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. Instructions regarding the courtroom visit paper can be found here.

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:

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<thead>
<tr>
<th></th>
<th>20%</th>
<th>Date Assigned/Date Due</th>
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<tr>
<td>Classroom Participation</td>
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<tr>
<td>Essay 1</td>
<td>20%</td>
<td>Assigned Sept. 28, Due Oct. 5</td>
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<tr>
<td>Essay 2</td>
<td>20%</td>
<td>Assigned Nov. 2, Due Nov. 9</td>
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<tr>
<td>Court visit paper</td>
<td>20%</td>
<td>Due November 23</td>
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<tr>
<td>Final Essay</td>
<td>20%</td>
<td>Assigned Dec. 9, Due Dec. 16</td>
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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 Mark C. Miller, *Exploring Judicial Politics*, Oxford University Press, 2008 (ISBN: 978-0-19-534307-6). Because all of these texts are readily available on the Internet for less than the list price, I have not asked the University Bookstore to order copies. 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
Miller: Introduction, 1

August 26, 31 - Judicial Review and American Democracy – Beginning the Debate
Hall: Whittington, Judicial Review and Interpretation, 116
      Provine, Judicial Activism and American Democracy, 313
Web: Franken, Address to American Constitution Society
      Bork, Graglia, Has the Supreme Court Gone Too Far?
      O’Connor, The Threat to Judicial Independence

Sept 2, 7, 9 History and Context: Judge Made Law and Comparative 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
Miller: Maveety, Comparative Judicial Studies, 294
Web: Fletcher/Sheppard, “Civil Law” in American Law in Global Perspective
      Greenhouse, American (Judicial) Idol
      Excerpts from Apple/Deyling, Primer on the Civil-Law System

Sept. 9, 14 - State and Federal Systems
Carp: Chapters 2, 3
Hall: Brace/Gann Hall, Is Judicial Federalism Essential to Democracy?, 174
Web: Michigan v. Long
      Pinello, from Gay Rights and American Law

Sept. 16, 21 - State Judges
Carp: Chap 5. State Judges
Miller: McLeod, Differences in State Judicial Selection, 10
      Langer and Wilhelm, State Supreme Courts as Policymakers, 110
Web: Tarr, “Politicalizing the Process”
      Excerpt from Brennan Center, Fair Courts: Setting Recusal Standards
      Caperton v. Massey Coal; Republican Party v. White

Sept. 23 - Federal Judges
Carp: Chap 6. Federal Judges
Hall: Grossman, Paths to the Bench, 142
Miller: Bell, In Their Own Interest, 31

September 28 – First Essay Assigned, Due October 5.

Sept 28 - Lawyers
Carp: Chap. 8. Lawyers, Litigants, and Interest Groups in the Judicial Process
Miller: Mather, Bringing the Lawyers Back In, 48
September 30, October 5 - Criminal Trials
**Carp:** Chapters 9, 10
**Hall:** Yalof, Courts and the Definition of Defendants' Rights, 432
**Web:** Feeley, from *The Process is the Punishment*
Blumberg, “The Practice of Law as a Confidence Game”

October 7 - Civil Courts and ADR
**Carp:** Chap. 11. The Civil Court Process
**Miller:** Waters, Strickland, and Ostrom, State Trial Courts, 83

October 12, 14 - Fall Break

October 19, 21 - Juries
**Miller:** Boatright, The Politics of Jury Reform, 64
**Web:** Vidmar and Hans, from *Blackwell Companion to Law and Society*

October 26, 28 - How Judges Decide
**Carp:** Chapters 12, 13
**Hall:** Sunstein, Judges and Democracy, 32
**Miller:** Martinek, Appellate Workhorses of the Federal Judiciary, 125
Ward, Sorcerers’ Apprentices, 152
Marshall, Pacelle & Ludowise, A Court of Laws or a Super Legislature?, 192

November 2 – Second Essay Assigned, Due November 9.

November 2, 4 - Judicial Policymaking
**Miller:** Barnes, U.S. District Courts, Litigation and the Policymaking Process, 97
Pacelle, The Emergence and Evolution of Supreme Court Policy, 174
Comiskey, Is There Really a Countermajoritarian Problem?, 205
Fisher, The Federal Courts and Terrorism
**Web:** Silverstein, *from Law’s Allure*

November 4, 9 - Checks on Judicial Policymaking
**Carp:** Chap. 4. Jurisdiction and Policy-making Boundaries
**Hall:** Brisbin, The Judiciary and the Separation of Powers, 89
**Miller:** Brisbin, Resistance to the Judiciary, 213
Miller, The Interactions between the Federal Courts and the Other Branches, 274

Nov. 11, 16 - 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*
Nov. 18, 23 - Implementation

**Carp:** Chap. 14 - Implementation and Impact of Judicial Policies

**Hall:** Rosenberg, The Impact of Courts on American Life, 280

**Web:** Justice, *The Two Faces of Judicial Activism*

November 23 - Court visit paper due

Nov. 30, Dec. 7 - 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

**Web:** Halton/McCann, from *Distorting the Law*

Dec. 9 - A Final Reckoning

**Carp:** Chap 15. Policymaking by American Judges: A Synthesis

**Web:** Tamanaha, from *Beyond the Realist-Formalist Divide*

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.

**Do NOT place under my office door.** Late papers must be submitted by 12 pm (noon) on Friday December 18.