

SPRING 2020

POLITICAL SCIENCE 104D: JUDICIAL POLITICS

Visiting Professor Glenn Smith (gsmith@cwsl.edu -- NOTE: NOT a ucsd.edu e-dress)
Monday, 6:30 P.M. to 9:20 P.M., on ZOOM
(accessed via CANVAS using Password
Posted in Canvas announcement)

OVERALL COURSE APPROACH

This course provides an introduction to many of the major theoretical and practical issues flowing from the reality that in modern America substantial power and discretion is exercised by judicial officials

- whose legitimacy as policy-makers remains controversial,
- who are not always subject to the “usual” methods of electoral and political accountability in a majoritarian democracy,
- and whose subjection to any electoral/political accountability may appear to conflict with the expectation that these judges will rise “above politics” in providing equal justice under law!

The course examines the politics of judicial policy-making in both state and federal courts, and at both the trial and appellate levels.

To the extent the online ZOOM technology permits, I will conduct the class in a “modified law-school” style, in several ways:

First, a significant portion of the class readings will involve close reading of excerpts from landmark court cases and other legal materials.

Second, although of necessity I will regularly lecture to provide a recap of past materials or an overview of upcoming legal doctrines and developments, I will seek to make the class more interactive than a typical all-lecture class is. Specifically, I will seek to maximize case coverage through class discussion involving volunteer participants; at times class members will discuss questions or hypothetical problems in small groups via ZOOM “breakout rooms”, and it is possible that student volunteers may play the roles of advocates or judges in experiential learning exercises. (Of course, the extent to which I am successful in this will depend on prepared and participatory class members!)

A third way in which the class is taught in a “modified law-school” style is that one or more of the mini-midterms and the final exam will ask you to apply the legal doctrines and policies you have learned from case excerpts to a hypothetical fact pattern.

The last way in which the class is like law school is that I use a different (and usually more generous) curve for course-grade calculation, compared to the typical undergraduate scale in which it takes at least 90% of points to get an A, 80% of points to get a B, etc.

You are expected to do the assigned reading for each session and come to each class prepared to engage in a lively discussion.¹ We will have FUN.

And, of course, as with any live class this class will be conducted according to UCSD's Principles of Community: <https://ucsd.edu/about/principles.html>.

**NO MAKEUP CLASS PLANNED FOR CANCELLED CLASS
SCHEDULED FOR MEMORIAL DAY**

We would be scheduled to have our 9th class week on Monday, May 25th, were this not the Memorial Day holiday. Barring unforeseen consequences requiring a change of plans, I do not intend to have to make this May 25th class up. Rather, I plan to compensate by covering highlights of three Chapters from the required book by prerecorded lecture. I may also provide other additional "enrichment" material this way.

READINGS AND SYLLABI

You are required to purchase one text for the class²: Carp, Stidham, Manning & Holmes, JUDICIAL PROCESS IN AMERICA (2019 11th Ed. CQ Press)

[Note: Students sometimes wonder whether previous editions of the Carp, et. al. book can be used instead of the most recent edition. As with most legal issues, "it depends." Most of the materials in the new edition can be found in older ones. However, there are a few new pages, studies, and examples, and page numbers are different. I make regular reference to page numbers in class, and will refer to the latest (11th Edition) pages. Students especially motivated by cost-saving concerns may be willing to go to the trouble of comparing older and newer editions and cross-correlating page numbers.]

I will make additional assigned readings (composed of key Supreme Court decisions, lower-court decisions and briefs filed as part of litigating other cases), discussion

¹ Given the interactive nature of the course, you will get more out of real-time virtual attendance. However, in the event that illness or other unavoidable problem prevents you from attending a particular class, you can watch the online video recording that ZOOM automatically makes and posts to the cloud a day or two later, eventually with an audio transcript. (I will send an email and/or post the links to recorded classes as an announcement on the course CANVAS site.) These ZOOM recordings have a limited shelf life, so please make up a missed session soon.

² Unfortunately, I recently learned that the "Course Resources" information on the Schedule of Classes erroneously stated that there was no required course. I corrected this asap and included information about the required book in an email sent before class started. Sorry for any inconvenience, and I hope any inconvenience is reduced by the facts that 1) the first assignment to be read before class is in Week 2 and 2) that **the book can be purchased online at a discount through the "Inclusive Access Program" arranged with the publisher through the UCSD Book Store.** (Visit this link for more information: <https://ucsandiegobookstore.com/t2-inclusiveAccess.aspx>)

questions, and past-exam questions available through the class CANVAS webpage. These additional assignments will run to TWO-HUNDRED-PLUS PAGES. You will be able to download these materials for free and use them on the open book/open note exam(s) you will take online.

Please have the assigned texts and materials accessible for each class.

There will be two Assignment Syllabi for this course. The first Syllabus is discussed in class the first day, and available from the class webpage. A second syllabus will be distributed separately.

EXAMINATIONS: Three Online Mini-Midterms and One Online Final

We will have **three “mini-midterms”** (consisting of 1 one-paragraph short-answer question, in which students choose between two answer options) at the beginning of the following class sessions:

***Week 4: April 20th**

***Week 6: May 4th**

***Week 8: May 18th**

Each mini-midterm **will begin promptly at 6:30 PM and end around 7 PM**. The online ZOOM Class, covering the week's assigned material, will continue after that.

You will also take an **final exam (consisting of 3 one-paragraph short-answer questions)**, and whose coverage will be cumulative, **ON Wednesday, June 10th, at 7 PM (ending no later than 9 PM.)**

IMPORTANT: PLEASE LOOK AT YOUR SCHEDULE IMMEDIATELY, and ensure that you are able to take the in-class mini-midterms and the final exam at their scheduled times.

All examinations will pose \short-answer essay questions) in the format illustrated through past exam questions posted on the Class webpage. All exams will be open book / open note. **Each mini-midterm is worth 15% of total course points; the final exam is worth 45%.**

More details on examination coverage and format will be provided via separate handouts, elaborated on through in-class announcements.

PACKBACK POSTING REQUIREMENTS

The remaining 10% of your course grade will be based on the quality and consistency of your postings on the Packback™ educational site associated with this course. An integral part of the course, the Packback Questions platform will be used for online discussion about class topics. It is an innovative technology that has over four past courses (including the Spring 2018 and 2019 offerings of this course)

shown itself to be especially well suited to enhance two key educational goals I have long pursued in P Sc 104D: 1) illustrating how the issues you are studying in P Sc 104D relate directly to controversies and developments in the larger "real world" and 2) promoting student-to-student interaction about class materials (including, especially, outside of class time).³

For EACH CLASS WEEK starting with the third week (April 13-19) and continuing through the tenth week (June 1-7) – *except for two weeks of your choosing* -- you are assigned to post 2 different items, as follows:

- (A) 1 posting must RESPOND to postings by me, the TAs or other class members
- (B) 1 posting must either (i) RAISE A QUESTION flowing from course materials for others to discuss⁴ or (ii) EXPLAIN how a current legal challenge (i.e., a lawsuit filed in court, or a decision or other procedural phase related to a filed lawsuit) or a controversy in a non-judicial forum (and covered in a general or specialized media source which you cite or link to in your posting)⁵ involves a topic covered in P Sc 104B, AND INVITE OTHERS TO COMMENT.

IMPORTANT: For maximum potential credit, THREE OF YOUR WEEKLY POSTINGS of the Category (B) type MUST BE CURRENT-MEDIA POSTINGS as defined in (B)(ii).

EACH WEEK'S POSTINGS MUST BE COMPLETED NO LATER THAN 11:59 PM ON SUNDAY NIGHT OF THAT WEEK.

[How the 10% PackBack grade is calculated:

³ Although various learning platforms have free “bulletin board” and “discussion” features, in my experience Packback has significant advantages over these (which are summarized in a separate document I have posted on the CANVAS site).

⁴ For example, you could pose the question whether choosing state judges by election is in practice more “political” than the merit-selection process. Or, you could express an opinion about, and invite student comment on, whether the Supreme Court’s decision in *Williams-Yulee v. Florida Bar* draws the appropriate balance between free speech and the need to control inappropriate partisanship and conflicts of interests in judicial elections. (Both of these are topics that will be covered in P Sc 104D.)

⁵ Examples would be a news account of an effort by state legislators to change the method for choosing the chief justice of a state, or a report of a lawsuit seeking to embroil state or federal judges in a controversial topic (like whether President Trump’s diversion of military funds to build the Wall is legal). NOTE that the focus of your “(B)ii” postings should be on the JUDICIAL-POLITICS ISSUES implicated by the current legal challenge or controversy. (Thus, if you posted about litigation over the proposed Wall-funding diversion, your focus should be on how this would require a judge to decide highly controversial political or legal issues, how the Administration is arguing that the issue is a “political question” judges should not decide, etc. – rather than the legal merits of the declaration itself, which is a P Sc 104A issue, or just a general “is this right?” question.)

--5% is unrelated to the *quality* of postings; I determine whether you posted the required number of postings on a weekly basis (as defined above);
--5% is based on my assessment of the quality of the Questions posted. (This includes: the extent to which Questions relate to issues about "Judicial Politics;" the clarity and specificity with which the Questions pose inquiries tied to the legal and political/policy insights of the course (as opposed to general, "What do you Think?" or "Is this Right?" inquiries); and whether at least 3 questions are of the "B(ii)" type described above.)]

REGISTERING FOR PACKBACK

All students registered in P Sc 104D should receive an email from Packback with instructions on how to register for the service. In the alternative, you can access this link: <https://questions.packback.co>; use this **Community Access Code: a70a23a2-630c-4d80-9187-840f1cc56538**.

There is a one-time fee (\$25) for students signing up for the first time. Students who have previously registered for Packback and who sign up using the same email they previously used get a modest discount (\$22). (Please note that I do not receive any financial compensation for your registration.)

INFORMATION ON MY AVAILABILITY

***I will maintain REGULAR ONLINE OFFICE HOURS (which vary to accommodate different times of my Law School class teaching) via ZOOM at these times and using these links:

*Thursdays, APR. 2 & APR. 9:

--11 AM to 12:30 PM: ZOOM INK = <https://ucsd.zoom.us/j/166256735>
--2:30 PM to 3:30 PM: ZOOM INK = <https://ucsd.zoom.us/j/252840572>

*Mondays, April 13 through June 1, 4 to 6 PM -- <https://ucsd.zoom.us/j/637606263>

Just login and announce yourself. (If I do not immediately answer, give me a minute or two – sometimes I have to temporarily step away from my computer or reboot the meeting...)

***For "virtual office hours (other than at the regular times) at another mutually convenient time, email me at gsmith@cwsl.edu". [PLEASE NOTE THAT THIS IS NOT a **ucsd.edu e-dress!**] WHEN YOU EMAIL ME, please REFERENCE "P SC 104D" in the subject line, so that I will know your email is not spam.]

***Starting May 5, I will post a CANVAS Announcement with my regular Law School office hours (for the Summer 2020 trimester). You are welcome to join these.

***For law-school-planning questions and recommendations: Past experience indicates that a number of the students taking this course are planning to attend (or thinking about attending) law school. As a full-time law professor guest teaching this course, I am happy to be a resource to such students by providing general counseling about law school and legal careers, arranging visits to law school classes taught by others at my home institution, and writing letters of recommendation in appropriate cases. (Please note that I am not recruiting students to law school in general or my law school in particular. In fairness, I simply wish to make sure all potentially interested students know in advance of my policy on being a law-school resource.)

***In appropriate cases I am also willing to write recommendation letters for graduate study, internships (e.g., AIP or UCDC), foreign study, or other related opportunities.

Do not hesitate to contact me if I can be of any assistance to you!

TA CONTACT INFORMATION & OFFICE HOURS

I am very excited to welcome to P Sc 104D two experienced and knowledgeable TAs, with whom I have previously worked. The TAs will grade for the course, and also will be great resources about course materials, studying for and taking my exams, graduate study and their areas of scholarly interest.

Here's how to contact the TAs – and to request “virtual office hours” at a mutually convenient time:

TA LUCAS DE ABREU MAIA (ideabreu@ucsd.edu) (NOTE: Lucas is on East Coast time, 3 hours later...)

TA ZOE NEMEREVER (znemerev@ucsd.edu)

FIRST SYLLABUS FOR PHASES I & IIA through IIIG

(Assignments for first seven classes)

--References in regular font to "Carp" are to Carp, Stidham & Manning, JUDICIAL PROCESS IN AMERICA (2019 11th Ed. CQ Press). For all Carp Chapter assignments, PLEASE PAY CAREFUL ATTENTION TO THE "FURTHER THOUGHT AND DISCUSSION QUESTIONS" AT THE END OF EACH CHAPTER.

--References to "Smith" are to documents prepared by Professor Smith and available via the P Sc 104D webpage on CANVAS.

I. AN OVERVIEW OF THE COURSE & THE STATE AND FEDERAL JUDICIAL SYSTEMS: History, Background and Key Functions

A. An Introduction to the Course and the Importance of Its Subject

Introductory Lecture based on Course Information Document

B. The Rule and Role of Law in America: An Overview

Introductory Lecture (covering portions of Carp, Chap. 1) [ASSIGNMENT:
"HIGHLIGHT-READ"⁶ THIS CHAPTER AFTER THE MAR. 30th CLASS]

C. The History and Organization of the Federal and State Judicial Systems: An Overview

Introductory Lecture (covering portions of Carp, Chaps. 2 & 3)

[ASSIGNMENT: HIGHLIGHT-READ THESE CHAPTERS AFTER THE
MAR. 30TH CLASS]

[PLEASE READ THE FOLLOWING FOR APRIL 6th]

D. Specific Procedures and Dynamics at the United States Supreme Court

⁶"Highlight-read" means, at a minimum, to read any portions of a Chapter that you need to read to understand fully the points from that Chapter that I covered in class. In many cases, the points may be self-explanatory, so that no additional reading within the Chapter is needed.

COURSE INFORMATION HANDOUT, P SC 104D, PAGE INTRO/SYLL-8

Introductory Lecture (no reading assignment)

II. KEY FACETS OF JUDICIAL POLITICS: An In-depth Look

A. The Importance of, and Limits on, Judicial Politics and Policy-Making: An Initial Assessment

Smith, "Additional Discussion Questions for 2nd Week Class" (available on CANVAS website)

Carp, Annotated Constitution (in back of book) [NOTE: "Skim-Read" Constitution provisions that help you answer the Smith Additional Discussion Questions]

Carp, Chap. 4

[PLEASE READ THE FOLLOWING FOR APRIL 13TH:]

B. A Closer Look at State Judicial Backgrounds, Selection and Other "Personnel" Matters

Carp, Chap. 5

Smith, pp. JE-1 through JE-__ (excerpts from *Williams-Yulee v. Florida Bar* (Sup. Ct. 2015) and *French v. Jones* (9th Cir. 2017))

[In a pre-recorded lecture posted on CANVAS and that you should view before this class, or in a brief lecture during this class, I will highlight portions of Carp, Chap. 9. **YOU ARE ASSIGNED TO "HIGHLIGHT-READ" THESE PAGES** (and any others you have a specific interest in) after viewing the prerecorded lecture or in-class lecture.]

[PLEASE READ THE FOLLOWING FOR APRIL 20th:]

C. A Closer Look at Federal Judicial Backgrounds, Selection and Other "Personnel" Matters

Carp, Chap. 6

Carp, Chap. 7

[In a pre-recorded lecture posted on CANVAS and that you should view before this class, or in a brief lecture during this class, I will highlight portions of Carp, Chap. 10. **YOU ARE ASSIGNED TO "HIGHLIGHT-READ" THESE PAGES** (and any others you have a specific interest in) after viewing the prerecorded lecture or in-class lecture.]

[PLEASE READ THE FOLLOWING FOR APRIL 27TH:]

- D. **Other Players in the Judicial Systems: How Judges Interact with Other System Participants, Policy-Makers, and the Public**
Carp, Chap. 8

- E1. **Decision-Making Patterns and Dynamics, Part 1: Trial Courts**
Carp, Chap. 12

[In a pre-recorded lecture posted on CANVAS and that you should view before this class, or in a brief lecture during this class, I will highlight portions of Carp, Chap. 11. **YOU ARE ASSIGNED TO "HIGHLIGHT-READ" THESE PAGES** (and any others you have a specific interest in) after viewing the prerecorded lecture or in-class lecture.]

[PLEASE READ THE FOLLOWING FOR MAY 4th:]

- E2. **Decision-Making Patterns and Dynamics, Part 2: Appellate Courts**

Carp, Chap. 13
Smith, pp. DP-1 through DP-__ (excerpts from *Caperton v. A.T. Massey Coal Co.*)

[PLEASE READ THE FOLLOWING FOR MAY 11th:]

- F. **Implementation, Political-Branch Influences, and the Impact of Judicial Policies**
Carp, Chap. 14
Smith, pp. JS-1 through JS-12 (highlighted excerpts from a trio of post-Civil-War jurisdiction-stripping decisions, *McCardle, Yerger & Klein*)

- G. **Basic Themes in Judicial Politics and Policy-Making: A Synthesis**
Carp, Chap. 15