

**POLS 220
TOPICS IN LAW
FALL SEMESTER 2013**

Class Schedule: 2:30 – 3:45 T/Th
523 Old Mill
Instructor: Professor Lisa Holmes
Office: 540 Old Mill
Office Hours: 9:00 – 9:45 T/Th,
11:30 – 12:30 T/Th, or by appointment

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COURSE INTRODUCTION

The focus on this course is on the role of the federal judiciary, especially the U.S. Supreme Court, in the American political system. Most classes that even touch on the judiciary start with *Marbury v. Madison*, and the Supreme Court's power of judicial review. Sadly, in some classes, treatment of the judicial branch ends with *Marbury*. In this course, we are going to conduct an in depth examination of the American judiciary, focusing specifically on its power and role in our democratic system. The course will begin by analyzing concerns over the so-called "countermajoritarian difficulty" brought about by the court's power of judicial review. We then turn to an analysis of the ability (and the willingness) of the other branches of government to interpret the Constitution. In the second half of the course, we will examine how the American public influences and is influenced by the judiciary. We will conclude the semester with an assessment of the politicization of the contemporary American judiciary.

Within the specific subjects and readings touched on throughout the semester, we will be analyzing the American judiciary from both a normative perspective (e.g. How extensive should the Supreme Court's power of judicial review be? Should Congress defer to the courts when it comes to interpretation of the Constitution?) and an empirical perspective (e.g. How do members of Congress discuss interpretation of the Constitution? Does public opinion influence the Supreme Court?). Although empirical research can help us answer some questions concerning the role of the judicial in the American democratic system, we will always be left with questions concerning whether the U.S. Supreme Court's role is appropriate, proper, or desirable.

REQUIRED COURSE READINGS

Required Texts (available for purchase at the University Bookstore and on 2-hour reserve at the library):

The Least Dangerous Branch: The Supreme Court at the Bar of Politics, 2nd Edition, by Alexander M. Bickel (1986) (paperback), Yale University Press (ISBN: 978-0-300-03299-4)

Citizens, Courts, and Confirmations: Positivity Theory and the Judgments of the American People, by James L. Gibson and Gregory A. Caldeira (2009) (paperback), Princeton University Press (ISBN: 978-0-691-13988-3)

Constitutional Deliberation in Congress: The Impact of Judicial Review in a Separated System, by J. Mitchell Pickerell (2004) (paperback), Duke University Press (ISBN: 978-0-8223-3262-6)

The Nine: Inside the Secret World of the Supreme Court, by Jeffrey Toobin (2007) (paperback), Doubleday (ISBN: 978-1-4000-9679-4)

Political Foundations of Judicial Supremacy: The Presidency, the Supreme Court, and Constitutional Leadership in U.S. History, by Keith E. Whittington (2007) (paperback), Princeton University Press (ISBN: 978-0-691-14102-2)

Other Required Readings

- A number of additional required readings have been assigned for the semester. These readings will be available on Blackboard.
- Further readings may and most likely will be assigned as the semester progresses. These will be placed on Blackboard or handed out in class.
- I recommend that you bring the assigned reading to class with you each day.

COURSE REQUIREMENTS

Class Participation: As a seminar, meaningful class participation is an essential component of this course. *Students are expected to attend all classes prepared to discuss the readings assigned each day.* As such, the **quality** of your class participation (defined as regular, meaningful contributions to class discussion with knowledge and understanding of the assigned readings) constitutes a large portion of your final grade. Since you cannot participate if you are not in class, attendance will be incorporated as part of this grade component. Although I hope to avoid giving “pop” quizzes on the reading in this class, such assignments may be incorporated into the participation grade component of the course as needed during the semester. (30% of final grade)

Midterm Exam. An all-essay take home exam will be distributed in class. The exam is scheduled to be due **to me** by the end of the class period 3:45 PM on **Thursday, October 24th**. The essay exam will integrate material from class lectures, class discussions, reading assignments, and any other class activities or assignments. (25% of final grade)

Final Exam. An all-essay, cumulative take home exam will be distributed near the end of the semester. Exams will be due **to me** at the end of the scheduled final exam period **10:15 AM on TUESDAY, DECEMBER 10TH**. (25% of final grade)

Short Paper Assignments: Each student will be required to sign up for THREE class sessions where the student will write a short paper on the day’s assigned reading. In addition, the expectation is that the student will be especially prepared to assist in discussing that day’s reading. More information on these short papers and a sign-up sheet for the first round of papers will be provided soon. (Each short paper is worth 6.67% of your final grade – for a total of 20% of the final grade).

A Note on Grading Policy:

An “A” grade given on any assignment or as a final cumulative grade signifies “excellent” work (reserved for those students who have not only demonstrated an excellent understanding of the course material, but who have also shown an excellent ability to analyze the material). A “B” signifies “good” work (a “good” understanding of and ability to analyze the material). A “C” signifies “satisfactory” work (a “satisfactory” understanding of and ability to analyze the material). A “D” signifies “passing” work (a “passing” understanding of and ability to analyze the material). An “F” signifies “failing” work (an inability to understand *or* analyze the material).

ACADEMIC HONESTY

Students are, of course, expected to do their own work on all assignments in this class. University standards regarding academic honesty apply throughout the semester. Please see the official university policy at: <http://www.uvm.edu/~uvmppg/ppg/student/acadintegrity.pdf>

CLASSROOM PROTOCOL

The Department of Political Science requires that this class room protocol, defining minimum standards of conduct, be included in all syllabi of political science classes.

1. Students are expected to attend and be prepared for ALL regularly scheduled classes.
2. Students are expected to arrive on time and stay in class until the class period ends. If a student knows in advance that s/he will need to leave early, s/he should notify the instructor before the class period begins.
3. Students are expected to treat faculty and fellow students with respect. For example, students must not disrupt class by leaving and reentering during class, must not distract class by making noise, and must be attentive to comments being made by the instructors and by peers.

In addition to the above minimum standards, the following standards will apply throughout the semester:

1. For the take-home exam and short paper assignments, late papers will be docked ½ letter grade for each 24 hour period (or fraction thereof) that the paper is late. So, a paper that would normally earn a B (an 85), would be dropped to an 80 if it is turned in up to 24 hours late, a 75 if turned in between 24 and 48 hours late, etc. Weekends and holidays ARE incorporated into this calculation. No variation on the computer/printer/hard drive catastrophe excuse will be accepted. You should keep adequate backups of all written work to prevent such a problem. I will only accept paper copies of these written assignments (not emailed versions), but if some sort of emergency prevents you from getting to campus to hand in your assignment on time, you may email it to me and then bring in a paper copy as soon as possible.
2. If you are a member of a sports team or a UVM organization that requires travel out of town, you must provide me with your schedule as soon as it becomes available. Until I receive your official schedule, no accommodation will be made concerning your class attendance or exam dates due to team travel.
3. Students have the right to practice the religion of their choice. Students with religious observation needs must submit to me in writing their documented religious holiday schedule for the semester by the end of the second full week of classes.
4. If you have a physical or learning disability, please provide me with the relevant paperwork from the ACCESS office by the end of the second full week of classes so we can discuss any relevant accommodations. Discussing these issues early in the semester is necessary to develop a plan that is workable for you and for me. Also, note that I may not be able to accommodate last-minute requests. If your accommodation needs change during the semester, you must inform me of any such changes immediately.
5. All cell phones, iPods, BlackBerries, and other electronic devices ***must be turned off and stowed away*** for the duration of ***each*** class session. Any use of these devices in class is distracting and will not be tolerated. ***Computers are not allowed for use in class***, unless you are a registered course note taker working through the ACCESS office. I reserve the right to reduce the final grade of any student who misuses electronic devices in class.
6. As per University policy: “The uvm.edu e-mail address that has been issued to you is the official means by which the University will communicate with you (during academic sessions and break periods). You are responsible for checking e-mail (from the University) sent to your University e-mail address.”

COURSE SCHEDULE

This is my intended schedule and agenda. However, this schedule (and the assigned readings) may change as the semester progresses. Readings available on Blackboard are listed as such. All other books must be purchased or borrowed from the UVM course reserve desk.

UNIT I: THE SUPREME COURT, JUDICIAL POWER, AND THE “COUNTERMAJORITARIAN PROBLEM”

- Aug. 27 Blackboard: **Gerring & Yesnowitz**, “A Normative Turn in Political Science?” (pgs 101-109 only)
Recommended: “Understanding Federal and State Courts” (on Blackboard) (This short summary provides some very basic background on the structure and function of the U.S. judiciary and should be read by anyone who needs a bit of a refresher on the court system.)
- Aug. 29** *Class cancelled – I will be attending the American Political Science Association Conference*
- Sept. 3 Blackboard: **Hollingsworth v. Perry** (2013), Roberts’ majority and Kennedy’s dissenting opinions
- Sept. 5 **Bickel**: Chapter 1
 And **Federalist 78** (on Blackboard)
- Sept. 10 **Bickel**: Chapter 2 and 3
- Sept. 12 **Bickel**: Chapter 4
- Sept. 17 **Bickel**: Chapters 5 and 6
- Sept. 19 Blackboard: **Wright**, “The Role of the Supreme Court in a Democratic Society”
 And **Dahl**, “Decision-Making in a Democracy”

UNIT II: THE CONSTITUTION, THE COURTS, AND THE OTHER BRANCHES OF GOVERNMENT

- Sept. 24 **Whittington**: Chapters 1 and 2
 And **Liptak**, “Supreme Court is Asked to Rule on Health Care” (on Blackboard)
- Sept. 26 **Whittington**: Chapter 3
- Oct. 1 **Whittington**: Chapter 4
- Oct. 3 **Whittington**: Chapters 5 and 6
- Oct. 8 Blackboard: **Graber**, “The Nonmajoritarian Difficulty: Legislative Deference to the Judiciary”
- Oct. 10 **Pickerill**: Introduction and Chapter 1
- Oct. 15 **Pickerill**: Chapters 2 and 3
- Oct. 17 **Pickerill**: Chapters 4 and 5
- Oct. 22 Blackboard: **Devins**, “Why Congress Did Not Think about the Constitution ...”
 And **Howe**, “We Gave You a Chance”
 And **Liptak**, “In Congress’s Paralysis, a Mightier Supreme Court”

THURS., OCT. 24 MID-SEMESTER EXAM DUE TO MY OFFICE (540 OLD MILL) BY 3:45 PM

UNIT III: THE COURTS AND THE AMERICAN PUBLIC

- Oct. 29 **Gibson and Caldeira:** Chapters 1 through 3
 And **Liptak and Kopicki**, “Public’s Opinion of Supreme Court Drops after Health Care Law Decision” (on Blackboard)
- Oct. 31 **Gibson and Caldeira:** Chapters 4 through 6
 And **Schapiro**, “Objection! Americans’ Opinion of Supreme Court Can’t Keep Dropping” (on Blackboard)
- Nov. 5 Blackboard: **Epstein and Martin**, “Does Public Opinion Influence the Supreme Court? Possibly Yes (But We’re Not Sure Why)”
 And **Baum and Devins**, “Why the Supreme Court Cares About Elites, Not the American People.”
 And **Savage**, “Public Opinion Could Sway Supreme Court’s Ruling on Gay Marriage.”
- Nov. 7 Blackboard: **Franklin and Kosaki**, “The U.S. Supreme Court, Public Opinion, and Abortion”
 And **Johnson and Martin**, “The Public’s Conditional Response to Supreme Court Decisions”
 And **Stoutenborough et al.**, “Reassessing the Impact of Supreme Court Decisions on Public Opinion: Gay Civil Rights Cases”
 And **Kopicki**, “Polls: Public Division Remains Over Health Care Law”
 And **Sullivan**, “Did the Supreme Court Change Public Opinion about Gay Marriage? Nope.”

UNIT IV: COUNTERMAJORITARIANISM, POLITICIZATION, AND THE CONTEMPORARY SUPREME COURT

- Nov. 12 **Toobin:** Part One (note, this includes chapters 1 through 10)
- Nov. 14 **Toobin:** Parts Two and Three (note, this includes chapters 11 through 19)
- Nov. 19 **Toobin:** Part Four (chapter 20 through the end of the book)
- Nov. 21 Blackboard: **Gibson and Caldeira:** “Has Legal Realism Damaged the Legitimacy of the U.S. Supreme Court?”
- Nov. 26 and 28 Thanksgiving Break**
- Dec. 3 Blackboard: **Levinson**, “Online Alexander Bickel Symposium: Alexander Bickel Has Left the Building.”
 “Corporations and the Court.” *The Economist*.

TUESDAY, DEC. 10 FINAL EXAM DUE TO MY OFFICE (540 OLD MILL) BY 10:15 AM