

Judicial Process and Politics

POSC 323

Case Western Reserve University

Department of Political Science

Spring 2019

Tuesdays/Thursdays 5:30 – 6:45 PM

Classroom: **Clark 308**

(revised January 14, 2019)

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Office Hours: Tuesdays/Thursdays 4:00 – 5:15 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 system. Our studies will also include an overview of the role of a judiciary (including the Supreme Court of the United States (SCOTUS)) 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:

- Centrality of the Rule of Law: New Realities in 2019
- Definition of law; 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 case studies in active areas on constitutional law
- Fundamentals of legal reasoning, legal education and “thinking like a lawyer”
- Judicial review, constitutional norms and the Trump Administration

Required Texts

Carp, Robert A., Stidham, Ronald, Manning Kenneth L. & Holmes, Lisa M, **Judicial Process in America, 10th ed.**, (CQ Press 2017) (“CSM”).

Baum, Lawrence, **The Supreme Court, 13th ed.**, (CQ Press 2019) (“Baum”).

Selected Readings listed on Appendix I attached hereto and others identified during the semester will be available on Canvas at <http://canvas.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 National Center for State Courts at: www.judicialselection.us.

Student Performance and Evaluation

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

- **Class Attendance and Participation** (20%) - *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 lead a class discussion; there will be advance sign-up for this course requirement.
- **Two Short Papers** (10% each) - There will be two short research papers on topics to be assigned in Week 4 and in Week 10. 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. Papers should apply the course concepts to the assigned topic(s) in an interesting and persuasive manner.
- **Mid-Term Examination** (20%) – 60-minute in-class written examination in Week 7 (February 28th), 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 Exam 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 6th (10AM) through Wednesday, May 8 (10AM).* Additional details with respect to the items above will be provided in class.

Code of Conduct

This is a course of the rule of law. At Case, our body of law includes the Student Code of Conduct of the University, found online at:

<https://students.case.edu/policy/conduct/doc/codeofconduct.pdf>

Students are required to uphold and to comply with the Code.

Students who do not understand the Code 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 Code of Conduct.

Ground Rules for the Classroom and Work Product

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

- **Arrive on time and be ready to commence.** If circumstances require a late arrival, please provide advance notice.
- 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.
- No late work will be accepted or make-up exams given, except in extreme circumstances.

Guest Speakers

Guest speakers have been invited to share their expertise with our class. Our guests are current and former federal and state officeholders, judges, prosecutors 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> |
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| Week 1: January 15/17 | <ul style="list-style-type: none"> • <i>The Rule of Law</i>: Mueller, Comey and . . . <i>George W. Bush</i> • What is Law? • Role of Law and Courts • The Judiciary in the American Governmental System (Part I) | CSM , Ch. 1-2 <i>Selected Readings</i> 1, 2, 3, |
| Week 2: January 22/24 | <ul style="list-style-type: none"> • The Judiciary in the American Governmental System (Part II) | CSM , Ch. 3 Baum , Ch. 1 <i>Selected Readings</i> 4 |
| Week 3: January 29/31 | <ul style="list-style-type: none"> • Judicial Organization • Jurisdiction | CSM , Ch. 4 <i>Selected Readings</i> 5 |
| Week 4: February 5/7 | <ul style="list-style-type: none"> • Selection/Appointment of Judges • <i>Guest Speaker</i>: Perry Apelbaum, Chief of Staff and General Counsel. Committee on the Judiciary, U.S. House of Representatives (<i>tentative</i>) • <i>Short Paper No. 1 Assigned</i> | CSM , Ch. 5-6 Baum , Ch. 2 |
| Week 5: February 12/14 | <ul style="list-style-type: none"> • Civil Court Processes • Appellate Process • <i>Guest Speaker</i>: The Honorable Dan Polster, U.S. District Court (N.D. Ohio) • <i>Short Paper No. 1 Due</i> | CSM , Ch. 11-13 Baum , Ch. 3 |
| Week 6: February 19/21 | <ul style="list-style-type: none"> • Criminal Court Processes • <i>Guest Speaker</i>: Steven M. Dettelbach, Esq., Former United States Attorney, N.D. Ohio | CSM , Ch.9-10 |
| Week 7: February 26/28 | <ul style="list-style-type: none"> • Interest Groups - Lawyers, Litigants, Trade Associations and Bar Associations • <i>Guest Speaker</i>: Rebecca Ruppert McMahon, Executive Director, Cleveland Metropolitan Bar Association | CSM , Ch. 8 |

MIDTERM EXAM

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| Week 8: March 5/7 | <ul style="list-style-type: none"> • Judicial Policy-Making; Activism (Part I) • Guest Speaker: TBD | CSM, Ch. 14-15 Baum, Ch. 4 |
| March 12/14 | SPRING BREAK | |
| Week 9: March 19/21 | <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 10: March 26/28 | <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>Buckley v. Valeo</i>, 424 U.S. 1 (1970) ○ <i>Citizens United v. FEC</i>, 130 S. Ct. 876 (2010) ○ <i>SpeechNow.Org. v. FEC</i>, 599 F. 3d 686 (D.C. Cir. 2010)(en banc) ○ <i>Lieu et al. v. FEC</i>, Civil Action No. 16-cv-2201 (U.S. District Court of the District of Columbia, filed November 4, 2016). • Short Paper No. 2 Assigned | <i>Selected Readings 6,7</i> <i>Additional Selected Readings TBD</i> |
| Week 11: April 2/4 | <ul style="list-style-type: none"> • Pre-Law I –Legal Reasoning; Common Law; Statutory Interpretation | <i>Selected Readings</i> <i>TBD</i> |
| Week 12: April 9/11 | <ul style="list-style-type: none"> • Pre-Law II – Constitutional Interpretation • Short Paper No. 2 Due | <i>Selected Readings</i> <i>TBD</i> |
| Week 13: April 16/18 | <ul style="list-style-type: none"> • Judicial Policy-Making; Activism (Part IV) • 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). | <i>Selected Readings 8;</i> <i>Additional Selected Readings TBD</i> |
| Week 14: April 23/25 | <ul style="list-style-type: none"> • Judicial Review, Constitutional Norms and the Trump Administration | <i>Selected Readings</i> <i>TBD</i> |
| May 6 - 8 | FINAL EXAM | |

APPENDIX I

SELECTED READINGS

1. Excerpt from "*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. Gramlich, John, "*With Another Supreme Court Pick, Trump is Leaving his Mark on Higher Federal Courts*", Pew Research Center.org *FACTTANK blog* (July 16, 2018).
4. McCloskey, Robert G. (revised by Sanford Levinson), **The American Supreme Court, 5th ed.**, (Univ. of Chicago 2010) ("**McCloskey**"), Chapter 1 – *The Genesis and Nature of Judicial Power*.
5. **McCloskey**, Chapter 2 – *The Establishment of the Right to Decide, 1789-1810*.
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).