American courts resolve disputes between private parties and determine guilt or innocence in criminal trials. But they also do a great deal more. Using their authority under the Constitution, the Supreme Court has played a decisive role in social policy areas such as minority rights, intimate family and sexual relations, voting rights, police practices, punishment of criminals, environmental protection, and many other areas. In addition, lower federal courts have managed reform programs for prisons, mental hospitals, schools, and other public institutions.

This course will consider the role of courts in our governmental system. Are they overstepping their boundaries when they take an active role in public policy formation and institutional management? Are they interfering with the proper functioning of other government institutions, such as Congress, the Presidency or state governments? Are they acting on the basis of law or merely expressing the political preferences of the judges? Are they upholding or violating the rule of law? Are they supporting or undermining democratic government? With the nation waiting in anticipation to see what the current Supreme Court will do, this is a crucial time for us, as a nation, to address these questions.

**Written assignments:** Each student will be responsible for preparing questions for one of the “Zoom” visitors, two short papers during the semester describing a case and one 15-20 paper at the end.

**Readings:** The one book we want you to buy, as we will be using a large proportion of it, is

All other readings will be available online via Brightspace. Cases are publicly available and easily searchable, but you will want to use the Brightspace page as many of our cases will be edited down for you.

**Zoom Visitors:** The following authors will join our class via Zoom on the day their work is assigned:

- Gerald Rosenberg, Univ. of Chicago Pol. Sci.
- Erwin Chemerinsky, Univ. of California, Berkeley L.S. (for the Lockyer case)
- David Strauss, Univ. of Chicago L. S. (to be determined)
- William Fletcher, U.S. Court of Appeals, Ninth Circuit
- Susan Sturm, Columbia University L.S.
- Malcolm Feeley, University of California, Berkeley L.S.
- Charles Epp, University of Toledo Pol. Sci.
- Owen Fiss, Yale University L.S.
- Brian Tamanaha, Washington University L.S.

**Schedule of Readings (subject to change)**

**A: Introduction to Judicial Decision Making**

**Week 1: Decisions**

Tuesday (Jan. 18)
Introduction  (No Reading)

Thursday (Jan. 20)


Karl Llewellyn, *The Bramble Bush*, pages 60-71

Orin Kerr, “How to Read a Judicial Opinion,” pp. 1-8

**B: Managing the Legal System**

**Week 2: Juries and Attorneys**

Tuesday (Jan. 25)


Thursday (Jan. 27)

*Gideon v. Wainwright*, 372 U.S. 335 (1964)


Anthony Lewis, *Gideon’s Trumpet*, pp.____

**Week 4: Police Practices and Sentencing**

Tuesday (Feb. 1)


Thursday (Feb. 3)


C: Confronting Public Controversies

Week 5: American Apartheid

Tuesday (Feb. 8)

*Plessy v. Ferguson*, 153 U.S. 537 (1896)


Geoffrey Stone and David Strauss, *Democracy and Equality*, pp. 13–26

Thursday (Feb. 10)


Erwin Chemerinsky, *The Case Against the Supreme Court*, 21-53

Gerald Rosenberg, *The Hollow Hope*, pp. 42–71

Week 6: Voting

Tuesday, Feb. 15

*Smith v. Allwright*, 321 U.S. 649 (1944)


Geoffrey Stone and David Strauss, *Democracy and Equality*, pp. 76-88

Thursday, Feb. 17

*Shelby County v. Holder*, 570 U.S. 529 (2013)


Zachary Roth, *The Great Suppression*, pp. 17-42


Week 7: Sex and Reproduction

Tuesday (Feb. 22)

*Griswold v. Connecticut*, 381 U.S. 479 (1965)

*Roe v. Wade*, 410 U.S. 113 (1973)

Gerald Rosenberg, *The Hollow Hope*, pp. 173-201
Thursday (Feb 24)


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**Week 8: Intimate Relations**

Tuesday (Mar. 1)

*Loving v. Virginia,* 388 U.S. 1 (1967)

Geoffrey R. Stone and David A. Strauss, *Democracy and Equality*, pages 114-123

Dorothy Roberts, Loving v. Virginia as a Civil Rights Decision, 59 N.Y. L. Sch. L. Rev. 175 (2014)

Thursday (Mar. 3)


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**SPRING BREAK - NO CLASSES**

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**D. Courts as Parens Patriae**

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**Week 9:**

Tuesday (Mar. 15)

*Prince v. Massachusetts*

*Parham v. J.R.*

Maria N. Greenstein, *The Role of the Judge in Children’s Matters*

Thursday (Mar. 17)
Stanley v. Illinois
In re J.N.S.

Week 10:
Tuesday (Mar. 22)
Ginsburg v. New York
Tinker v. Des Moines
Thursday (Mar. 24)
In re Gault
Roper v. Simmons

E. Courts as Institutional Reformers

Week 11: Institutional Reform: Prisons
Tuesday (Mar. 29)
Malcolm Feeley & Edward Rubin, Judicial Policy Making and the Modern State, pp. 27-79
Thursday (Mar. 31)
William Fletcher, The Discretionary Constitution, pp. 635-57
Susan Sturm, A Normative Theory of Public Law Remedies, pp. 1378-1412

Week 12: Police Departments
Tuesday (Apr. 5)
David Rudovsky, The Qualified Immunity Doctrine in the Supreme Court: Judicial Activism and the Restriction of Constitutional Rights, pages 23-35; 72-81

Thursday (Apr. 7)
City of Los Angeles v. Lyons, 461 U.S. 95 (1983)

**F. Policy and Law**

**Week 14: The Role of the Judge**

Tuesday (Apr. 12)

Jerome Frank, *Courts on Trial*, pp. 146-64

Jeffrey Segal & Harold Spaeth, *The Supreme Court and the Attitudinal Model Revisited*, pp. 1-26, 86-114

Thursday (Apr. 14)

Owen Fiss, *Objectivity and Interpretation*


**Week 16: The Role of Law**

Tuesday (Apr. 19)


Erwin Chemerinsky, *The Case Against the Supreme Court*, pp. 229-65

Thursday (Apr. 21)