

**THE JUDICIARY**  
**Political Science 324, Section 1**  
**Maybank Room 316**  
**T/Th: 1:40-2:55**  
**Fall 2013**

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**Office Hours:** M: 10-12; W: 2-3 (or by appointment)

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**I. OBJECTIVES**

This class is designed for upper-level undergraduates and is intended to introduce them the policies and processes of the American judicial system. It analyzes the major legal concepts and operations of that system with an emphasis on the political as well as legal factors involved in judicial decision-making. Along with being able to describe the various institutions and institutional practices that comprise the judicial branch, students will be able to evaluate the operation of the judiciary, developing rigorous assessments of how the judicial system facilitates (or not) justice and equal treatment under the law. Students also will become intimately familiar with the various theoretical perspectives that have informed scholarly work on the judiciary and be able to apply these theories to new contexts and structures. The course will emphasize synthesis and analysis, meaning that students will be required to combine concepts and themes from different parts of the course and use those concepts to reach their own determination of whether and how the judiciary is an appropriate system for resolving disputes.

**II. REQUIRED TEXTS**

Each student must purchase/borrow:

Carp, Robert A., Ronald Stidham, and Kenneth L. Manning. 2014. *Judicial Process in America, 9th<sup>th</sup> ed.*. CQ Press: Washington, D.C.

Charles Gardner Geyh, ed. 2011. *What's Law Got to Do With It?: What Judges Do, Why They Do It, and What's at Stake*. 2011. Stanford Univ. Press: Stanford, CA.

There will also be a significant amount of additional readings drawn from outside sources. I will post these readings on OAKS.

### **III. EVALUATION**

Grades will be based upon two in-class examinations, a final paper, and class participation. The first mid-term will constitute 20% of the final grade; the second mid-term will constitute 25%; the final paper will constitute 35% of the final grade; class participation will constitute 20%.

Examinations will likely be a combination of objective, short answer, and essay questions. Exams must be taken at the scheduled time, unless arrangements have been made with the instructor at least 48 hours prior to the exam. Make-up exams will only be offered once and will be more difficult than the regular test.

I will distribute information about the final paper at a subsequent date, but please note it will involve application of the concepts studied in the final section of the course.

Class participation is highly encouraged, as reflected in its contribution to the final grade. The class participation grade will be based upon how actively you participate in the course. Active participation means that, at a minimum, you come to class having completed the reading(s) assigned for that day. You will be evaluated based upon both the frequency and substance of your involvement in class discussions.

The grading system is based upon the following scale: 93-100% A; 90-92 A-; 87-89% B+; 83-85% B; 80-82% B-; 77-79% C+; 73-76% C; 70-72% C-; 67-69% D+; 63-67% D; 60-62% D-; 0-59%: F. Extra credit is not permitted.

I also reserve the right to give random pop quizzes if it appears that students are not reading the material and coming to class well-prepared. If instituted, these quizzes will be factored into your class participation grade.

### **IV. ATTENDANCE AND CLASS BEHAVIOR**

Attendance is **required** for all classes; attendance will be taken. Only **documented** illness, family emergency, or institutional permission constitute excused absences. Please let me know of any such absences **in advance** whenever possible; if you will be missing class for a school-related reason (activity, athletics etc.), you **must** let me know at least twenty-four hours before your absence. Any student who has more than two unexcused absences may be assigned a lower or failing final grade.

The rules of the student code of conduct apply in this class. Appropriate behavior is required at all times. Students are expected to attend class prepared and on time. Students may not speak while other students or the instructor is speaking. Classroom debate is **highly** encouraged, but students are expected to conduct themselves with decorum and respect.

The academic honor code applies in this class. Cheating in any form will not be tolerated and will result in serious penalty.

Laptops are allowed, but **only** for taking lecture notes. If the student uses the laptop for any other purpose, that student will be banned from computer use for the remainder of the semester. Use of cell phones during class is strictly prohibited. Turn phones **off** before entering the classroom.

## **V. DISABLED STUDENTS**

The College of Charleston policy regarding disabled students and reasonable accommodations will apply in this class and accommodations will be provided for those students with documented disabilities. Please speak with me as soon as possible if you are in need of assistance.

## **VI. ASSIGNMENTS AND LECTURE TOPICS**

Please note that I reserve the right to alter these assignments as necessary. Notice of such changes will be provided in advance and students are expected to alter their reading as necessary.

Also, please be aware the exams and final paper will be based upon information contained in **both the text and the lectures**. Focusing upon solely the text or the lecture material will be insufficient to perform well in this class.

### **A. THE PURPOSE AND STRUCTURE OF THE JUDICIAL SYSTEM**

#### **1. August 20<sup>th</sup>: Introduction**

#### **2. August 22<sup>nd</sup>: Defining “The Law”**

##### **Readings:**

Carp, et. al. pp. 1-23

**Key Topics:** What is “law?” What forms does law take? Where does law come from? How does law compare to other rules from the government?

#### **3. August 27<sup>th</sup> and 29<sup>th</sup>; September 3<sup>rd</sup>: The Origin and Function of Courts and Judges**

##### **Readings:**

Shapiro, Martin. 1981. *Courts: A Comparative and Political Analysis*. Univ. of Chicago Press: Chicago, Il. Chapter 1, pp. 1-8.

Murphy, Walter F., C. Herman Pritchett, Lee Epstein, and Jack Knight, ed. 2006. *Courts, Judges, and Politics: An Introduction to the Judicial System*, 6<sup>th</sup> ed. 2006. McGraw Hill: New York, NY. pp. 38-57.

Davis, Sue. "Discrimination Through Direct Democracy: The Role of the Judiciary in the Pursuit of Equality," in Kermit T. Hall and Kevin T. McGuire, ed., *The Judicial Branch*. 2014. Oxford Univ: New York, NY.

Justice, William Wayne. "The Two Faces of Judicial Activism," in David M. O'Brien, ed., *Judges on Judging*. 2013. CQ Press: Thousand Oaks: CA.

Rehnquist, William H. "The Notion of a Living Constitution," in David M. O'Brien, ed., *Judges on Judging*. 2013. CQ Press: Thousand Oaks: CA.

**Key Topics:** What is a court? Why do we have courts? What function(s) do they serve in society, in theory and practice? Do courts do too much in our society or too little? What is the proper role for a judge? Do judges adhere to this role? Should they?

#### 4. September 5<sup>th</sup> and 10<sup>th</sup>: The Federal Judicial System

##### **Readings:**

Carp, et. al., pp. 25-51

**Key Topics:** How is the federal court system structured? How does a case proceed through federal courts? Does this process reflect the goals of a judicial system?

#### 5. September 12<sup>th</sup>: The State Judicial System

##### **Readings:**

Carp, et. al. pp. 52-74

**Key Topics:** How are state court systems structured? How do state courts compare with federal courts? How does a case proceed through a state's courts? Does this process reflect the goals of a judicial system?

#### 6. September 17<sup>th</sup>: Review/Catch-Up

**\*\*SEPTEMBER 19<sup>TH</sup>: EXAM #1\*\***

## **B. THE PROCESSES, ACTORS, AND CONSEQUENCES OF ADJUDICATION**

### **1. September 24<sup>th</sup> and 26<sup>th</sup>; October 1<sup>st</sup>: Judges**

#### **Readings:**

Carp, et. al. pp. 101-154

Hall, Kermit L. “Judicial Independence and the Majoritarian Difficulty,” in Kermit T. Hall and Kevin T. McGuire, ed., *The Judicial Branch*. 2014. Oxford Univ: New York, NY.

Streb, Matthew J. “How Judicial Elections are Like Other Elections and What That Means for the Rule of Law,” in Geyh, pp. 195-222.

Gibson, James L. “Judging the Politics of Judging: Are Politicians in Robes Inevitably Illegitimate?” in Geyh, pp. 281-305.

**Key Topics:** What are the general characteristics of a judge? Are these traits always desirable? Are judges affected by their personal characteristics and background? Should they be? How should we select judges? What function do judges serve in a democratic system? What function should they serve?

### **2. October 3<sup>rd</sup> and 8<sup>th</sup>: Lawyers, Litigants, and Interest Groups**

#### **Readings:**

Carp, et. al. 181-204

Bailey, Michael, Brian Kamoie, and Forrest Maltzman. 2005. “Signals From the 10<sup>th</sup> Justice: The Political Role of the Solicitor General in Supreme Court Decision-Making.” *American Journal of Political Science*. 49(1): 72-85.

Songer, Donald, Ashlyn Kuersten, and Erin Kaheny. “Why The Haves Don’t Always Come Out Ahead: Repeat Players Meet Amici Curiae for the Disadvantaged.” 2000. *Political Research Quarterly* 53(3): 537-556 (scan Data/Methods section).

**Key Topics:** What role do lawyers, litigants, and interest groups play in the judicial system? Who has more (and less) control over cases and court rulings? Who should have control? What factors affect the power of these actors?

### 3. October 10<sup>th</sup>: The Civil Process

**Readings:**

Carp, et. al., pp. 271-292

Murphy, Walter F., C. Herman Pritchett, Lee Epstein, and Jack Knight, ed. 2006. *Courts, Judges, and Politics: An Introduction to the Judicial System*, 6<sup>th</sup> ed. 2006. McGraw Hill: New York, NY. pp. 103-115

**Key Topics:** What is a civil case? What are its major stages? How does it compare to a criminal case?

### 4. October 17<sup>th</sup> and 22<sup>nd</sup>: Jurisdiction and the “Limits” of Judicial Power

**Readings:**

Carp, et. al., pp. 75-99

Howard, Robert M. and Amy Steigerwalt. 2012. *Judging Law and Policy: Courts and Policymaking in the American Political System*. Routledge, New York: New York. Introduction (pp.1-5, 13-18)

Rosenberg, Gerald. 2008. *The Hollow Hope: Can Courts Bring About Social Change?*. Univ. of Chicago Press: Chicago, IL. Chapter 1

**Key topics:** How powerful is the judiciary? What, if any, legal and politics factors constrain this power? How powerful should the judiciary be?

### 5. October 24<sup>th</sup>: Review/Make-Up

**\*\*OCTOBER 31<sup>st</sup>: EXAM #2\*\***

## C. JUDICIAL DECISION-MAKING: THE INTERSECTION OF LAW AND POLITICS

### 1. November 5<sup>th</sup>, 7<sup>th</sup>, and 12<sup>th</sup>: The Traditional Approach

**Readings:**

Murphy, Walter F., C. Herman Pritchett, Lee Epstein, and Jack Knight, ed. 2006. *Courts, Judges, and Politics: An Introduction to the Judicial System*, 6<sup>th</sup> ed. 2006. McGraw Hill: New York, NY. pp. 438-449; 491-501; 539-558

Bailey, Michael A. and Forrest Maltzman. 2011. *The Constrained Court, Law, Politics, and the Decisions Justices Make*. Princeton Univ. Press: Princeton, NJ. Chapter 4.

Friedman, Barry and Andrew D. Martin. "Looking for Law in All the Wrong Places," in Geyh, pp. 143-172.

**Key Topics:** How have scholars traditionally understood judicial decision-making? What are the benefits and problems of this approach? Why and how has this approach gained renewed interest from political scientists? How strong is the evidence for this model?

## 2. November 14<sup>th</sup> and 19<sup>th</sup>: The Attitudinal Model

### Readings:

Carp, et. al., pp. 357-360

Segal, Jeffrey A. and Harold J. Spaeth. 2003. *The Supreme Court and The Attitudinal Model Revisited*. Cambridge Univ. Press: New York, NY. Chapters 3 (skip pp. 97-110) and 4. (OAKS)

Segal, Jeffrey A. "What's Law Got To Do With It: Thoughts from the Realm of Political Science," in Geyh, pp. 17-40.

Cross, Frank B. "Law Is Politics," in Geyh, pp.92-113.

**Key Topics:** How do attitudinalists understand judicial decision-making? How strong is the evidence for this model? What criticisms have been leveled at this approach? What are the benefits and problems of adopting the attitudinal model?

## 3. November 19<sup>th</sup> and 21<sup>st</sup>: Strategic Interactions

### Readings:

Carp, pp. 340-350; 360-361

Epstein, Lee and Jack Knight. 1998. *The Choices Justices Make*. CQ Press: Washington, D.C. Chapters 1 and 3

Maltzman, Forrest, James F. Spriggs, Jr. and Paul J. Wahlbeck. 2000. *Crafting Law on the Supreme Court: The Collegial Game*. Cambridge Univ. Press: Cambridge, UK. Introduction.

Lindquist, Stefanie A. "Stare Decisis as Reciprocity Norm," in Geyh, 173-196.

**Key Topics:** What factors do advocates of the strategic model find relevant to judicial decision-making? How does this model fit with others we have studied? How strong is the evidence for this model? What are the benefits and problems of adopting a strategic approach?

**4. November 26<sup>th</sup>: Review/Make-Up**

**\*\*FINAL PAPER DUE (HARD COPY ONLY) ON FRIDAY,  
DECEMBER 6<sup>TH</sup> AT 12:00 PM\***