

PS234: Law and Politics in the United States

Tuesdays and Thursdays 11:05-12:20

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Overview. How does the Supreme Court really decide cases? Are judges as activist as politicians claim? In this course, we will explore these questions by addressing how political and social forces influence American law and legal institutions, and vice versa. We'll divide the course into roughly two parts: (1) judicial politics and decision making and (2) law and its relation to the rest of society. By the end of this course, you'll have a solid understanding of how the American legal system works, you'll understand the basics of legal (analytic) reasoning, and you'll understand why judges are sometimes accused simply of being politicians.

Requirements. There are no prerequisites for this course. You are expected to come to each class prepared and ready to discuss the material. The practice of law is based on argumentation and rhetoric; participation in class debates and discussion is therefore essential and will be a key component of your grade. Also, reading law is difficult the first time you do it and requires you to think in a slightly different way (which we will teach you); please give yourself ample time to work through the readings.

Grading. Your grade in this class will be composed of

- Paper #1 (5–7 pages, due in hard copy at start of class on October 4) – 20%

- Midterm (in class on October 16) – 20%
- Paper #2 (5–7 pages, due in hard copy at start of class on November 20) – 20%
- Final (December 20) – 30%
- Class Participation – 10%

Both the midterm and the final will be a combination of IDs, short answer, and essay. They will be closed-book and closed-note. We will not take attendance; the class participation component of your grade will hinge on you coming to class, participating in debates and discussions, and volunteering to explain cases and concepts.

Office hours and email. I have an open-door office policy, meaning that you are welcome to stop by at any point between approximately 9:30am and 5pm Monday through Friday, excluding around noon for lunch. (If I’m not there, please wait or come by another time; you can also email me ahead of time to confirm that I’ll be around.) However, for those who prefer office hours, I have office hours Wednesdays 10am to noon; I’ll definitely be in my office then. I’m always available by email. I encourage everyone to stop by and be in touch.

Paper Extension Policy. Hard copies of papers must be turned in at the start of class on the due date. (We cannot accept emailed versions of papers due to the additional burden this places on the teaching staff – sorry!) Attempting to turn a paper in late is unfair to everyone. Extensions will be granted only in case of (1) a death in the family or (2) a unforeseen medical emergency. In case of such an emergency, please let us know as soon as possible; in some cases, we may require supporting documentation (e.g., a doctor’s note) out of fairness to the other students. Also in the interest of fairness, unsubstantiated requests for extensions will be denied summarily.

If you do not have an extension, and you turn in a paper late, you will be docked one third of one letter grade for every 24 hours that the paper is late. Thus, if your paper earned a “B+,” but you turned it in six hours late, you will be receive a “B”. If you turn it in 30 hours late, you will receive a “B-”.

Exam Policy. Both exams are closed book and closed note (and, by extension, no Internet and no cell phones). The midterm and final exam dates are firm. Missed exams may only be re-taken under the following circumstances: (1) a death in the family, (2) participation in a University-sponsored academic or sporting event (extra-curricular events do not count), (3) unforeseen medical emergency. In the case of (1) and (2), you must inform me within 24 hours of the exam that you will miss it. In some cases, we may require supporting documentation out of fairness to the other students.

Lecture Notes. Class meetings will be a combination of lecture, discussion, and in-class debates. I will post my lecture notes following each class meeting either on Blackboard or on my website.

Academic Honesty. We encourage you to discuss the course readings and assignments with your fellow students. However, all written work must be done independently and not in collaboration with one another. The two papers will require citations and a “Works Cited” section following the Chicago Manual of Style format (or some other consistently used format), and both exams will be closed book, closed note, and closed Internet (no cell phones, etc.). Lastly, all class activities must be performed in accordance with the University of Rochester’s Academic Honesty Policy (<http://www.rochester.edu/college/honesty>). Under UR rules, I *must* report possible policy violations to the Board on Academic Honesty. Your reputation is the most important thing you have, especially at this stage of your academic career; please do not tarnish it.

University of Rochester CARE Network. The primary goal of the CARE network is to identify students in, or heading toward distress. As a faculty member, I’ve been encouraged to submit CARE reports on behalf of students who appear to be struggling academically or personally, and who may need inclusive, multi-layered support from the campus community. The CARE administrator shares information only with staff who need to know it in order to help you. More information about CARE can be found at <http://www.rochester.edu/care>. Please don’t hesitate to reach out to me or to someone you trust if you are struggling or feel overwhelmed.

Readings. We will read excerpts from the following texts:

- Baum, Lawrence, *American Courts: Process and Policy* (7th Edition, Wadsworth)
- Epstein, Lee and Jack Knight, *The Choices Justices Make*
- Murphy, Walter F. and C. Herman Pritchett, Lee Epstein, and Jack Knight, *Courts, Judges & Politics: An Introduction to the Judicial Process* (6th Edition, McGraw Hill) (hereinafter Murphy et al)
- Rosenberg, Gerald N., *The Hollow Hope: Can Courts Bring About Social Change?* (2nd Edition, University of Chicago Press).
- Segal, Jeffrey A. and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited*

We will also read various articles and excerpts of court cases. Most of the readings (including book excerpts and court cases) will be posted on Blackboard. If you wish to buy hard copies of these books, they will be available for purchase on Amazon.com and at other online retailers.

Tentative Schedule and Readings¹

August 30: Introduction (no readings)

September 4: Origins of the American Legal System

- Murphy et al pp 77-82 (optional: 38-55) (posted on Blackboard)
- Federalist No. 78 (copy available at http://constitution.org/uslaw/judiciary_1789.txt)
- United States Constitution, Article III (copy available at <http://www.law.cornell.edu/constitution/articleiii>)
- Marbury v. Madison, 5 U.S. 137 (1803)
- Optional: De Toqueville, *Democracy in America* Chapter 6: Judicial Power in the United States (copy available at http://xroads.virginia.edu/~HYPER/DETOC/1_ch06.htm)

September 6: How the American Legal System Operates Today

- *Judiciary Act of 1789*, Sections 1-4 (copy available at http://constitution.org/uslaw/judiciary_1789.htm)
- Baum, Lawrence, *American Courts: Process and Policy*, Chapter 2 (pp 19-49) (posted on Blackboard)
- Optional: Murphy et al, Chapter 3 (pp 77-92)
- Optional: Murphy et al, Chapter 13 (pp 623-644)

September 11: Judicial Decisionmaking #1: The Legal Model and Sources of Law

- Murphy et al, Chapter 11 (pp 491-501) (posted on Blackboard)
- Murphy et al, Chapter 12 (pp 539-558) (posted on Blackboard)
- Kerr, Orin, How to Read a Legal Opinion: A Guide for New Law Students, *Green Bag Law Journal* (2007) (posted on Blackboard)
- Bond v. United States (2000)

¹Note: This schedule is subject to change, depending on how far we get in each class and how much discussion the topics generate. I also reserve the right to modify (e.g., reduce) the amount of reading, particularly later in the term.

September 13: Judicial Decisionmaking #1 (continued): The Legal Model and Theories of Interpretation

- Bond v. United States (2000) (skim again before class)
- Murphy et al, Chapter 10 (pp 438-449) (posted on Blackboard)
- Segal, Jeffrey A. and Spaeth, Harold J., *The Supreme Court and the Attitudinal Model Revisited* (Chapter 2) (posted on Blackboard)

September 18: Example: Equal Protection

- Korematsu v. United States, 323 U.S. 214 (1944)
- City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985)
- Craig v. Boren, 429 U.S. 190 (1976)

September 20: Judicial Decisionmaking #2: The Attitudinal Model

- Segal, Jeffrey A. and Harold J. Spaeth, *The Supreme Court and the Attitudinal Model Revisited* (Chapter 3) (posted on Blackboard)
- Ruger, Theodore et al, The Supreme Court Forecasting Project: Legal and Political Science Approaches to Predicting Supreme Court Decisionmaking, *Columbia Law Review*, Vol. 104, No. 4 (2004) (posted on Blackboard)

September 25: Example: Commerce Clause

- United States v. Lopez, 514 U.S. 549 (1995)
- Gonzales v. Raich (previously Ashcroft v. Raich), 545 U.S. 1 (2005)
- National Federation of Independent Business v. Sebelius (2012)

September 27: Judicial Decisionmaking #3: Identity and Empathy

- Boyd, Christy et al, Untangling the Causal Effects of Gender on Judging (<http://epstein.usc.edu/research/genderjudging.pdf>) (skim over technical details)
- Glynn, Adam and Maya Sen, Identifying Judicial Empathy (http://scholar.harvard.edu/msen/files/judicialdaughters_v14.pdf) (skim over technical details)
- Obama, Barack, The President's Remarks on Justice Souter (<http://www.whitehouse.gov/blog/09/05/01/The-Presidents-Remarks-on-Justice-Souter>)
- Lithwick, Dahlia and Sonja West, The Unsung Empathy of Justice Stevens: Justice John Paul Stevens is the Model for Why Empathy Matters, *Slate* (http://www.slate.com/articles/news_and_politics/jurisprudence/2010/04/the_unsung_empathy_of_justice_stevens.html)

October 2: Example: Reproductive Rights

- Griswold v. Connecticut, 381 U.S. 479 (1965)
- Roe v. Wade, 410 U.S. 113 (1973)
- Optional: Greenhouse, Linda, *Becoming Justice Blackmun* (Chapter 4)

October 4: Judicial Decisionmaking #4: Strategic Decisionmaking

- Epstein, Lee and Jack Knight, *The Choices Justices Make* (Chapters 1–3)

FIRST PAPER DUE AT START OF CLASS

October 9: No class (Fall Break)

October 11: The Politics of Judicial Selection, Confirmation, and Life Tenure

- Murphy et al Chapter 4 (pp 141-152, 156-157)
- Toobin, Jeffrey, “Advice and Dissent: The Fight Over the President’s Judicial Nominations,” *The New Yorker* (http://www.newyorker.com/archive/2003/05/26/030526fa_fact?currentPage=all)

October 16: In-Class Midterm (1 Hr)

October 18: Oral Arguments and Cert

- Johnson, Timothy R. et al, The Influence of Oral Arguments on the U.S. Supreme Court, *American Political Science Review* (2006) (posted on Blackboard)

October 23: Political Question Doctrine and Redistricting

- Baker v. Carr, 369 U.S. 186 (1962)
- Nixon v. United States, 506 U.S. 224 (1993)

October 25: Example: Bush v. Gore

- Bush v. Gore, 531 U.S. 98 (2000)
- Gerhardt, Michael J., The Story of Bush v. Gore: The Paradox of Judicial Activism (posted on Blackboard)

October 30: Public Opinion and the Court

- Giles, M.W. and Blackstone, B. and Vining Jr, R.L., The Supreme Court in American Democracy: Unraveling the Linkages Between Public Opinion and Judicial Decision Making, *The Journal of Politics*, Vol. 70, no. 2 (2008) (posted on Blackboard)
- Gibson, James L. and Gregory A. Caldeira, Knowing the Supreme Court? A Reconsideration of Public Ignorance of the High Court, *The Journal of Politics*, Vol. 71, No. 2 (2009) (copy available at <http://jameslgibson.wustl.edu/jop2009.pdf>)

November 1: Political Speech

- *Brandenburg v. Ohio*, 395 U.S. 444 (1969)
- *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

November 6: Campaign Finance

- Toobin, Jeffrey, “Money Unlimited How Chief Justice John Roberts orchestrated the Citizens United decision” (http://www.newyorker.com/reporting/2012/05/21/120521fa_fact_toobin)
- *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010)

November 8: Racial Minorities and the Courts I

- *Carolene Products*, Footnote 4
- *Plessy v. Ferguson*, 163 U.S. 537 (1896)
- *Brown v. Board of Education*, 347 U.S. 483 (1954)

November 13: Racial Minorities and the Courts II

- *Brown v. Board of Education*, 349 U.S. 294 (1955) (“Brown II”)
- Rosenberg, Gerald N., *The Hollow Hope*, Chapters 2-3 (posted on Blackboard)

November 15: Gender, Reproductive Freedom, and the Courts

- Rosenberg, Gerald N., *The Hollow Hope*, Chapters 6-7 (posted on Blackboard)

November 20: State Courts

- Baum, Lawrence, *American Courts: Process and Policy* (pp 38–49, pp 101-119) (posted on Blackboard)
- *Goodridge v. Dept. of Public Health*, 798 N.E.2d 941 (Mass. 2003)

SECOND PAPER DUE AT THE START OF CLASS

November 22: No class (Thanksgiving)

November 27: The Criminal Justice System

- Baum, Lawrence, *American Courts: Process and Policy*, Chapter 6 (posted on Blackboard)
- Hans, Valerie, *Judging the Jury* (excerpts, to be announced)

November 29: Race and the Death Penalty

- Baldus, David C., Charles Pulaski and George Woodworth, Comparative Review of Death Sentences: An Empirical Study of the Georgia Experience, *Journal of Criminal Law and Criminology* (1983) (skim technical details)
- *McCleskey v. Kemp*, 481 U.S. 279 (1987)

December 4: The Regulatory/Administrative System

- Kagan, Robert A., *Adversarial Legalism: The American Way of Law*, Chapter 1 (posted on Blackboard)

December 6: The Legal Profession and its (Waning?) Influence

- Baum, Lawrence, *American Courts: Process and Policy*, Chapter 3
- Segal, David, “Law School Economics: Ka-Ching!” *New York Times*, 2011 (posted on Blackboard)
- Feuera, Alan, “A Study in Why Major Law Firms Are Shrinking,” *New York Times*, 2009 (posted on Blackboard)

December 11: Conclusion: Where do we go from here?