

University Of Arkansas Clinton School Of Public Service
Ethical And Legal Dimensions Of Public Service

Course Description

Ethical and legal considerations shape every aspect of effective leadership in public service. This course will provide an overview of the primary ethical principles and legal concepts that guide difficult decisions in the public realm. Traditional academic study of ethical and legal theory will be combined with practical approaches to problem solving. Students will explore issues of economic, political, and social justice through case studies of current issues.

Course Objectives

Students will be able to:

- Identify ethical dilemmas and issues of social justice
- Explore and evaluate alternative solutions to ethical problems
- Consider the global implications of one's decisions
- Identify legal problems and resources to address them
- Identify the challenges and the advantages of use the legal system to accomplish change
- Provide leadership in creating an ethical climate in an organization

Grades

There will be a final exam, divided equally between ethics and law, that will count for 50% of your grade for the course. You will develop and present two case studies with a small group of your classmates that together will count for the remaining 50%. Half of that grade will come from the joint presentation and half from your own written analysis of the cases.

Students will be expected to read the assignments carefully and thoughtfully before class and be prepared to help structure each class session by their *questions* and *reactions* to the readings. Bring specific questions or comments to class. Cases will be discussed in class to hone the skills of case analysis and deliberation. Participation is thus essential to the success of the course and may add up to 5 points toward the final grade.

Grading scale: 90=A, 80=B, 70=C, 60=D.

Schedule Of Topics And Readings

INTRODUCTION TO LAW AND THE LEGAL PROCESS

Topics

Common Law system vs. Civil Law system
Structure and role of American courts and legislatures
Framework of International Law

- **Readings**
- La Porta, et al, *Judicial Checks and Balances*, 112 JOURNAL OF POLITICAL ECONOMY 445 (2004).
- Grajzl, *Lawyers And Politicians: The Impact Of Organized Legal Professions On Institutional Reforms*, 17 CONSTITUTIONAL POLITICAL ECONOMY 251 (2006).

ROLES OF LAW AND LAWYERS IN PUBLIC SERVICE

• **Topics**

▪ **The Basic Models of Public Service**

- Government Official
- Social Justice Activist
- CEO/Corporate Form
 - ◆ Non-Profits
 - ◆ For Profit
 - Privatized Government Service
 - Social Entrepreneur
- Philanthropy/Charity

- Volunteer
- **The Basic Legal Devices Used by Public Servants**
 - Litigation
 - Political Activity (lobbying, grassroots organizing, etc)
 - Service Delivery
- **The Core Substantive Legal Areas**
 - Constitutional Law
 - Legislative Process
 - Administrative Law
 - Business Law
 - International Law (public and private)
- **Readings**
 - Trubek and Farnham, *Social Justice Collaboratives: Multi-disciplinary practices for People*, 7 Clin. L. Rev. 227 (2000).
 - EXCERPTS FROM AUSTIN SARAT AND STUART SCHEINGOLD, EDS. *CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA*. New York: Oxford University Press, 2001.

ETHICS AND LAW IN CONFLICT

- **Topics**
 - The Relationship of Law and Ethics
- **Readings**
 - Sophocles, *Antigone*

ETHICS AND SOCIAL INSTITUTIONS

- **Topics**
 - Ethics and cultural norms
 - Ethics and religion
- **Readings**
 - James Rachels, *The Elements of Moral Philosophy, Chapters 1, 2, 4*

RULES, CONSEQUENCES, AND THE COMMON GOOD

- **Topics**
 - Following rules
 - Conflicting sources of rules: religion, culture, codes of ethics, reason
 - Resolving conflicts of rules
 - Making exceptions to rules
 - Loyalty to special relationships; justice and mercy
 - Achieving good results: individual good, aggregate good, and the common good
 - Conflicting communal goods: local, national, global, and future communities
- **Readings**
 - Rachels, *The Elements of Moral Philosophy, Chapters 6-8*.
 - Handouts

CASE STUDIES IN ETHICS

Students will develop case analyses in small groups and present to the class for discussion. There will be one grade for the group presentation and a second for each individual's written analysis. Group membership and the content of the cases will be assigned by the professor.

A TALE OF TWO LAWYERS: JOHN W. DAVIS AND THURGOOD MARSHALL

- **Topics**
 - ***How Life Experience Shapes Public Service Leaders***
 - Compare Marshal and Davis.
 - How they provided leadership to their legal teams
 - How they used the social science data
 - How they organized and delivered their argument
 - How they understood their roles

- What accounts for Marshall's respect for and deference to Davis?
- The (contested) Definition of Public Service
 - Did they both render Public service?
 - Marshall earned a salary but Davis took the case for free. Does that make a difference?
 - They both believed in the "rightness" of their cause. Does that matter?
 - They both believed in the social good that would result from a decision in their favor and the social harm that would come from a decision against them. Did *Brown* play out the way either of them expected?
- **Readings**
 - WILLIAM HARBAUGH, JOHN W. DAVIS: LAWYER'S LAWYER (1973) pp. 483-519.
 - Diana Klebenow & Franklin L. Jonas, *Peoples' Lawyers* (2003) pp. 242-275.

"MANAGING" SOCIAL AND LEGAL CHANGE

- **Topics**
 - *The (inevitable?) clash of client interests, movement visions, and the legal system's values.*
 - *How social change movements sustain themselves and adapt to new circumstances.*
 - *How the legal system facilitates and impedes social change.*
- **Readings**
 - Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests*, 85 YALE L. J. 470 (1976).
 - Bell, *Interest Convergence Covenants*, Chapter 5 in SILENT COVENANTS (2004)
 - Charles Ogletree, ALL DELIBERATE SPEED (2004) Chapter 9.
 - Kara Miles Turner, *Both Victors and Victims: Prince Edward County, Virginia, the NAACP, and Brown*, 90 VA. L. REV. 1667 (2004).
- **Questions:**
 - Compare Marshall and Dr. King. Why did Marshall distance himself from King?
 - Is the clash of pragmatic client interests and movement vision inevitable?
 - How does a person justify choosing one over the other?

SOCIAL CONTRACT, HUMAN RIGHTS AND DEMOCRACY

- **Topics**
 - Morality in the international arena
 - Among nations
 - Within multinational organizations
 - Human rights and international law
 - Justifying democracy: furthering the common good, and securing human dignity
 - Pure and representative democracy
 - Civil disobedience
 - Democracy and leadership: following one's own lights or public opinion?
 - Democracy in organizations
- **Readings**
 - J. Rachels, *Elements of Moral Philosophy*, Chapter 10
 - J. J. Rousseau, selections from *The Social Contract*
 - Shawn Spano. *Public Dialogue and Participatory Democracy*, Chapter 2

GLOBALISM AND SOCIAL JUSTICE

- **Topics**
 - Justice and equality
 - Of treatment
 - Of opportunity
 - Of outcome
 - Justice, loyalty, and identity
 - The "curse of bigness": local communities in the global world order
 - Justice, mercy, peace and harmony

- **Readings**

- T. Beauchamp, *Philosophical Ethics*, Chapter 9: *Justice*
- Thomas Friedman, *The World Is Flat*, Chapter 4
- Michael Sandel, *Public Philosophy*, Chapter 1
- Kwame Anthony Appiah, *Cosmopolitanism* (selections)
- D. Tutu, *Truth + Reconciliation*, Greater Good, Vol. 1, No. 2 (Fall 2004)
- A. Lazare, *Making Peace through Apology*, Greater Good, Vol. 1, No. 1

GUEST LECTURER: ALLEN BUCHANAN

THE CORPORATE FORM AND PUBLIC SERVICE: NGO'S, PUBLIC SERVICE AND THE LAW

- **Readings**

- **Topics**

- The Corporate Form
 - Non-profit corporations - REVISED MODEL NONPROFIT CORP. ACT (1987).
 - Social Enterprise
 - Challenges and Legal Issues
 - Resources, Fiduciary responsibilities and Accountability
 - Consequences of Privatization

- **Readings**

- Young, Social Enterprise in the United States: Alternate Identities and Forms (Paper presented at EMES Conference, December 2001).
- Hopkins, Social Entrepreneurs Brief Guide to Law appearing in Dees, *Enterprising Nonprofits* (1998).
- Lasoprogata and Cotten, "Contemplating Enterprise:" The Business and Legal Challenges of Social Entrepreneurship, 41 *Am. Bus. L. J.* 67 (2003).
- Wade, Lessons from a Prophet on Vocational Identity: Profit or Philanthropy, 50 *Ala. L. Rev.* 115 (1998).
- James G. Wiehl, *Roles and Responsibilities of Nonprofit Health Care Board Members in the Post-Enron Era*, 25 *J. LEGAL MED.* 411 (2004)

THE INTERNATIONAL DIMENSION OF PUBLIC SERVICE

- **Topics**

- Basic forms of international public service organizations
- The challenges of international public service
 - Cultural and legal values
 - Public vs. Private sector
 - Colonialism
 - Brain Drain from Private sector
- International NGO's
 - The basic form
 - Kinds

- **Readings**

- Maru, *Paralegals and the Provision of Justice Services in Sierra Leone*, 31 *YALE J. INTL. LAW* 427 (2005).
- Kalb, *The Institutional Ecology of NGOs: Applying Hansmann to International Development*, 41 *TEX. INTL. L. J.* 297 (2006).
- ACCESS TO JUSTICE: A Review of the Justice System in Aceh, Indonesia (2003)
- EXCERPTS FROM AUSTIN SARAT AND STUART SCHEINGOLD, EDS. *CAUSE LAWYERING AND THE STATE IN A GLOBAL ERA*. New York: Oxford University Press, 2001.

LEGAL CASE STUDIES – Students will work in groups of three to develop a legal strategy to accomplish an assigned goal for a hypothetical public service entity. Group membership and the content of the hypothetical problems will be assigned by the professor.

Academic Integrity

All work you present to us should be your own. It is fine to study or prepare for class with others, but papers, presentations and assignments should be individual efforts. Plagiarism includes (but is not limited to) adopting or appropriating for one's own use and/or incorporating in one's own work, without acknowledgement, passages, parts of passages, tables, photographs, models, figures, and illustrations from the writings or works of others; thus presenting such as a product of one's own mind. Any student who plagiarizes may be subject to **any or all** of the following sanctions: receiving a zero on the written work, receiving a reduced grade for the course in which the plagiarism occurred, being suspended from registering for one or more semester(s), being required to enroll in a short course on graduate level writing, being required to comply with any other appropriate remedy as proposed by the Associate Dean, and/or being dismissed from UACS.

You should keep digital copies of all written work for this class. I reserve the right to request a digital copy of your work.

Plagiarism on any assignment in this class will at minimum result in an "F" for the assignment. I reserve the right to pursue further disciplinary action if appropriate. I strongly recommend students maintain a record of the preparation of their assignments.

Student Accommodation

It is the policy of UACS to accommodate students with disabilities, pursuant to federal and state law. Any student with a disability who needs accommodation, for example in seating placement or in arrangements for examinations, should inform instructors at the beginning of the course.