

# **POLS 4310: Judicial Process and Policymaking, Spring 2020**

**Instructor:** Dr. Andrew Smith

**Lectures Posted:** Tuesdays and Thursdays at midnight

**Office:** ELABN 230

**Office Hours:** Tuesdays and Thursdays, 1:30 – 3:30 PM, or by appointment

**Virtual Office Hours:** Tuesdays and Thursdays, 1:30 – 3:30 PM, or by appointment

**Host Location:** <https://utrgv.zoom.us/j/2013280479>

**Zoom Meeting ID:** 201 328 0479

**Email:** [andrew.smith@utrgv.edu](mailto:andrew.smith@utrgv.edu)

## ***Introduction***

Alexander Hamilton once referred to the judiciary as “the least dangerous branch” because it would have the power of “neither the purse nor the sword” in the new republic. However, over the course of American history the judiciary – particularly at the federal level – has influenced much of American public policy, from civil rights for African-Americans to the powers of the federal government to the right to vote. So how did the American judicial system go from the “least dangerous branch” to at least an equal player with the democratically elected branches?

Over the course of this semester, we will discuss how the federal judiciary has evolved throughout American history. Furthermore, we will explore how the study of the judiciary has changed, from a belief that judges are merely constitutional “umpires” to more robust and scientific explanations of judicial decision-making, as well as how our traditional understandings of “law” and “justice” do not include the considerations of all Americans. By the end of this course, you will understand how the behavior of judges, the theories of justice, and the judicial system impact United States public policy – and how these decisions affect your daily life.

## ***Course Goals***

The primary purpose of this course is to introduce you to the American judicial process and the American court system (primarily the federal court system, and by the end of this course you will expand your knowledge of judicial decision-making, the judicial process, and legal theory. The secondary goal of this course is to improve your critical thinking, reading, and writing skills through various means. The tertiary goal of this course is to provide an introduction to research methods, through the reading and discussion of peer-reviewed articles on the judiciary.

## ***Learning Objectives for Curriculum Requirements:***

This course fulfills the capstone requirement of the Legal Studies Minor. This course also serves as an elective area requirement in Political Science:

- (i) This elective focuses on the consideration of the Constitution of the United States and federal and state laws and policies related to it.
- (ii) This elective involves the philosophical, legal, scientific, and normative underpinnings of the US judicial system and its behavior.

This course also contains student-learning objectives related to the fulfillment of political science and university curriculum standards for upper-division courses:

- (i) **Research Methods:** students will apply research methods appropriate to the social sciences, including (but not limited to) empirical analysis, practical application of theory, and critical evaluation of historical documents.
- (ii) **Critical Thinking:** students will acquire analytical and critical thinking skills, including (but not limited to) the summarizing of complex material and the critiquing of prominent theories.
- (iii) **Effective Writing:** students will demonstrate the ability to write effectively, through the completion of exams and research papers and discussion boards.
- (iv) **Effective Speaking:** students will demonstrate the ability to communicate effectively, through participation in classroom discussion and debate.

### ***Required Readings***

Carp, Robert; Stidham, Ronald; Manning, Kenneth; and Holmes, Lisa. 2016. *Judicial Processes in America*. 11<sup>th</sup> Edition. Los Angeles: Sage Publications. (hereafter referred to as Carp, et al).

Please use the most recent edition of this textbook, as the chapter contents will match up with what we're discussing in class and the statistics in the 11<sup>th</sup> edition are more up-to-date.

In addition to the textbook, we will discuss various peer-reviewed articles, court cases, and excerpts from other scholarly works, all of which you must read in order to successfully complete this course. Unless otherwise noted, these readings will be posted to Blackboard, under the "Course Materials" section ([mycourses.utrgv.edu](http://mycourses.utrgv.edu)).

### ***Grade Breakdown***

Research Paper – Group Grade: 25%  
Research Paper – Individual Grade: 25%  
Response Papers: 20%  
Participation: 10%  
Midterm Exam: 20%

### ***Grades and Grading:***

A (90-100), B (80-89), C (70-79), D (60-69), F (0-59)

### ***Lectures:***

All lectures will be posted under the “Course Materials” section of Blackboard and will be posted every Tuesday and Thursday at midnight, unless otherwise noted. If you do not view the lectures it will be extremely difficult to do well on the response papers and exam. If you are having trouble accessing any of the lectures, PLEASE EMAIL ME ASAP!

### ***Participation***

Ten percent of your grade is based on online participation. During the semester, I will post discussion threads on Blackboard, which will be graded on a 0-5 scale. In order to get a participation grade (other than a zero) for this course, you must respond to a thread **at least 5 times** during the semester. Posting can take the form of either responding to the thread question or replying to someone else’s comment. Appropriate responses will be detailed, directly answer the question asked, provide evidence (primarily from the readings), and contain sources if statistics or quotes are cited. **All discussion boards will close at 11:59 PM CST on April 24<sup>th</sup>. If you do not have the required posts by that time, you will receive a zero for participation, regardless of your in-class participation level.** For a score rubric, please consult Blackboard, under “Course Materials”.

### ***Statement of Civility and Inclusivity***

This class will address topics in American law, jurisprudence, and politics which may be controversial or contentious. The reason we discuss these issues is because students need to be exposed to areas outside of their comfort zone and because a lack of engagement with ongoing controversies in interpreting the Constitution is a disservice to students and the general population. Students are warned at the onset that there will be issues with which you will disagree with the views of your classmates and even the professor, and there will be issues discussed which may be sensitive to students because of their personal views or experiences

The key with participation is to **respect one another**. I do not care whether you leave this course believing in one theory over another or believing in judicial activism or restraint. I do care whether you can defend your position, whether you understand the readings, and whether you can formulate your own views. Therefore, it is expected that everyone in the class will be respectful of those whose opinions may differ from your own, and it is expected that you will not resort to personal attacks, mudslinging, and overgeneralizations. Violating this policy will reflect poorly on your final grade.

### ***Midterm Exam***

You will have a midterm exam which will count for 20% of your overall grade and will be a take-home, open-book exam. The midterm will be available starting on **March 14<sup>th</sup> at midnight CST** and is due **on March 17<sup>th</sup> by 11:59 PM CST on Blackboard**. For the exam, you will craft responses in which you incorporate the learning material to answer questions related to concepts discussed in class. You will be presented with 4 questions, of which you must answer 2. Appropriate responses will be 1 ½ to 2 single-spaced pages in length per question, answer the questions directly, and use a logical and developed argument containing the (required) readings and court cases in the syllabus. You are only allowed to use those materials included in the course (journal articles, textbook, etc.); **you may not use outside sources. Using outside sources will be considered plagiarism.** To learn more about how your exam responses will be evaluated, please read the grading rubric posted to Blackboard, under “Course Materials”.

### *Research Paper*

A total of 50% of your final grade will be a group research paper on a topic of your choosing. This paper will be due **no later than 11:59 PM on May 4<sup>th</sup>**. Your group will pick a topic related to law and the judicial process in America (legality of private prisons, judicial elections versus judicial appointments, etc.), pose a research question (i.e. do private prisons reduce recidivism?), state a thesis (i.e. “private prisons do not reduce recidivism”), provide background information on the topic (history, statistics, etc.), and defend your hypothesis, using a combination of case law, academic journal and law review articles, and logical, critical thinking of the topic. This research paper should be approximately 7-10 pages long (**NOT** counting the bibliography), double-spaced, and in Word or PDF format. **Documents must be uploaded to Blackboard in these formats, or they will not be accepted.**

The paper must have **at least 10** scholarly sources (law review articles, government documents, etc.). Although your group may use articles covered in class as sources in your paper, **you may NOT use the textbook, and you must include at least 5 scholarly articles or books from outside of class.** All sources must be cited in text, as well as in the bibliography; **failure to cite sources in the text of the paper is considered plagiarism.** The in-text citation format is APSA style, and all in-text citations must be parenthetical. Bibliographic citations will follow the APSA style (see the end of the syllabus for what APSA citations look like). **It is strongly advised that you use RefWorks to manage citations.** A reference librarian will come during the 1<sup>st</sup> week of class to explain how to use and manage citations.

The group assignments will be made by the 3<sup>rd</sup> week of class, and it is expected that the group will meet at least once every 2 weeks. Under your group page, there are links in which to upload your notes, email one another, and otherwise collaborate with one another (this is also what I will use to check your progress). You are free to use other tools not shown in the group page, such as using Zoom for distance meetings. I will check in with each group once a month to receive a progress report that’s based on what’s included in your group page; failure to hold regular group meetings/check in will be negatively taken into account in grading the final paper. Problems or issues between

group members are to be resolved by the group itself, but if the issue cannot be resolved, it is to be reported to me, and I will take decisive action.

In terms of grading, your grade will be the assigned for the entire group's paper and a peer assessment of your individual contribution to the group. The group paper grade will be based on the criteria outlined in the first two paragraphs of this section. For the specific grading rubric used for this assignment, look in the "Course Materials" folder on Blackboard.

The individual grade will be the average score assigned to you by the other group members, who must fill one out for each member of the group or receive a zero for their individual grade. This score is based on the effectiveness of your contribution to the assignment (regular communication with the group members, meaningful assistance with research and writing, etc.). It is strongly recommended that no group member "specialize" in a specific segment of the paper: you will find that inevitably one member contributes significantly more/less than the others, and you will receive a zero for the portion of the paper for which you did not contribute. It is advisable that you divide the workload fairly among one another (everybody does a portion of the research, everybody writes part of the introduction, etc.). For the specific grading rubric for the individual grade, please see the "Course Materials" folder on Blackboard.

### ***Response Papers***

In order to prepare you for the final research paper, you will have two response papers, counting for a combined total of 20% of your overall average, which you will have to write throughout the course of the semester. The response papers will be based on the assigned readings and general topics we are covering in class. I will provide you with a topic (thesis statement, chapter to discuss, etc.), and you will write a summary of the topic (background information, et al) and your thoughts on the subject matter (i.e. "legal realism does a better job explaining Supreme Court decision-making because...").

Papers should be no more than 3 double-spaced pages in length, NOT counting the bibliography, and should be uploaded to Blackboard in Word or PDF format. **Documents must be uploaded to Blackboard in these formats, or they will not be accepted. You may only use the textbook and the assigned readings; the use of outside materials will be considered plagiarism.** Responses should indicate that you have thoroughly read the germane material, present a logical critique of the subject, and demonstrate a grasp of critical thinking on matters related to judicial processes and theories. While there is no minimum or maximum number of sources that you will need to cite in your response papers, the best responses will demonstrate a robust review of the relevant material. For the grading rubric used for this assignment, look in the "Course Materials" folder on Blackboard.

### ***Late Assignments:***

Assignments that are turned in after the assigned due date and time are considered late, no matter how close to the deadline they are submitted. You automatically lose 10 points if your assignment is turned in after the due date, and you lose an additional 2.3 points for every hour after the due date that you are late. **If you turn in your assignment 24 hours or later after the due date and time, you receive a zero.** The same rules apply to the group paper, except **points will be deducted from all of the group members, and the zero will apply to the entire group as well.** If there is a legitimate reason you cannot complete the assignment in the allotted time (hospitalization, et al), you must communicate with me as soon as it is feasible (and provide me with evidence) so that you may complete the assignment without penalty; otherwise, your grade (and that of your group) suffers the consequences.

### ***Extra Credit:***

You will receive bonus points to your final average if you perform designated extra credit assignments throughout the semester. You may receive no more than **3** bonus points (1 point for each assignment, so no more than three assignments). Extra credit is assigned by me and may consist of writing a summary of a lecture, live-tweeting a political speech, or anything else that comes to mind that I believe relates to what we're discussing in class.

### ***Academic Dishonesty and Plagiarism:***

This is the quickest way to fail this class and get yourself in serious trouble with the university. Cheating and lying will not be tolerated in my class, period. Anyone caught cheating or lying per university rules will suffer the consequences, which are at my discretion. All assignments are closed-book. The exam submissions and research paper will use SafeAssign, which is designed to detect plagiarism. See the Student Rights and Responsibilities website for a comprehensive definition of academic dishonesty: <http://www.utrgv.edu/srr/students/academic-dishonesty/index.htm>.

### ***Accommodations for Students with Disabilities:***

If you have a learning, mental, or physical disability that may require individualized accommodation, you must inform me of your need ASAP – preferably at the beginning of the semester. Please contact the Student Accessibility Services office, located at University Center 108 here in Edinburg (Cortez 129, if you are in Brownsville), in order to register with them (this is the only way I will be able to grant you academic accommodation). You can also contact the Edinburg office at (956) 665-7005 (the Brownsville office is (956) 882-7374) or at [ability@utrgv.edu](mailto:ability@utrgv.edu).

### ***DACA Support for Undocumented Students***

For those students who are undocumented, The DREAM Resource Center – located in the Center for Diversity and Inclusion – provides a safe, confidential space for students to obtain resources and services. The office is located in the University Center

Room 206A on the Edinburg campus (Student Union Room 1.20 on the Brownsville campus). You can also contact the center at (956) 665-2260 or at [diversity@utrgv.edu](mailto:diversity@utrgv.edu) or [dreamer@utrgv.edu](mailto:dreamer@utrgv.edu). All conversations related to your status and issues related to it are confidential and will not be made public without your consent, by me or anyone else. This university strives to be a safe space for all students, regardless of their citizenship status, and we will do everything to help you receive the resources you need to be successful in college.

***Pregnancy, Pregnancy-related, and Parenting Accommodations:***

Title IX of the Education Amendments of 1972 prohibits sex discrimination, which includes discrimination based on pregnancy, marital status, or parental status. Students seeking accommodations related to pregnancy, pregnancy-related condition, or parenting (reasonably immediate postpartum period) are encouraged to contact Student Accessibility Services for additional information and to request accommodations. If you will need to miss class for anything related to these matters, you will have to receive accommodation from SAS and inform me ASAP of your needs, so that we may work together to accommodate you.

If you do have a small child or children, and you are a full-time student, UTRGV has an on-campus Child Development Center, which serves children age 3 months to 5 years and provides students with meals, learning activities, and child care. If you are interested in the preschool, please visit <https://www.utrgv.edu/en-us/student-experience/student-services/child-development-center/> or email the center at [childcare@utrgv.edu](mailto:childcare@utrgv.edu) for more information.

If you are having trouble finding a babysitter or child care for your child, you are free to bring them to class with you. I do ask that you only do so if you absolutely cannot get child care for that class, and I ask that you make sure your child is on their best behavior (quiet, not disruptive, etc.). If you cannot guarantee this, I ask that you not attend class that day (if you provide evidence that you cannot find child care, I will count the absence as excused), and if you are consistently having trouble finding child care, you should contact either Student Accessibility Services or the Dean of Students to learn other ways to work around this issue.

***Sexual Harassment, Discrimination, and Violence:***

In accordance with UT System regulations, I am a “Responsible Employee” for reporting purposes under Title IX regulations and so must report any instance, occurring during a student’s time in college, of sexual assault, stalking, dating violence, domestic violence, or sexual harassment about which I become aware during this course through writing, discussion, or personal disclosure. I also reserve the right to pursue action beyond the official university protocol (e.g. going to public law enforcement with concerns or evidence), with the consent of the victim. More information can be found at [www.utrgv.edu/equity](http://www.utrgv.edu/equity), including confidential resources available on campus. The faculty and staff of UTRGV actively strive to provide a learning, working, and living environment that promotes personal integrity, civility, and mutual respect that is free from sexual misconduct and discrimination.

### ***FERPA Release:***

In accordance with the Family Education Rights and Privacy Act (FERPA), all academic information related to this course is confidential. Consequently, I cannot reveal any information about your grade, attendance, etc. to anyone who is not an authorized university employee. If you have someone whom you want to have access to your information, you will need to sign a FERPA waiver and turn it in to me. You can find that document at <https://www.utrgv.edu/files/documents/student-enrollment/utrgv%20-%20ferpa%20release.pdf>.

### ***Mandatory Course Evaluation Period:***

Students are required to complete an ONLINE evaluation of this course, accessed through your UTRGV account (<http://my.utrgv.edu>); you will be contacted through email with further instructions. Students who complete their evaluations will have priority access to their grades. The course evaluations will open at midnight CST on April 9<sup>th</sup> and close at 11:59 PM CST on April 29<sup>th</sup>.

### ***University-Sponsored Clubs or Programs***

If you are a student-athlete, band member, or otherwise affiliated with a university-sponsored club or event that will require you to miss class during the semester, please let me know ASAP – preferably at the beginning of the semester – so that absences for these events do not reflect on your final grade.

### ***Inclement Weather Policy***

This class will follow the university's inclement weather policy, with regards to winter weather: if the campus is closed there will be no class, and if campus is open there will be class. Having stated that, if you live away from campus please use common sense with regard to road conditions. If it is too dangerous for you to safely make it to campus, please notify me ASAP so that your absence will be excused.

### ***Food Security Resources for Students:***

Any student who faces challenges securing their food and believes this may affect their performance in the course (it will) is urged to contact the VP for Student Success for support. Furthermore, please be aware of resources on campus, such as the Student Food Pantry, that can assist you in accessing food and other non-perishable resources. You can learn more about the Student Food Pantry, and other resources for students, at <http://www.utrgv.edu/advising/one-stop-shop/connect-to-your-student-resources/index.htm>

### ***Mental and Physical Health***

College can be a very scary and troubling time. Please understand that you are not alone, and there are resources available to help you with any crisis or concerns you may have. For mental health, the best on-campus resource is the Student Counseling Center, located at EUCTR 109 in Edinburg or BSTUN 2.10 in Brownsville. The Counseling Center offers a myriad of resources for free to students who have paid the health fee for the semester, and all information is confidential. If you would like their help, you can contact them at (956) 665-2574 in Edinburg ((956) 882-3897 if you are in Brownsville) or check their website at <http://www.utrgv.edu/counseling/services/counseling/index.htm>.

Physical health is also an important aspect of college, as poor physical health can (and often does) impact your success in the classroom. The Student Health Center offers primary care physicians and a full array of medical services, almost all of which are free of charge to students who have paid the health fee for the semester. If you would like their help, you can contact them at (956) 665-2511 if you are in Edinburg ((956) 882-3896 if you are in Brownsville) or visit their website at <http://www.utrgv.edu/health-services/>.

### ***Academic Help and Career Guidance***

If you need academic (non-disability) help, there are several resources available to you at UTRGV, in addition to my office hours. University Resources include the Learning Center, Writing Center, Advising Center and Career Center. The centers provide services such as tutoring, writing help, critical thinking, study skills, degree planning, and student employment. Locations are:

- Learning center: BSTUN 2.10 (Brownsville) or ELCTR 100 (Edinburg)
- Writing center: BLIBR 3.206 (Brownsville) or ESTAC 3.119 (Edinburg)
- Advising center: BMAIN 1.400 (Brownsville) or ESWKH 101 (Edinburg)
- Career center: BCRTZ 129 (Brownsville) or ESSBL 2.101 (Edinburg)

The Writing Center now accepts online and Skyping appointments. Go to <https://www.utrgv.edu/writingcenter/services/online/index.htm> and look for the appropriate links.

### ***Schedule (subject to change as needed)***

**1/14:** Introduction. Introduce one another and go over the goals and format of the course

**1/16:** Basics of American Legal System

**Flipped PowerPoint:** Explore the different types of laws and legal divisions in the United States

**In-Class PowerPoint:** Review the history of the Supreme Court

### **Required Reading**

Carp, et al Ch. 2

*Marbury v. Madison* (1804)

*Federalist 78*

## *Anti-Federalist 15*

### **Optional Readings**

*McCulloch v. Maryland* (1819)

Orren, Karen and Walker, Christopher. 2013. "Cold Case File: Indictable Acts and Officer Accountability in *Marbury v. Madison*". *The American Political Science Review* 1-18 (interesting article treating *Marbury* as a political whodunit).

**1/21:** Jurisdiction in Federal Courts.

### **Presentation by Reference Librarian about RefWorks**

**In-Class:** Explore when federal courts are allowed to hear cases and why courts cannot hear certain cases

### **Required Readings**

Carp, et al Ch. 4 (except for the section on state court jurisdiction)

*Baker v. Carr* (definition of "political question")

### **Optional Reading**

*Ashwander v. TVA* (more detailed outline of when and why courts can(not) hear cases)

**1/23:** Litigants and the Courts.

**Flipped Lecture:** Explore the different types of litigants.

**In-Class Lecture:** Discuss how resource advantages potentially cause the courts to favor some litigants over others and examine how less-advantaged litigants try to "balance the scale".

### **Required Readings**

Carp, et al Ch. 8

Galanter, Marc. 1974. "Why the 'Haves' Come Out Ahead: Speculation on the Limits of Legal Change". *Law & Society Review* 9:95-160.

Black, Ryan and Owens, Ryan. 2013. "A Built-In Advantage: The Office of the Solicitor General and the U.S. Supreme Court". *Political Research Quarterly* 66:454-466.

Collins, Paul. 2004. "Friends of the Court: Examining the Influence of *Amicus Curiae* Participation in U.S. Supreme Court Litigation". *Law & Society Review* 38:807-832.

Silver-Greenberg, Jessica, and Gebeloff, Robert. October 31, 2015. "Arbitration Everywhere, Stacking the Deck of Justice." *New York Times*

### **Optional Readings**

Songer, Donald and Sheehan, Reginald. 1992. "Who Wins on Appeal? Upperdogs and Underdogs in the United States Courts of Appeals". *American Journal of Political Science* 36:235-258.

Songer, Donald; Kuersten, Ashley; and Kaheny, Eric. 2000. "Why the Haves Don't Always Come Out Ahead: Players Meet Amicus Curiae for the Disadvantaged". *Political Research Quarterly* 53:537-556 (good read on state supreme courts and interest groups).  
Black, Ryan and Boyd, Christina. 2012. "US Supreme Court Agenda Setting and the Role of Litigant Status". *Journal of Law, Economics, & Organization* 28:286-312.  
Nelson, Michael C. and Epstein, Lee. 2019. "Lawyers with More Experience Obtain Better Outcomes". Working paper.

**1/28: Group assignments made;** Natural and Positive Legal Theory

**Flipped PowerPoint:** Discuss what is meant by natural law, and explore how the concept of natural law has influenced actual law; discuss positive law and how it's influenced the modern legal system

**In-Class PowerPoint:** Compare positive and natural law in the US and discuss the benefits and drawbacks of each approach to the law

### **Required Reading**

Carp, et al Ch. 1

Rousseau's *The Social Contract*, Books 1 – 3

Baron de Montesquieu's *The Spirit of the Laws*

Selections from John Rawls's *Theory of Justice*

Stone, Harlan. 1936. "The Common Law in the United States". *Harvard Law Review* 50:4-26.

Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker". *Journal of Public Law* pp. 563-582.

Fuller, Lon. February 1949. "The Case of the Speluncean Explorers". *Harvard Law Review* 62

### **Optional Reading**

Rousseau's *The Social Contract*, Book 4

Koppelman, Andrew. Summer 2009. "The Limits of Constructivism: Can Rawls Condemn Female Genital Mutilation?" *The Review of Politics* 71:459-482.

Blackstone, Sir William. 1765-1769. *Commentaries on the Laws of England* (most famous work by one of the greatest influences on American law).

Sturm, Douglas. February 1966. "Lon Fuller's Multidimensional Natural Law Theory". *Stanford Law Review* 18:612-639.

Pfander, James and Birk, Daniel. 2011. "Article III and the Scottish Judiciary". *Harvard Law Review* 124:1613-1687 (highlights role of Scottish judicial system in American legal history).

**1/30: Dissent and the Law**

**In-Class Lecture:** Examine what happens when the law is perceived as unjust

### **Required Reading**

Foucault, Michel. 1977. Selections from *Discipline and Punish*. US: Pantheon Books.  
Martin Luther King's "Letters from a Birmingham Jail"  
Henry David Thoreau's "Civil Disobedience"  
Huebner, Timothy. 2017. *Liberty and Union: The Civil War Era and American Constitutionalism*. University of Kansas Press. Ch. 2

### **Optional Readings**

Franz Fanon's *The Wretched of the Earth*  
Roberts, Neil. 2004. "Fanon, Sartre, Violence, and Freedom." *Sartre Studies International* 10:139-160.

**2/4:** Research Methods and the Law

**In-Class PowerPoint:** Introduce basic statistical analysis concepts, such as hypotheses, correlations, and confidence intervals

**2/6:** Legal Realism

**In-Class Lecture:** Explore the evolution of judicial theory in political science and the law

### **Required Readings**

Pritchett, C. Herman. February 1948. "VI. The Roosevelt Court: Votes and Values". *The American Political Science Review* 42:53-67.  
Segal, Jeffery and Spaeth, Harold. 1996. "The Influence of Stare Decisis on the Votes of United States Supreme Court Justices". *American Journal of Political Science* 40:971-1003.  
Knight, Jack and Epstein, Lee. 1996. "The Norm of Stare Decisis". *American Journal of Political Science* 40:1018-1035 (response to the Segal and Spaeth article above).  
Epstein, Lee and Knight, Jack. 2000. "Toward a Strategic Revolution in Judicial Politics: A Look Back, A Look Ahead". *Political Research Quarterly* 53:425-466.

**2/11: Response Paper #1 due by 11:59 PM on Blackboard;** Judicial Behavior

**Flipped PowerPoint:** Examine the different theories of judicial decision-making

**In-Class Lecture:** Discuss the ways in which federal court judges make their final decisions

### **Required Readings**

Carp, et al Chs. 12 and 13  
Kastellec, Jonathan P. June 2011. "Panel Composition and Voting on the U.S. Courts of Appeals over Time". *Political Research Quarterly* 64:377-391.  
Kaheny, Eric; Haire, Susan; and Benesh, Sara. 2008. "Change over Tenure: Voting, Variance, and Decision Making on the U.S. Courts of Appeals". *American Journal of Political Science* 52:490-503.

Scott, Kevin. 2006. "Shaping the Supreme Court's Federal Certiorari Docket". *The Justice Systems Journal* 27:191-207.

Baird, Vanessa A. August 2004. "The Effect of Politically Salient Decisions on the U.S. Supreme Court's Agenda". *The Journal of Politics* 66:755-772.

Spriggs, James II; Maltzman, Forrest; and Wahlback, Paul. 1999. "Bargaining on the U.S. Supreme Court: Justices' Responses to Majority Opinion Drafts". *The Journal of Politics* 61:485-506.

McAtee, Andrea and McGuire, Kevin T. June 2007. "Lawyers, Justices, and Issue Salience: When and How Do Legal Arguments Affect the US Supreme Court?" *Law & Society Review* 41:259-278.

Martin, Andrew D.; Quinn, Kevin M.; and Epstein, Lee. 2004. "The Median Justice on the United States Supreme Court". *North Carolina Law Review* 83:1275-1322.

### ***Optional Reading***

Cameron, Charles; Segal, Jeffrey; and Songer, Donald. 2000. "Strategic Auditing in a Political Hierarchy: An Informational Model of the Supreme Court's *Certiorari* Decisions". *The American Political Science Review* 94:101-116.

Scott, Kevin M. March 2006. "Understanding Judicial Hierarchy: Reversals and the Behavior of Intermediate Appellate Court Judges". *Law & Society Review* 40:163-191.

Jacobi, Tonja and Schweers, Dylan. November 2017. "Justice, Interrupted: The Effect of Gender, Ideology, and Seniority at Supreme Court Oral Arguments. *Virginia Law Review* 103:1379-1485.

Segal, Jeffery and Cover, Albert. 1989. "Ideological Values and the Votes of U.S. Supreme Court Justices". *The American Political Science Review* 83:557-565.

George, Tracey and Solimine, Michael. 2001. "Supreme Court Monitoring of the United States Courts of Appeals En Banc". *Supreme Court Economic Review* 9:171-204.

Peters, C. Scott. 2007. "Getting Attention: The Effect of Legal Mobilization on the U.S. Supreme Court's Attention to Issues". *Political Research Quarterly* 60:561-572.

Clark, Tom S. and Kestel, Jonathan. 2013. "The Supreme Court and Percolation in the Lower Courts: An Optimal Stopping Model". *The Journal of Politics* 75:150-168.

Davis, Sue and Songer, Donald. 1988-89. "The Changing Role of the United States Courts of Appeals: The Flow of Litigation Revisited". *The Justice Systems Journal* 13:323-340.

Cross, Frank. 2003. "Decisionmaking in the U.S. Circuit Courts of Appeals". *California Law Review* 91:1457-1515

Giles, Michael; Walker, Thomas; and Zorn, Christopher. 2006. "Setting a Judicial Agenda: The Decision to Grant *En Banc* Review in the U.S. Courts of Appeals". *The Journal of Politics* 68:852-866.

Lauderdale, Benjamin E. and Clark, Tom S. November 2012. "The Supreme Court's Many Median Justices." *The American Political Science Review* 106:847-866.0

**2/13:** Compliance with Supreme Court Outcomes within the Federal System.

**Flipped Lecture:** Discuss how the "least dangerous branch" enforces its decisions in the lower federal courts.

**In-Class Lecture:** explore issues related to the judicial hierarchy and why courts enforce Supreme Court precedent

### **Required Readings**

Carp, et al Ch. 14

Caminker, Evan. 1994. "Why Must Inferior Courts Obey Supreme Court Precedent?". *Stanford Law Review* 46:817-873.

Klein, David and Hume, Robert. 2003. "Fear of Reversal as an Explanation of Lower Court Compliance". *Law & Society Review* 37:579-606.

Westerland, Chad; Segal, Jeffrey; Epstein, Lee; Cameron, Charles; and Compato, Scott. 2010. "Strategic Defiance and Compliance in the U.S. Courts of Appeals". *American Journal of Political Science* 54:891-905.

**2/18:** The Impact of Supreme Court Decision-Making on Public Policy.

**Flipped Lecture:** Explore how the Supreme Court's decisions influence – and are influenced by – public policy and opinion in America

**In-Class Lecture:** Discuss the effect of blowback from the public and the other branches and how – and whether – this serves as a restraint on Supreme Court decisions.

### **Required Readings**

Scheb, John and Lyons, William. 2001. "Judicial Behavior and Public Opinion: Popular Expectations regarding the Factors that Influence Supreme Court Decisions". *Political Behavior* 23:181-194.

Curry, Brett; Pacelle, Richard; and Marshall, Bryan. 2008. "'An Informal and Limited Alliance': The President and the Supreme Court". *Presidential Studies Quarterly* 38:223-247.

McGuire, Kevin and Stimson, James. 2004. "The Least Dangerous Branch Revisited: New Evidence on Supreme Court Responsiveness to Public Opinion". *The Journal of Politics* 66:1018-1035.

Baird, Vanessa A. and Gangl, Amy. August 2006. "Shattering the Myth of Legality: The Impact of the Media's Framing of Supreme Court Procedure on the Perception of Fairness". *Political Psychology* 27:597-614.

### **Optional Readings**

Eskridge, William N., Jr. 1991. "Overriding Supreme Court Statutory Interpretation Decisions". *The Yale Law Journal* 101:331-455.

Clark, Tom S. 2009. "The Separation of Powers, Court Curbing, and Judicial Legitimacy". *American Journal of Political Science* 53: 971-989.

Dickson, Del. 1994. "State Court Defiance and the Limits of Supreme Court Authority: *Williams v. Georgia* Revisited". *The Yale Law Journal* 103:1423-1481 (good read on a specific example of state court defiance of a Supreme Court order).

**2/20:** So You Want to Be a Federal Judge?

**In-Class:** Discuss the nomination and confirmation processes for federal judges. Explore the nominations of some recent Supreme Court justices.

### **Required Readings**

Carp, et al Chs. 6 and 7

Scherer, Nancy; Bartels, Benjamin; and Steigerwalt, Amy. 2008. "Sounding the Fire Alarm: The Role of Interest Groups in the Lower Federal Court Nomination Process". *The Journal of Politics* 70:1026-1039.

### **Optional Readings**

Stidham, Ronald and Carp, Robert. 1988. "Explaining Regionalism in the Federal District Courts". *Publius* 8:113-125.

Ruckman, P.S., Jr. 1993. "The Supreme Court, Critical Nominations, and the Senate Confirmation Process". *The Journal of Politics* 55:793-805.

Epstein, Lee; Martin, Andrew; Quinn, Kevin; and Segal, Jeffrey. 2009. "Circuit Effects: How the Norm of Federal Judicial Experience Biases the Supreme Court". *University of Pennsylvania Law Review* 157:833-880.

**2/25:** Race, Gender, and Justice – Critical Race Theory and the Law.

**Flipped Lecture:** Explore the evolution of race in American law

**In-Class Lecture:** Explore how our understanding of a "color-blind" law inevitably clashes with the reality of American life

### **Required Readings**

Swidorski, Carl. 2003. "The Supreme Court's Legal (Mis)construction of Race, Gender, and Class, 1865-2000". *Race, Gender, & Class* 10:97-114.

Treviño, A. Javier; Harris, Michelle A.; and Wallace, Derron. March 2008. "What's So Critical about Critical Race Theory?" *Contemporary Justice Review* 11:7-10.

Gamal, Fanna. 2016. "The Racial Politics of Protection: A Critical Race Examination of Police Militarization". *California Law Review* 104:979-1008.

Hurwitz, Jon; Peffley, Mark; and Mondak, Jeffery. September 2015. "Linked Fate and Outgroup Perceptions: Blacks, Latinos, and the US Criminal Justice System". *Political Research Quarterly* 68:505-520.

### **Optional Readings**

Bedoya, Alvaro. 2006. "The Unforeseen Effects of *Georgia v. Ashcroft* on the Latino Community". *The Yale Law Journal* 115:2112-2146.

*Hernandez v. Texas* (1954)

**2/27:** Race, Gender, and Justice – Critical Gender Theory and the Law

**Flipped PowerPoint:** Explore the differences between "gender" and "sex" and how American law traditionally fails to distinguish between the two

**In-Class PowerPoint:** Examine practical examples of critical gender theory in the law, such as the Equal Rights Amendment

### **Required Readings**

Gill, Rebecca D.; Kagan, Michael; and Marouf, Fatma. 2019. "The Impact of Maleness on Judicial Decision Making: Masculinity, Chivalry, and Immigration Appeals". *Politics, Groups, and Identities* 7:509-528.

Williams, Margaret S. 2008. "Ambition, Gender, and the Judiciary". *Political Research Quarterly* 61:68-78.

Spade, Dean. 2015. "Rights, Movements, and Critical Trans Politics." *Normal Life: Administrative Violence, Critical Trans, & the Limits of Law*. US: Duke University Press. pp. 19-42.

### **Optional Reading**

Selections from *Borderlands/La Frontera*

**3/3:** Race, Gender, and Justice – Positive Law and Race and Gender/Sexuality

**Flipped PowerPoint:** Examine how laws regarding race and gender/sexuality have (de)evolved over the centuries in American law

**In-Class PowerPoint:** Discuss contemporary issues in race, gender, and justice in American law

### **Required Readings**

Smith, Fred O., Jr. 2005. "Gendered Justice: Do Male and Female Justices Rule Differently on Questions of Gay Rights?". *Stanford Law Review* 57:2087-2134.

Harmon, Rachel. 2009. "Promoting Civil Rights Through Proactive Policing Reform". *Stanford Law Review* 62:1-68.

Glynn, Adam N. and Sen, Maya. January 2015. "Identifying Judicial Empathy: Does Having Daughters Cause Judges to Rule for Women's Issues?" *American Journal of Political Science* 59:37-54.

*Reed v. Reed* (1971)

### **Optional Reading**

Legewie, Joscha. December 2019. "Police Violence and the Health of Black Infants." *Science Advances* 5:1-8.

**3/5:** Review for midterm (in class)

**3/10 through 3/23: No Class (Spring Break); midterm opens at midnight on 3/21**

**3/24: Midterm due by 11:59 PM on Blackboard; Crime and Punishment.** Discuss what crime is and how governments decide on what is and is not a “crime;” explore different theories of crime prevention and how these theories play out in practice

### **Required Readings**

Ellwood, Charles A. January 1912. “Lombroso’s Theory of Crime”. *Journal of the American Institute of Criminal Law and Criminology* 2:716-723.  
Wilson, James Q., and Kelling, George L. March 1982. “Broken Windows: The Police and Neighborhood Activity.” *The Atlantic Monthly*.  
Bar-Gill, Oren and Harel, Alon. June 2001. “Crime Rates and Expected Sanctions: The Economics of Deterrence Revisited.” *The Journal of Legal Studies* 30:485-501.  
Green, Christopher R. November 2015. “Reverse Broken Windows.” *Journal of Legal Education* 65:265-277.

### **Optional Readings**

Calvo-Armengoi, Antoni and Zenou, Yves. August 2004. “Social Networks and Crime Decisions: The Role of Social Structure in Facilitating Delinquent Behavior.” *International Economic Review* 45:939-958.  
Akers, Ronald L. Spring 2005. “Sociological Theory and Practice: The Case of Criminology.” *Journal of Applied Sociology* 22:24-41.  
Callanan, Valerie J. Spring 2012. “Media Consumption, Perceptions of Crime Risk and Fear of Crime: Examining Race/Ethnic Differences.” *Sociological Perspectives* 55:93-115.

**3/26: Criminal Procedure and the Constitution.** Discuss the basics of criminal procedure prior to trial; explore various elements of the Constitution related to defendants’ rights prior to trial, such as illegal searches and seizures

### **Required Readings**

Carp, et al Ch. 9  
*Miranda v. Arizona* (your rights when arrested)  
*Mapp v. Ohio* (Exclusionary Rule regarding evidence)  
*Terry v. Ohio* (example of exception to Exclusionary Rule)  
*US v. Leon* (“good faith” exception to Exclusionary Rule)  
Ch. 6 in Baumgartner, Frank R.; Epp, Derek A.; and Shoub, Kelsey. 2018. *Suspect Citizens: What 20 Million Traffic Stops Tell Us about Policing and Race*. Cambridge University Press.

### **Optional Readings**

*Utah v. Strieff* (recent decision on evidence obtained from searches)  
*Riley v. California* (cell phone searches during arrest)  
*Carpenter v. US* (recent decision on searches of cell phone location history)

**3/31:** Criminal Trials and the Constitution; discuss what goes on during a criminal trial, what constitutional provisions are in play, and how sentencing is decided.

### **Required Readings**

Carp, et al Ch. 10

*Gideon v. Wainwright* (right to counsel)

*Batson v. Kentucky* (jury strikes)

Cole, Simon A. and Dioso-Villa, Rachel. "Investigating the 'CSI Effect' Effect: Media and Litigation Crisis in Criminal Law" (April 1, 2009). *Stanford Law Review*, Vol. 61, No. 6, 2009.

### **Optional Reading**

*Strickland v. Washington*

*Flowers v. Kentucky*

**4/2:** Criminal Sentencing, Appeals, and Prison Policy. Explore issues related to criminal appeals and the aftermath of a trial; examine contemporary issues in sentencing; examine the basics of prison policy at the federal and state levels; explore the history of incarceration in America; discuss contemporary issues in prison policy, such as the for-profit prison system

### **Required Reading**

*US v. Booker* (statutory minimums)

*Atkins v. Virginia* (execution of intellectually handicapped criminals)

*Roper v. Simmons* (execution of minors)

Shapiro, Joseph. May 19, 2014. "As Court Fees Rise, The Poor Are Paying the Price".

*NPR* <https://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor>

Smith, Kevin B. August 2004. "The Politics of Punishment: Evaluating Political Explanations of Incarceration Rates." *The Journal of Politics* 66:925-938.

Mitchell, Jerry. August 19, 2019. "Inside the Prison Where Inmates Set Each Other on Fire and Gangs Have More Power Than Guards". *ProPublica*

<https://www.propublica.org/article/leakesville-south-mississippi-correctional-institution-prison-gangs>

Alexander, Michelle. 2012. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. NY: The New Press. Chs. 1 and 2

Baker, Thomas; Pickett, Justin T.; Amin, Dhara M.; Golden, Kristin; Dhungana, Karla; Gertz, Marc; and Bedard, Laura. June 2015. "Shared Race/Ethnicity, Court Procedural Justice, and Self-Regulating Beliefs: A Study of Female Offenders". *Law & Society Review* 49:433-465.

### **Optional Readings**

Perkinson, Robert. 2010. *Texas Tough: The Rise of America's Prison Empire*. US: Metropolitan Books. Chapter 8, pp. 286-324.  
*Slavery by Another Name* (movie)

**4/7:** Civil Law; explore the basics of civil law and lawsuit procedure; examine contemporary issues in civil law, such as tort “reform”

### **Required Reading**

Carp, et al Ch. 11

Malhorta, Neil. Spring 2015. “An Empirical Analysis of ‘Tort Tales’: How Cultural Memes Influence Attitudes on Tort Reform”. *Journal of Law and Courts* 3:149-166.

Thomas, Wendi C. June 27, 2019. “The Nonprofit Hospital That Makes Millions, Owns a Collection Agency and Relentlessly Sues the Poor.” *ProPublica*

<https://www.propublica.org/article/methodist-le-bonheur-healthcare-sues-poor-medical-debt>

### **Optional Reading**

Whitman, Christina. 1980. “Constitutional Torts”. *Michigan Law Review* 79:5-71.

**4/9: Last day to drop class or withdraw;** State Judicial Systems. Discuss the different types of state court systems and judges and how they compare and contrast with the federal system.

### **Required Readings**

Carp, et al Ch. 3; Ch. 4 section on state court jurisdiction; and Ch. 5

Brace, Paul; Hall, Melinda; and Langer, Laura. 2001. “Placing State Supreme Courts in State Politics”. *State Politics and Policy Quarterly* 1:81-108.

Benesh, Sara. 2006. "Understanding Public Confidence in American Courts". *The Journal of Politics* 68:697-707.

Brace, Paul; Yates, Jeff; and Boyea, Brent. 2012. “Judges, Litigants, and the Design of Courts”. *Law & Society Review* 46:497-522.

**4/14: Response Paper 2 due by 11:59 PM on Blackboard;** Judicial Selection in the States. Examine the different methods of selecting judges; discuss judicial elections and the influence of money on judicial politics

### **Required Reading**

Bonneau, Chris. 2007. “The Effects of Campaign Spending in State Supreme Court Elections”. *Political Research Quarterly* 60:489-499.

Rock, Emily and Baum, Lawrence. Winter 2010. “The Impact of High-Visibility Contests for U.S. State Court Judgeships: Partisan Voting in Nonpartisan Elections”. *State Politics & Policy Quarterly* 10:368-396.

Kazungu, Sidi and Smith, Andrew. 2020. "Gender, Campaign Contributions, and State Intermediate Appellate Court Elections". Working paper.

### ***Optional Reading***

Streb, Matthew, and Frederick, Brian. 2009. "Conditions for Competition in Low-Information Judicial Elections: The Case of Intermediate Appellate Court Elections." *Political Research Quarterly* 62:523-537.

Gill, Rebecca; Lazos, Sylvia; and Waters, Mallory. 2011. "Are Judicial Evaluations Fair to Women and Minorities? A Cautionary Tale from Clark County, Nevada". *Law & Society Review* 45:731-759.

**4/16:** Federal Administrative Law; observe how disputes are adjudicated in the federal administrative system, and examine why new administrative rules are passed; discuss the issues with the *Chevron* Doctrine and other issues related to administrative law and procedure

### **Required Readings**

*Chevron v. Environmental Resources Defense Council*

*Wickard v. Filburn*

*National Federation of Independent Businesses v. Sebelius*

### ***Optional Readings***

Wilson, Woodrow. 1887. "The Study of Administration". *Political Science Quarterly* 2:197-222 (the one that started it all).

Sunstein, Cass. 1987. "Constitutionalism after the New Deal". *Harvard Law Review* 101:421-510

Wood, B. Dan and Waterman, Richard. 1991. "The Dynamics of Political Control of the Bureaucracy". *The American Political Science Review* 85:801-828 (not so much about administrative law as it is about the long-term consequences of political appointees)

Furlong, Scott and Kerwin, Cornelius. 2005. "Interest Group Participation in Rule Making: A Decade of Change". *Journal of Public Administration Research and Theory* 15:353-370.

**4/21:** International Courts and Law. Examine the influence of international law on the American judicial system and discuss the benefits and drawbacks of this influence  
Examine the various international judicial bodies and their effectiveness, and explore the development of judicial systems across the globe.

### **Required Readings**

Simmons, Beth and Danner, Allison. 2010. "Credible Commitments and the International Criminal Court". *International Organization* 64:225-256.

Garoupa, Nuna and Ginsburg, Tom. 2009. "Guarding the Guardians: Judicial Councils and Judicial Independence". *The American Journal of Comparative Law* 57:103-134.

### ***Optional Readings***

Turner, Jenia Iontcheva. 2007. "Transnational Networks and International Criminal Justice". *Michigan Law Review* 105:985-1032.

Cohen, Mathilde. Fall 2014. "Ex Ante versus Ex Post Deliberations: Two Models of Deliberations in Courts of Last Resort." *The American Journal of Comparative Law* 62:951-1007.

**4/23:** Immigration Law in the US. Explore the basics of immigration law and procedure in the US; discuss issues related to asylum applications and immigration law

### **Required Readings**

Cox, Adam B. and Posner, Eric A. February 2007. "The Second-Order Structure of Immigration Law". *Stanford Law Review* 59:809-856.

García, Ruben J. 1995. "Critical Race Theory and Proposition 187: The Racial Politics of Immigration Law". *Chicano-Latino Law Review* 17:118-154.

*Plyer v. Doe*

*US v. Wong Kim Ark*

### ***Optional Readings***

Lim, Julian. August 2013. "Immigration, Asylum, and Citizenship: A More Holistic Approach". *California Law Review* 101:1013-1077.

Gulasekaram, Pratheepan; Su, Rick; and Villazor, Rose Cuison. April 2019. "Anti-Sanctuary and Immigration Localism". *Columbia Law Review* 119:837-894.

Levitt, Justin. June 2019. "Citizenship and the Census". *Columbia Law Review* 119:1355-1398.

**4/28:** Wrap-Up; discuss law school and law enforcement as career paths; reflect on the course

**4/30: Study Day (no class)**

**5/5: Final Research Paper due by 11:59 PM CST on Blackboard**

## Bibliographic and In-Text Citation Formats

1. Newspaper articles:
  - a. Authors' last names, authors' first names. Date. Name of article (in quotations). Newspaper where article located, (in italics), pages (if physical magazine) or internet link
  - b. E.g. Cramer, Renee. August 13, 2015. "The Harsh Human Cost of Defunding Planned Parenthood". *Newsweek* <http://www.newsweek.com/harsh-human-cost-defunding-planned-parenthood-363185>
2. Journal articles:
  - a. Authors' last names, authors' first names. Month and year. Name of article (in quotations). Journal name (in italics), volume number:pages
  - b. E.g. Dahl, Robert. 1957. "Decision-Making in a Democracy: The Supreme Court as a National Policy-Maker". *Journal of Public Law* pp. 563-582.
3. Court cases:
  - a. Full name of case (in italics), US case number (in parentheses)
  - b. E.g. *Baker v. Carr* (369 US 186)
4. Books
  - a. Authors' last names, authors' first names. Date. Title of book (in italics). Edition (if there's more than one). Publishing company
  - b. E.g. Epstein, Lee and Martin, Andrew D. 2014. *An Introduction to Empirical Legal Research*. Oxford University Press
5. In-text citations (in parentheses)
  - a. Last name(s) of author(s) and year of publication
  - b. E.g. (Epstein and Martin 2014)