Political Science 5120/6120: Judicial Process

M,W 4:35 pm-5:55 pm, OSH 137

Course Objectives: The courts are the least democratic of the major American political institutions. Yet the role of the courts is often claimed to be essential to maintaining not only the rule of the law, but the basic rights necessary to maintain a functioning democratic republic. This course will provide a broad survey of judicial institutions, while engaging a central question in American politics: is judicial power compatible with democracy?

We will directly address this question twice: first at the beginning of the course and later at the end. Between these two more specific discussions, we will survey such topics as the appointment of judges, the legal profession, the conduct of trials, decision-making in the appellate courts, and the effect of judicial decisions on politics and policy. However, the question of the compatibility of the courts with democracy will structure our discussions, so that we will continually ask whether the courts are as responsive to the public as they should be, whether they should be responsive at all, and what types of judicial accountability are appropriate.

Course Requirements and Methods of Evaluation: There will be two midterm papers and a final paper, on which you will be expected to demonstrate your ability to apply concepts and theories found in the readings, lectures and class discussion. You will have a week to complete each 4-5 page paper, in which you will write on one of two provided essay questions. There is also a paper which you will write describing and, more importantly, analyzing what you observe when visiting two courtrooms and observe two different forms of judicial proceeding. I will provide you with further instructions regarding the courtroom visit paper several weeks into the semester.

Graduate and Honors students enrolled in POLS 6120 will also be required to participate in supplementary meetings with the instructor, other graduate and Honors students, to read additional materials assigned after consultation with the instructor, and to submit a 15 page research paper on a topic to be approved by the instructor. Their grade will be determined by a different formula, in which the research paper will be worth 25% and each of the elements listed below will be worth 15%.

Your grade will be computed as follows:

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Weight</th>
<th>Due Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Classroom Participation</td>
<td>20%</td>
<td></td>
</tr>
<tr>
<td>Essay 1</td>
<td>20%</td>
<td>Assigned Sept. 28, Due Oct. 5</td>
</tr>
<tr>
<td>Essay 2</td>
<td>20%</td>
<td>Assigned Nov. 2, Due Nov. 9</td>
</tr>
<tr>
<td>Court visit paper</td>
<td>20%</td>
<td>Due November 23</td>
</tr>
<tr>
<td>Final Essay</td>
<td>20%</td>
<td>Assigned Dec. 9, Due Dec. 16</td>
</tr>
</tbody>
</table>

Required Materials: There are three books which are required for this course. They are: Kermit Hall and Kevin McGuire, Institutions of American Democracy: The Judicial Branch, Oxford
University Press, 2006 (ISBN: 978-0195309171); Robert A. Carp, Ronald Stidham, and Kenneth Manning: Judicial Process in America, 7th Edition, CQ Press, 2007 (ISBN: 978-0872893412); and Elliot E. Slotnick, Judicial Politics: Readings from Judicature, 3rd Edition, CQ Press, 2005 (ISBN: 978-1-56802-944-3). Because all of these texts are readily available on the Internet for far less than the list price, I have not asked the University Bookstore to order copies. However, I ask you to make sure that you are purchasing the proper edition of the Slotnick and Carp texts (the ISBN numbers will help ensure this). Reading assignments are listed next to the first author’s name. Those assignments noted as Web can be accessed via the internet through the electronic version of this syllabus using the password distributed in class (email me if you do not recall it).

Non-negotiable Policy on Late Papers and Unsubmitted Work: Papers will be accepted until 5 pm on the date due. I will lower a paper grade one full grade if you submit a paper due on a date for which you have an unexcused absence. Late papers will lose one full grade if submitted within a week of due date; after a week, papers will not be accepted. Failure to submit any assignment during the semester will result in failure of the entire course.

Academic Misconduct: All quotes must be cited as such and include a clear reference to the work from which they were drawn; they will otherwise be treated as plagiarism. All use of materials other than course materials must be accompanied by full citations. All work in this course is assigned as individual work; working as groups or teams is strongly discouraged (and may be treated as cheating), as is all but the most casual assistance from others; this includes spouses and other family members. If you intend to submit a paper which significantly draws upon work for another class, you must first receive explicit permission to do so from both myself and the other instructor. Any form of academic dishonesty will result in a failing grade for the course and other disciplinary action, up to expulsion from the University. Please note that you should keep a copy of your work. When working on a computer, always make a back-up; computer malfunction is not an excuse.

Americans with Disabilities Act Notice: Persons with disabilities requiring special accommodations to meet the expectations of this course should provide reasonable prior notice to the instructor and to the Center for Disability Services, 162 Olpin Union Building, 581-5020 (V/TDD) to make arrangements. Written material in this course can be made available in alternative format with prior notification.

Accommodation of Sincerely Held Beliefs: I will work with students who require schedule changes due to religious or other significant obligations. I will not consider any requests based on course content. Because modern American politics includes many debates over sexuality, obscenity, religious practice and belief, and political ideology, any class that did not address such issues would be substantially limited. Students are required to attend all classes and to read all assignments. All assignments and lectures are related to our subject matter, and I do not include gratuitously salacious material. If you have any objection to the frank and open discussion of any of the topics above, including the use of adult language appropriate to subject matter, please drop the class.

The following schedule is approximate and subject to additions, deletions and substitutions.
Schedule of Classes and Assignments

August 24 - Introduction to Course

August 26, 31 - Judicial Review and American Democracy – Beginning the Debate

**Hall:** Provine, Judicial Activism and American Democracy, 313

**Slotnick:** Melone/Mace: Judicial review: the usurpation and democracy questions, 18
- Taylor, The judiciary is too powerful, 30
- Wallace, Interpreting the Constitution: the case for judicial restraint, 33
- Cohn, Judicial review is exercised properly, 38
- Shaman, Interpreting the Constitution, 41

Sept 2, 9 History and Context: Judge Made Law

**Carp:** Chap. 1: Foundations of Law in the United States

**Hall:** Nelson, The Historical Foundations of the American Judiciary, 3
- Kommers, American Courts and Democracy, 200

**Slotnick:** Slotnick, The place of judicial review in the American tradition, 2

**Web:** Fletcher/Sheppard, “Civil Law” in *American Law in Global Perspective*
- Excerpts from Apple/Deyling, *Primer on the Civil-Law System*

Sept. 14, 16 - State and Federal Systems

**Carp:** Chapters 2, 3

**Hall:** Brace/Gann Hall, Is Judicial Federalism Essential to Democracy?, 174

**Slotnick:** Abrahamson, The state of state courts, 580
- Abrahamson/Gutmann, The new federalism: state constitutions and state courts, 585
- Esler, State supreme court commitment to state law, 599

**Web:** *Michigan v. Long*

Sept. 21, 23 - State Judges

**Carp:** Chap 5. State Judges

**Slotnick:** Berkson, Judicial selection in the United States, 50
- Thomas et al, Interest groups and state court election, 53

**Web:** Tarr, “Politicizing the Process”
- Excerpt from Brennan Center, *Fair Courts: Setting Recusal Standards*
- *Caperton v. Massey Coal; Republican Party v. White*

Sept. 23, 28 - Federal Judges

**Carp:** Chap 6. Federal Judges

**Hall:** Grossman, Paths to the Bench, 142

**Slotnick:** Carp, et al, The decision-making behavior of George W. Bush’s appointees, 112
- Watson and Stookey, Supreme Court confirmation hearings, 547
- Denning, The judicial confirmation process and the blue slip, 562
- Hurwitz and Lanier, Women & minorities on state & federal appellate benches, 270
- Davis, et al., Voting behavior and gender on the U.S. courts of appeals, 286
September 28 – First Essay Assigned, Due October 5.

Sept 30 - Lawyers
**Carp:** Chap. 8. Lawyers, Litigants, and Interest Groups in the Judicial Process
**Slotnick:** Adams, The legal profession: a critical evaluation, 146
 Posner, Truth, justice, and the client's interest: Can the lawyer serve all three?, 154
 Kritzer, Contingency fee lawyers as gatekeepers in the civil justice system, 157
**Web:** Blumberg, “The Practice of Law as a Confidence Game”

October 5, 7 - Criminal Trials
**Carp:** Chapters 9, 10
**Hall:** Yalof, Courts and the Definition of Defendants' Rights, 432
**Slotnick:** Worden, Policy making by prosecutors, 305
 Morris, Race and crime: what evidence is there?, 324
 Berman/Feinblatt, Problem solving justice: a quiet revolution, 583
**Web:** Feeley, *The Process is the Punishment*

October 19 - Civil Courts and ADR
**Carp:** Chap. 11. The Civil Court Process
**Slotnick:** Ludwig, The changing role of the trial judge, 333
 Cooley, Arbitration vs. mediation – explaining the differences, 611

October 21, 26 - Juries
**Slotnick:** Sperlich, And then there were six: the decline of the American jury, 211
 Diamond, Scientific jury selection: what social scientists know and do not know, 244
 Bowers, The capital jury: is it tilted toward death?, 252
 Brenner, Is the grand jury worth keeping?, 263

October, 28, November 2 - How Judges Decide
**Carp:** Chapters 12, 13
**Hall:** Sunstein, Judges and Democracy, 32
**Slotnick:** Hartnett, Deciding what to decide, 394 (*read first*)
 Provine, Deciding what to decide: how the Supreme Court sets its agenda, 338
 O'Brien, The Rehnquist Court's shrinking plenary docket, 379
 Miner, Federal court reform should start at the top, 387
 Wasby, The functions and importance of appellate oral argument, 405
 Campbell, The spirit of dissent, 425
 Segal and Howard, How Supreme Court justices respond to litigant requests, 431

November 2 – Second Essay Assigned, Due November 9.
November 4 - Restraints on Judicial Decision-making

**Carp:** Chap. 4. Jurisdiction and Policy-making Boundaries
**Hall:** Brisbin, The Judiciary and the Separation of Powers, 89
Whittington, Judicial Review and Interpretation, 116
**Slotnick:** Miller, Interactions between legislatures and courts, 516
Lindquist/Yalof: Congressional responses to federal circuit court decisions, 520

Nov. 9, 11- Implementation

**Carp:** Chap. 14 - Implementation and Impact of Judicial Policies
**Hall:** Rosenberg, The Impact of Courts on American Life, 280
**Web:** McCann, Reform Litigation on Trial

Nov. 16, 18, 23 - The Courts and Civil Liberties

**Hall:** Epp, Courts and the Rights Revolution, 343
Davis, Discrimination Through Direct Democracy, 375
Graber, From Republic to Democracy: The Judiciary and the Political Process, 401
Reed, Public Education, Democratic Life, and the American Courts, 459
Ely, Property Rights and Democracy in the American Constitutional Order, 487
**Web:** Goodridge v. Massachusetts; D.C. v. Heller

November 23 - Court visit paper due

Nov. 30, Dec. 2- Public Support and Public Opinion

**Hall:** Mather, Courts in American Popular Culture, 233
Caldiera/McGuire, What Americans Know about the Courts and Why It Matters, 262
**Slotnick:** Marshall, The Supreme Court and the grass roots, 293
Spill and Oxley, Philosopher kings or political actors?, 462
Slotnick and Segal, The Supreme Court decided today,…or did it?, 471
Podlas, Should we blame Judge Judy? The messages TV courtrooms send viewers, 480
Scheb and Lyons, Public perception of the Supreme Court in the 1990s, 496
Kritzer, The impact of Bush v. Gore on public perceptions and knowledge, 500
Esterling, Public outreach: The cornerstone of judicial independence, 507

Dec. 7, 9 - A Final Reckoning

**Carp:** Chap 15. Policymaking by American Judges: A Synthesis
**Slotnick:** Marshall and Ignagni, Supreme Court and public support for rights claims, 487
Meese/DeHart: Reining in the federal judiciary, 636
Segal, Judicial decision making and election year rhetoric, 642
Wasby, Arrogation of power or accountability: "judicial imperialism" revisited, 651
Fein/Neuborne, Why should we care about independent and accountable judges?, 661
Friedman, Attacks on judges: Why they fail, 668
**Web:** O'Connor, The Threat to Judicial Independence

December 9 – Final Essay Assigned. Due December 16. Please submit through turnitin.com and deliver hard copy to my mailbox in the Political Science office, OSH 252 before 5 pm. Late papers must be submitted by 12 pm (noon) on Friday December 18.