

SPRING 2019
POLITICAL SCIENCE 104D: JUDICIAL POLITICS

Visiting Professor Glenn Smith (gsmith@cwsl.edu)

Tuesday, 5 P.M. to 7:50 P.M.

Mandeville, Room B-210

OVERALL COURSE APPROACH

This course provides an introduction to many of the major theoretical and practical issues flowing from the reality that in modern America substantial power and discretion is exercised by judicial officials

--whose legitimacy as policy-makers remains controversial,

--who are not always subject to the “usual” methods of electoral and political accountability in a majoritarian democracy,

--and whose subjection to some electoral accountability may strongly conflict with the expectation that these judges will rise “above politics” in providing equal justice under law!

The course examines the politics of judicial policy-making in both state and federal courts, and at both the trial and appellate levels.

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You are expected to do the assigned reading for each session and come to each class prepared to engage in a lively discussion.¹ We will have FUN.

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For EACH CLASS WEEK starting with the second week (April 8-14) and continuing through the tenth week (June 3-9) – *except* for 1) the week before the midterm exam (May 6-12) and 2) another week of your choosing -- you are assigned to post 3 different items, as follows:

- (A) 2 postings must RESPOND to postings by me, the TAs or other class members
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104B, AND INVITE OTHERS TO COMMENT.

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FIRST SYLLABUS FOR PHASES I & IIA through IIH

(Assignments for first six classes,
covered on the in-class midterm in Week Seven, Tuesday, May 14th)

--References in regular font to “Carp” are to Carp, Stidham & Manning, JUDICIAL PROCESS IN AMERICA (2017 10th Ed. CQ Press). Unless page numbers are given, the reference to a Chapter is to the entire Chapter. (*For one assignment within a single chapter, page number equivalents to the previous 9th and 8th editions are given in italicized parentheses.*) For all Carp assignments, PLEASE PAY CAREFUL ATTENTION TO THE “FURTHER THOUGHT AND DISCUSSION QUESTIONS” AT THE END OF EACH CHAPTER.

--References to “Smith” are to documents prepared by Professor Smith and available via the P Sc 104D webpage on TED.

I. AN OVERVIEW OF THE COURSE & THE STATE AND FEDERAL JUDICIAL SYSTEMS: History, Background and Key Functions

A. An Introduction to the Course and the Importance of Its Subject
Introductory Lecture

B. The Rule and Role of Law in America: An Overview
Introductory Lecture (covering portions of Carp, Chap. 1) [ASSIGNMENT: “HIGHLIGHT-READ”¹¹ THIS CHAPTER AFTER THE APRIL 2ND CLASS]

C. The History and Organization of the Federal and State Judicial Systems: An Overview
Introductory Lecture (covering portions of Carp, Chaps. 2 & 3)
[ASSIGNMENT: HIGHLIGHT-READ THESE CHAPTERS AFTER THE APRIL 2ND CLASS]

D. A Bit More on Procedures and Dynamics at the United States Supreme Court

¹¹“Highlight-read” means, at a minimum, to read any portions of a Chapter that you need to read to understand fully the points from that Chapter that I covered in class. In many cases, the points may be self-explanatory, so that no additional reading within the Chapter is needed.

Introductory Lecture (which will continue at the first part of class on April 9th)

[READ THE FOLLOWING FOR APRIL 9th]

II. KEY FACETS OF JUDICIAL POLITICS: An In-depth Look

- A. **Basic Themes in Judicial Politics and Policy-Making: A Synthesis**
Carp, Chap. 15
- B. **The Importance of, and Limits on, Judicial Politics and Policy-Making: An Initial Assessment**
Smith, “Additional Discussion Questions for 2nd Week Class” (available on class website)
Carp, Annotated Constitution (pp. 405-439) [NOTE: “Skim-Read” clauses that help you answer the Smith Additional Discussion Questions] (*equiv. to pp. 425-462 in 9th Edition and pp. 409-445 in 8th Edition*)
Carp, Chap. 4

[PLEASE READ THE FOLLOWING FOR APRIL 16TH.]

- C. **A Closer Look at State Judicial Backgrounds, Selection and Other “Personnel” Matters**
Carp, Chap. 5
Smith, pp. JE-1 through JE-__ (excerpts from *Williams-Yulee v. Florida Bar* (Sup. Ct. 2015) and *French v. Jones* (9th Cir. 2017))

[This class will also highlight portions of Carp, Chap. 9. YOU ARE ASSIGNED TO “HIGHLIGHT-READ” THESE PAGES AFTER THE APRIL 9TH CLASS, and you might want to read]

[PLEASE READ THE FOLLOWING FOR APRIL 23rd.]

- D. **A Closer Look at Federal Judicial Backgrounds, Selection and Other “Personnel” Matters**
Carp, Chap. 6
Carp, Chap. 7
- E. **Other Players in the Judicial Systems: How Judges Interact with Other System Participants, Policy-Makers, and the Public**
Carp, Chap. 8

[This class will also highlight portions of Carp, Chap. 10. PLEASE “HIGHLIGHT-READ” THESE PAGES AFTER THE APRIL 15TH CLASS]

[PLEASE READ THE FOLLOWING FOR APRIL 30TH.]

F. Decision-Making Patterns and Dynamics, Part 1: Trial Courts
Carp, Chap. 12

[This class will also highlight portions of Carp, Chap. 11. PLEASE "HIGHLIGHT-READ" THESE PAGES AFTER THE APRIL 23rd CLASS]

[PLEASE READ THE FOLLOWING FOR MAY 6TH:]

G. Decision-Making Patterns and Dynamics, Part 2: Appellate Courts

Carp, Chap. 13
Smith, pp. DP-1 through DP-__ (excerpts from *Caperton v. A.T. Massey Coal Co.*)

In-class midterm on **TUESDAY, MAY 14TH, 5 P.M. to 6:30ish P.M.**; After a 15-minute break, class will reconvene for a lecture on this **ADDITIONAL ASSIGNMENT:**

H. Implementation, Political-Branch Influences, and the Impact of Judicial Policies
Carp, Chap. 14
Smith, pp. JS-1 through JS-12 (highlighted excerpts from a trio of post-Civil-War jurisdiction-stripping decisions, *McCardle*, *Yerger* & *Klein*)