

SPRING 2018

POLITICAL SCIENCE 104D: JUDICIAL POLITICS

Visiting Professor Glenn Smith (gsmith@cwsl.edu)

Monday, 6 P.M. to 8:50 P.M.

(except Memorial Day, Monday, May 28;

the class missed on Memorial Day will be made up by a podcast lecture)

Pepper Canyon, Room 106

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 some electoral accountability may strongly 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 both the trial and appellate levels. The course places special emphasis on the processes and dynamics of United State Supreme Court decision-making.

The class is conducted “modified law school” style: I will regularly lecture, especially when background information about judicial structure and organization, and about major facets of the American legal system, needs to be sketched in. And, class sessions will also regularly feature discussion among class members – as a whole or in smaller groups -- of questions based on assigned materials. The success of the class depends to a significant degree on the willingness of prepared and interested students to participate actively in discussions. Student volunteers may at times play the roles of advocates for pre-assigned positions.

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.

¹ Given the interactive nature of the course, you will get more out of it through live attendance. However, in the event that illness or other unavoidable problem prevents you from attending a particular class, class sessions will be recorded for podcast through podcast.ucsd.edu. As noted below, although students are welcome to attend the makeup class, in lieu of the cancelled Memorial Day class, that class will also be available via podcast.

READINGS AND SYLLABI

You are required to purchase two texts for the class:²

1. Carp, Stidham & Manning, JUDICIAL PROCESS IN AMERICA (2017 10th Ed. CQ Press)
2. Baum, THE SUPREME COURT (2016 12th Ed. CQ Press)

I will make additional assigned readings, discussion questions, and past-exam questions available in class and/or through the class webpage (see below). In particular, THE ASSIGNED MATERIALS FOR THE LAST THREE-PLUS CLASSES WILL MAINLY FOCUS ON 100 or more pages of CASE EXCERPTS I HAVE PREPARED. You will be able to download these excerpts for free from the class webpage; however, if you wish to use them during the final exam, you will need to download them onto paper pages (because you will not be able to access laptops during the final exam).

Please bring the appropriate text(s) to 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

There will be an **in-class midterm**, covering the materials studied in the first six class sessions, during the first hour and 30 minutes of the regular class time in the seventh week, **MONDAY, MAY 14TH**. The exam **will begin promptly at 6 PM and end around 7:30 PM**. After a break, we will reconvene for a lecture on new materials.

You will also take a **final exam** that is cumulative, with emphasis on materials covered in the classes after the midterm, **ON WEDNESDAY, JUNE 14th, FROM 7 to 10 PM**.

IMPORTANT: PLEASE LOOK AT YOUR SCHEDULE IMMEDIATELY, and ensure that you are able to take both the in-class midterm and the final exam at their

² I have assigned, and will use in class, the latest editions of these books. Inevitably, the question arises whether recent previous editions can be used. The answer, as with many legal questions, is "it depends." Namely, it depends on whether it will be worth your while to work with a book whose pages may not be the same as those I reference in class and which you will occasionally need to supplement with new materials. (Generally the text of the previous editions is substantially similar to the text of these newest editions.)

scheduled times.

Both examinations will pose short-answer essay questions, in the format illustrated through past exam questions posted on the Class webpage. Both exams will be open book / open note. **The midterm is worth 30% of total course points; the final exam is worth 60%.**

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 seemingly especially well-suited to enhance two key educational goals I have long pursued in P Sc 104D: 1) to promote student-to-student interaction about class materials and 2) to illustrate how the judicial-politics issues you are studying in P Sc 104D relate directly to the abundant controversies and developments in the larger "real world."

For EACH CLASS WEEK starting with the third week (April 16-22) and continuing through the tenth week (June 4-10) – *except* for the week including the midterm exam (April 30-May 6) -- you are assigned to post 3 different items, as follows:

- (A) 2 postings must respond to postings by me, the TAs or other class members
- (B) 1 posting must either (i) raise a question for others to discuss or (ii) explain how a current legal challenge or controversy happening in a non-judicial forum (and covered in a general or specialized media source which you cite or link to in your posting) involves a topic covered in P Sc 104D, and invite others to comment.

IMPORTANT: For maximum potential credit, **AT LEAST 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.

Further information about signing up for Packback will be provided in a separate document.

CLASS WEBPAGE ACCESS INSTRUCTIONS

The class webpage, from which you can download this document, course syllabi, course readings, and other assignments, will be maintained on TED.

INFORMATION ON MY AVAILABILITY

***For “virtual office hours,” or to arrange office hours at a mutually convenient other time, email me at gsmith@cwsf.edu. **[PLEASE NOTE THAT THIS IS NOT A [ucsd.edu](mailto:gsmith@cwsf.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.]

***For UCSD “coffee and conversation” office hours: *Tuesdays, 3:00 P.M. to 6:00 P.M., at Peet’s near RIMAC.*

***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!

SPRING 2018 -- POLITICAL SCIENCE 104D
Judicial Politics
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FIRST SYLLABUS FOR PHASES I & IIA through IIG

(Assignments for first six classes;

first four weeks are covered on the in-class midterm in Week Five, Monday, April 30th)

--References in regular font to “Carp” are to Carp, Stidham & Manning, JUDICIAL PROCESS IN AMERICA (2017 10th Ed. CQ Press). Unless page numbers are given, the reference to a Chapter is to the entire Chapter. (*Page number equivalents to the previous 9th and 8th editions are sometimes given in italicized parentheses.*) For all Carp assignments, PLEASE PAY CAREFUL ATTENTION TO THE “FURTHER THOUGHT AND DISCUSSION QUESTIONS” AT THE END OF EACH CHAPTER.

--References in regular font are to “Baum” are to THE SUPREME COURT (2016 12th Ed. CQ Press). Unless page numbers are given, the reference to a Chapter is to the entire Chapter. (*Page number equivalents to the previous 11th and 10th editions are frequently given in italicized parentheses.*)

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

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

B. The Rule and Role of Law in America: An Overview
Introductory lecture (covering portions of Carp, Chap. 1) [PLEASE
“HIGHLIGHT-READ”¹ THIS CHAPTER AFTER THE APRIL 2ND CLASS]

C. The History and Organization of the Federal and State Judicial Systems: An Overview
Introductory lecture (covering portions of Carp, Chaps. 2 & 3) [PLEASE
HIGHLIGHT-READ THESE CHAPTERS AFTER THE APRIL 2ND CLASS]

¹“Highlight-read” means to at least read any portions of a Chapter that you need to read to understand fully the points from that Chapter that I mentioned in class. In many cases, the points may be self explanatory, so that no additional reading within the Chapter is needed.

[READ THE FOLLOWING FOR APRIL 9th]

- D. More on Procedures and Dynamics at the United States Supreme Court: An Overview**
Baum, Chap. 1, pp. 11-16 & Chap. 3, pp. 83-99 [*equiv. to 11th Ed., pp. 11-17 & 86-100 & 10th Ed., pp. 11-16 & 85-100*]

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

- A. Basic Themes in Judicial Politics and Policy-Making: A Synthesis**
Carp, Chap. 15
- B. The Importance of, and Limits on, Judicial Politics and Policy-Making: An Initial Assessment**
Smith, "Additional Discussion Questions for 2nd Week Class" (available on class website)
Carp, Annotated Constitution (pp. 405-439) [NOTE: "Skim-Read" clauses that help you answer the Smith Additional Discussion Questions] (*equiv. to pp. 425-462 in 9th Edition and pp. 409-445 in 8th Edition*)
Carp, Chap. 4

[This class will also highlight portions of Carp, Chap. 9. PLEASE "HIGHLIGHT-READ" THESE PAGES AFTER THE APRIL 8TH CLASS]

[PLEASE READ THE FOLLOWING FOR APRIL 16TH.]

- C. A Closer Look at Judicial Backgrounds, Selection and Other "Personnel" Matters**
Carp, Chap. 5
Carp, Chap. 6
- D. Other Players in the Judicial Systems: How Judges Interact with Other System Participants, Policy-Makers, and the Public**
Carp, Chap. 7
Carp, Chap. 8

[This class will also highlight portions of Carp, Chap. 10. PLEASE "HIGHLIGHT-READ" THESE PAGES AFTER THE APRIL 15TH CLASS]

[PLEASE READ THE FOLLOWING FOR APRIL 23rd.]

- E. Focusing More Specifically on the U.S. Supreme Court: Judicial Politics & Policy-Making, Justice Selection, and the Court's Interaction with Other System Participants**

Baum, Chap. 5

Baum, Chap. 2, p. 29 (*equiv. of 11th Ed., p. 29 and 10th Ed., p. 28*) (Table 2-1) & pp. 49-63 (*equiv. to 11th Ed., pp. 49-65 and 10th Ed., pp. 50-64*)

Baum, Chap. 1, pp. 16-19 (*equiv. to 11th Ed., pp. 17-19 and 10th Ed., pp. 16-18*)

Baum, Chap. 2, pp. 28 & 30-34 (*equiv. to 11th Ed., pp. 28 & 30-34 and 10th Ed., pp. 27 & 29-34*)

[This class will also highlight portions of Carp, Chap. 11. **PLEASE “HIGHLIGHT-READ” THESE PAGES AFTER THE APRIL 23rd CLASS**]

[In-class midterm on **MONDAY, APRIL 30TH**, 6 P.M. to 7:30ish P.M.; After a 15-minute break, class will reconvene for a lecture on **FOLLOWING ADDITIONAL ASSIGNMENT:**]

F. Decision-Making Participants, Patterns and Dynamics, Part 1: Starting “At the Top” with the U.S. Supreme Court

Baum, Chap. 3, pp. 67-83 (*equiv. to 11th Ed., pp. 69-86 and 10th Ed., pp. 70-85*)]

[**PLEASE READ THE FOLLOWING FOR MAY 7TH:**]

Baum, Chap. 4

[**PLEASE READ THE FOLLOWING FOR MAY 14TH:**]

G. Decision-Making Patterns and Dynamics, Part 2: Trial Courts and Appellate Courts

Carp, Chap. 12

Carp, Chap. 13