?" from *The Structure of Procedure* (1974), pp. 199-211.

Week 4

IV. POLITICS AND LAW

A. Three Types of Politico-Legal Orders

Robert A. Kagan, "On 'Responsive Law'", in R. Kagan, M. Krygier & K. Winston, eds., *Legality and Community*. Rowland & Littlefield, 2002, pp. 85-98

Repressive: Otto Ulc, *The Judge in a Communist State* (1972) pp. 130-33, 140-41.

Autonomous: Robert Cover, *Justice Accused; Antislavery and The Judicial Process* (1975) pp. 1-7

Responsive: *Gideon v. Wainwright*, 372 U.S. 335 (1963)

B. How Political Structure Affects Law

Robert A. Kagan, "American Courts and the Policy Dialogue," in M. Miller & J. Barnes, eds., *Making Policy, Making Law*. Georgetown U. Press, 2004) pp. 13-34

P.S. Atiyah and Robert Summers, *Form and Substance in Anglo-American Law* (1987) "The Makers and Making of Statute Law," pp. 298-323

C. Making Law -- Judges or Politicians?

Lawrence Friedman, *A History of American Law* (1973), pp. 93-117.

Lochner v. New York, 198 U.S. 45 (1905).

Roe v. Wade, 410 U.S. 113 (1973) from W. Cohen and J. Kaplan, *The Bill of Rights* (1976), pp. 577-593

Lief Carter & Thomas Burke, *Reason in Law*, 7th Ed.. (2007), "Law and Politics: The Case of Terry Schindler Schiavo", pp. 163-187

Week 5

D. Choosing Judges: Politics or Professionalism?

D. Meador, "German Appellate Judges: American-English Comparisons," *Judicature*, June-July 1983, pp. 16

P. Atiyah & R. Summers, *Form and Substance in Anglo-American Law* (1987) pp. 336-358.

H. Moss, "On Judging Judges," *Wall St. J.*, July 19, 1996, p.A12

Jack Bass, *Taming the Storm*, pp. 323-336.

J. Gottschall, "Reagan's Appointments to the U.S. Courts of Appeals." *Judicature* (June 1986) pp.49-54

J. Wold & J. Culver, "The Defeat of the California Justices," *Judicature* (April/May 1987) pp. 348-55.

V. LITIGATION, ADJUDICATION, AND ADMINISTRATIVE AGENCY DECISION-MAKING

Week 6

A. Criminal Cases

Stephen Adler, *The Jury: Disorder in the Courts* (1994), "The Awful Court of Judgment"

Robert A. Kagan, *Adversarial Legalism* (2001), pp. 61-81

J. Fritsch & D. Rohde, "Lawyers Often Fail New York's Poor" and "For the Poor, A Lawyer with 1,600 Cases," *NY Times*, April 8, 9, 2001

B. Civil Disputes

Robert A. Kagan, *Adversarial Legalism* (2001) pp. 99-125

Week 7

C. Decision-making in Administrative Agencies

Jerry Mashaw, "Welfare Administration and Aid to Families with Dependent Children in Virginia," *57 Va. L. Rev.* 818-39 (1971)

Goldberg v Kelly, 397 U.S. 254 (1970), from Choper et al, *Constitutional Law*

R. A. Kagan, *Regulatory Justice* (Russell Sage Foundation, 1978) pp. 5, 37, 85-97

Ming H. Chen "Deciding Asylum Claims: Preliminary Results" (2006)

WEEK 8

VI. COPING WITH HAZARDS

A. Tort Law: Common Law Policymaking by Judges

Lief Carter and Thomas Burke, *Reason in Law*. Chapter 3: "The Common Law" pgs 36-52

B. Legal Culture and Expectations of Legal Protection

Lawrence M. Friedman, *Total Justice* (1985) pp. 39-67

C. Compensating Accident Victims: Tort Law and Insurance

Robert A. Kagan, *Adversarial Legalism* (2001) pp. 126-147

Stephen Adler, *The Jury* (1994) "The Wizards of Odds"

Week 9**C. Regulating Hazards**

Thomas Erdmann et al, "Tap Water Burn Prevention: The Effect of Legislation," *Pediatrics* 88: 572-77 (1991)

Paul Portney, "How Not to Create A Job", *Regulation*, (Nov/Dec 1982) pp. 35-39

Robert A. Kagan, *Adversarial Legalism* (2001) pp. 181-206

David Barstow, "A Trench Caves In," *N.Y. Times*, Dec, 21, 2003, Sec. 1, p.1

Robert A. Kagan, "Environmental Management Style and Corporate Environmental Performance," in C. Coglianese & J. Nash, eds. *Leveraging the Private Sector* (Resources for the Future, 2006), pp. 31-45

Week 10**VII. LAWYERS AND THE LEGAL SYSTEM****A. Lawyers, Dispute Resolution and Social Control**

M. Torgov, "Fear of Lawyers" *This World, San Francisco Examiner*, Dec. 27, 1987, p.19

A. Sarat & W. Felstiner, "Law and Strategy in the Divorce Lawyer's Office" *20 Law & Soc'y Rev.* 93 (1986), edited version from S. Macaulay et al, *Law & Society* pp. 872-900

B. Lawyers and Legal Policy-Making

Robert A. Kagan, "Do Lawyers Cause Adversarial Legalism?" *19 Law & Social Inquiry* 6-9, 15-38 (1994)

David Vladeck, "Unreasonable Delay, Unreasonable Intervention: The Battle to Force Regulation of Ethylene Oxide," in P. Strauss, ed., *Administrative Law Stories* (Foundation Press, 2006), pp. 190-226

Week 11**VIII. REDRESSING INEQUALITIES****A. Discrimination and Poverty**

Lawrence M. Friedman, *American Law in the 20th Century* (2002) pp. 302-310

Friedman, *American Law in the 20th Century* – see reading from Week 2

Paul Burstein & Mark Evan Edwards, "The Impact of Employment Discrimination Litigation on Racial Disparity in Earnings," *28 Law & Soc. Rev.* 79-85, 90. 105-08 (1994)

D. Gaiter, "Eating Crow: How Shoney's, Belted By a Lawsuit, Found the Path to Diversity," *Wall St. Journal*, April 16, 1996

Devah Pager & Bruce Western, "Race at Work: Realities of Race and Criminal Record in the NYC Job Market" (2005)

Jane Gross, "Jury Awards \$7.1 Million in Sex Case," *Wall Street Journal*, Sept. 2, 1994, p. A8

R. A. Kagan, *Adversarial Legalism* (2001) pp. 159-175

Week 12**B. The Struggle for Equal Educational Opportunity**

J. Harvey Wilkerson, *From Brown to Bakke: The Supreme Court and School Integration, 1954-1978* (1979) pp. 216-249

Peter Irons, "Demetrio Rodriguez v. San Antonio," in Irons, *The Courage of Their Convictions* pp. 283-93

R. A. Kagan, *Adversarial Legalism* (2001) pp. 175-180

Ross Sandler & David Schoenbrod, *Democracy by Decree: What Happens When Courts Run Government* (Yale U. Press, 2003) pp. 45-97

Week 13**C. Labor Relations**

R. Kagan, "How Much Does Law Matter? Labor Law, Competition, and Waterfront Labor Relations in Rotterdam and U.S. Ports," 24 *Law & Soc'y Rev.* 35-65 (1990) .

C. Sharpe, M. Crain & R. Schiller, "The Story of *Emporium Capwell*: Civil Rights, Collective Action and the Constraints of Union Power," in L.Cooper & C. Fisk, eds., *Labor Law Stories* (Foundation Press, 2005) pp. 241-79