

Judicial Process and Politics

POSC 323

Case Western Reserve University

Department of Political Science

Spring 2015

Wednesday 4:30 - 7:00 PM

Classroom: Clark 302

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Office Hours: Wednesdays 3:30-4:15 PM and by appointment

Course Description

This course of study is an introduction to the American judicial process and the political dynamics within the system. We will examine the position of the judiciary in our federal and state governmental systems as well as the actors/parties in the systems. Our studies will also include an overview of the role of a judiciary (including the U.S. Supreme Court) in the American democratic experiment and the fundamentals of dispute resolution (i) among branches of government, (ii) between government and private parties and (iii) among private parties. We will consider the following topics:

- Role of law and courts in the American governmental system;
- Structure of the federal and state judiciaries;
- Selection/Appointment of judges;
- Criminal court processes;
- Civil court processes;
- Appellate processes
- Judicial decision-making; and
- Fundamentals of legal reasoning.

Required Texts

Carp, Robert A., Stidham, Ronald & Manning, Kenneth L., **Judicial Process in America, 9th ed.**, (CQ Press 2014) (“CSM”).

Carter, Lief & Burke, Tom, **Reason in Law, 8th ed.**, (Longman 2010) (“C&B”) – *out-of-print but available on Amazon and other “secondary market” booksellers.*

Baum, Lawrence, **The Supreme Court, 11th ed.**, (CQ Press 2013) (“Baum”).

Selected Readings listed on Appendix I attached hereto and others identified during the semester will be available at <http://blackboard.case.edu> . *Selected Readings are a requirement of this course.*

For general topics relating to the federal judiciary, consider visits to www.supremecourt.gov and www.scotusblog.com for updates on activities of the federal courts. In connection with Week 4 readings (Selection/Appointment of Judges), visit the website of the American Judicature Society at: www.judicialselection.us.

Student Performance and Evaluation

Undergraduate student performance in this course will be based on the following:

- **Class Attendance and Participation** (10%) - *Attendance is expected and required.* Class time will be used for lectures, discussions and engagement with guest speakers. Class time will include introduction and discussion of material beyond the assigned readings. Students are expected to be prepared for each class meeting by having read, in advance, the materials assigned for each class. All students are expected to participate in class discussion. During the class term, each student will be required to participate in a small group that leads class discussion; there will be advance sign-up for this course requirement.
- **Two Short Papers** (15% each) - There will be two short research papers on topics to be assigned in Week 4 and Week 11. Details will be provided in handouts. Short papers should be 3-5 pages, double-spaced with 12 pt. font and one-inch margins and are due two weeks from date of assignment.
- **Mid-Term Examination** (20%) – 90-minute in-class written examination in Week 9 (March 4th), the Mid-Term will be a short answer and essay examination addressing topics covered in the course of study through Week 7.
- **Take-Home Final Examination** (40%) – The final will be an essay examination that will cover the breadth of the topics covered in the course of study. The “take home” format is intended to emphasize analysis and writing, not recitation of data. *The 48-hour examination period will be Monday, May 4 (10AM) through Wednesday, May 6 (10AM).* Additional details with respect to the items above will be provided in class. Prior to the final examination, an optional review session will be scheduled.

Academic Integrity

Students are required to uphold and to comply with the Academic Integrity Policy of the University, found online at:

<http://students.case.edu/groups/aiboard/policy.html>

Students who do not understand the Policy after having read it should make an appointment to see me to discuss it; indeed, I welcome this discussion and encourage students to see me in advance of any assignment about which they have doubts or questions. It is a course requirement that students read the Academic Integrity Policy.

Ground Rules for the Classroom

The classroom is to be an environment conducive to active engagement and mutual respect for our time and our points of view. Accordingly, please observe the following:

- **Arrive on time and be ready to commence at 4:30 P.M.** If circumstances require a late arrival, please provide advance notice, if feasible.
- Please turn off all cell phones and mobile electronic devices. Texting or other mobile communications is not permitted during class.
- **No laptop or tablet use is permitted in the classroom.** Multi-tasking is not conducive to fully engaged discussion and learning.
- Students are expected and obliged to conduct themselves in class in a professional manner. Professionalism refers to adherence to standards of behavior and performance expected from political scientists. This includes, but is not limited to, courteous behavior in class, attention to other speakers, and engagement with the work at hand.

Guest Speakers

Guest speakers have been invited to share their expertise with our class. Our guests are current and former judges or other participants in the judicial process or the activities of the bar in Ohio. As the availability of speakers can change, I will keep the class advised of changes in scheduling.

COURSE SCHEDULE AND ASSIGNMENTS

<u>Week/Date</u>	<u>Topics; Assignments</u>	<u>Readings</u>
Week 1: January 14	<ul style="list-style-type: none"> • Role of Law and Courts • The Judiciary in the American Governmental System (Part I) 	<p style="text-align: right;">CSM, Ch. 1-2 <i>Selected Readings</i> 1, 2 <i>Additional/Optional Reading</i></p>
Week 2: January 21	<ul style="list-style-type: none"> • The Judiciary in the American Governmental System (Part II) 	<p style="text-align: right;">CSM, Ch. 3 Baum, Ch. 1 <i>Selected Readings</i> 3</p>
Week 3: January 28	<ul style="list-style-type: none"> • Judicial Organization • Jurisdiction 	<p style="text-align: right;">CSM, Ch. 4 <i>Selected Readings</i> 4</p>
Week 4: February 4	<ul style="list-style-type: none"> • Selection/Appointment of Judges • <i>Guest Speaker: TBD</i> • <i>Short Paper No. 1 Assigned</i> 	<p style="text-align: right;">CSM, Ch. 5-6 Baum, Ch. 2 <i>Selected Readings</i> 5</p>
Week 5: February 11	<ul style="list-style-type: none"> • Interest Groups - Lawyers, Litigants, Trade Associations and Bar Associations • <i>Guest Speaker:</i> Representative of the Cleveland Metropolitan Bar Association 	<p style="text-align: right;">CSM, Ch. 8 Baum, Ch. 3</p>
Week 6: February 18	<ul style="list-style-type: none"> • Criminal Court Processes • <i>Guest Speaker:</i> Steven M. Dettelbach, Esq., United States Attorney, N.D. Ohio (<i>tentative</i>) • <i>Short Paper No. 1 Due</i> 	<p style="text-align: right;">CSM, Ch.9-10</p>
Week 7: February 25	<ul style="list-style-type: none"> • Civil Court Processes • Appellate Process 	<p style="text-align: right;">CSM, Ch. 11-13</p>
Week 8: March 4	<ul style="list-style-type: none"> • Mid-Term Examination 	

SPRING BREAK: March 11

Week 9: March 18	<ul style="list-style-type: none"> • Judicial Policy-Making; Activism (Part I) • Guest Speaker: The Honorable Dan Aaron Polster, U.S. District Court, Northern District of Ohio 	CSM, Ch. 14-15 Baum, Ch. 4
Week 10: March 25	<ul style="list-style-type: none"> • Judicial Policy-Making; Activism (Part II) • Case Study: Racial Politics and the Judiciary <ul style="list-style-type: none"> ○ <i>Brown v. Board of Education of Topeka</i>, 347 U.S. 483 (1954). ○ <i>Regents of the University of California v. Bakke</i>, 438 U.S. 265 (1978). 	CSM, Ch. 7 Baum, Ch. 5-6
Week 11: April 1	<ul style="list-style-type: none"> • Judicial Policy-Making; Activism (Part III) • Case Study: Campaign Finance and First Amendment Jurisprudence <ul style="list-style-type: none"> ○ <i>Citizens United v. FEC</i>, 130 S. Ct. 876 (2010). • Short Paper No. 2 Assigned 	<i>Selected Readings 6,7</i>
Week 12: April 8	<ul style="list-style-type: none"> • Pre-Law I –Legal Reasoning; Common Law; Statutory Interpretation 	C&B, Ch. 1-4
Week 13: April 17	<ul style="list-style-type: none"> • Pre-Law II – Constitutional Interpretation • Short Paper No. 2 Due 	C&B, Ch. 5
Week 14: April 24	<ul style="list-style-type: none"> • Politics and the Law • Case Study: Right to Keep and Bear Arms and the 2nd Amendment <ul style="list-style-type: none"> ○ <i>District of Columbia v. Heller</i>, 554 U.S. 570 (2008). 	C&B, Ch. 6 <i>Selected Readings 8</i>

APPENDIX I

SELECTED READINGS

1. "*Commemorating the 200th Anniversary of Marbury v. Madison: The Supreme Court's Greatest Case (1803)*", American Bar Association, *Division of Public Education*, Washington, D.C. (2003).
2. **The Federalist Papers, No. 78** (*Hamilton*).
3. McCloskey, Robert G. (revised by Sanford Levinson), **The American Supreme Court**, 5th ed., (CQ Press 2013) ("McCloskey"), Chapter 1 – *The Genesis and Nature of Judicial Power*.
4. **McCloskey**, Chapter 2 – *The Establishment of the Right to Decide, 1789-1810*.
5. Panel Discussion, "*Breaking the Judicial Nominations Logjam*", The Brookings Institution, Washington, D.C. (February 28, 2011).
6. *Citizens United v. FEC*, 130 S. Ct. 876 (2010).
7. "Shapiro, I. and Mosvick, N., "*Stare Decisis After Citizens United: When Should Courts Overturn Precedent?*", *Nexus: Chapman's Journal of Law & Policy*, vol. 16 (2011)
8. *District of Columbia v. Heller*, 554 U.S. 570 (2008).

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