

THE JUDICIARY
Political Science 324
Maybank Room 316
W: 5:30 – 8:15
Fall 2022

Instructor: Elizabeth Meny, J.D.
Pronouns: she/her

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Office Hours: M/5pm – 6pm in person; Th/ 5pm – 6pm by phone, Facetime or Zoom;
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I. OBJECTIVES AND STUDENT LEARNING OUTCOMES

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 structures, participants, operations, and impact of that system. There is also an emphasis on the political as well as legal factors involved in judicial decision-making.

At the conclusion of the course, students will be able to 1) Describe the various institutions, institutional practices, and actors that comprise the judicial branch; 2) Evaluate the operation of the judiciary, developing empirical and normative assessments of how the judicial system facilitates (or not) justice and equal treatment under the law; 3) Explain various theories of judicial decision-making, and how those theories shape the way judges make their decisions.

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. PREREQUISITE(S):

Political Science 101 or permission of instructor.

III. REQUIRED TEXTS

Each student must purchase/borrow:

Carp, Robert A., Kenneth L. Manning, Lisa M. Holmes, and Ronald Stidham.
2020. *Judicial Process in America, 11th ed.* CQ Press: Washington, D.C.

There will also be a **significant** amount of additional readings drawn from outside sources. I will post these readings on OAKS. Please read all listed material BEFORE the class session. When a topic runs over several class sessions, please read the first half of the listed assignments for the first session and the second half for the second session.

IV. EVALUATION

Grades will be based upon a mid-term examination; a final examination; two written assignments; and class participation. The mid-term will constitute 25% of the final grade; the final will constitute 25%; each written assignment will constitute 15% of the final grade; and 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. I reserve the option of substituting the final exam with a group project or paper and will notify students of any change well in advance of that decision. Make-up exams will only be offered once and will be more difficult than the regular test.

I will distribute information about the written assignments at a subsequent date.

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. There will also be (informal) small group work during certain class sessions. Your performance and contributions in these sessions will also factor into your participation grade.

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 to 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.

V. 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. Students will be assigned one unexcused absence for every two times they are late to class.

The rules of the student code of conduct apply in this class. Appropriate behavior is always required. 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.

Laptops and cell phones are prohibited in the classroom, unless required for a class assignment which students will be notified of in advance. Please see me if you have questions about this policy or need accommodations.

VI. ACADEMIC INTEGRITY

Lying, cheating, attempted cheating, and plagiarism are violations of our Honor Code that, when identified, are investigated. Each incident will be examined to determine the degree of deception involved.

Incidents where the instructor determines the student's actions are related more to a misunderstanding will be handled by the instructor. A written intervention designed to help prevent the student from repeating the error will be given to the student. The intervention, submitted by form and signed both by the instructor and the student, will be forwarded to the Dean of Students and placed in the student's file.

Cases of suspected academic dishonesty will be reported directly by the instructor and/or others having knowledge of the incident to the Dean of Students. A student found responsible by the Honor Board for academic dishonesty will receive an XXF in the course, indicating failure of the course due to academic dishonesty. This grade will appear on the student's transcript for two years after which the student may petition for the XX to be expunged. The F is permanent. The student may also be placed on disciplinary probation, suspended (temporary removal) or expelled (permanent removal) from the College by the Honor Board.

Students should be aware that unauthorized collaboration--working together without permission-- is a form of cheating. Unless the instructor specifies that students can work together on an assignment, quiz and/or test, no collaboration during the completion of the assignment is permitted. Other forms of cheating include possessing or using an unauthorized study aid (which could include accessing information via a cell phone or computer), copying from others' exams, fabricating data, and giving unauthorized assistance. Research conducted and/or papers written for other classes cannot be used in whole or in part for any assignment in this class without obtaining prior permission from the instructor.

Students can find the complete Honor Code and all related processes in the Student Handbook at <http://studentaffairs.cofc.edu/honor-system/studenthandbook/index>.

VII. STUDENTS WITH DISABILITIES

The College of Charleston policy regarding students with disabilities 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 need assistance.

VIII. 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 24: Introduction, Defining “The Law”

Readings after class:

Carp: Chapter 1, (33 – 47: Up to “Functions of Law”)

2. August 31: The Origin, Function, and Form of Courts

Readings:

Carp: Chapter 1 (pp. 47 – 51: Read through the end of “Protecting Individual Liberties”)

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*, 6th ed. 2006. McGraw Hill: New York, NY. pp. 38-57.

3. September 7: The Rule of Law and Civil Disobedience

Readings:

Carp: Chapter 1 (pp. 52 – 58: Read through the end of “Concluding Thoughts on the United States and the Rule of Law”)

Powell, Lewis F., Jr. 1967. *Civil Disobedience: Prelude to Revolution?*
Washington and Lee University School of Law, Lewis F. Powell Jr. Papers

<https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1024&context=powellspeeches>

(NOTE: This paper was written in 1967 and contains antiquated phrases and views.)

Martin Luther King, Jr., “Letter from a Birmingham Jail.”

https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html
<https://youtu.be/Di05SvJ8utI>

Kittay, D.: *Defending the rule of law: Bars respond to Capitol riot*. American Bar Association, Vol. 46, No. 4: March-April 2021

https://www.americanbar.org/groups/bar_services/publications/bar_leader/2020_2/1/march-april/defending-the-rule-of-law-bars-respond-to-capitol-riot/

4. September 14: The Function of Judges

Readings:

Lon Fuller's “The Case of the Speluncean Explorers” (27 pages)

https://pennstatelaw.psu.edu/_file/TheCaseOfTheSpelunceanExplorers.pdf

Cardozo, Benjamin N. “The Judge as Legislator.” 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.

Posner, Richard. “What Am I, A Potted Plant? The Case Against Strict Constructionism,” in David M. O’Brien, ed., *Judges on Judging*. 2013. CQ Press: Thousand Oaks: CA.

5. September 21, 28: The Federal Judicial System

Readings:

Carp: pp. 26-42

Carp: pp. 78-99

McCann, Michael. “How the Supreme Court Matters in American Politics: New Institutional Perspectives.” In Howard Gillman and Cornell Clayton, eds. *The Supreme Court in American Politics: New*

Institutionalist Interpretations. (pages 63-67; 71-73; 74-77; 78-80; 91-92)
(NOTE: This reading is difficult, but please make your best effort)

O'Brien, David M. *Storm Center: The Supreme Court in American Politics*, Chapter 6: The Court and American Life (pp. 299-302; 309-323 (stop at "by itself"; 360-361) (NOTE: Please read for a general "sense" of the story, rather than precise historical details.).

6. October 5: Mid-Term Exam

B. THE ACTORS, PROCESS, AND CONSEQUENCES OF ADJUDICATION

1. October 12: Federal Judges: The Who, The How and The Who Cares?

Readings:

Carp: pp. 149-165;

Arenberg, Richard A. 2020. "The Trumpification of the Federal Court." In The Hill.com. Available at <https://thehill.com/opinion/judiciary/476796-the-trumpification-of-the-federal-courts>.

White House Fact Sheet. 2019. "President Donald J. Trump is Appointing a Historic Number of Federal Judges to Uphold Our Constitution as Written." Available at <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-appointing-historic-number-federal-judges-uphold-constitution-written/>

2. October 19: State Judges: Is this Really Any Better?

Readings:

Carp: pp. 101-131

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. (pp. 63-67)

3. October 26: Litigants and Interest Groups: 99% vs. The 1%?

Readings:

Carp: pp. 239-246 (for Feb. 27th; review for March 3rd)

Galanter, Marc. "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Social Change." In Murphy, Walter F., C. Herman Pritchett, Lee Epstein, and Jack Knight, ed. *Courts, Judges, and Politics: An Introduction to the Judicial System*, 6th ed. 2006. McGraw Hill: New York, NY. pp. 285-287. (for Feb 27th)

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). (for Feb. 27th)

Collins, Paul M. 2007. "Lobbyists before the U.S. Supreme Court: Investigating the Influence of Amicus Curiae Briefs." *Political Research Quarterly*. 61(1): 55-70. (for March 3rd)

OPTIONAL: O'Connor, Karen and Lee Epstein. 1983. "Beyond Legislative Lobbying: Women's Rights Groups and the Supreme Court." *Judicature* 67: 134-143.

OPTIONAL: Wofford, Claire B. 2015. "Assessing the Anecdotes: Amicus Curiae, Legal Rules, and the U.S. Supreme Court." *Justice System Journal*. 36(3): 274-294.

OPTIONAL: Wofford, Claire B. N.D. "Why Try: Examining the Goals of Litigants and Amici Curiae before the U.S. Supreme Court." Forthcoming. *Justice System Journal*.

4. November 2: The Civil Process: It Ain't Like TV

Readings:

Carp: pp. 332-353

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

Looking to the Law: Courts and Social Change

Readings:

Carp: pp. 455-476

Silverstein, Gordon. 2009. *Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics*. Cambridge Univ. Press. (pages 1-5; 15-29)

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

Klarman, Michael. 1994. "The Backlash Thesis: How Brown Changed Race Relations." *Journal of American History* 81(1): 81-118.

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

1. November 9: It's All About the Law

Readings:

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

Friedman, Barry and Andrew D. Martin. "Looking for Law in All the Wrong Places," in Charles G. Geyh, *What's Law Got to Do with It?* 2011. Stanford Univ. Press: Stanford, CA. (pp. 143-172).

2. November 16: It's All About the Politics –

Readings:

Carp: pp. 434-437

Segal, Jeffrey A. "What's Law Got to Do with It: Thoughts from the Realm of Political Science," in Charles G. Geyh, *What's Law Got to Do with It?* 2011. Stanford Univ. Press: Stanford, CA. (pp. 26-29).

Segal, Jeffrey A. and Harold J. Spaeth. 2003. *The Supreme Court and The Attitudinal Model Revisited*. Cambridge Univ. Press: New York, NY. Chapter 3

3. November 30: It's All About the Game

Readings:

Carp: pp. 411-434; 437-438

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

4. December 7: Final Exam