LAW, SOCIETY AND CULTURE

“The life of the law has not been logic; it has been experience.”
Oliver Wendell Holmes, THE COMMON LAW (1881)

PURPOSE AND OBJECTIVES
This course functions as a survey of modern Supreme Court jurisprudence. We will review in detail several landmark cases, with a specific focus on how court texts were both informed by and influenced broader trends in American society. Emphasis will be placed on the distinguishing features of common law method, and students will use close reading techniques to identify the defining discourse characteristics of the U.S. judicial opinion. Film viewings and readings from literature will be used to complement our understanding of how law relates to culture. Required in-class writing and discussion exercises will reinforce content and skills mastery, and a final "fact pattern" style exam will be administered.

Our course content will complement learning objectives in your other first semester classes, such as evaluating legal arguments and using legal vocabulary as well as terms of art.

We will also focus on core reading, speaking and analytic skills, such as:

- forming connections across texts and discerning how legal doctrines evolve over time
- responding to questions either voluntarily or in Socratic method
- situating case law in a historical or cultural context

MEETINGS AND OFFICE HOURS
Our seminar will meet each Wednesday morning (9:00am sharp!) in McDonough 110. Please drop in whenever my door is open. I will maintain regular office hours on Thursdays from 10am – noon.

GRADING AND CLASS EXPECTATIONS
Class is more educational & enjoyable when everyone is well prepared to discuss the assigned readings. Honors grades may be given to students who produce consistently high-quality work and make important contributions to our classroom discussion. Regular attendance, in-class participation and satisfactory completion of all written assignments are required to receive a grade of Pass. You must let me know in advance if you have a legitimate excuse as to why you cannot attend a class meeting. I also expect students to frequently check email and Canvas for updates to our class syllabus.

PLAGIARISM
Common law lawyers cite to legal authority to provide credibility for their argument, to reference broader conversation on a point of law and – most importantly – to give credit to the original source of an idea or fact. Proper attribution is a core value and formative to the ethical code of the lawyer.

Please be aware that your work in this course is subject to the Georgetown Plagiarism Policy. See 109-10 of the Georgetown Law Student Handbook of Academic Policies (Conduct Policies) (http://www.law.georgetown.edu/campus-services/registrar/handbook/upload/2016-2017-Student-Handbook-08-11-16.pdf) for more instructive guidance. Feel welcome to approach me about any questions on this topic.
Week 1: The U.S. Supreme Court, the Judicial Opinion and Strategic Litigation

Welcome to Law, Society & Culture! This week we will review the design and expectations of our course. We will discuss the constitutional history of the United States, American Federalism and the U.S. Court System, as well as the institutional and rhetorical contexts of the Common Law Judicial Opinion. Professor Robert Ferguson has described the unique discourse factors (purpose, audience, tone, organization) that inform the construction of the U.S. judicial opinion. By understanding how the judicial opinion functions as a genre, we can develop strategic reading skills so that we can more efficiently read case law. We will look in detail at the Civil War Amendments as well as the social history that tracks their origin and evolution. In the second half of class we will begin watching the Gregory Peck film adaptation to To Kill a Mockingbird.

Assignments:  
Plessy v. Ferguson  
Excerpts from LAWRENCE ROSEN, LAW AS CULTURE (“Creating Facts” & “Filling in the Facts”)

Week 2: Deconstructing “Separate but Equal” (September 7)

This week we will continue our discussion of the Supreme Court & the Judicial Opinion, with a particular focus on the distinguishing characteristics of the Judicial Dissent. Socratic Questioning today will center on the Plessy v. Ferguson opinion. Focus on how the factual context of the case relates to the legal analysis of the court. How is race constructed in the law? To what extent is the U.S. Constitution a “color-blind” document? How do shared notions of America inform Supreme Court jurisprudence? Consider how these questions intersect with our viewing of the conclusion to To Kill a Mockingbird.

Assignments:  
Sweat v. Painter  
Brown v. Board of Education

Week 3: Imagining Brown v. Board

This week we will think about equality in the context of the American classroom. Do you have any instincts as to why this line of doctrine begins with a case involving law students and then moves to the primary school classroom? How does this reflect the use of strategic litigation by advocacy groups with long-term goals? We will focus on how court lexicon (vocabulary) and court tests for educational equality evolve over time. We will also question the use of “non-legal” authority by American courts, and whether social facts are explicitly cited by the unanimous Brown decision. Are you surprised by the citation to social psychologist Dr. Kenneth Clark and the “doll experiment”? Is this kind of citation a form of authoritative precedent, or is it something else?

Assignments:  
“Brown v. Board of Education and the Interest-Convergence Dilemma” (Bell)

Week 4: Re-writing Brown

This week we renew our conversation on the relationship between the Supreme Court and American society. What is the coercive power of the published opinion – is “the pen [truly] mightier than the sword” (Lytton)? Or does the court require the (potentially violent) backing of the state for its opinions to enjoy the force of law? The genre of U.S. Academic Legal Writing will also be introduced this week. Academic legal writing represents a special kind of legal writing. It can be learned, prescriptive, responsive to a practical problem, or all of these things. Why does Prof. Derrick Bell think Brown was written? Do you agree with him?

Assignments:  
Korematsu v. United States  
“In Defense of Dissents” (Brennan)
Week 5: Dissent Writing and Rhetoric

This week we pick up on our Week 2 discussion on the distinguishing discourse factors of the Judicial Dissent. Who is the audience(s) of a dissent? What is the purpose(s) of a dissent? Who is Justice Jackson writing for and what is he trying to achieve in his Korematsu dissent? The introduction of Aristotle’s “rhetorical triangle” (credibility, logic, empathy) provides a useful prism for unpacking the distinctive argument conventions of the dissent. We also re-ask our perennial question of the influence of society on the Supreme Court – should emergency political situations change the calculus of judicial decision-making? Are emergencies merely a reflection of judicial framing, or do they exist in reality? Consider these questions as we begin our film viewing of Snow Falling on Cedars.

Assignment: The SCOTUS October Term opens October 4. You are to attend Oral Arguments for either the U.S. Supreme Court, or another local court and write a short summary.

Week 6: Korematsu’s Future

This week we will share our thoughts on attending Oral Arguments. How would you describe court culture and its use of language? We will also conclude our viewing of Snow Falling on Cedars, and you will complete an in-class writing assignment in which you cite to texts and classroom discussion points to support your argument.

In-class essay: Evaluating Justice Jackson’s dissent in Korematsu.

Assignments: Lawrence v. Texas Windsor (SDNY)

Week 7: Language and the Law – From Gay Marriage to Marriage Equality

This week we contextualize our theme of legal equality within the personal freedom to choose one’s romantic identity. Does Justice Kennedy frame this issue in the way you would expect? Is it common for high court justices in your home country to write with this kind of poetic ambition? Related, to what extent should American courts consider our “global society” and trends in other nations? Is U.S. culture now part of a globalized, transnational culture? We also begin our review of the Windsor line of cases. Why do you think Edie Windsor was selected to be the plaintiff here? How do the personal stories of parties to cases affect Supreme Court history?

Assignments: Windsor (2nd Circuit majority opinion & SCOTUS opinion)

Week 8: Evolving Notions of Equality

This week we trace the evolution of a specific equal protection case from district court to appellate court to U.S. Supreme Court. Are you surprised by how each judicial opinion seems to treat the same factual context differently? Does this reflect a consensus on marriage equality or instead ideological discordance? Also, what does this fragmentation indicate about Supreme Court jurisprudence on the Fourteenth Amendment. To what extent does stare decisis bind the Supreme Court? To what extent should it?

Assignments: United States v. Virginia “A Jury of Her Peers” (Glaspell)
Week 9: Gender and the Law

This week we transition to the role of gender in law & society. What does equality among genders mean? Does equality of opportunity require formal equality, or are there distinctive aspects of being female that should be recognized by the law? Are these sorts of subtle questions well answered by the law? Perhaps the law possesses a rigidity that makes it difficult to respond to social complexity. Can literature help to complement our understanding of these issues? What do you think is the contribution of the law & literature movement?

Assignments: “Harrison Bergeron” (Vonnegut)  
Grutter v. Bollinger

Week 10: Equality and Society

This week we revisit our conversation on equality in the American classroom. How do you define equality? E.g., as equality of opportunity, as redistribution, as equality of ability? As a line-drawing problem, at what point should the law intervene to prevent inequality? Kurt Vonnegut in “Harrison Bergeron” points to the perverse consequences of a society obsessed with a vision of perfect equality. But it is unclear whether his short story is meant to be ironic or sincere. What are the problems of using cultural texts that make implicit use of humor etc. in reference to legal texts like the judicial opinion, which are characterized by transparency and candor?

Class debate: Is Vonnegut’s work a parody? Do you think he is on the side of the Handicapper General or Harrison?

Week 11: In-class Fact Pattern Exam

This week you will complete a fact pattern-style exam in which you compare a provided hypothetical scenario to the readings from our course. You will take on the perspective of a Supreme Court Clerk, and comment on whether a case should be accepted for review, and what principles and precedent should inform your justice’s crafting of her opinion.

Week 12: Individual Conferences

This week we will meet individually outside of our seminar to discuss your in-class exam. Be prepared to ask clarification questions about the exam as well as to challenge my comments.

Assignment: Excerpt of “Law and the Humanities: An Uneasy Relationship” (Balkin & Levinson)  
“Torture Memo” on Geneva Convention

Week 13: The Relationship of Law to Society & Culture

This week concludes our course. We will review your fact pattern exam, with an emphasis both on the substance of your ideas as well as writing strategies related to organization, fact selection and time management. We will then consider the relationship of law to society & culture; first, through the lens of a poem, and then via a class debate on the relative merits of how different medium present legal conflicts.

Class debate: Are legal conflicts most accurately portrayed by judicial opinions, literature or film?